



NATIONAL INTEGRITY SYSTEM ASSESSMENT TURKEY



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TI-Turkey (Uluslararası Şeffaflık Derneği) was founded in 2008 by voluntary efforts. The association aims to set the rule of transparency, integrity and accountability principles in all segments of the society for the democratic, social, and economic development of the country. TI-Turkey predicates on collaboration of public sector, businesses, unions, universities, professional chambers, and non-governmental organizations in the scope of its anti-corruption efforts. It expects legibility, integrity, legal conformity, accountability, and traceability from all individuals and institutions in society who constitutes the social structure and/or holds public power, and conducts its activities within the frame of these principles. TI-Turkey shares the principles and visions of Transparency International (TI). TI-Turkey is the national representative of TI, the global coalition against corruption which has national chapters in more than 100 countries.

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Authors

Dr. Umut Gündüz

Pelin Erdoğan

Yalın Hatipoğlu

Editors

E. Oya Özarslan

Prof. Dr. Uğur Ömürgönülşen

Dr. Diğdem Soyaltın

Andrew McDevitt

Batuhan Görgülü

Contributors

Özlem Zıngıl

Nükheth Oğan Atakan

Deniz Can Akkaya

Ömer Akalın

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Every effort has been made to verify the accuracy of the information contained in this report. All information is believed to be correct as of October 2015. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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NATIONAL INTEGRITY SYSTEM ASSESSMENT- TURKEY

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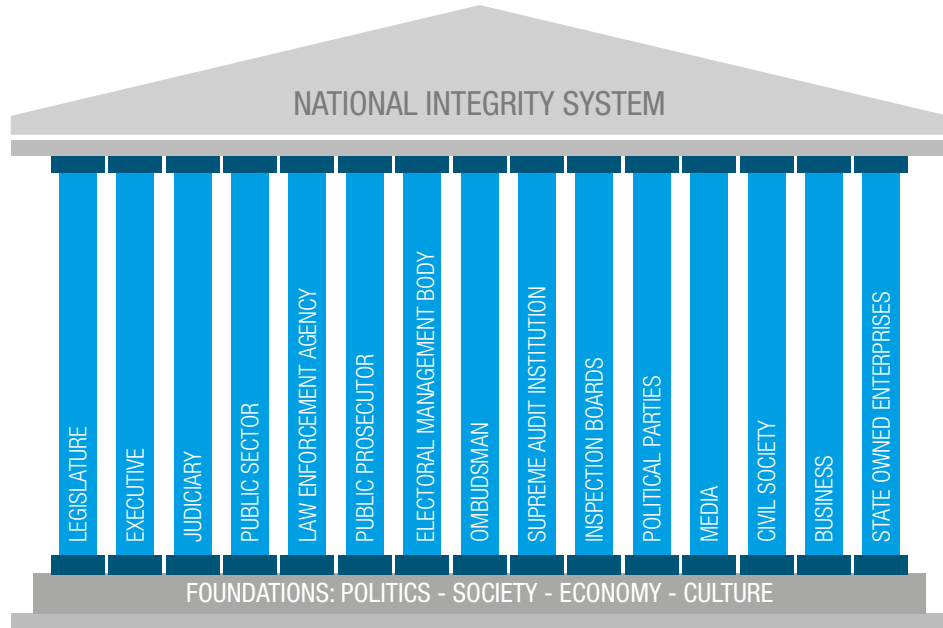
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ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyze both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbors systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

Definitions

The definition of ‘corruption’ which is used by Transparency International is as follows:

“The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.”¹

‘Grand corruption’ is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’² ‘Petty corruption’ is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’³ ‘Political corruption’ is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’⁴

Objectives

The key objectives of the National Integrity System assessment are to generate:

- an improved understanding of the strengths and weaknesses of Turkey's National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Turkey for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Turkey's institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Turkey to advocate for sustainable and effective reform.

Methodology

In Transparency International's methodology, the National Integrity System is formed by 15 pillars

Core Governance Institutions	Public Sector Agencies	Non-Governmental Actors
Legislature	Public sector	Political parties
Executive	Law enforcement agency	Media
Judiciary	Electoral management body	Civil society
	Ombudsman	Business
	State Owned Enterprises	
	Supreme audit institution	
	Public prosecutor	
	Anti-Corruption agencies	

Each of the 15 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfil their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

Dimension	Indicators (Law And Practice)
Capacity	Resources / Independence
Governance	Transparency / Accountability / Integrity
Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritize areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 15 pillars operate.

POLITICS	SOCIETY	ECONOMY	CULTURE
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The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’, developed by Transparency International. These consist of a ‘scoring question’ for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practicing lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.⁵

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organizations, international organizations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is people ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarize the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions’ scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.



The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

Consultative approach and Validation of findings

The assessment process in Turkey had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

The consultative approach in Turkey aimed to receive feedbacks from specialists who are as equipped in practice and implementation processes, and activism aspects as they are regarding the theory. Following the feedbacks provided in written form, roundtable discussions have been conducted at the Transparency International Turkey to enable the members of the consultative team to discuss their findings with each other, the executive board and the research team. Apart from the academicians and civil society actors, the composition of the consultative component is formed with the aim to engage with bureaucrats who has the opportunity to provide an insight regarding the inner mechanisms and structures of the pillars.

Advisory Board

Name	Position
Bülent Tarhan	Chief Inspector, Prime Ministry Inspection Board
Ceren Sözeri	Associate Professor, Galatasaray University, Media and Communication Studies
Hande Özhabaş	Senior Expert, TESEV
Murat Önok	Assistant Professor, Koc University, Law School
Mustafa Sönmez	Economist, Journalist
Ömer Faruk Gençkaya	Professor, Head of Department and Chair of Law sub-department, Marmara University, Faculty of Political Science
Ömer Fazlıoğlu	Political Officer & Sector Manager, Delegation of the European Union to Turkey
Turgut Tarhanlı	Professor, İstanbul Bilgi University, Faculty of Law
Zeki Gündüz	PWC Tax Services Leader

The Advisory Board group meeting has taken place on 21 November 2014 in Istanbul. The Board has offered recommendations on secondary sources, interview strategies, main themes of the report, and actions to ensure the visibility of the report. The Board has also provided feedback and information during and after the meeting, and following the interviews with the experts.

Endnotes

- 1 Transparency International, (2009) *The Anti-Corruption Plain Language Guide*, p.14.
http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide
- 2 Ibid. p. 23.
- 3 Ibid. p. 33.
- 4 Ibid. p. 35.
- 5 www.transparency.org/policy_research/nis/methodology

II

EXECUTIVE SUMMARY

This National Integrity System (NIS) Assessment presents a holistic picture of Turkey’s institutional landscape with regard to its capacity to function, its compliance with good governance principles, and its performance in the fight against corruption. Within this framework the analysis identifies weaknesses and shortcomings affecting the whole system, as well as institution-specific areas of concern. Of the 15 institutions assessed, 11 were classified as “weak” and only four rated as high as “moderate”.

Key findings

The overarching systematic challenge for Turkey’s national integrity system is the failure to adequately separate powers and keep the executive in check. Anti-corruption efforts entail perfect adherence to the principles of separation of powers, and the deference of the executive body to the Constitutional framework and the boundaries drawn therein.

The influence of the executive over other institutions, such as the legislature, judiciary, ombudsman, and media, demonstrates a considerable undermining of the rule of law and the functioning of democratic processes. Consolidation of power on the executive prevents civil actors (business, media, civil society organizations) from performing their duties in effectively participating in anti-corruption measures in place. The deficiencies in these institutions are mostly the product of the overarching control of the executive, which casts a shadow over the independence of these bodies. Political polarization and the imbalance over the control mechanisms it brings damage the Rule of Law and hinder the democratic process.

While institutional dependence on the executive is widespread, lack of transparency, accountability and integrity are also fundamental factors impairing progress in the national integrity system. While most institutions are equipped with adequate human, financial and technical resources, the absence of mechanisms to ensure accountability, and the weak implementation of integrity measures and anti-corruption policies seriously undermine their performance.

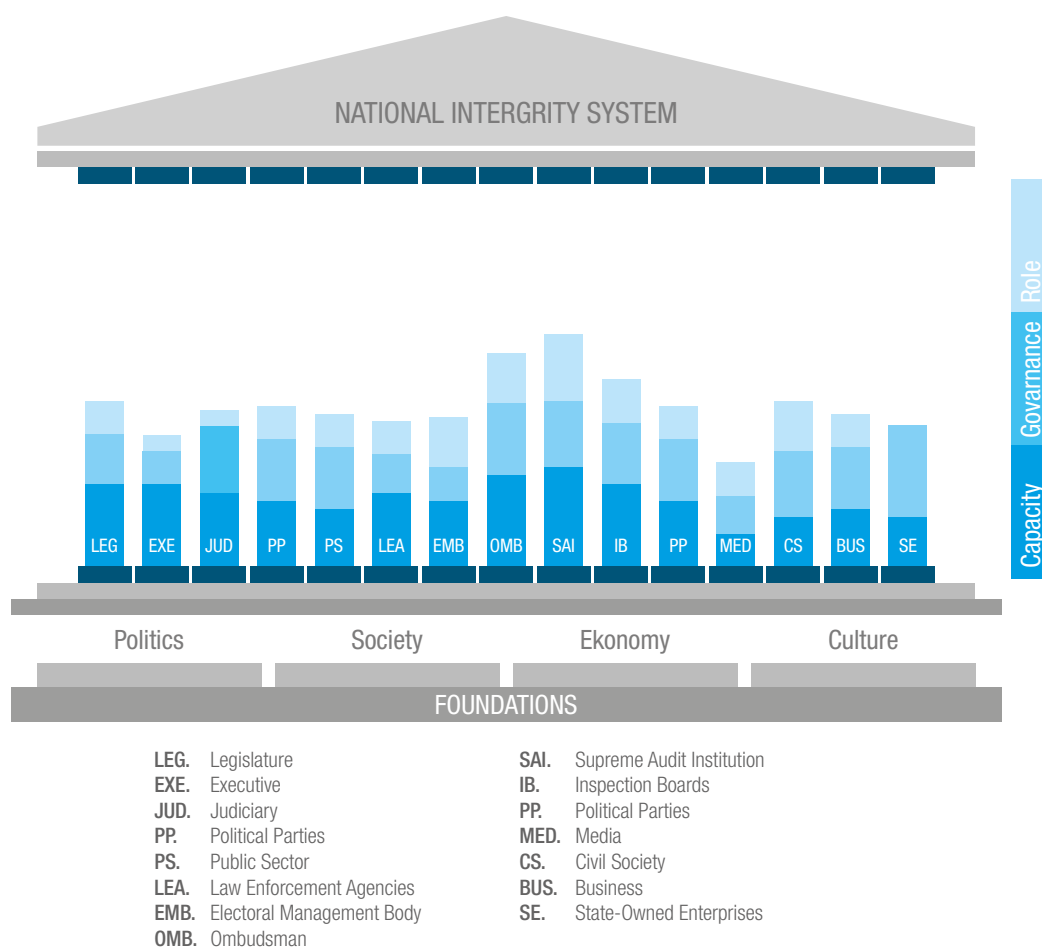
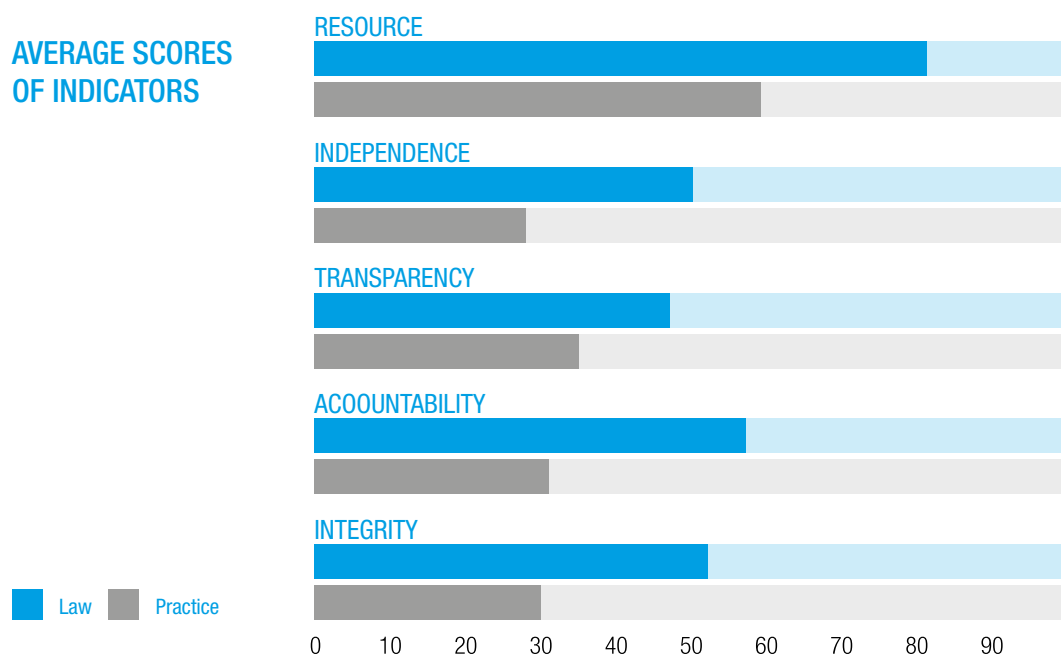
Although some progress was made in the development of anti-corruption policies in the early 2000s, this reform process has gone into reverse in recent years as amendments to the legal framework have weakened rather than strengthened the national integrity system. Changes to the laws such as the Public Procurement Law have had detrimental effects and resulted in a severely weakened system and the loss of checks and balances.

Turkey’s national integrity system is characterized by a large gap between law and practice and the chart above presents this divide. Almost all institutions in this analysis reveal the deficiencies in practice and the loss of control that the legal framework is supposed to provide. Unless strong political will is created to establish and institutionalize good governance practices, this enveloping problem is bound to harm the system as a whole and pave the way for corrupt practices.

The weakest pillars in Turkey’s national integrity system are the media and the executive.

Given its essential role as a public watchdog, the fact that the **media** is assessed as the weakest pillar in the national integrity system is particularly alarming. This can largely be attributed to the strong political pressure under which it operates, including the use of anti-terrorism legislation and the Penal Code to censor and prosecute journalists, the blocking of Internet sites, bans on certain publications, and the politicization of media owners and the main media regulatory authority, the RTÜK. The absence of an independent, accountable and transparent media makes it difficult for all other anti-corruption actors to function efficiently.

AVERAGE SCORES OF INDICATORS



The poor performance of the **electoral management body** (the Supreme Board of Elections), meanwhile, raises serious concerns about standards of democracy. In particular, there are no provisions in place to ensure transparency and accountability of the Board, and there are deficiencies in the legal framework, which limit the Board's effective role in election and campaign regulation. In particular, the Board is not authorized to regulate and audit campaign financing during local and parliamentary elections.

The **public prosecutor**, the foundation of justice and the initial point for corruption prosecution, is also weak and relatively ineffective. Political interference in the work of prosecutors is one of the most serious concerns in the integrity system, undermining justice and enabling corruption to go unpunished. Prosecutors are often intimidated by and subjected to unjustified civil, penal and other liabilities, as exemplified by their treatment following the December 2013 corruption investigations.¹ The limited transparency and accountability of public prosecutors is also a concern.

As core institutions of governance, it is particularly concerning that the **executive** and the **legislature** perform so poorly in their roles regarding the fight against corruption and have failed to prioritize anti-corruption measures and good governance. This is despite both institutions being comparatively well resourced. A key problem is the fact that there is very limited constraint on the executive's power and official misconduct is rarely prosecuted and punished, while the legislature still lacks sufficient integrity measures to hold members of parliament accountable or provide oversight and enhance governance.

The **judiciary** is neither a deterrent to corruption nor effective in investigating allegations of corruption in full transparency, and is in fact itself perceived as one of the most corrupt institutions in the country. Due to numerous amendments to the Public Procurement Law, the **public sector** has also become highly vulnerable to corruption and despite a comprehensive legal framework ensuring the integrity of public sector employees, bribery and the receipt of gifts are still matters of concern. Lack of independence, meanwhile, reveals itself to be one of the main challenges both for **state owned enterprises** and the **law enforcement agencies** (Turkish National Police).

There are many areas in need of improvement in the non-governmental sector in the form of **civil society, business and political parties**. While the number of civil society organizations (CSOs) and the level of citizen engagement are increasing, their limited capacity in terms of know-how, and human and financial resources remain a challenge. Meanwhile, inequality in the treatment of CSOs, external pressures and lack of a structured and continuous dialogue between CSOs and the public sector limit the influence of civil society in the policy-making process. For the business sector, the interference of public officials in its activities and the effects of nepotism, alongside deficiencies in the adoption of integrity principles and lack of cooperation with civil society, present major challenges. Political parties are also identified as particularly vulnerable to corruption risks. In particular, the lack of effective measures with regard to transparency in political financing and political ethics remain serious concerns.

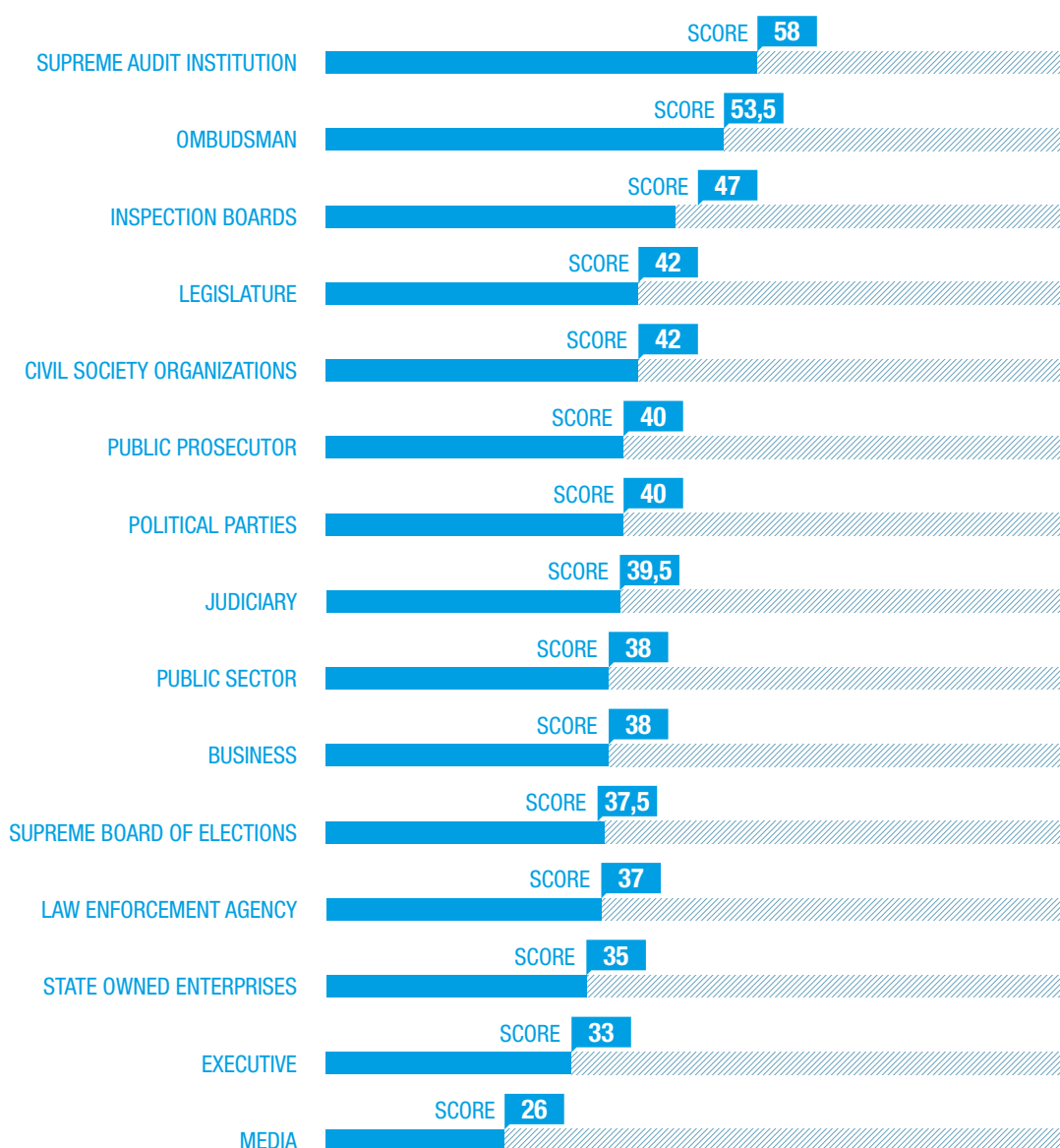
The strongest pillars in the NIS Assessment are the **supreme audit institution** (the Turkish Court of Accounts), the **ombudsman** and the **inspection boards**. Strength in these areas is a positive sign, as they are three crucial actors in the checks and balances system. However, it should be noted that despite enjoying sufficient resources, there is still much room for improvement in terms of their effectiveness in monitoring, controlling and improving public sector management.

The Turkish Court of Accounts has adequate financial and human resources to detect inefficient management in the public sector and the loss of public resources and there are adequate

provisions regulating integrity measures for the auditors of the TCA. However, deficiencies in the legal framework as well as in practice, such as the limited scope of performance auditing and lack of effective cooperation with the legislature in oversight of the executive, restrict the effectiveness of the TCA.

The Ombudsman's Office is the youngest institution in Turkey's national integrity system. The legislative framework regulating its activities and mandate provides an enabling environment for it to carry out its functions unhindered. However, improvements are needed in order to ensure its own integrity and effectiveness, and levels of independence and transparency in the election of ombudsmen have been major concerns from the beginning.

The legal framework provides the necessary power to inspection boards and adequate regulations regarding integrity measures. However, lack of coordination, independence and transparency mechanisms undermine the proper functioning of the boards.



Policy Recommendations

- Separation of powers should be protected to allow the branches of state to check and balance each other. The Executive should maintain the Rule of Law and not overstep its boundaries defined by the Constitution.
- Independence of the Judiciary must be protected; to this end, external interference and politicization of the Judiciary must be prevented, organizational links between the Executive and the Judiciary must be reviewed, and legislation be made clear. The appointment process for judges should be transparent and based on clear and objective criteria and the authority to assess examinations for the selection of judges and prosecutors should be transferred from the Ministry of Justice to the HSYK.
- In order to ensure better representation of votes in the parliament and truer representation of voters' political positions, the election threshold should be decreased. By doing so, institutions such as RTÜK, Ombudsman, or Supreme Board of Elections, whose organizational structures are heavily dependent on the parliament through appointment procedures would be improved in accordance with the principles of equal representation.
- The use of parliamentary immunity should be limited to protection of freedom of speech and should not be abused to block corruption related investigations. MPs' regular declaration of assets that allows for comparative audits should be implemented.
- Law No. 4734 on Public Procurement should be revised in accordance with EU public procurement directives to limit the scope of exceptions and no new exceptions should be added to the law. The executive body should cease practices that bypass Public Procurement Authority and avoid the procurements' supervision by the institution. All applications to procurements should be published in detail, and the practice of allowing companies to arbitrarily exceed their financial provisions should be avoided.
- The practices of all institutions with the authority to make final decisions should be open to judicial reviews and appeals. The most critical among these are the High Council of Judges and Prosecutors and the Supreme Election Board.
- The campaign finances of all candidates for local, parliamentary, and presidential elections should be regulated and subjected to auditing. In-kind donations for campaign finance should also be clearly regulated and enforced.
- Law No.3713 on Anti-Terror should be reformulated in accordance with international human rights legislation and Articles 299 and 301 of the Turkish Penal Code should be abolished. The provisions on freedom of expression should be strengthened to ensure editorial independence.
- There should be legal measures to avoid problems stemming from cross-ownership in the media sector. In order to ensure transparency and eliminate self-censorship, media ownership structures need to be regulated by an independent supervisory board and media owners' other businesses should be made public knowledge.

Endnote

- 1 Hurriyet Daily News, (24 August 2015) <http://www.hurriyetdailynews.com/former-prosecutor-oz-seeks-asylum-from-germany-daily.aspx?pageID=238&nID=87450&NewsCatID=509>

III

**FOUNDATIONS OF
THE NATIONAL
INTEGRITY SYSTEM**

Since the national integrity system is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these factors impact integrity on the whole. There are four different "foundations" of the system: political-institutional foundations, socio-political foundations, socio-economic foundations, and socio-cultural foundations.

SCORE **25**

Political-institutional foundations

To what extent are the political institutions in the country supportive of an effective national integrity system?

The Constitution guarantees the fundamental rights and freedoms of individuals. However, many laws are subject to abuse due the gaps and exceptions, and democratic processes appear to be obstructed and freedoms have been highly threatened. Therefore, the guarantees of the Constitution do not equate to the upholding of these rights in society.

As stated by the OSCE/ODIHR, "the legal framework is generally conducive to conduct democratic elections, if implemented fully and effectively".¹ Prior to parliamentary elections in 2015, however, there were significant apprehensions regarding the fairness of the environment in which these elections would occur.²

The majority of these concerns appear to have originated in the speculation of misconduct surrounding the March 2014 local elections. These elections occurred at a time when a number of government officials were accused of corruption and saw the targeting of the independent press by the government. There were also numerous alleged and documented cases of irregularities during the local elections.³ The March 2014 elections, in this regard, happened in an environment that did not promote the fair competition needed for a well-functioning democracy.

The same constraints on the media were also observed prior to the June 2015 elections, as many news outlets that critiqued the Justice and Development Party (AKP) were placed under mounting pressure.⁴ Furthermore, although the Constitution states that the president must not act in favor of any political party, President Recep Tayyip Erdoğan participated actively in advocating for the AKP. According to the OSCE/ODIHR, he shared his views regarding the various political parties and made his stance on the elections clear on multiple occasions.⁵ By doing so, the president used public funds for the rallies he held around the country, effectively using these funds for the election campaign of the incumbent party. In addition, the prime minister and Ministers also benefitted from public funds throughout the campaign. Therefore, it is evident that political competition for office has not been free or fair in Turkey in the last two elections.

It is difficult to refer to a state as democratic, if it does not embody personal or collective freedoms and fundamental human rights and implement these principles properly. Although the Turkish Constitution guarantees these rights and freedoms, the approach of the legal framework is defective such that it enables freedom of association to be treated as a threat in certain cases. According to a TUSEV report, individual freedom is reflected as a threat to state security from the perspective of the Constitution of 1982 and the laws created following it.⁶ Following the coup d'état on 12 September 1980, the concept of freedom of association was tainted by negative connotations, as

it is often associated with political polarization and instability.⁷ This perception became evident in a variety of laws ranging from Law No.2820 on Political Parties to Law No.2911 on Meetings and Demonstrations.⁸

These negative connotations not only have an impact on society, but also on the judiciary, which as a consequence has actively participated in closing down a number of civil society organizations and political parties.⁹ These actions have led to multiple denunciations by international observers. The European Court of Human Rights has found Turkey responsible and culpable for a variety of closures, especially those associated with political parties.¹⁰

In a positive step, Law No. 5253 on Associations was modified in 2004, during the accession process, and as a consequence removed a variety of restrictions on civil society activities. Despite this modification to the law, however, associations still encounter major problems.¹¹ Associations are required to obtain permission from the governorship of the city in which they will be conducting the fundraising activity; they are required to notify the Directorate of Associations under the Ministry of Interior before using foreign funding.¹² Moreover, the public benefit status providing tax exemptions is determined by the Council of Ministers (the Cabinet), therefore there still remains much room for modification of these laws.¹³

Freedom of expression is also vital for a fair electoral process and therefore for democracy.¹⁴ Even though it is protected by the Constitution, the government often disrespects this freedom.¹⁵ Prime examples of violations took place in 2014 when the government blocked YouTube and Twitter prior to the elections. Even though the Constitutional Court deemed this illegal, these sites were not accessible during the elections.¹⁶ Such blocking and content removal measures are not limited to social media sites, but also affect news agencies' websites through dubious legal measures.¹⁷

Freedom of expression is also endangered by the treatment of journalists, who are often subjected to unjustified dismissal, pressure and even imprisonment.¹⁸ A recent example is the president's reaction to the *Cumhuriyet* newspaper, after an article was released "claiming to prove trucks stopped last year was carrying arms to Syrian rebels".¹⁹ Erdoğan requested that the chief news editor, Can Dündar, be sentenced to aggravated life imprisonment, life imprisonment or 42 years.²⁰ Can Dündar, the editor-in-chief, and Erdem Gül, the paper's Ankara bureau chief, were placed in pre-trial detention on accusations of spying and "divulging state secrets." According to Freedom House, Turkey was classified as "not free" for press freedom in 2014.²¹

Furthermore, freedom of expression and access to information is also a concern following the amendments in the laws regulating publications on the Internet. According to Freedom House "Changes to Turkey's internet law entrusted the Telecommunications Communication Presidency TIB with broad discretion to block privacy violations, while failing to establish strong checks and balances." Recent cases of temporary blocking access in Turkey includes well-known online platforms such as Twitter, YouTube, WordPress, Daily Motion, Sound Cloud, and Vimeo.²²

Turkey's judicial system appears to have become highly politicized, which has led to speculation regarding its degree of independence from the executive.²³ The deficiencies in the system make it difficult for citizens to seek redress for violations of their rights.²⁴ In particular, the way the government react to the allegations of December 2013 corruption investigations and replacement of judges and prosecutors thereafter, once again demonstrated the extent of the problem.²⁵ Interventions in the judiciary have come in many forms from the creation of new law that jeopardizes judicial independence, to the sacking of prominent judges and prosecutors, and the constant threat of being moved to another region of the country as punishment for stepping out of line.²⁶

There also appears to be a culture of impunity in Turkey where crimes committed by the army, the police and government officials are often left unpunished.²⁷ This makes it much more difficult for citizens to seek compensation for the breach of their rights, and demonstrates considerable weakness in the rule of law. In the aftermath of the Gezi Park Protests, police officers that had violated the rights of individuals were rarely prosecuted.²⁸

As recently as 2014, the government announced a law amendment that stated that members of the Turkish National Intelligence Organization (MIT) had been granted “immunity from prosecution” and that they could only be prosecuted without the authority of the institution itself.²⁹ The amendment is in direct conflict with Turkey’s international commitments and creates an environment where intelligence services can work with impunity, opening up the risk of torture and other ill treatment, in violation of individual rights. This risk is further compounded by “the 20-year statute of limitations” for the prosecution of unlawful killings by public officials.³⁰

The government is able to control matters important to society since it has too much power due to the rate of representation in the parliament. This is significant because the decision-making process in the parliament relies on majority voting.³¹ Therefore, the legislature was not in a position to check the powers of the executive.

SCORE **25**

Socio-political foundations

To what extent are the relationships among social groups and between social groups and the political system in the country supportive of an effective national integrity system?

There are numerous connections between social groups and the political system, through a wide network of civil society organizations and political parties. However, these connections are fragile due to the minimal influence they are able to exert on political decision-making.

The current political elite is fairly exclusive. Ever since the AKP came to power, they have “dismantled the elements of the secular state elite and replaced the former elite with its own cadres”.³² Additionally, they have focused on a mind-set that revolves around a “dissociation” mentality, where they have distinguished themselves and their followers from others.³³ This suggests that in order to be a part of the political elite, you need to adopt the AKP’s viewpoint and be considered one of them. There also appears to be a culture of nepotism rather than meritocracy, which enables this system of preferential treatment.³⁴

Since the Ottoman Empire there have been strong patron-client relationships in Turkey,³⁵ but the AKP has strengthened these patronage networks since it gained power more than a decade ago.³⁶ These relationships are significant in local elections where municipalities distribute “goods and services in exchange for votes”.³⁷ Therefore political associations and affiliations through this network have become an important determinant of access to resources.³⁸

According to the 2014 Bertelsmann Transformation Index, there is an “absence of a socially rooted party system” in Turkey.³⁹ This absence can be seen as a result of the high proportion of votes (10 percent) each party must receive in order to gain a seat in the parliament.⁴⁰ This threshold is to the disadvantage of parties that do not have a large reach or scarce resources.⁴¹ The 2015 parlia-

mentary elections saw the participation of 20 political parties, but only four passed the electoral threshold.⁴² Many political interests that do not gain official representation in the parliament instead take part in civil society.

In 2014, there were “approximately 80,000 registered associations, and several hundred unions and chambers”.⁴³ Additionally, there were a variety of interest groups on topics ranging from putting a spotlight on societal issues to endorsing democracy. However, their impact on policy appears to be minimal.⁴⁴ According to the 2011 data, regardless of the large number of CSOs, only 31 percent of the population participates in civil society.⁴⁵ This rate is expected to increase, since the Gezi Protests and the recent elections witnessed new forms and ways of participation in civil society. According to an international survey conducted in 2010, Turkey ranked 134 out of 153 countries for its levels of donation and volunteering and the population’s propensity to help an unknown person in need.⁴⁶

Gender related discrimination and inequality is still a major problem in Turkey. According to the Global Gender Gap Report 2013 Turkey ranked at 120 out of 136 countries. Moreover, violence against women, remains also high in Turkish society where “one in every three women is exposed to physical abuse” by their spouse or significant other.⁴⁷

Personal freedoms are guaranteed by the Constitution. Article 10 “guarantees equality before the law, irrespective of language, race, sex, political opinion or religion”.⁴⁸ However, in reality this article is not respected. Prejudice is felt on a variety of levels: from ethnicity to gender, and religion to sexuality. Discrimination against those who follow a different religious faith than Sunni Islam is also widespread. This discrimination is common in education where Alawites are often discriminated against if they do not take part in the mandatory religious lectures. The lesbian, gay, bisexual and transgender (LGBT) community is also subject to discrimination, which has been intensified by the absence of policies designed to prevent this prejudice.⁴⁹

Prejudice towards minorities also remains quite widespread. The official number of minorities is unknown because ethnicity and religion are not included in the state census.⁵⁰ However, the principal ethnicities in Turkey are the Turks, the Kurds, the Laz, the Roma and the Yazidis. The Constitution, however, does not mention minorities and their rights. Rather than protecting these minorities, the state appears to systematically discriminate against them, since there are many laws that constrain the “political, participatory, religious, educational and linguistic rights of minorities”.⁵¹ As a result of the Copenhagen Criteria, the language rights of minorities were expanded in 2004, but still constrained, as broadcasting in a language other than Turkish is limited. Turkey only formally “recognizes Armenians, Jews and Rum Christians as minorities”.⁵² This is because the definition of minorities dates back to the Treaty of Lausanne of 1923, where the recognition of a minority was limited to those practicing a different religion to that of the state. Given Turkey is officially a secular state, this legislation is both outdated and affords no protection to a range of minority groups.

The exclusion based on ethnicity is one of the root causes of ethnic conflict and is seen as a key factor that led a group from among the Kurdish population to resort to violence in 1984 by founding the Kurdistan Workers Party (PKK).⁵³ The Kurds, according to Minority Rights Group International, “are the largest ethnic and linguistic minority in Turkey”.⁵⁴ The conflict between the PKK and the state has led to the death of upwards of 30,000 people from both sides and a significant population has become internally displaced. The conflict has led the Turkish state to further exclude the Kurdish population as a whole and paved the way to some unjustified arrests of members of the pro-Kurdish parties.⁵⁵

This conflict has been on-going for years, but according to Taşpınar and Tol, “Turkey has come a long way in granting some cultural rights to its Kurdish minority” since 2005.⁵⁶ One of these cultural rights is the addition of an optional Kurdish language class in state schools, but has not been enough to appease the Kurdish policymakers.⁵⁷

It is very difficult for minorities, particularly those not recognized as such, to lobby for legislation to promote their rights and freedoms. This is because, with a 10 percent share of the vote in the general elections needed to gain a seat in parliament, such groups remain unrepresented in mainstream politics.⁵⁸ Only 24 minority MPs had chance to represent in the Grand National Assembly of Turkey (TBMM) in 92 years.⁵⁹

SCORE **25**

Socio-economic foundations

To what extent is the socio-economic situation of the country supportive of an effective national integrity system?

Economic growth in Turkey has shown progress over the last decade, especially through the process of its recovery from the financial crisis. Nevertheless, the socio-economic situation is still fragile as income inequality, unemployment, poverty and access to many fundamental services remain major challenges.

In the three years leading up to 2005, Turkey’s economy was booming with an average growth rate of 7.3 percent.⁶⁰ However, the financial crisis caused Turkey’s exports to decline massively, further leading to a decrease in investment by firms and consumption by households.⁶¹ In 2009, these drops in the various components of the Gross Domestic Product (GDP), led the GDP growth rate to decline to 4.8 percent.⁶² These low and negative growth rates were paralleled by exceptionally high unemployment.⁶³

However, Turkey recovered from economic decline rapidly due to the effective use of both fiscal and monetary policy.⁶⁴ In 2013, Turkey’s GDP per capita stood at of US\$ 10,975,⁶⁵ and GDP stood approximately at US\$ 823 billion.⁶⁶ Overall, the economic impact of the financial crisis was followed by a rather quick recovery compared to other OECD countries.⁶⁷

However, the unemployment rate did not witness a proportional decrease as the economy went into recovery. The unemployment rate in the midst of the global downturn in 2009 had reached 13.1 percent and only decreased to a level of 9.9 percent by 2014.⁶⁸ Along with unemployment, gender disparity in employment appears to have increased as well. The unemployment rate of males is 9 percent, but for females is as high as 11.8 percent.⁶⁹ Female unemployment rates have shown a substantial increase from the pre-crisis level of 9.2 percent in 2007.⁷⁰ It appears that the global crisis has exacerbated gender inequality with only 29 percent of women actively participating in the work force in 2013 compared to a 71 percent participation rate for men.⁷¹

A significant portion of the population in Turkey, even the employed, remains unregistered. In 2013, 37.8 percent of the total employed population was unregistered with many working in the agriculture sector.⁷² These unregistered workers have a fundamental role in creating a shadow economy, as they are involved in a variety of fields from construction and transportation to trade.⁷³

According to research conducted by Schneider, the shadow economy is estimated to be about 29.1 percent of the Turkish GDP.⁷⁴

The impact of the global financial crisis was not only limited to GDP and unemployment levels; it also increased income inequality.⁷⁵ In 2014, Turkey was ranked 3rd in terms of income inequality out of all of the OECD countries.⁷⁶ The ratio between the poorest and richest 10 percent of the population has increased since the financial crisis from 14.5 in the pre-crisis period, to 15.1 in 2014, whereas the ratio for EU increased from 6.9 to 7.4.⁷⁷

Just as significant as this income inequality is the proportion of citizens living below the relative poverty line.⁷⁸ A significant number of citizens live in poverty or do not have sufficient resources to obtain basic necessities. One in five people live below the relative poverty line and the OECD lists Turkey as having the “3rd highest level of relative poverty in the OECD area”.⁷⁹ According to the Turkish Statistical Institute, in 2013, 2.06 percent of the population was living on less than US\$ 4.3 a day.⁸⁰ This proportion was 0.64 percent in urban areas and 5.13 percent in rural areas.⁸¹

Poverty may result from inequality in the redistribution of resources. Turkey only focuses 12.8 percent GDP on public social spending, which is quite low compared to the OECD average of 21.8 percent.⁸² According to the OECD in 2014, this was specifically used for “health, old age and survivor’s benefits, while support for the working population is very low”.⁸³ As can be seen, the population is not supported by a variety of social services, but healthcare services have shown some progress over the last decade,⁸⁴ with an increase in accessibility. Approximately 12.8 percent of government’s public social spending is used towards healthcare services. Turkey has recently implemented a wide array of healthcare policies with one of the most significant being the Health Transformation Program. In addition, health services such as vaccinations have improved and access to immunization has increased. In 2011, 97 percent of the population had “full vaccination coverage”.⁸⁵ The broadening of the coverage guaranteed by the General Health Insurance has also increased access to the health sector, as more service providers have become available to all citizens. Although access to services has been made easier, payment for them remains a problem, as even with insurance, patients are still required to pay for service-related fees under different names.⁸⁶

According to the 2015 Better Life Index, 12.7 percent of the population does not have access to shelter with basic facilities,⁸⁷ and this figure does not include the shortage of accommodation to deal with the refugee crisis.

When considering the population over the age of 15, 2.6 million people are illiterate, 2.2 million of whom are women.⁸⁸ These results demonstrate the vast inequality between genders, even though access to primary education is generally high.⁸⁹ The level of post-secondary education attainment remains low; it was only 14 percent in 2011.⁹⁰ A regulation that came into effect in 2014, known widely as the 4+4+4 system established mandatory education for all for a minimum of 12 years.⁹¹ Nevertheless, concerns regarding gender and income parity in attaining mandatory education remain. Various reports in the media suggest that in 2014 almost 40,000 girls have not continued their education after the 8th grade,⁹² and the number of girls in elementary school age is lower than boys in the same age group.⁹³ The new system also exacerbates the problem for children of lower income families who complete their first eight years in school are more susceptible to entering the workforce at an earlier age, boosting child labor figures.⁹⁴

There are social safety nets in place for old age, illness, unemployment and disabilities, but they are highly inadequate. The unemployed receive unemployment benefits and the proportion of

funds provided by the government for benefits has risen over the years from 0.05 percent of GDP in 2006 to 0.24 percent in 2013.⁹⁵ However, this spending is still inadequate given the unemployment rate in the total labor force in 2013 was 8.7 percent.⁹⁶ Additionally, the government spent 0.52 percent of GDP on people with disabilities in 2013,⁹⁷ but this is also highly inadequate considering that in 2012 the unemployment rate for people with disabilities was at 78.9 percent.⁹⁸ This unemployment figure also shows that the government needs to set policies to increase the employment opportunities of disabled people. Turkey's retirement funds in 2013 were 8.03 percent of GDP, which rose from 6.37 percent in 2006.⁹⁹

The 2014 Global Competitiveness Report, ranked Turkey's infrastructure at 51 out of 144 countries.¹⁰⁰ The quality of the infrastructure was ranked at 33, which according to the report gives Turkey a competitive advantage.¹⁰¹ This competitive advantage can also be seen in terms of the "quality of air transport infrastructure", as well as the "quality of roads", which are ranked as 34 and 40 respectively.

Additionally, Turkey's geographical position provides opportunities for the business sector because its location is very beneficial for companies engaging in inter-regional or intra-regional trade.¹⁰² The strength of Turkey's business sector can be seen by the fact that "33 percent of the members of the International Investment Association of Turkey use Turkey as a regional hub".¹⁰³ Even though the location makes the business sector strong, according to the 2014 Global Competitiveness Report, Turkey ranked 50 out of 144 for its "business sophistication".¹⁰⁴

SCORE **25**

Socio-cultural foundations

To what extent are the prevailing ethics, norms and values in society supportive of an effective national integrity system?

Turkish society is characterized by low levels of trust and high levels of tolerance for political corruption, although petty individual corruption is not so well tolerated by the population.

According to research conducted by Yılmaz Esmer, ever since 1990, Turkey has been identified as a country associated with very low levels of trust between individuals.¹⁰⁵ Only one in 10 individuals believe that they can trust other people.¹⁰⁶ The 2011 World Values Survey shows similar results: 82.9 percent of the 1,605 people that were surveyed stated that citizens have to be particularly cautious when trusting someone.¹⁰⁷ This level of trust among the population depends on a variety of factors from the level of closeness, to the nationality and religion of the person being trusted. Even though the level of trust significantly varies, the World Values Survey shows that only 31.9 percent of those who were surveyed fully trust those they are acquainted with. It also appears that as many as 37.6 percent of those surveyed do not greatly trust people who belong to a different religion.¹⁰⁸

In addition to trust between individuals, the confidence citizens have in public institutions is a significant element affecting the integrity system. The army used to be well trusted by the population, but in 2012 the level of confidence in it decreased to 76 percent from 87 percent.¹⁰⁹ By comparison, the level of trust in the Turkish Grand National Assembly and the government were quite low: 58 percent and 62 percent respectively in 2012.¹¹⁰ However, it should be noted that this survey was

conducted before recent events such as the Gezi Park Protests, December 2013 corruption investigations, the developments thereafter and the restrictions placed on the freedom of speech, which might well have affected levels of trust subsequently.

Furthermore, tolerance appears to be as low as the levels of interpersonal trust. The Civil Society Index states that tolerance towards the beliefs of other citizens in Turkey is not very high, as the acceptance of others' views and beliefs mostly takes place after conflict.¹¹¹ According to CIVICUS, tolerance is "not attributed much importance by civil society as a whole".¹¹² Furthermore, the results from the 2011 World Values Survey also show that "unselfishness" was not seen as an essential quality for children by 72.3 percent of those surveyed.¹¹³ This high percentage appears to portray much of the population as apathetic towards other citizens.

The 2011 World Values Survey shows that 86.7 percent of the surveyed citizens stated that a person "accepting a bribe in the course of their duties" can never be seen as justifiable. Additionally, tax evasion was also seen in a very negative light as 86 percent saw its occurrence as "never justifiable".¹¹⁴ Even so, a lower proportion (77.7 percent) saw receiving government benefits when you are not eligible for them as "never justifiable"; although those who held this view nevertheless constituted a high proportion of the population.

Although these results show a high sensitivity towards corruption, other surveys suggest that corruption is not a huge determinant when making voting decisions. According to a survey conducted by Transparency International Turkey, only 52 percent of individuals surveyed stated that allegations of corruption in a political party would negatively affect their decision to support that party.¹¹⁵ Interestingly, 28 percent indicated that an accusation of corruption would have zero impact on their voting decisions and 20 percent stated that the impact "varies depending on economy/ideological reasons".¹¹⁶

A significant proportion (48 percent) appeared not to consider corruption a significant factor when making decisions during elections, demonstrating that there is a relatively high degree of tolerance in society towards corruption in government.

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IV

CORRUPTION PROFILE

Corruption is a major problem in Turkey, despite a series of anti-corruption efforts – mostly inspired by the EU accession process – which were launched in the early 2000s. After the consecutive electoral successes of the ruling party, the centralization of power became a particular concern for corruption,¹ along with the deceleration of reforms in the late 2000s.² While power is centralized in the hands of the executive and legislative bodies, participation of non-governmental actors (e.g. business, civil society, media) in anti-corruption policies and practices remains weak.³ The deadlock in Turkey's EU accession process has become a concern for the sustainability of anti-corruption reforms, which could be attributed to a lack of continued interest on the part of the government.⁴

Corruption indicators

Transparency International's 2014 Corruption Perceptions Index ranked Turkey 64 out of 175 countries with a score of 43 out of 100.⁵ This rank is below 24 EU members and above only four of them (Bulgaria, Greece, Italy and Romania). Turkey is thus below the EU average on this ranking, but it is above other EU candidate countries in the Western Balkans. There has been a significant decrease in Turkey's ranking over the past three years, from 54 in 2012 and 53 in 2013 to 64 in 2014.

According to Transparency International's 2013 Global Corruption Barometer, 54 percent of respondents said that corruption had increased in the past two years.⁶ Respondents identified political parties (66 percent), the media (56 percent), the parliament (55 percent) and business (50 percent) as the most corrupt institutions. Furthermore, 68 percent felt that corruption was either a problem or a serious problem in the public sector: 27 percent reported paying a bribe for education services, 23 percent to the police, 22 percent for land services, and 20 percent for registry and permit services. Significantly, 84 percent declared that government was "somewhat" or "entirely" run by a few big entities acting in their own best interests. According to a public opinion survey conducted by Transparency International Turkey in 2015, 67 percent of respondents believed that the level of corruption had increased in the past two years, whereas only 18 percent believed it had decreased.⁷ When asked how the level of corruption will change in the following two years, a mere 25 percent of respondents believed corruption would decrease, compared to 54 percent that believed it would increase.⁸ Finally, such results can be explained by the fact that 55 percent found the government's efforts in the fight against corruption ineffective.⁹

A 2010 Global Integrity report assessed Turkey's integrity as weak.¹⁰ Particularly problematic areas were transparency in political financing, conflict of interest safeguards, and checks and balances in the executive, legislative and judicial branches. In general, while the legal framework was considered moderate, its implementation was judged very weak. According to a study by the Economic Policy Research Foundation of Turkey (TEPAV) based on the World Bank Worldwide Governance Indicators,¹¹ there was strong performance in the control of corruption between 2002 and 2010. The indicators used to evaluate the level of control of corruption include public trust in politicians, transparency, and the level of corruption.¹² The World Bank also uses a wide variety of other variables to measure the scope of anti-corruption activities, including the level of diversion of public funds, irregular payments, accountability, frequency of corruption, and anti-corruption policy.¹³ Based on this, countries are then given a percentile rank, with higher scores indicating better control of corruption. At the time, although Turkey showed some improvement with regards to these indicators, it was still significantly below the EU-27 average. The same research also suggested a slight improvement in regulatory quality and government effectiveness. These figures may slightly contradict the figures above, which indicate that Turkey's anti-corruption initiatives and their results have slowed or even regressed, due to the differing variables that make up the data.

Recent cases of corruption

Turkey's economic system can be described along the lines of crony capitalism due to the close links between the government and business, particularly in the construction and media sectors.¹⁴ Economists claim that the composition of big business has changed in favor of pro-government business and the construction sector is at the center of this debate. The sector made up more than 5 percent of Turkey's GDP in 2011,¹⁵ and is growing due to huge public infrastructure projects, including a third airport and third bridge in Istanbul, along with several highways and housing investments.

The recent disaster at the Soma Coal Mine, which caused the fatality of more than 300 workers, revealed the close networks and conflicts of interest that exist between the public and private sectors, which undermine accountability mechanisms. An inspection report which indicated the mine's "intact" safety was prepared just months before the disaster. The complete audit of the facility took only four days, however, and some experts argued that it should have taken approximately two months. It later became evident that the inspector and the project manager of the mine were related, and that neither of them had declared this to avoid conflicts of interest.¹⁶ Erkan Akçay, a MP from the Nationalist Movement Party (MHP), who was on the Parliamentary Commission formed to investigate the mine accident in Soma, claimed that some mine companies are highly protected by the government and so they can get away with deficiencies in safety standards and in other areas.¹⁷ Lack of regular and proper controls on mines, energy and infrastructure projects is one of the major causes of industrial accidents and "occupational deaths", and deficiencies in the audits and controls of these entities seem to be a result of close relationships between mine companies and inspectors.¹⁸

Corruption became a hot top topic with the December 2013 investigations, which took place less than four months before the local elections. Three ministers' sons were taken into custody along with 34 others, including the CEO of the state-owned Halkbank, other businessmen and high-level bureaucrats. Allegations included bribery, corruption and the smuggling of gold to Iran by an Iranian-Turkish businessman, Reza Zarrab, through Halkbank.¹⁹

The government's response to these allegations was to accuse the Gülen Movement of planning a conspiracy.²⁰ Gülen, who was previously an ally of President Erdoğan and the ruling party, was accused of trying to overthrow the government using his alleged network of law enforcement officers and other state officials.²¹

Opposition parties argued that the "parallel state" discourses and its alleged management by Gülen was an attempt to draw the media agenda away from the corruption investigation.²² The investigations brought about a cabinet reshuffle for the Erdoğan government, through which 10 ministers were replaced and three resigned. A particularly worrying development during these investigations was that the original public prosecutors and police officers on the case were replaced by officers that subsequently dropped the charges without proper judicial proceedings.²³

The August 2014 presidential elections also raised questions concerning the lack of transparency and abuse of power. The presidential candidates racing against Erdoğan accused him several times of using state resources for election campaigning and complained about the disproportionate and biased coverage on state television in his favor, as exemplified by extensive live coverage of his speeches and events, thereby also limiting the coverage received by the other candidates.²⁴ This is particularly problematic as it limited the information available to voters about political alternatives.²⁵

Furthermore, according to the OSCE Erdoğan merged election propaganda with his prime ministerial activities (e.g. during the inauguration of the high speed train line between Istanbul and Ankara), which led to the misuse of state resources.²⁶ The OSCE also noted biased media coverage in favor of Erdoğan and weakness in the legal framework around election campaigning.

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V

**ANTI-
CORRUPTION
ACTIVITIES**

Legal framework

In the last decade, Turkey has signed and ratified several international conventions and treaties against corruption including the UN Convention against Corruption (2006), Council of Europe's Criminal Law Convention on Corruption (signed 27 October 2001; ratified 29 March 2004), the Council of Europe's Civil Law Convention on Corruption (signed 27 October 2001; ratified 17 September 2003) and the OECD Anti-Bribery Convention (signed 17 December 1997; ratified 1 February 2000). Turkey became a member of the Group of States against Corruption (GRECO) in 2004. Despite this international legal framework, the lack of sound implementation is a concern. According to Transparency International in 2013, Turkey was classified as a country with little or no enforcement of the OECD Anti-Bribery Convention.¹ In 2012, GRECO noted that Turkey partially satisfied recommendations on the criminalization of corruption,² but argued that serious shortcomings remain in the transparency of political financing despite these partial improvements. In 2010, the Strategy to Increase Transparency and Strengthen the Fight against Corruption 2010-2014 (the National Anti-Corruption Strategy) was accepted by the Council of Ministers.³ Although it is to some extent based on GRECO recommendations, EU progress reports, and international and national NGO recommendations, there was little evidence of a pluralist and multi-stakeholder process during its implementation period.⁴ In order to implement the strategy, an Action Plan with a timeframe and designated responsible institutions was also prepared and put into force. Working groups – working under relevant ministries – responsible for conducting research and preparing reports and recommendations related with the targets of the Strategy were also formed. Although two years have passed since the deadlines for the targets stated in the Strategy and Action Plan, there has been little to no improvement, with its implementation lagging in recent years.⁵ There has been no implementation of policy suggestions made by the working groups, which included the establishment of corruption data tracking and a yearly corruption perception survey.⁶ Moreover, some criticisms of the Strategy itself include that it lacked a participatory approach, thereby limiting the crucial role of civil society in combatting corruption, and the degree of transparency.⁷

Institutional structure

There is no single institution in charge of anti-corruption activities, which leads to a fragmented approach. Several bodies deal with the issue, but the main anti-corruption tasks are carried out by the inspection boards of Ministries and of other public institutions and by the Prime Ministry Inspection Board. The Prime Ministry Inspection Board has been the coordinating body since 2009. Currently, it only provides secretarial and technical support to the design of anti-corruption policy. Nevertheless, the operational independence of the Board remains a concern.⁸ Similar concerns were pointed out by a 2012 SIGMA assessment report.⁹ In order to reinforce efforts to combat corruption at the institutional level, a Council of Ethics for Public Service was established in 2004 to improve transparency in public administration, with a special focus on civil servants' practices. The Council determined a code of conduct for civil servants, and investigates complaints and supports improvements of the ethics culture in public offices through training. The Council is also authorized to collect list of gifts received by high-level public officials and investigate the accuracy of asset declarations when necessary.¹⁰ One particular concern about the Council is that it is not able to enforce its decisions with disciplinary measures.¹¹ There have also been some disputes regarding the disclosure of information on investigations, allegations and penalties.¹² As a result of the decision by the Constitutional Court, the Council does not publish decisions of violations in the Official Gazette.¹³

Civil society, business and external actors

The government and civil society collaborated to combat corruption during the development of the National Anti-Corruption Strategy. Throughout the process, 43 civil society and private sector representatives took part in 23 working groups and provided recommendations. The Turkish Union of Chambers and Stock Exchanges (TOBB) was consulted along with labor unions. However, such collaborative examples are rare, which undermines efforts to combat corruption. Although civil society attempts to make itself heard by pressuring the government from the outside, those that are perceived to oppose the government or its policies can face numerous obstacles, especially of a financial and legal nature.¹⁴ Therefore, it is a challenge for CSOs to engage in a collaborative action with the government against corruption.

There are a few civil society organizations working in the field of anti-corruption, including Transparency International (TI) Turkey, and think-tanks also engage in research on corruption and anti-corruption efforts. The Economic Policy Research Foundation of Turkey (TEPAV), has corruption as one of its research areas and its 2006 publication, *Legislation on Fight against Corruption: Laws, Directives, International Treaties and Action Plans*, is an important reference book on the issue.¹⁵ The Turkish Economic and Social Studies Foundation (TESEV) also conducted research on corruption perceptions in Turkey in the early 2000s and published a research report within the scope of SELDI project titled Turkey Corruption Assessment Report in 2014.¹⁶

There are 292 Turkish companies committed to the UN Global Compact, including Turkey's biggest businesses and leading business NGOs. A meeting of the B20, an outreach group made up of business leaders from G20 economies, provides an example of business and government working together on anti-corruption efforts. In March 2015, the Fifth Annual G20-OECD High Level Conference on Anti-corruption was held in Istanbul, during which business people, civil society and international organization representatives, and governments discussed corruption and possible anti-corruption solutions.¹⁷

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VI

TÜRKİYE ŞEFFAFLIK SİSTEMİ ANALİZİ

1

LEGISLATURE

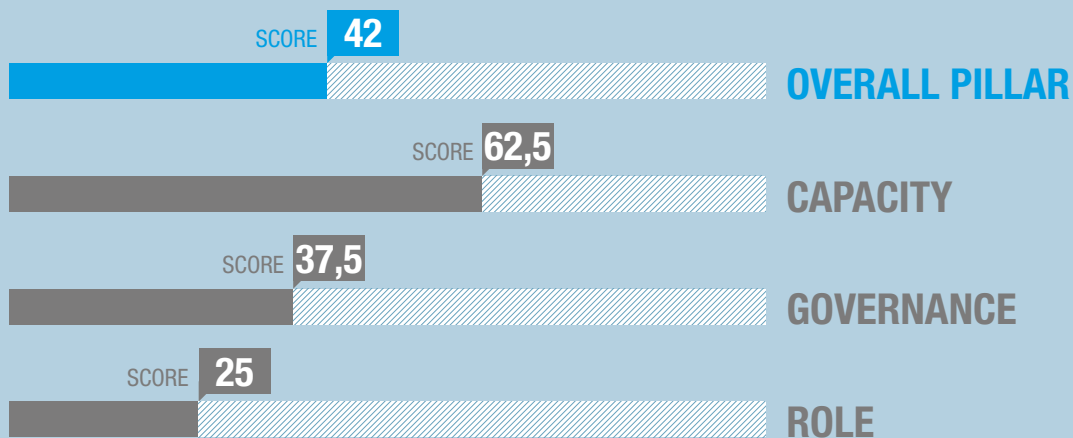
OVERVIEW

The analysis of the Grand National Assembly of Turkey (TBMM) shows that the parliament is equipped with necessary resources by the legislative framework to work on behalf of Turkish citizens. However, the legal framework lacks measures to ensure compliance with integrity principles or to ensure transparency and hold members of parliament (MPs) accountable.

Moreover, the lack of political will to enhance good governance principles in the parliament and the influence of the political leaders and government over MPs result in weaknesses in the governance and role indicators. It should be noted that the high election threshold, the highest among Council of Europe members with 10 percent, prevents broader political participation in parliament. This results in poor governance and oversight.

Although the report prepared by the TBMM Committee to Investigate Corruption in 2003 and international reports have recommended that parliamentary immunity should be restricted for corruption crimes, no sound progress has been made in this regard.

The table below presents the indicator scores that summarize the assessment of the legislature in terms of its capacity, governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	100	50
	Independence	75	25
Governance	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	50	25
Role	Executive oversight	25	
	Legal reform	25	

STRUCTURE AND ORGANIZATION

Law No. 2839 on Parliamentary Elections regulates the procedures of parliamentary elections, the numbers of MPs to be allocated to each election district, the election period, renewal of elections, eligibility to apply for election and conditions of candidature and the election of MPs.¹ According to the law, the number of MPs is 550. The Rules of Procedure of the TBMM define the working principles and organizational structure of the parliament.² The administrative organization of the TBMM consists of departments providing support to the Office of the Speaker.

The Plenary is the final decision-maker and carries out legislative work, oversight and other functions. Government bills and private members' bills debated in the committees are enacted upon the approval of the Plenary. The Bureau (the Speaker's Office) has significant roles regarding the legislative activity and administrative matters. The Bureau is composed of the speaker, vice-speakers, quaestors, and secretaries. The Assembly elects one of its members as speaker for two years and four vice-speakers at the beginning of each parliamentary term. The secretaries assist the speaker by performing the duties in the law. The quaestors are responsible for assisting the speaker by performing administrative, financial and security functions pursuant to the directions of the speaker.

Political party groups are the main actors in parliamentary activities and participate in proceedings of the Assembly in proportion to their numerical strength. At least 20 MPs from the same political party may form a party group in the Assembly. The speaker and chairs of political party groups or deputy chairs constitute the Board of Spokespersons, which is responsible for matters relating to the schedule of the plenary sittings and committee meetings.³

ASSESSMENT

CAPACITY

SCORE **100**

Resources - Law

To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

The TBMM is authorized to determine its own budget. The budget of the TBMM is drafted by quaestors (*idare amiri*) and submitted to the Office of the Speaker to be examined and finalized by the Bureau (*Başkanlık Divanı*). The Bureau submits the finalized budget proposal to the TBMM for voting until the end of September, according to Law No. 5018 on Public Financial Management and Control.⁴ The speaker of the TBMM is authorized to control the budget, and signs and orders payment of the budget of the TBMM. Independence of the TBMM from the Ministry of Finance is an advantage, providing flexibility in budget management and opening space for needs-based budget allocations.

The Committee on Planning and Budget is authorized to oversee the implementation of the budget of the TBMM, but only concerning expenditure in accordance with the legal framework on the

services of the Assembly. The Committee is required to submit the findings of their audit to the Plenary with a report.

The number of permanent staff to be recruited to the TBMM is determined by law. The professional personnel dealing with legislative activities such as experts, rapporteurs, and stenographers are recruited with a special written examination from among candidates with a bachelor degree.

SCORE 50

Resources - Practice

To what extent does the legislature have adequate resources to carry out its duties in practice?

The TBMM has adequate financial and physical resources to function properly. Observing the annual activity reports for the period 2010–2013, a significant increase in the budget of the Assembly has been identified.⁵ While the budget of the TBMM was 522,084,501 TL (approximately 174 million euros) by the end of 2011,⁶ at end of 2013 the budget had increased to 722,741,520 TL (approximately 240 million euros) 90.2 percent of this was spent and the remaining 9.8 percent was cancelled.⁷

In 2010, the *Comparative Indicator Based Monitoring of Anti-Corruption Progress Report* (CIMAP) on Turkey identified that inadequate physical resources and technical equipment had a negative impact on the TBMM Committees in carrying out their duties.⁸ However, since 2010 physical resources of the parliament have improved. In 2013 an additional building for the TBMM was constructed and opened for the service of the legislature in March 2014. The building hosts offices for MPs and chairs of the committees, and also has meeting rooms providing necessary infrastructure for the legislators. Therefore, the needs of the TBMM in terms of physical resources are significantly met.

One of the problems regarding the human resources is that the deputies lack the necessary legislative experience as the candidate lists of all parties change every election in relatively large ratios when compared to other democracies.⁹ Another problem is that the candidates who finance their own campaigns see their term as an opportunity to benefit and profit from ‘the investment’. The educational background of the deputies in the 2015 TBMM composition is as follows; out of the 550 elected deputies; 312 are university graduates, 100 have a PhD, 80 have an MA, 49 are high school graduates, six have a middle school education and three only completed elementary school.¹⁰

There has not been a parallel increase in the capacity of human resources. Compared to the 2011 statistics, there has been a significant decrease in the number of permanent staff working, based on the Article 4/A of Law No. 657.¹¹ At the end of 2014, the number of civil servants of the secretariat of the TBMM was 4,985. There were 1,983 permanent staff, 1,441 temporary personnel working on the basis of the Article 4/C of Law No. 657, and 35 temporary personnel working on the basis of Article 12 of the repealed Law No. 2919. There were 496 advisors for MPs, 452 secondary advisors and 502 support staff. Among the 4,985 personnel, 39.8 percent were permanent staff: 30.6 percent of staff working for MPs and party groups and 28.3 percent were temporary staff working on the basis of the Article 4/C of Law No. 657. The rate of staff with a bachelor degree was

39.9 percent, with a high school diploma was 26 percent and with a two-year associate degree was 13 percent. Observing the statistics from a gender perspective, it is clear that the majority of the staff were men (68 percent).

Since the salaries of the advisors of MPs are allocated from the parliamentary budget, MPs are not supposed to provide for these expenses. However, during the interviews with the advisors, they noted that advisors do not have same employment rights, such as severance pay, as other personnel even though they are contracted employees, and this results in insecurity in the working environment of advisors.¹²

Parliamentary committees have permanent staff qualified to conduct research, report on draft bills and participate in support services for legislative processes. However, Şengölge argued that experts could not capitalize on their qualifications and skills properly since they have to carry out administrative tasks.¹³ Moreover, the number and expertise of the professional staff is not adequate. The TBMM lacks efficient human resource management based on merit and performance.¹⁴ It was observed in the TBMM's 2015 Performance Program that service procurement is a method practiced usually for research and related activities. This raises doubts on the sustainable development of qualifications of the legislative staff, due to the outsourced expertise.

The TBMM provides training based on annual training plans and also on the needs identified during the legislative year. The TBMM has made project partnerships with the World Bank to provide training on legislative budgeting process.¹⁵ There are also opportunities for the staff working in administration to participate in training, conferences and other related organizations abroad. However, Şengölge argued that the training provided for the staff is not adequate and is influenced by the political agenda rather than their needs.¹⁶

In 2013, studies on the establishment of a performance evaluation system were completed.¹⁷ This evaluation system aims to identify the level of competence of the staff and to examine their training needs. The Directive on Performance Evaluation of Administrative Personnel was put in place in March 2013 at the approval of the Speaker of the TBMM. This evaluation system may serve to reveal the needs and expectations of the personnel in terms of career development.

The Performance Program of the General Secretariat of the TBMM for the period 2013-2017 concluded that the "transformation phase of policy implementations regarding human resources is not concluded" and that there is a "lack of expertise in corporate culture, lack of expertise in information technologies, weak corporate culture and sense of belonging".¹⁸

SCORE **75**

Independence - Law

To what extent is the legislature independent and free from subordination to external actors by law?

The rules for setting the agenda of the Plenary of the TBMM are defined by Article 49 of the Rules of Procedure of the TBMM. According to these Rules the legislature has the power to control its own agenda. The Advisory Board consisting of the speaker of the TBMM, chairs of political parties and group deputy chairs determines the agenda. In case of disagreement, the agenda is determined through majority votes in the Plenary. The majority rule may result in the dominance of

the ruling party in determining the agenda since the high election threshold (10 percent) benefits the ruling party, by excluding smaller parties and therefore giving larger parties a disproportionate number of seats and greater power.

Article 10 of the Rules of Procedure of the TBMM defines the election procedures for the speaker. Two elections are held for the Office of the Speaker in the course of a legislative term. The term of office for the first elected speaker is two years, followed by a three-year term for the second. The president may recall the TBMM for extraordinary meetings on his/her own initiative or at the request of the Council of Ministers (Cabinet) a period of adjournment or recess.¹⁹

The Constitution requires the Bureau to be formed by MPs according to the proportion of seats each party has in the parliament. Therefore, the majority of the members of the Bureau are from the ruling party. Although the Speaker is elected from among MPs, there are concerns about this position, as the high electoral threshold shapes the parliamentary structure and the uncompromising political will of the incumbent party prevents fair and competitive election process for the Speaker.

There are 18 committees working in different fields and their members are determined through elections conducted twice in each legislative year. The agenda setting rules for committees is regulated by the Rules of Procedures. According to these rules, chairs of committees call for a meeting at least two days in advance. The agenda is drawn up by the chairs and attached to the meeting notification. Committee members are also allowed to propose an agenda when one third of the members agree on meeting on a particular issue. The ability to set the agenda enhances the independence of the TBMM, but the Rules of Procedures of the TBMM still favor the ruling party in agenda setting.²⁰

MPs have immunity through Article 83 of the Constitution. According to Article 83, legislators are not liable for their votes or the views they express during statements in parliamentary proceedings. An MP who is alleged to have committed an offence before or after election cannot be detained, interrogated, arrested or tried unless the Assembly decides otherwise. Although the TBMM Committee to Investigate Corruption formed in 2003 recommended that parliamentary immunity should be restricted in terms of corruption crimes, no progress has been made in this regard. Article 6 of Council of Europe's Resolution (97) 24 accepted in 1997 on the Twenty Guiding Principles for the Fight Against Corruption lists "to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society" as one of the principles.²¹ Furthermore, Council of Europe Criminal Law Convention on Corruption refers to the provision above. Likewise, UN Convention against Corruption imposes similar obligations on the party states.

Regarding the policy on organizational structure and recruitment of professional staff in the TBMM, the legislative framework provides independence. According to the Law No. 6253 on the Administrative Organization of the TBMM, the assembly is entitled to recruit professional staff and make changes in the organizational structure of the administrative organization without permission from a higher authority.

According to Article 175 of the Constitution, an amendment can be proposed by at least 184 MPs (one third of 550 MPs) and, if rejected, the president may send the amendment back to the parliament for reconsideration. The adoption of a proposal for an amendment requires a three-fifths majority of the total number of members of the parliament by a secret ballot. If a law is adopted by a three-fifths or less than two-thirds majority of the parliament and is not referred by the president for further consideration, it is published in the Official Gazette in order to be submitted to referendum.

Article 116 of the Constitution gives the President the right to dissolve the legislature and hold new elections. However, such power is subject to certain conditions, such as the failure to form a new government within 45 days. Moreover, when the president and the parliamentary majority have opposite political tendencies, the system has the potential to lead to conflict between the legislature and the executive. In this case the President could dissolve the legislature in the hope that elections would lead to a more cooperative parliamentary majority.²²

SCORE 25

Independence - Practice

To what extent is the legislature free from subordination to external actors in practice?

In 2013 the Annual Activity Report of the Administrative Organization identified that the administration of the TBMM is open to political influence by the executive.²³ The CIMAP report also underlined fears of the executive's interference in the internal regulation of the legislature, since the president of the Bureau is a political figure chosen from among MPs. Moreover, the heavy involvement of the speaker as a political figure in decisions on the employment of administrative personnel results in the threat of political intervention in personnel policy.²⁴ There are also criticisms over the independence of the legislators from their political parties. As discussed in the political parties pillar, the party leadership has a strong influence over the members of parties, including MPs and therefore the legislative footprint of MPs reflects the approach of their parties generally. MPs vote based on their group's decision and in some cases they do not even know the whole content of an amendment or new law proposed during the voting process. There are serious concerns regarding the influence by the executive or the leaders of political parties during the law-making process.

The independence of the parliament also depends on the internal democratic mechanisms of political parties. Aykut Erdoğan, an MP for the Republican People's Party (CHP) highlighted that to ensure the independence of the parliament, MP candidates should be pre-elected by their organizations and their members before the parliamentary election.²⁵ The current legal framework does not provide any obligation on parties to conduct pre-elections through which party members can directly determine MP candidates; rather it defines this process as an option. Therefore, handpicking by the party leadership and weaknesses in internal democracy appear as risks worth mentioning.

During the ruling period of the AKP governments, the regulations that could have been defined in by-laws were elaborated in parliamentary legislation, resulting in inefficiencies. In addition to this, law making through omnibus bills has become a regular practice in recent years. Omnibus bills cover several changes in legislation in different areas. Despite the diverse subjects included in the omnibus bills they are discussed by a single parliamentary committee. This process prevents effective parliamentary discussions over the proposed changes and makes monitoring legislative changes difficult, even for the experts and advisors of MPs. Moreover, individual articles of draft laws may not be debated in the TBMM, as they are only debated as groups of articles (e.g. 30 articles in one package). It should also be noted that omnibus bills were banned in the Roman Empire in B.C. 98 in accordance with the principle of *lex Caecilia et Didia* (ban of miscellaneous provisions in a single Roman law).²⁶

During the legislative process, the bills proposed by opposition MPs, regardless their content, get rejected regularly. According to an analysis based on official statistics of the TBMM, during the 24th term of office 36 percent of 1,045 government bills became law and 25 percent of them are still on the agenda. However, only 13 percent of the 2,836 MP proposals for bills became law, 1 percent is still on the agenda and 86 percent waiting for committees' decisions to send them to the Plenary.²⁷ These results clearly show that the bills submitted by the executive have a much greater chance of becoming law, demonstrating that the executive has dominance over legislative agenda setting.

Mustafa Durna, chair of the Committee to Monitor Members of Parliament, also pointed to the influence of the National Security Council (MGK).²⁸ Between 1980 and 1983 Turkey was governed by a military regime where the MGK had both executive and legislature powers. The duties and structure of the MGK was rearranged in 2010 with a constitutional amendment civilianizing the MGK. This involved increasing the number of its civilian members and changing the secretary of the MGK from a military to a civilian post; envisaged to be appointed by the elected political leadership. The amendment established that the MGK would serve in an "advisory" role to the Council of Ministers, rather than formulate policies on its own.

Yet, recently restrictions were imposed on the capacity of the Turkish Court of Accounts auditors to monitor military spending, and in turn restricted the parliament's oversight of the military.²⁹ Moreover, it is argued that over the last few years a civilian MGK has become influential again in setting the political agenda.³⁰

President Erdoğan also has influence over the legislature. He revealed his political influence during the general elections in 2015 when he called on the Turkish electorate to elect 400 MPs from the ruling party. It is thought that this was in order to gain the necessary power to change the Constitution and establish a presidential system.³¹ Actually in practice the political regime resembles a pendulum between a presidential system and a parliamentary democracy, and it is neither constitutionally nor practically clear under which system will the regime position itself. This vagueness damages the parliament's power and independence, and in some cases the parliament is overruled by the presidential office.

Furthermore, the president's alleged role in the finalization of the ruling party's deputy candidate lists, and intervention in the deliberation attempts regarding the formation of a coalition after the 2015 general elections, has damaged the independence of the legislature severely. The main opposition party could not practice the constitutional right to carry on deliberations after the AKP failed to form a coalition. The president refused to hand over authority to the CHP and prevented them to pursue the deliberations.

The European Commission 2014 Progress Report on Turkey underlined the persistent lack of dialogue and a lack of will to compromise among political parties, which hampers the parliament's ability to perform its key functions of law-making and oversight of the executive.³²

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

Article 97 of the Constitution mandates that debates held in the plenary session of the TBMM shall be open to the public and the media. Public debates in the parliament can be freely published through all means, unless a decision to the contrary is adopted by the parliament upon a proposal of the Bureau, according to Article 97. The Plenary of the TBMM may hold closed sittings upon the written request of the prime minister, a minister, a political party group, or 20 deputies. When a motion on the closed sitting is given, everyone, excluding those who are entitled to participate in the closed sitting, is asked to leave the Plenary and the justification of the motion is declared to the participants. Committee meetings are not open to the public,³³ but those who are invited by the chair are allowed to participate.

Article 97 of the Constitution requires the legislature to publish the minutes of legislative sessions and ensure the reservation of the minutes of closed sessions for 10 years. The minutes of the closed sessions can only be made public after 10 years. The TBMM is also subject to Law No. 5018 on Public Financial Management and Control, and therefore required to publish annual activity reports.

Although there are legal measures to ensure transparency at a certain level, there are some gaps in the legal framework regarding public access to the legislative processes. For media representatives, a special accreditation is required to observe the legislative sessions and meetings of the committees. Eligibility criteria for the media are defined in Article 5 of the By-law on TBMM Legislative Studies on Press and Broadcasting. According to the by-law, media members are required to have had a yellow press card for at least five years. This leads to the exclusion of some media channels or reporters, especially those working in alternative media channels.³⁴

In addition, there are no legal measures to ensure consultation with stakeholders such as civil society organizations. Therefore, civil society needs to follow up on draft laws and proposed bills using the website of the TBMM or get information from the media.³⁵

According to the Law No. 3628, all elected public officials including MPs are required to declare their assets, but the legislation does not require MPs to make their asset declarations public.

SCORE 25

Transparency - Practice

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?

The public has access to legislative sessions through the national television channel TBMM TV. However, the channel is authorized to broadcast the legislative sessions only until 7pm. The ses-

sions after this are only accessible online. Moreover, since the agenda of the plenary changes so often it is difficult for the media to follow the agenda properly. Most of the critical debates and discussions about issues that have the potential to damage the credibility of the government are held after 7pm, which raises doubts about the government's intentions.

Two recent and striking examples are the negotiations and voting procedure regarding the corruption scandals in 2013 and the Soma disaster, the biggest mining accident in the history of Turkey. The citizens' right to information was undermined by the limitations on broadcasts of the legislative sessions and the deputies of the main opposition party resorted to broadcasting the negotiations through social media in order to inform the public.

As discussed above, there is no legal framework regulating relations between the parliament and civil society organizations and defining principles for consultation. Therefore, access to information on legislative changes and proposals depends on the capacity of civil society to monitor legislative processes and the scope of media coverage.

Meanwhile, there are concerns about the unequal representation of civil society in committee meetings. A report by the Istanbul Policy Center highlighted that criteria for invitations are not clear, and in practice only pro-government organizations are generally invited to these meetings.³⁶ The CIMAP Report also emphasizes that the chairs of committees invite experts, related civil society organizations or affected interest groups to meetings, but it is up to the chair to decide whom to invite. In this regard, sometimes, it is almost impossible to monitor the workings of committees and sub-committees and learn about the details of the reports submitted by them to the Plenary.³⁷

The legislative footprint of MPs is not open to be monitored by the public. Turkish citizens do not have information on who voted for which legislative change in the parliament. Moreover, since the minutes of the committee meetings are not open to public access, there is also a lack of transparency in the activities and decision-making processes of the committees.

The Anti-Corruption Action Plan prepared by the 58th government states that:

"Preambles of draft laws shall be amended taking into consideration the potential benefits and costs of the draft law. In this framework, general preambles will be published on the Official Gazette along with laws."³⁸

Despite this, no progress has been made in this field. Draft laws were made available to the public through the website of Prime Ministry for a short period of time, but the practice has come to an end.

SCORE

50

Accountability - Law

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Article 148 of the Constitution and Law No. 6216 on Establishment of Constitutional Court and the Rules of Procedure³⁹ define the procedures for the constitutional review of legislative activities. According to the Law, the Court examines the constitutionality of the laws by considering their form and substance. However judicial review of constitutional amendments can only be examined

in terms of their form. According to the Constitution, the president and a minimum 20 percent of the total number of MPs in the TBMM can ask the Court to start an invalidation suit against a law, decree or the rules of procedure of the TBMM. Challenges to a law must be made within 60 days of its promulgation.

As we discuss in the transparency indicator, the lack of legal measures to regulate consultation with civil society organizations also hinders parliamentary accountability. Although the Rules of Procedure allow the chairs of committees to invite civil society representatives, the current legislative framework does not serve this purpose effectively without ensuring a structured mechanism of consultation by law.

Citizens have the right to submit petitions by Law No. 3017 on the Use of the Right to Petition,⁴⁰ the Rules of Procedure and the Constitution. The Petition Committee is the parliamentary unit is authorized to deal with citizens' complaints and petitions. The Committee has to reply to the applicant within 60 days. Furthermore, accountability suffers from the risk of parliamentary immunities being extended, and paving the way for a culture of impunity in the legislature, particularly regarding any involvement in corruption related cases.

SCORE **25**

Accountability - Practice

To what extent do the legislature and its members report on and answer for their actions in practice?

Parliamentary discussions over the Draft Law on Internal Security, granting extensive powers to police officers and governors and district governors turned into a mass brawl in February 2014.⁴¹ Despite protests by MPs from the opposition parties and criticism from civil society organizations such as Amnesty International⁴² and Human Rights Watch,⁴³ and despite legal articles restricting parliamentary discussions in environments dominated by noise and fighting, parliamentary meetings and voting for the legal amendment carried on.

In addition to lack of compatibility with internal accountability, as exemplified above, there are also deficiencies related to the ability of citizens to hold the TBMM accountable. Due to the lack of a legislative footprint mechanism to enable the monitoring of MPs' voting practices, it is difficult to identify and assess possible influence by third parties or hold MPs accountable. As discussed above, citizens do not have a mechanism allowing access to information on the voting histories of MPs, or the meetings they attend with third parties. Moreover, the limited access of the public, media and civil society to parliamentary meetings after 7pm and to the reports of sub-committees makes it difficult for citizens to make complaints about the activities of the legislature or individual MPs. The use of decrees with force of law, which is exempts them from any substantial legislative oversight, also hampers public capacity to monitor the legislative processes.

Rather than providing an enabling environment for free speech, immunity provisions shelter MPs from the crimes they commit, including corruption. A recent parliamentary investigation raised serious doubts about the accountability of the parliament. Media organizations were banned from reporting on a parliamentary investigation related to the former ministers Erdoğan Bayraktar, Muammer Güler, Egemen Bağış and Zafer Çağlayan through a court decision.⁴⁴ Members of the op-

position party, Peoples' Democratic Party (HDP), were withdrawn from the investigation committee for questioning the accountability of the committee.⁴⁵ A voting session was held on a proposal to lift parliamentary immunity, allowing a judicial investigation into corruption charges in the Constitutional Court (acting in the capacity of "Yüce Divan") in January 2015. The TBMM rejected the proposal and maintained the immunity of the four former ministers facing corruption charges.⁴⁶ This is only one of the numerous examples showing that immunities extend beyond the scope of freedom of expression and ultimately serve as safeguards against punishment of corrupt practices.

SCORE **50**

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of members of the legislature?

Article 82 of the Constitution and Law No. 3069 on Offices Incompatible with Parliamentary Mandate define the legal framework outlining the incompatibilities for being a member of parliament. According to the Constitution and Article 2 of the Law, MPs cannot work for offices in state departments and other public corporate bodies and their subsidiaries, for associations working for public interests, or foundations with tax exemptions and receiving financial support from the state. Duties that require recommendation, appointment, or approval of the executive are also considered as incompatible with the office of an MP. The Law also restricts holding administrative positions as secretary-general, secretary, or under any other title in state departments and state affiliated institutions.⁴⁷

MPs cannot work as brokers or consultants in state departments, state-affiliated institutions, or follow up business for the institutions mentioned in Article 2. They cannot act as attorneys against the state in legal cases that are related to the financial interests of the state, such as crimes committed against the judicial personality of the state and embezzlement, smuggling, or crimes related to and foreign exchange operations. They cannot use their MP title while conducting their self-employed professions and private enterprises.⁴⁸ Lastly, unless otherwise decided by the parliament, they cannot accept paid employment or posts by a foreign state or international organization.⁴⁹

Although this legal framework provides limits on the acts of MPs to a certain extent, there are still deficiencies and gaps in the legislation. The Regulations on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials⁵⁰ and the Law No.2531 on Works Banned from Being Performed by Civil Servants Who Quit Public Duty are not applicable to MPs, and a substitute scheme does not exist for them. Moreover, Law No. 3069 does not define restrictions regarding the relations of MPs with private sector entities. Therefore, the law is weak with regard to conflicts of interest and abuse of public duty. As a result, there is a risk related to the revolving door phenomenon. Due to the lack of meaningful restrictions, former MPs can become lobbyists. A draft bill⁵¹ was submitted by the CHP in 2012 to overcome these deficiencies to a certain extent, but no progress has been made regarding this or the previous draft bills for the regulation of political ethics.

There is also no legal framework regulating the relations between lobbyists and MPs. Therefore, monitoring conflicts of interests and the influence of lobbyists on policy-making processes are serious challenges. It should be noted that this gap in the legislation also contributes to the per-

ceived corruption level in the parliament among the public, and results in loss in trust in MPs. This is evident in the data revealed by the Global Corruption Barometer 2013, where the parliament was considered the second most corrupt institution in the country.⁵² In addition, the “Corruption in Turkey” report carried out by TI Turkey in 2015 show that respondents view TBMM among the institutions with the highest level of corruption with 37 percent.⁵³

Law No. 3628 requires MPs to submit asset declarations to the TBMM, but there is no independent body to assess their accuracy. There is also a gap in the legislation related to gift receiving. According to Law No. 3628 public officials listed in Article 2, including MPs, must return gifts or grants worth more than a total of 10 months’ minimum wage within one month of the date of receipt to their institutions. However, the definition of gifts under the Law refers to international gift giving, i.e. from foreign countries, international organizations, other international legal entities or any other international private or legal person.

SCORE **25**

Integrity mechanisms - Practice

To what extent is the integrity of legislators ensured in practice?

As mentioned above, parliament was considered the second most corrupt institution according to the Global Corruption Barometer in 2013.⁵⁴ MPs take an oath before taking their seats in the parliament, which emphasizes the principles of the rule of law, respect to human rights and devoted service for the independence and welfare of the country. This oath only has a “symbolic meaning”, however, and there is not a mechanism for enforcing and safeguarding the integrity principles of MPs. Although a sub-committee on ethics was formed in 2007, no progress has been made to introduce a code of conduct for MPs.

Favoritism, nepotism and clientelism in particular, are considered as corruption both in the international literature and according to the TBMM Corruption Investigation Committee. However, no progress was made to establish an Ethics Committee to deal with the above-mentioned corruption and previous legal drafts did not even contain regulations in this matter. Another crucial concern is that the deputies and ministers do not announce their relatives’ financial records and there are common allegations that these relatives own companies that work or benefit in fields, which are under the responsibility of the ministers.⁵⁵ There is no mechanism for tracking the compliance of MPs with the relevant legal framework or to provide integrity screening. Considering the risk of political influence revealed in almost all pillars of the national integrity system, the lack of such a mechanism results in poor performance in the integrity of the parliament.

During the 24th term of office of the parliament, TUMIKOM reported that there were 1,101 court cases demanding a repeal of immunities for individual MPs.⁵⁶ The report noted that the General Secretariat of the TBMM did not provide information on the crimes referred to in the requests for repealing immunity, by pointing to Article 20 and 21 of Law No. 4982 on the Right to Access Information, which restricts information on documents related to judicial investigations (Article 20) and protects the right to privacy (Article 21). While the scope of immunity provides the shelter of impunity for MPs, discussions in the public sphere regarding the misconduct of MPs are blocked through lack of transparency in the requests for repealing immunity.

Another example on lack of integrity in the law-making process is the voting session on “the temporary election government”: 556 votes were counted after the electronic voting session in the TBMM composed of 550 MPs.⁵⁷

There is a Code of Conduct and Ethics Committee directly attached to the administrative organization of the TBMM. Ethics guidelines for the staff are available on the TBMM website and include measures on conflicts of interest, gifts and other related areas.

ROLE

SCORE 25

Executive oversight

To what extent does the legislature provide effective oversight of the executive?

The legislature has the power to set up committees of inquiry according to the Rules of Procedures of the TBMM, through a motion signed by at least 10 percent of members of the TBMM (55 MPs). However, a parliamentary investigation can only be requested against the present and former prime minister and ministers. Committees of inquiry are set up to be impartial and an MP cannot be elected as a member of a committee if they have stopped a judge from hearing a related case, participated in a judgment according to the Penal Procedures Code tabled a motion for parliamentary investigation, or previously revealed their opinions on a related issue in or outside the TBMM.

A recent example is the parliamentary investigation against former ministers Muammer Güler, Zaf-er Çağlayan, Egemen Bağış and Erdoğan Bayraktar. Opposition parties criticized the investigation process by arguing that members of the ruling party in the investigation committee blocked the investigation. Moreover, legislators’ votes for immunity for the four former ministers facing corruption charges led to questions regarding the parliament’s ability to hold public officials to account.⁵⁸

There are other deficiencies in the oversight mechanisms of the parliament. A significant number of written questions submitted by MPs are left unanswered; during the 24th term of office 23.8 percent of the written questions remained unanswered.⁵⁹

The real cost of the newly built Presidential Palace is given as another example regarding the deficiencies in the oversight mechanisms of the parliament. While the Minister of Finance Mehmet Şimşek declared that the cost was 1,357 billion TL, TOKİ (Housing Development Administration of Turkey) working directly attached to the Prime Minister’s Office has failed to provide information on the cost of the palace.⁶⁰

Despite it is legally mandatory for the TBMM to annually audit the revenues, expenditures and properties of public institutions along with the executive budget via the related Turkish Court of Accounts (TCA) reports; they have not been submitted to the TBMM for two consecutive years. The common perception is that the government has prevented the submission of these reports. The Plan and Budget Committee is authorized to receive and discuss the TCA reports before sending them to the Plenary. However, they are elaborated on during the annual budget process, therefore a limited time is allocated to analyze the content of the reports, findings and recommendations. A two-month budgeting process is not adequate to effectively work on these reports and except for

the State Owned Enterprises Committee there is no specialized body authorized to regularly work on the TCA reports.

In the 2012 Open Budget Survey, the legislature's strength regarding budget oversight was assessed as weak. The report recommended that the legislature should be provided with the internal capacity to conduct budget analysis or to access independent research for such analysis, and it should have the authority to discuss the overall budget policy prior to the preparation of the budget proposal and to amend it. It also emphasized that the executive should seek approval from the legislature before reallocating the funds between administrative units and prior to spending any supplemental budget and contingency funds.⁶¹ A 2014 OECD SIGMA Report on public administration reform also emphasized the need for improvement in budget oversight by the legislature. The report noted that the parliament is only given two months to consider the budget, whereas the OECD recommends that a minimum of three months should be allowed.⁶²

Another issue of concern is the excessive use of decrees with the force of law. Decrees with the force of law are exempt from any substantial judicial or legislative oversight. The dominance of the executive is manifested in the use of these Decrees as an instrument for introducing policy changes. They offer flexibility to the government and enable the introduction of policy changes without being distorted by delays, but these arrangements limit the effectiveness of parliamentary oversight.⁶³

Constitutionally the legislature has the right to put forward a motion of no confidence against the government or individual ministers, but the opposition could never achieve the necessary majority to practice this supervision mechanism.

SCORE **25**

Legal reforms

To what extent does the legislature prioritize anti-corruption and governance as a concern in the country?

Although there have been some efforts to draft laws on ethics in politics and transparency in political financing, little progress has been made especially with regards to draft bills submitted by the MPs from opposition parties. Aydın Ayaydın MP from the CHP submitted a bill on the establishment of a commission for political ethics in 2011,⁶⁴ and Ayşe Danişoğlu MP from the CHP submitted a draft bill on political ethics in 2012.⁶⁵ On the first anniversary of the 17 December corruption scandal, Umut Oran MP from the CHP submitted a bill on political ethics. Following the recent parliamentary elections in June 2015, the HDP submitted a request for a parliamentary investigation on corruption cases in the recent history of the Turkish Republic, including the December 2013 case.

Prime Minister Ahmet Davutoğlu also announced a reform package titled "Transparency in Public Administration" on 14 January 2015, which included measures on asset declarations to be made public and rules on political financing to ensure transparency. However, these proposals were not put to the vote due to a lack of political will.

In addition to the lack of progress on political ethics and transparency in law making, legislators have in fact passed several legal amendments resulting in an increase in corruption risks. One of the most important areas in this regard is public procurement. As mentioned in the public pro-

curement pillar, there have been several amendments to the Public Procurement Law No. 4734 that have dramatically increased the scope of exceptions to the legislation. The number of clauses identifying institutions, areas and facilities exempted from the law's provisions under Article 3 has risen from 6 to 20.

The TBMM Corruption Investigation Committee report stated:

"The necessary amendments to the TBMM internal regulations should be made in order to establish the Permanent Committee on Fight Against Corruption. This committee should have the competences as investigation committees and be authorized to establish interim sub-committees consisting of experts including judges, prosecutors, security and intelligence officers."⁶⁶

There has been no progress made to date in relation to this recommendation.

Despite widespread opposition from human rights activists, bar associations, opposition parties and civil society organizations, MPs from the ruling party succeeded with several legislative changes. One example for this is Law No. 5651 on Regulating Publications on the Internet and Fighting Against Crimes Committed on Internet, which was amended in February 2014. The amendment was subject to harsh criticism, since it broadens the surveillance power of public authorities and increases the risk of censorship.⁶⁷

As is discussed in the accountability section, parliamentary discussions over the Draft Law on Internal Security, granting extensive powers to police officers and governors, is also subject to criticism.

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2

EXECUTIVE

OVERVIEW

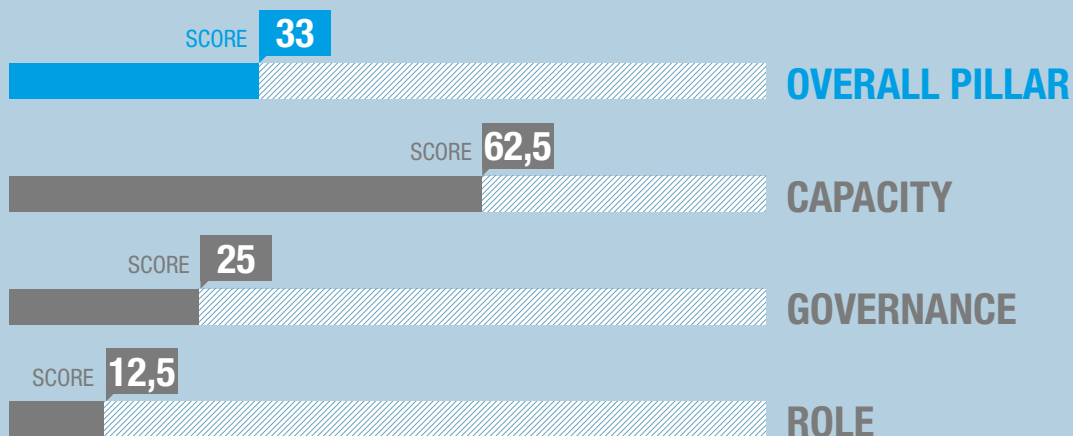
The president, prime minister and the Council of Ministers comprise executive power in Turkey. The financial resources of the executive branch are adequate, but human resources are at significant risk of political influence, which results in ineffective human resources management.

Serious concerns have been raised regarding the separation of powers and authorities within the executive. The president's chairpersonship of the Council of Ministers and presence at grand openings of infrastructure projects and public facilities, and several public events during the election period, have led to discussions over the independence, impartiality and integrity of the executive body. The president's presence at an extraordinary number of events and campaigning in favor of the ruling party during these events was also criticized by the OSCE.¹

The executive's performance on transparency, accountability and integrity and in the fight against corruption is also weak. While the impunity given to the members of the executive body serves to hinder accountability, lack of transparency in certain parts of the budget management and policy-making processes results in poor governance.

Although the government has made several commitments regarding the fight against corruption, a great number of them have not been implemented. Public perception of the government's performance in the fight against corruption points to its ineffectiveness.

The table below presents the indicator scores that summarize the assessment of the executive in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	75
	Independence	75	25
Governance	Transparency	50	25
	Accountability	50	0
	Integrity mechanisms	25	0
Role	Public sector management	25	
	Legal system	0	

STRUCTURE AND ORGANISATION

Executive power is exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and laws. The president serves as the head of state and holds certain legislative, executive and judicial functions and authority.

A member of the parliament – generally the chair of the political party that received the most votes in the previous election – is authorized to form a government by the president. Then he/she acts as the prime minister, the head of the government and coordinates the Council of Ministers.

As of May 2015, there were 22 ministries.² The authorities and responsibilities of the ministries are mainly regulated by Law No. 3046, the Rules of Procedures of the Grand National Assembly of Turkey (TBMM) and Law No. 5018 on Public Financial Management and Control.

ASSESSMENT

CAPACITY

SCORE **75**

Resources - Practice

To what extent does the executive have adequate resources to effectively carry out its duties?

The executive has adequate resources to function properly. An increasing trend was observed in the budgets of ministries and their human resources.³ A dramatic increase was also observed in the budget of the President's Office. In the 2015 Budget the highest increase was reported for the President's Office with a 97 percent increase.⁴ However, there are concerns regarding the efficiency of the executive's use of resources, both its budget allocations and additional discretionary funds.

Effectiveness in the allocation of human resources is also a matter of concern. Professor Muhittin Acar highlights that although the number of people employed in "expert" positions has increased in recent years, there is a limited increase in the quality of work, due to shortcomings in planning and management.⁵

Clientelism and political influence over the appointments and recruitment also raises questions of effectiveness and fairness in the human resources management of the executive. MP Haluk Koç from the CHP disclosed three lists containing information on nepotism, in which relatives and acquaintances of members of the executive and also MPs from the ruling party were appointed to public offices without taking the required exams or through capitalizing on their relations.⁶

As discussed in the Public Sector, the increased budget and more widespread use of technology may not result in the expected improvements in the quality of public services. Budget allocations should be examined in order to identify the areas related with this budget increase and to elaborate on the impact of the increase.⁷

Another important concern is the existence of discretionary funds (örtülü ödenek). There has been an increase in these funds in recent years, which may be interpreted as a diversion of resources from their initial aim. It is not possible to interpret this increase as an allocation of more resources for public goods, since the items that the funds are spent on are unknown.⁸

The President's Office was provided with discretionary funds through an omnibus bill in March 2015.⁹ According to the Law, the total amount of discretionary funds allocated in the relevant year cannot exceed five per thousand of the sum of the initial appropriations in the general budget. This means the prime minister and the president have the authority to spend 2.3 billion TL, without being held accountable for what they spend it on.¹⁰

SCORE **75**

Independence - Law

To what extent is the executive independent by law?

The separation of powers is defined in the Constitution. According to Articles 7, 8 and 9, legislative power is vested in the TBMM on behalf of the Turkish nation and this power shall not be delegated, whereas executive power and function shall be exercised and carried out by the president and the Council of Ministers in conformity with the Constitution and laws, and judicial power shall be exercised by independent courts.¹¹

Apart from these articles, there is no regulation in the Constitution and in the Internal Regulation of the TBMM, ensuring the independence of the executive.

According to the Article 91 of the Constitution, the executive has the authority to order decrees with the force of law (decree laws) with the exception of those declaring martial law and states of emergency, and those concerning fundamental rights, individual rights and duties included in the first and second chapters of the Constitution and political rights. Decree laws are subject to judicial review.

SCORE **25**

Independence - Practice

To what extent is the executive independent in practice?

The separation of powers is still a major concern of Turkey's democratization process. One of the major disputes in terms of the independence of the executive is the president's chairpersonship over the Council of Ministers. According to Article 104 of the Constitution, the president presides over the Council of Ministers or can call the Council of Ministers to meet under his/her chairpersonship whenever he/she deems it necessary.

However, previous presidents did not exercise their power to call on the Council of Ministers except extraordinary times. Therefore, the president's chairmanship is now considered as a form of interference, and has become subject of criticisms and seen as an indication of the president's desire to change the regime to presidential system.¹² A prominent political scientist, Professor Er-

sin Kalaycıoğlu argues that advocates of the presidential system desire a kind of one-party regime, which is not accountable to the public.¹³

Moreover, following a press meeting by Prime Minister Ahmet Davutoğlu on the reform package on transparency in the public sector, the president raised concerns by stating that he did not find the timing and the content of the package appropriate before general elections, and argued that if the asset declaration requirement widened to cover the district chairs of political parties, no one would be willing to take on this role.¹⁴

It is not possible for ministers to act independently from the government's policy; rather in general the agenda of the government is considered state policy. Therefore, ministers are not able to always act in the interests of the public, but are unduly influenced by the agenda of the prime minister. While the centralization has an impact on the independence of ministries, it has also consequences for transparency.

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there regulations in place to ensure transparency in relevant activities of the executive?

Public institutions including the executive body are subject to Law No. 4982 on the Right to Access Information.¹⁵ According to this law, ministries are required to provide every kind of information and document upon information requests (with exceptions set out in the law) and review and decide on the applications for access to information promptly, effectively and correctly.

However, the two exceptions namely "state secrets" and "commercial secrets" are open to abuse, since there is not a clear definition for these two concepts in the legislation. For example, although it is mentioned in some laws such as the Penal Code and Law No. 5411 on Banking, there is not a complete and comprehensive definition of "commercial secrets". Although a draft bill aiming to regulate the area of commercial secrets, bank secrets and client secrets was sent to the parliament by the government in 2011, no progress has been made in this area to date.¹⁶

According to Law No. 5018 on the Public Financial Management and Control,¹⁷ the Prime Minister's Office and ministries are also required to prepare development plans, annual programs, strategic plans and budgets, to negotiate on them with the authorized bodies, to implement them, and to make the implementation results and the relevant reports available and accessible to the public.

According to Law No. 3628 on Asset Declaration, Fight against Bribery and Corruption, the prime minister and ministers are required to submit asset declarations when their term of office starts.¹⁸ However, since these are kept confidential unless an investigation is launched, the legislation prevents transparency in asset declarations.

Council of Ministers' decrees are required to be published on the Official Gazette. However, there is no regulation requiring the agenda of the Council of Ministers to be declared or any rules regulating the frequency of the meetings.

Transparency - Practice

To what extent is there transparency in relevant activities of the executive in practice?

Information on the government budget is open to the public in digital format. Ministries and the Prime Minister's Office publish information on the use of their budgets in their annual reports, and publish performance programs and strategic plans. On the other hand, it is not possible for citizens, the courts or related supervisory boards to audit the discretionary funds of the Presidential Office or the government. An important example is that the costs for the construction and maintenance of the Presidential Palace were not announced and could not be audited by any institution.

Regarding the institutional framework ensuring the transparency of the executive body (in particular the Prime Minister's Office), the Communication Center BIMER and BEDK are worthy of mention. BIMER, is the Prime Ministry Communication Center, and was established in 2006 to respond to information requests by citizens. The number of requests has immensely increased since its establishment.¹⁹ While the number was 129,297 in 2006, it increased to 1.124 million in 2014, according to data published by BIMER. The Annual Report on Access to Information published by the parliament shows that 53,363 of the requests were positively answered, while 10,861 were rejected from among the 81,720 requests that the Prime Minister's Office received.²⁰

There was also an increase in the number of appeals to the BEDK, the institution authorized to review and process complaints. These increased from 1,164 in 2006 to 2,690 in 2014. However, a significant number of these applications were also rejected by BEDK. In 2014 the number of rejected applicants was 1,095.²¹ There is a need for diversity in BEDK members.²² Members of the BEDK Council are composed of nine individuals appointed by the Council of Ministers. The appointments are done via recommendations from various organizations ranging from the members of the Council of Ministers, academia, the Bar Association to general directors and judges from the Ministry of Justice. In order to incorporate insights from different perspectives and enhance the effectiveness of the mechanisms of access to information, and thereby open governance, it would be valuable to engage relevant interest groups in policy-making.

There are several shortcomings regarding the executive's level of transparency. While working groups established under ministries through the National Anti-Corruption Strategy contributed to it, no details concerning the process was shared during the four years and the final reports were not publicly available. It is currently unknown whether the national anti-corruption strategy was implemented; and if so, the content and the extent of the anti-corruption efforts are still obscured from the public. The reform package on transparency in the public sector was also not prepared in a transparent way and the details of the report, which are limited in scope, were not shared with the public.

There are also deficiencies in financial transparency. The website of the Prime Minister's Office includes only short biographies of the members of the Council of Ministers and their asset declarations are not open to the public.

Public funding of civil society organizations is also a matter of concern. For example, the Ministry of Youth and Sports provides public funding to youth organizations for their projects. However, the information on which organizations or projects are awarded funds is not open to the public. A citizen who contacted Transparency International Turkey's Advocacy and Legal Advice Centre (Şeffaflığa Çağrı Merkezi) requested this information from the Ministry, but the request was rejected.²³

Moreover, as discussed in the media pillar, the accreditation requirements applied to the media by the executive to attend press meetings and other events result in discrimination when accessing information. It was reported in 2014 that certain anti-government media groups were not allowed to enter the building where the Council of Ministers meeting was held.²⁴

SCORE **50**

Accountability - Law

To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?

According to Article 105 of the Constitution, no appeal can be made to any judicial authority, including the Constitutional Court, against the decisions and orders signed by the president on his/her own initiative. The president may be impeached for high treason on the proposal of at least one-third of the total number of members of the TBMM, and by the decision of at least three quarters of the total number of members. Article 87 of the Constitution also authorizes the legislature to oversee the ministers and ministries.

According to Law No. 5018, ministries are required to prepare annual activity reports. The Law does not define the deadline for publicizing the reports; rather it states that the elements to be covered and the periods of preparations and submission of these reports are determined through a by-law of the Ministry of Finance. This by-law was introduced in 2006, whereby public bodies operating within the scope of general budget were required to publish these reports by the end of February in the following financial year.

The Ministry of Finance is authorized to send the General Activity Report to the Turkish Court of Accounts (TCA) and publish it at the same time. According to Law No. 6085, the TCA is responsible for preparing the External Audit General Evaluation Report,²⁵ the Activity General Evaluation Report,²⁶ the Financial Statistics Evaluation Report,²⁷ and the Statement of General Conformity.²⁸ The TCA also prepares consolidated reports on state owned enterprises. These annual auditing reports must be submitted to the parliament. The TCA provides opinions by taking into consideration the external audit results and then the parliament discusses these reports during the budget process.

MPs can submit oral and written questions to be answered by the prime minister or ministers. Written questions are required to be answered within 15 days at the latest after they are sent to the Prime Ministry or the related ministry.

Parliamentary investigations against former or current prime ministers and ministers are required to be submitted by at least 10 percent of MPs, whereas a motion of no confidence is required to be submitted on behalf of a political party group or with the signatures of at least 20 deputies. As a result of the parliamentary investigation, committees can prepare a report demanding the related minister or prime minister to be sent to the Supreme Court. The decision to send a minister or prime minister to the Supreme Court is made in the Plenary.

Like the prime minister, ministers also have parliamentary immunity, even from charges related to corruption. Articles 99 and 100 of the Constitution also apply to them. This immunity before the judiciary has the potential to be abused and protect members of the executive from prosecution from corruption related crimes. The TBMM Committee to Investigate Corruption, which was established in 2003, stated the following in its report:

“Allegations against Prime Minister and ministers may fail to become subject of judicial processes in cases of lack of approval in the parliament or enough number of votes for investigation or decision to send the case to the Constitutional Court (acting as “Yüce Divan”). While this situation is not consistent with the principle of separation of powers, it also implies a decision of acquittal by remaining silent and therefore harms public trust. Therefore, criminal liability of the prime minister and ministers should be decided upon a judicial process and the article 100 of the Constitution should be amended accordingly.”²⁹

Although the report in question recommended that the Public Accounts Commission should be established, no step has been taken yet.

SCORE

0

Accountability - Practice

To what extent is there effective oversight of the executive activities in practice?

A parliamentary committee can be formed to investigate wrongdoings by ministers and hold the government accountable. However, effective functioning of this mechanism depends on the integrity and independence of the parliament and MPs. As discussed in the legislature chapter, the structure of the parliament is shaped by the 10 percent election threshold, which has an impact on several accountability mechanisms, including parliamentary voting for cases to be taken up by the Constitutional Court acting in the capacity of “Yüce Divan” and immunity to be waived.

According to World Justice Project’s Rule of Law Index, there is very limited constraint on the government’s powers: a lack of independent auditing, non-governmental checks and sanctions for official misconduct remain major problem areas within this framework.³⁰ In addition, there exists no mechanism to oversee the use of public resources by the incumbent party during election campaigns.

A recent example is the December 2013 corruption allegations against four ex-ministers and their relatives. The investigations covered one of the greatest corruption allegations in the history of Turkey and ministers, their relatives, the general manager of a public bank, and an Iranian businessman resident in Turkey businessman was accused of being involved in a major corruption case. The accusations included bribery, money laundering and fictitious export, and large amounts of cash were found following the police raids on the houses and businesses of the accused.³¹

The way that the government approached the allegations was alarming. The allegations were not taken seriously and considered to be an attempted coup against the government. Following the investigations, a great number of dismissals and changes of office took place in the police and judiciary,³² while the former ministers allegedly involved in the case were not tried and their immunity was protected by a parliamentary decision. The prosecutors became the suspects as the investigation against the public prosecutors Celal Kara and Muammer Akkaş was initiated. The High Council of Judges and Prosecutors then dismissed them, along with others, from the profession.³³

The Council of Ministers’ decrees are used to overcome disputes related to labor or environmental rights. For example, the Council of Ministers’ decree to postpone the metal industry strike launched by the Confederation of Revolutionary Workers’ Union/the United Metal Workers’ Union (*DİSK/Birlesik Metal-İş Sendikası*) is one of the recent cases that have been criticized.³⁴ There are also several cases in which, despite the court decisions on stay of execution, construction projects and privatizations were conducted.³⁵

The 2010 Global Integrity Report highlights that although the Council of State may stay a decision or annul a government action where it is made without adequate reason, even after a long period of time, in many cases arbitrary government decisions may remain in force for a long time.³⁶ Also, decisions may be carried out, thereby overruling the Council of State, by issuing new regulations.

Another important problem is widespread nepotism. Haluk Koç MP from CHP disclosed 85 cases in which acquaintances, relatives and colleagues of the governing party's politicians were appointed or recruited to public offices without an exam or merit-based evaluation. These cases also include ministers' and ex-ministers' relatives.³⁷

According to a 2014 OECD SIGMA report,³⁸ there are shortcomings in the reporting procedures of government institutions, which create obstacles for analysts and citizens in monitoring the execution of the budget. The report highlights that profiles of the main fiscal aggregates are not published and comparisons in monthly reports are year on year, which makes it difficult to compare the planned budget with the actual budget. It also emphasizes that although the Ministry of Finance publishes a detailed annual budget report presenting revenue and expenditures in gross terms and expenditures by institution, this format does not meet the Turkish Court of Account's auditing obligations.

SCORE **25**

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of members of the executive?

There is no comprehensive code of conduct for the executive branch. As discussed in the public sector pillar, there is no regulation to provide protection for whistleblowers either. Law No. 2531 on Prohibited Activities of Former Public Servants dated 1981 is in force and aims to prevent and reduce conflicts of interest. Article 2 (prohibition and its term), states that:

"Those who have left for any reason, the position in one of the public institutions stated in the article 1 of this law cannot directly or indirectly be assigned to a position or take charge of any business, make any undertaking, brokerage or representation relating to his/her duties and activities held in their former office, opposing to the office, department, institution and agency where they worked during the last two years before they left the office for three years starting from the date of leaving the office."³⁹

Although this provision refers to all public servants who receive a salary from the state, the members of the executive body are not explicitly mentioned. The 2010 Global Integrity Report concludes that there is a deficiency in the legal framework regulating integrity principles for the executive body.⁴⁰

SCORE **0**

Integrity mechanisms - Practice

To what extent is the integrity of members of the executive ensured in practice?

The gap between the legislative framework and the practice in terms of integrity principles is wide. Election periods, in particular, reveal the lack of internalized integrity principles for the executive. The use of his official position by Prime Minister Erdoğan during the presidential elections in August 2014, as well as biased media coverage was criticized by a 2015 OSCE Report.⁴¹

The president's active role during the 2015 campaign period for the general elections was criticized by opposition parties and also by independent observers authorized by OSCE/ODIHR. The OSCE report published after the general elections in 2015, highlighted that:

"Lack of clear distinction of key institutional events with campaign activities provided the President an undue advantage, contrary to national legislation and at odds with paragraph 5.4 of the 1990 OSCE Copenhagen Document and the Report on the Misuse of Administrative Resources during Electoral Processes by the Council of Europe's Commission for Democracy through Law (Venice Commission)."⁴²

The president not only attended key events in several cities, but also called for 400 (soon after 350) MPs to be elected, thus reaching the threshold required to push through a constitutional change to establish a presidential system in Turkey.

The December 2013 corruption investigations also seriously brought into question the integrity of the executive branch. Reza Zarrab, an Iranian businessman resident in Turkey was accused of giving bribes to a number of ministers.⁴³

ROLE

SCORE

25

Public sector management

To what extent is the executive committed to and engaged in developing a well-governed public sector?

According to a 2014 OECD SIGMA Report, while the regulatory and institutional framework is developed enough to manage and monitor the performance of public institutions, there are some areas in need of improvement.⁴⁴

The report highlights that the Ministry of Finance and the Ministry of Development have the capacity to implement more strategic performance budgeting, but the challenge is changing the traditional culture of secrecy within institutions. It also emphasizes the lack of follow-up actions when public institutions deviate from previously determined targets.

The report also emphasizes that expenditure from public institutions' own resources, "the revolving funds," increased dramatically. Since these funds are not subject to control by the Ministry of Finance or the parliament, they present a risk to planned fiscal targets. It concludes by stating the need for quantitative fiscal and sectoral risk assessments.⁴⁵

There is no information on incentives provided by the government to encourage transparency, accountability and inclusiveness in the public sector. The National Anti-Corruption Strategy and its Action Plan did not include any targets or measures about incentives.

The report prepared by the TBMM Corruption Investigation Committee suggested establishing a working group on legislative reforms and zoning decisions, incentives, permits, licenses and the relations between public institutions and contractors. However this group has not yet been formed.

SCORE

0

Legal system

To what extent does the executive prioritize public accountability and the fight against corruption as a concern in the country?

The Strategy for Increasing Transparency and Strengthening the Fight against Corruption was developed and approved in 2010 and based on this strategy, an Action Plan defining the targets, reform areas and responsible authorities was prepared.⁴⁶ The strategy prescribes formation of working groups to follow the action plan, which was subsequently completed in 2014. Due to the involvement of civil society organizations within the strategy, the public was made aware of the results of the working groups. Nevertheless, after the Executive Board received the results, neither the report, nor the actions done by the Board following the recommendations were shared with the public. The process for the formulation of the Strategy and the Action Plan were undertaken in a non-transparent manner and the final decisions did not produce clear results.

Although the implementation period is over, several reports – such as the 2012 OECD SIGMA Report and the European Commission 2014 Progress Report on Turkey– found that the National Anti-Corruption Strategy and Action Plan were insufficient, produced limited results and had lacked effective consultation. Based on the reports and recommendations of working groups established under ministries, a reform package on transparency in the public sector was also declared by Prime Minister Ahmet Davutoğlu in February 2015. However, no detailed information about the package or the reports by the working groups has been made public.

According to a 2015 survey by TI Turkey, more than a half of the respondents found the efforts of government in the fight against corruption ineffective.⁴⁷ It can be argued that immunity and impunity in corruption related allegations and crimes and the failure to fulfill commitments in the National Anti-Corruption Strategy have shaped this perception.

Turkey joined the Open Government Partnership (OGP) in 2011 and prepared an action plan covering measures needed for information sharing with the public, active participation in the policy- and decision-making processes, and increasing public awareness and improving dialogue between stakeholders. The OGP has not seen adequate progress on government commitments in order to conduct an independent evaluation yet. The OGP has sent a formal notice to the government to inform it that if no progress is made Turkey's compliance with the membership criteria will be reviewed.⁴⁸ According to the latest timeline published by the OGP⁴⁹, the government was expected to create the second action plan in cooperation with the CSOs by the end of June 2015. However, to date no progress has been made regarding this target.

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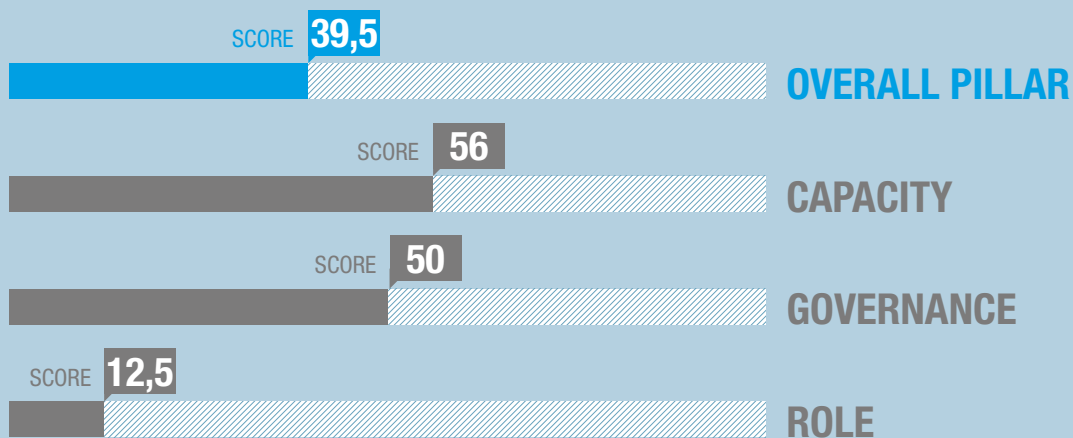
JUDICIARY

OVERVIEW

The independence of the judiciary is one of the most serious concerns in the Turkish national integrity system. In 2010, Turkey implemented a significant constitutional amendment for judicial administration, which included a total of 30 amendments, affecting some 23 articles of the Constitution. The amendments that were adopted and published in the Official Gazette were put to referendum in September 2010 and supported by the majority – with 58 percent in favor and 42 percent against.¹ With the recently adopted amendments to the composition and competencies of the High Council of Judges and Prosecutors (*Hakimler Savcılar Yüksek Kurulu*, HSYK), the national central body in the administration of law and justice, the independence and accountability of the judiciary has been widely debated. Although the amendments widened the composition of the HSYK and enhanced its financial independence by separating its budget from the Minister of Justice (MoJ) the amendments strengthened the presence of the MoJ and Undersecretary in the HSYK, which cast a shadow over the independence of the judiciary.²

Lack of independence also weakens the executive oversight capacity of the judiciary. In major corruption cases, the judiciary is neither a deterrent nor effective in investigating corruption allegations with full transparency. In nationwide surveys and international reports, decreasing public trust in the judiciary has been demonstrated.

The table below presents the indicator scores that summarize the assessment of the judiciary in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	100	50
	Independence	50	25
Governance	Transparency	50	50
	Accountability	75	25
	Integrity mechanisms	75	25
Role	Executive oversight	0	
	Yolsuzluk Kovuşturması	25	

STRUCTURE AND ORGANISATION

The judicial system is comprised of first instance courts, district courts and supreme courts. The main separation is between the civilian and military judiciaries.³ Both fields are split into two categories: ordinary (disputes between individuals), and administrative (disputes between individuals and the administrative authorities).

Due to its multipartite structured judicial system Turkey has supreme courts, rather than one Supreme Court.⁴ There are four different types of jurisdictional field and supreme courts for each field: The Court of Cassation for the civilian ordinary judiciary, the Council of State for the civilian administrative judiciary, the Military Court of Cassation for the military judiciary (only in terms of criminal procedures), and the High Military Administrative Court for the military administrative judiciary (it serves both as court of first instance and supreme court).⁵

Moreover, in order to resolve disputes between these courts the Court of Jurisdictional Disputes is established while Constitutional Court inspects the laws in terms of compliance with the Constitution. Each of them has their own prosecution services and general prosecutors except the Constitutional Court and the Court of Jurisdictional Disputes. (The General Prosecutor of the Court of Cassation carries out the prosecution services in the Constitutional Court.) Therefore, this judicial system in Turkey has led to the emergence of six supreme courts and four general prosecutors.⁶

The MoJ is responsible for determining the main policies and controlling the budgets of important bodies within the system. Law No. 2802 on Judges and Prosecutors details their wages, promotions and disciplinary penalties.⁷ The HSYK is authorized to manage the admission process of judges into the profession, as well as their appointments, transfers to other posts, promotions, penalty impositions and removal from office. Moreover, the HSYK can abolish a court or change the territorial jurisdiction of a court.

The organization and structure of the judiciary is defined in the Constitution. In September 2010, some parts of the Constitution, including the composition of the HSYK, were changed by referendum.⁸ The Inspection Board, which has become subordinated to the HSYK with the 2010 constitutional amendments (previously it was under MoJ), is responsible for carrying out inspections related to judges and prosecutors and for examining whether judges and prosecutors perform their duties in compliance with laws, regulations, by-laws and circulars.⁹

In February 2014 the parliament adopted Law No. 6524 on the Amendment of Certain Laws including amendments to Law No. 6087 on the HSYK. With the new amendments the government's influence on the HSYK has increased.¹⁰ The law signed by the president on 26 February entered into force on 27 February 2014. The Constitutional Court found the most problematic parts of Law No. 6524 to be unconstitutional. On 28 June 2014, Law No. 6545 entered into force. It "amended the Law No. 6087 on the HSYK in order to repair the violations of the Constitution" and "restored the legal situation before the entry into force of the Law No. 6524 to the extent in which the Constitutional Court had found that law to be unconstitutional".¹¹

ASSESSMENT

CAPACITY

SCORE **100**

Resources - Law

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?

According to the Constitution,¹² legislation regulates the qualifications, appointment, rights and duties, salaries, and allowances of judges. Article 103 of Law No. 2802 on Judges and Prosecutors determine judges' salaries.

All judges' salaries are determined as a percentage of the salary of the highest-level public official:¹³ chairs of the supreme courts receive 100 percent, members of the Council of State and Supreme Court receive 83 percent, first class judges receive 79 percent, and the lowest level judges receive 41 percent. Overall, the law guarantees that the salaries are fixed and adequate. In addition, the law also establishes the other benefits of the judges. The salary of all public servants including judges is adjusted according to the rate of inflation twice a year.

The lower courts do not have a separate budget from the ministries that govern them and are not legally entitled to participate in the budget decision-making process. The approved annual budget of the MoJ covers the budget of the first instance courts of general jurisdiction, regional administrative courts, administrative courts and tax courts.¹⁴ Budgets of all courts within the military field are included in the budget of the Ministry of National Defense.

However, the Constitutional Court, the Council of State and the Court of Cassation, have their own budgets. The MoJ does not cover the HSYK and Justice Academy, which are governed by their own budgets and are legally entitled to propose, allocate and manage their own budgets.

With the acceptance of Law No. 5018 on Public Financial Management and Control Law in 2003, a performance-based budget has been adopted. With this law, Turkish judiciary system has transformed to a result-oriented budget.

SCORE **50**

Resources - Practice

To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The budget allocated to the judiciary has regularly increased every year. While the amount was 785.6 million euros in 2006; it rose by 274 percent by 2012 reaching 2.1 billion euros and later, it increased by a further 55 percent to 3 billion euros in 2013.¹⁵ The 2014 budget for the judiciary was approximately 3 billion euros again, roughly 0.48 percent of Turkey's GDP.¹⁶

Turkey spends approximately 18 euros per capita on the judiciary. It spends a larger portion of its judicial budget on courts than other European nations: 51.9 percent compared to the European average of 49.2 percent.¹⁷ The MoJ has an important role in determining policies within the judicial system and consumes a substantial share of the judicial budget. The MoJ's share of the budget increased substantially between 2000 and 2014. In 2000 it was 0.77 percent, but by 2007 this had increased to 1.31 percent and by 2014 to 1.72 percent. Most of the MoJ's budget is spent on personnel costs, but goods and service purchases corresponded to 18.41 percent and investment costs amounted to 4.79 percent in 2013.¹⁸ New court buildings have been constructed in big cities and technical equipment and libraries have been modernized. The Justice Academy has a library that contains the documents, legislation, court decisions and publications related to the fields of law and justice.¹⁹

Turkish judges' salaries are comparable to the European average. According to a European Commission for the Efficiency of Justice (CEPEJ) report prepared with 2012 data, the net annual salary of a first instance professional judge is 32,991 euros, whereas the median of 46 countries covered by the research is 32,955 euros.²⁰ However the salaries of newly attained judges are relatively low when compared to the EU median.

The total number of judges and prosecutors, including those in the administrative judiciary increased by 9 percent in 2014 and reached 13,989, but only a quarter of them were women.²¹ The number of judges per 100,000 persons has increased from 10.7 in 2012 to 11.6 in 2013. This ratio is still lower than the European average, which is 22.7 per 100,000.²²

At the same time, the extreme workload and long working hours of judges has resulted in grievances. According to the *Better Judiciary* report,²³ such a workload is one of the main problems affecting the quality and effectiveness of the judgment process. Similarly, an internal expert²⁴ stated that the high number of cases and inadequate human resources have a negative effect on levels of public trust.

Experts interviewed for this report also emphasized the lack of training opportunities available to the judiciary. HSYK organizes training, but these events are infrequent and many judges are not able to attend them because of their extreme workloads.²⁵ An expert interviewed by TI Turkey highlighted that there is no attempt to ensure the specialization of judges in any fields, and the former secretary general of the Constitutional Court, claimed that the quality of education provided by faculties of law is a concern for the judicial process.²⁶

Law No. 6494²⁷ considers judicial training a right and a duty of judges and prosecutors. Training is organized and supervised by the HSYK and mainly performed in cooperation with the Justice Academy. The article on judicial training complies with international standards by defining training as a right and a duty.²⁸ The training and education expenses, which were 20,985 euro according to the 2008 data, have increased to 516,850 euros in 2010.²⁹

The information technology capacity of the judicial system is good. According to a 2012 CEPEJ report, the judiciary enjoys a very high level of computerization.³⁰ All judges and prosecutors have use of laptops, and access to the Internet and email facilities. The National Judicial Network System (UYAP) is an e-justice system developed in order to ensure a fast, reliable, soundly operated and accurate judicial system. It is used by courts, policy-makers, other judicial bodies, and includes all courts, public prosecutors services, prisons, other judicial institutions and government departments. Thanks to this nationwide intranet all courts are related to each other through electronic networks and all judicial proceedings can be carried out through this system. UYAP provides every kind of information and statistics such as the number of files, verdicts, pending cases and the average duration of the cases.³¹

Moreover, within the framework of the Better Access to Justice Project, carried out with the support of the European Union, audio and visual recording equipment and video conferencing systems have been put into operation in order to record hearings. The system is currently being used by some of the courts.³²

SCORE 50

Independence - Law

To what extent is the judiciary independent by law?

Judicial independence is under constitutional protection. Article 138 of the Constitution clearly guarantees the independence of the judiciary:

“Judges shall be independent in the discharge of their duties [and] no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.”³³

Article 138 of also guarantees the independence of the judiciary from the legislature in the phrase:

“No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.”³⁴

Moreover, the executive, legislature and the administration have to comply with judicial decisions and shall neither alter them in any respect nor delay their execution.³⁵ The Constitutional Court, the Court of Cassation, the Council of State, the Military Court of Cassation, the Supreme Military Administrative Court and the Court of Jurisdictional Conflicts are the supreme courts mentioned by the Constitution. It is quite difficult to amend the articles of the Constitution regulating the specifications of the supreme courts.³⁶

However, a law on the Constitutional amendment adopted by a two-thirds majority of the total number of members of the parliament directly or if referred by the president for further consideration, or its articles may be submitted to a referendum by the president. Laws or related articles of the constitutional amendment that are not submitted to referendum are published in the Official Gazette. Laws related to constitutional amendments that are submitted to referendum, shall require the approval of more than half of the valid votes cast.³⁷

The HSYK is an independent supreme board that is established to act in accordance with the principles of independence of courts and tenures of judges and prosecutors. Constitutional amendments in 2010 restructured the HSYK to become more administratively and financially independent; previously it had not had a separate budget and the MoJ had performed its secretariat services. The Minister of Justice is the chair of the HSYK and the Undersecretary of the MoJ is its member. Thus the MoJ has the authority to determine the agenda, appoint the general secretary, and have the final word on the investigation decisions of the Council.³⁸

The 2010 and 2011 European Union Progress Reports welcomed the adoption of the amendments to the Constitution on the composition of the HSYK stating that it was a positive step.³⁹ The 2010 report emphasized that:

“The government consulted the Venice Commission of the Council of Europe for the constitutional amendments. Judicial inspectors responsible for evaluating the performance of judges and prose-

cutors henceforth will report to the HSYK and no longer to the MoJ thus giving the High Council a basis for carrying out its work without the risk of political interference.”⁴⁰

However, the amendments have not altered the presence of MoJ and Under-secretary in the HSYK. The reality was the exact opposite of what the Venice Commission had anticipated and was criticized by judges and prosecutors, and international authorities. It is even argued with the amendments to HSYK the power would accumulate in the hands of the executive and legislative branches, which is entirely against democracy and the separation of powers.⁴¹ For example, the President of the European Network of Councils for the Judiciary (ENCJ), Miguel Carmona Ruano says:

“The current HSYK substantially corresponds to with principles of the ENCJ. Nonetheless, the presence of the MoJ as a member of the Council for then Judiciary, in general, is not considered appropriate, as it clearly entails the risk of the executive power affecting the debates and choices made by the judicial order.”⁴²

Furthermore, on 15 February 2014 Law No. 6525 on the Amendment of Certain Laws was adopted and amended various laws, including Law No. 6087 on the High Council of Judges and Public Prosecutors (HSYK) and Law No. 4954 on Justice Academy.

These amendments to Law No. 6087 were introduced shortly after the December 2013 corruption allegations. There was no proper stakeholder consultation in the preparation process of these amendments; they were criticized for increasing government’s influence on the HSYK.⁴³ As mentioned by the Human Right Watch the version of the law adopted on 15 February gave the minister an even stronger role.⁴⁴

For example, the power to send judges and prosecutors abroad for professional training, which previously belonged to the HSYK and the minister of justice, was granted exclusively to the minister; the HSYK’s influence on on-the-job training of judges and prosecutors was weakened; the minister of justice gained full authority to appoint the president and vice presidents of the Justice Academy; and the minister of justice was given the authority to choose the members of chambers, and stipulated that the chambers’ presidents are to be elected by the HSYK General Assembly from among two candidates suggested by the chambers.⁴⁵

Following the adoption of the amendments, all staff of the HSYK was dismissed, including the secretary general, deputy secretary-generals, the president\ and deputy presidents of the Inspection Board, inspectors, rapporteur judges and administrative staff. New staff was appointed under the control of the MoJ.⁴⁶

These changes are regarded to be at odds with the principle of judicial independence, the *sine qua non* of the rule of law. Referring to the principle of separation of powers enshrined in the Constitution the Constitutional Court annulled most of these legal changes in April 2014.⁴⁷

The HSYK has huge control and authority over judges, so it should be independent from the executive. However, the Constitution allows direct influence of the cabinet and the president on the HSYK. According to Article 159 of the Constitution, the HSYK is composed of 22 regular members.⁴⁸ Including the president, seven out of 22 members of the council are directly under control of the executive body. It should be noted that the election process of the rest of the members (15 out of 22) is also quite open to government intervention.

Law No. 2802 on Judges and Prosecutors defines the procedure for the selection of judges.⁴⁹ In consultation with the Justice Academy⁵⁰, the MoJ announces the number of judges to be recruited.

The candidates first take a written exam covering general culture, general skills, administrative law and civil law. The successful candidates in the written exam are able to take an oral exam. The members of the interview board are the under-secretary of the MoJ (as the president of the board), the head of the Inspection Board, the director general for penal affairs, the director general for civil affairs and the director general for personnel affairs, and two members who are selected by the executive board of the Justice Academy from among its members. The interview board assesses the candidates' a) ability of judgment, b) ability to understand a particular subject and to make a summary, c) appropriateness for the profession in terms of physical appearance, behavior and reactions, d) capability and culture, f) openness towards contemporary scientific developments and technological improvements.⁵¹

There are no measurable evaluation criteria in the oral examination process, so this step is quite open to subjective evaluation and manipulation.⁵² In this vein, the Venice Commission criticizes the fact that physical appearance is taken as a valid criterion for appointment as a judge or prosecutor. Moreover, it needs to be clarified what type of behavior and reactions would disqualify a candidate.⁵³

After the written and oral examinations, successful candidates enter a pre-service training phase for two years. At the end of the training, candidates sit a written exam and appointment of the successful candidates is done by allotment. The place of employment is decided by taking into consideration the needs of the civil and the administrative judiciary, and as well as trainees' family status with the aim of protecting family integrity.⁵⁴

It is worth noting that the examinations for the selection of judges and prosecutors are under the authority of the Ministry of Justice. Transfer of this authority from the MoJ to the HSYK would eliminate the concerns of executive control over the judiciary to some extent. The independence and transparency of the selection process of judges and prosecutors is directly tied to the transparency of the HSYK and should be addressed.

After their appointment, judges who have no judicial or disciplinary sanctions to their name and meet the moral and professional criteria get promoted every two years depending on their rank. Some of the requirements are defined by law, such as professional knowledge, quantity and quality of work accomplished, notes given upon the examination, professional works, writings and professional in-service and expertise training.⁵⁵ But there are also non-objective requirements such as moral characteristics, loyalty, and professional knowledge and intellect. Therefore, it is reasonable to note that neither the appointment nor promotion of judges is fully transparent or based on objective criteria and merit.⁵⁶ It should be also noted that the HSYK is the authority for disciplinary matters.

The Constitution provides security and tenure of judges and public prosecutors. They cannot be dismissed, and unless they request it, they cannot be retired before the age prescribed by the Constitution.⁵⁷ Law No. 2802 on Judges and Prosecutors defines the conditions under which judges' tenures can be terminated. These include repeated sanctioning with disciplinary punishment such as change of location or suspension of degree promotion. However, if an offence violates the honor and dignity of the profession or position held, the HSYK can decide on a judge's dismissal immediately.⁵⁸

Independence - Practice

To what extent does the judiciary operate without interference from the government or other actors?

The influence of the executive over the judiciary is referenced in the 2015 World Rule of Law Index as the category Turkey performs the worst in. The government's response to corruption allegations in December 2013 raised serious concerns about the independence of the judiciary and the effectiveness of the HSYK.⁵⁹ As mentioned in European Commission 2014 Progress Report for Turkey:

"...this response consisted in particular in amendments to the Law on the High Council of Judges and Prosecutors and subsequent numerous reassignments and dismissals of judges and prosecutors, as well as reassignments, dismissals, or even detention, of a large number of police officers."⁶⁰

After the December 2013 corruption scandal, the government took steps the following day to reassign or remove a number of prosecutors.⁶¹ Reportedly as many as 400 police, 784 judicial and 104 administrative judges and prosecutors linked to the investigation were reassigned to different positions.⁶²

Ali Rıza Öztürk, the spokesperson of the main opposition party Republican People's Party (CHP) declared:

"In no circumstances and no other period have judges and prosecutors faced such discriminatory action. The decree concerning the reshuffle aims to punish those jurists who do not act in compliance with the ruling party, while it rewards those who the government considers as making decisions supporting its position."⁶³

On 27 December 2013, Stefan Füle, EU commissioner for Enlargement, raised concerns about threats to the independence of the judiciary.⁶⁴ The concerns regarding independence of the judiciary became more visible when the government introduced a regulation requiring prosecutors and police to inform superiors in the Ministry of Interior before carrying out investigations or detentions. On 27 December, the Council of State overturned the regulation as unconstitutional.⁶⁵ It should also be stated that the judges and prosecutors are under political pressure when dealing with cases regarding worker accidents, and cases in which workers and large companies are positioned against one another.

However, in February 2014 the government aimed to introduce new amendments the Law No. 6087 on the High Council of Judges and Prosecutors that limits the operational capabilities of the judiciary and the police to conduct investigations into corruption allegations in a non-discriminatory, transparent and impartial manner.⁶⁶

The oral examinations are subject to abuse and the media has reported nepotism and various instances of wrongdoing. There are some who have passed the written exams many times only to fail in the oral examination; and there are claims suggesting questions irrelevant to the profession are being asked during these exams.⁶⁷ Recently, a public prosecutor declared that those who scored high on the written examinations were eliminated during the oral exam due to the alleged instances of nepotism, and their place filled by those referred by politicians, and has released a list of the instances where this has occurred.⁶⁸

The practice of legal rules regarding the promotion of judges and prosecutors are not very efficient. There are no solely objective criteria regulating the promotion of judges. The appraisal files, which play an important role in judges' promotions, include sections on moral characteristics, which are quite subjective and open to misuse.

HSYK uses appointments as a reward and punishment mechanism. With political motives, judges and prosecutors may be transferred without their consent. No protections against demotions and the lack of guarantees regarding locations of work put pressure on judges and prosecutors. The gap in legislation also allows the HSYK to move persons between professions and courts (*i.e.* prosecutors could be made judges, or a penal judge may be replaced with a justice of the peace). An expert interviewed added that in some cases judges were transferred two or three times to different cities in the same year.⁶⁹ This punishment mechanism may also be used preemptively, or may serve to deter other judges and prosecutors.

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

There is no specific provision on asset declarations for judges, but like all public officials they are required to declare their assets every five years. These declarations are not open to the public, however, and are not inspected unless there is an official investigation.⁷⁰

According to the Constitution, all court hearings are open to the public. Only in cases absolutely necessitated by public security and public morality, can court hearings be conducted in partially or completely closed sessions.⁷¹

A transcript of courtroom proceedings is maintained and signed by the presiding judge and clerk of the court in every trial. These transcripts provide all necessary information on the judgment process, including the names of the accused, defense lawyer and court expert, information on the course of the trial, the statements of the accused, the witnesses and court experts, documents read or refused to be read, requests made to the court and the verdict.⁷² However, the transcripts can only be obtained by the persons directly related to the case and are not available to the public.⁷³

The General Directorate of Judicial Record and Statistics, in cooperation with Turkish Statistical Institute, publishes judicial statistics every year. These include information on the decisions of the Constitutional Court, the Court of Cassation, the Council of State, the Court of Jurisdictional Disputes, the Military Supreme Court, the Military High Administration Court, the Ministry of National Defense Military Justice Affairs Department, the High Arbitration Committee, the Turkish Notary Public Union and the Council of Forensic Medicine.⁷⁴ It is available on the website of the General Directorate of Judicial Record and Statistics.

The MoJ's UYAP, the nationwide judicial intranet, covers all courts, offices of public prosecutors and law enforcement offices together with the central organization of the MoJ. Today, all judicial

business is conducted through UYAP; lawyers can open a case from their offices using UYAP and citizens can follow their cases (only their own cases) online. By including updated laws and regulations, the system also serves as a databank.⁷⁵

The HSYK has published a comprehensive bilingual brochure in Turkish and English describing its tasks and operations in comparison with the situation before the 2010 constitutional amendments. It issued a comprehensive report on its activities in 2011 and approved and published a Strategic Five-Year-Plan (2012–2016),⁷⁶ the implementation of which is to be supervised by its Plenary.⁷⁷ These are all important steps towards building and maintaining public confidence.⁷⁸ In addition, the HSYK's decisions relating to disciplinary proceedings are published on its website anonymously.⁷⁹

SCORE **50**

Transparency - Practice

To what extent does the public have access to judicial information and activities in practice?

The MoJ publishes annual reports on its website. The reports include information on the budget and main expenditure items. However, the budgets of all courts are consolidated in one row of the budget table, so they do not provide information on the financial details of the individual courts. On the other hand, the reports are quite informative on the activities and governance of the Ministry.

The Constitutional Court, the Council of State, the Court of Cassation and the HSYK publish their financial reports on their websites. These reports cover the consolidated budget and expenditure items in detail. For instance, personnel costs, social security insurance costs, goods and services purchased and capital transfers are available. Each report provides an expected budget for the following financial period. The Court of Cassation publishes some of its decisions in a monthly periodical, the *Journal of the Court of Cassation Decisions*. The selection process for the decisions that are published is not clear. The Journal is available on the court's website, but the latest available periodical was published in December 2012.⁸⁰ Similarly, the Council of State publishes a periodical, the *Journal of Turkish Council of State*, which includes selected decisions of the Council.⁸¹ All decisions of the Constitutional Court are published in both the Official Gazette and in the Decisions Journal which is available on the website of the court.⁸²

A transcript of the courtroom has to be maintained in every trial. Nobody can access these transcripts, including the attorneys. This protection is defended on the grounds privacy.⁸³

It is the duty of the prosecutors, who are entrusted by the HSYK, to inform the media on the investigation process. The prosecutors who are press agents inform the press on the judicial process that starts after the completion of an investigation. However, there is no provision that obliges judges to inform the press for the on-going case.⁸⁴ In critical cases the executive has implemented publication bans, which have become one of the most important obstacles for the accomplishment of the transparency principle. In addition, in certain political trials the lawyers were not given access to the investigation files.

The disciplinary decisions of the HSYK are only shared with the related person and are not open to public scrutiny. The General Directorate of Judicial Record and Statistics publish the number of cases conducted annually in the judicial statistics yearbook. During 2012, 12 judges were removed from their profession. In 2011 and 2010, this number was six and two respectively. Therefore, although the Yearbook does not provide any specific information on corruption cases, it is still a useful resource on the judiciary.⁸⁵

Other than access to information, another important issue is access to justice. For ensuring fair trial principles, the costs of the trial processes must be kept to a minimum. However, the high fees for personal applications present problems. For instance, in 2015, a fee of 226 TL (approximately 70 euros) was required for a personal application to the Constitutional Court.

The practice of moving courts to other cities is another matter of contention. Especially used when the defense is a member of law enforcement, the MoJ justifies the transfer of the court under matters of security, but in practice this may be used to limit public participation in the trials.

SCORE **75**

Accountability - Law

To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?

According to the Constitution, “the decisions of all courts shall be written with a justification”.⁸⁶ Decisions, which are unjustified or not properly justified, are supposed to be cancelled by the Court of Cassation and the Council of State. This article of the Constitution is vital for the accountability of the judiciary.

The law does not provide immunity to judges for their personal offences. For offences related to the exercise of their judicial duties, there can be disciplinary proceedings against judges.

According to Law No. 2802 on Judges and Prosecutors enacted in January 2011, the state can be sued for damages caused by the judicial actions of judges. Individuals may also direct disputes on the actions of judges to the HSYK, as it is the responsible authority for decisions on disciplinary proceedings, suspensions and the removal of judges. The disciplinary provisions under the Law specify unacceptable acts or behaviors. Depending on the nature and gravity of disciplinary actions several disciplinary sanctions are applied such as warnings, deductions from salary, condemnation, suspension of grade development, suspension of degree promotion, change of location, and dismissal from the profession.⁸⁷

For instance, the change of location penalty is applied when there is inappropriate and rude behavior towards colleagues, behavior harming trustworthiness and impartiality, failure to declare assets, engagement with economic activities incompatible with the profession and the receipt of gifts and bribery. In this vein, when there are suspicions of corruption, favoritism, or nepotism, judges are punished by being moved to another region.⁸⁸ It should also be noted that the judges and prosecutors may only appeal against decisions to defrock, and the fact that it is not possible for them to appeal for decisions concerning change of location is open to abuse.

The Constitution authorizes the HSYK to impose disciplinary penalties or remove judges from office. There is a formal complaints/disciplinary procedure. In order to start an investigation against a judge, the related chamber of the HSYK prepares a proposal for approval by the chair of the HSYK. An inspector or a judge/prosecutor who is more senior than the accused judge conducts the investigation.⁸⁹ During the investigation, judges can be suspended from office for maximum of three months or appointed to another judicial province.⁹⁰ As discussed above the independence of HSYK is quite questionable.⁹¹ Since the constitutional amendments that were adopted in 2010 a judicial review of the HSYK's decisions is possible and judges and prosecutors can appeal decisions in the court.⁹²

There are acceptance criteria for complaints lodged against judges. The complaints and denouncements of citizens are not processed if they are anonymous. However, in cases where anonymous complaints are based on concrete evidence, investigations can be carried out.⁹³

SCORE 25

Accountability - Practice

To what extent do members of the judiciary have to report and be answerable for their actions in practice?

An internal expert from a high court declared that almost all judicial decisions include a justification. Also, the language of these decisions is clear enough.⁹⁴ On the other hand, the content of these justifications is unsatisfactory and most only repeat the claims and do not include legal reasoning.⁹⁵ With a few exceptions, justifications of the court decisions are not explanatory and detailed enough.

As mentioned in previous sections the Inspection Board, established within the body of the HSYK, is responsible for carrying out inspections related to judges and prosecutors. However, effectively the consent of the MoJ is required before an investigation begins, because following the 2010 referendum, the MoJ was appointed as the chair of the HSYK. This consent mechanism is the major obstacle to the functioning of the complaint mechanism. As such, the proportion of complaints resulting in disciplinary investigations remains low, despite the high number of complaints.

In 2013 there were 9,375 complaints against judges and public prosecutors. Among these 5,981 (64 percent) were not put into process and for 1,461 (16 percent) no need was seen for investigation. The total number of investigations against judges and public prosecutors was only 345 (4 percent).⁹⁶ It can be inferred from the data that although legal regulations are in place, there is an institutional culture, which tends to protect judges from investigation.⁹⁷

This hampers the efficiency of the HSYK in investigating complaints and imposing sanctions. The number of complaints that are upheld and the amount of compensation given to complainants about the functioning of the judicial system is not available. However, most of the workload of the Third Chamber of HSYK comes from thousands of citizens' complaints against individual judges and public prosecutors.⁹⁸

According to an expert,⁹⁹ complainants are protected. The total number of complaints can be interpreted in a similar way. Although the effectiveness of the investigation process is questionable, there is no perceived threat against lodging a complaint.

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?

There is no code of conduct in place for the members of the judiciary. However, according to Law No. 2802,¹⁰⁰ judges should avoid acts such as receiving gifts and bribery, rude behavior to colleagues, and behavior damaging the dependability of the judiciary. Also, the UN Bangalore Principles of Judicial Conduct were accepted by the HSYK in 2006,¹⁰¹ and the Justice Academy includes the Bangalore Principles in the initial and in-service training for judges.

There is no primary law governing conflicts of interest for the judiciary. However, several laws and regulations include provisions regarding conflicts of interest for judges. According to Law No. 3628 on Asset Declaration,¹⁰² members of the judiciary are required to disclose their assets. They are required to file an asset declaration form and submit it to the relevant ministry. The asset declaration form includes information on immovable and movable assets, and the debt and income of the judges, their spouses and children.

Judges must declare their assets on entry to the post and within a month of leaving, during their term of employment, they must update their declaration every five years at the beginning and the middle of the decade, or when there is a significant change. The declarations are kept in the confidential dossiers of judges unless a judge is subject to a criminal investigation. The law defines a prison sentence for those who do not declare personal assets and income.¹⁰³

Members of the judiciary are prohibited from accepting or demanding gifts, either in person or through an intermediary, or from obtaining any personal benefits from conducting their duties or taking or giving debts from or to clients in the Court. The punishment for this is a change of location.¹⁰⁴ There is also a formal procedure to effectively challenge a judge if a party considers that the judge is not impartial.

There are some post-employment restrictions for members of the judiciary. According to Law No. 2531:¹⁰⁵

“...Those who resigned from their posts for any reason cannot directly or indirectly be assigned to a position or take charge of any business, make any undertaking, brokerage or representation relation to his/her duties and activities held in their former Office, opposing to the Office, department, institution and agency where they worked during the last two years before they left the Office. This prohibition lasts for the first three years from the date of resignation or retirement.”¹⁰⁶

Those who violate the law shall be sentenced to a penalty of imprisonment for a term of six months to two years and a judicial fine.

Integrity mechanisms - Practice

To what extent is the integrity of members of the judiciary ensured in practice?

Different surveys show that public confidence in the judicial system is quite low. According to the 2013 Global Corruption Barometer, 13 percent of respondents reported that they had paid a bribe to the judiciary and 43 percent felt that the judiciary is corrupt/extremely corrupt.¹⁰⁷ In 2015, TI Turkey conducted a nationwide survey on corruption perception with 2,000 respondents. The judiciary was perceived as one of the most corrupt institutions by 28 percent of respondents. In this survey, municipalities are designated the most corrupt, with 50 percent, and the army as the least corrupt, with 21 percent. The rank of the judiciary was seven out of 13 institutions. The only available statistics on the number of judges who have been investigated are published by the HSYK on its website, and these statistics do not include any details on the accusations.¹⁰⁸

The Assessment Selection and Placement Center (ÖSYM) gave instructions regarding the cancellation of the 2012 examination for lawyers to become judges and prosecutors, on the grounds that the questions had been leaked. This happened after four married couples scored similar points.¹⁰⁹ The Administrative Court prevented this decision from being put into action at the time. However, in June 2015 the investigation by the public prosecution office of Ankara decided to cancel this exam and the 37 judges and prosecutors who had been accepted into the profession following the exam were penalized by the rescission of the decision that had appointed them as judges and prosecutors.¹¹⁰ It also became clear that some of these lawyers had been political party members, and had been appointed to preferential locations on their appointment (including the locations where they had previously been working as lawyers). As there is a requirement to work in five different regions before being assigned to a large city, there were suspicions that their appointments had been inappropriate.¹¹¹

The asset declarations of judges are made electronically through the UYAP system. Therefore, those who fail to declare their assets can be easily identified. Moreover, the law defines a prison sentence for those who do not declare personal assets and income.¹¹² A judge from the high courts interviewed by TI Turkey asserted that all judges disclose their assets properly and all declarations are scrutinized.¹¹³ He added that post-employment restrictions are also effective in practice. On the other hand, he claimed that some judges fall asleep during trials (even during the very important cases such as Court cases into the deaths of Gezi protesters),¹¹⁴ and sometimes this is reported in the media. He suggested that this is one of the most important ethical breaches in the judiciary. However, the HSYK has not yet investigated a judge accused of sleeping during a trial.¹¹⁵

There are some post-employment restrictions for the members of the judiciary. This prohibition lasts for three years from the date of resignation or retirement. However, post-employment restrictions for public officials are not effectively implemented.¹¹⁶

Executive oversight

To what extent does the judiciary provide effective oversight of the executive?

According to the Constitution, all actions and acts of the administration are open to judicial review. However, Article 125 defines some serious limitations to judicial review of the actions of the executive. The first one is that:

“The acts of the President of the Republic in his/her own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review.”

After the 2010 referendum, the following was added to the constitution:

“Judicial power is limited to the review of the legality of administrative actions and acts, and in no case may it be used as a review of expediency. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.”¹¹⁷

With these exceptions and limitations defined in law, the effectiveness and deterrence of the judicial review on actions of the executive is a serious concern.

As mentioned above, the executive’s dominance within the judiciary has become a major concern after the government-introduced amendments to Law No. 6087 on the HSYK. As the cornerstone of judicial independence, the HSYK remained at the center of the battle over control of the judiciary; its acting head has already condemned Law No. 6524 on the Amendment of Certain Laws including amendments to the Law on the HSYK as “unconstitutional”.¹¹⁸ With the recent legal changes that were adopted by parliament in February 2014 it has become clear that the judiciary is not independent enough to review the actions of the executive.¹¹⁹

One noteworthy example on the dependence of the judiciary on the executive was in the area of privatization. The courts have cancelled some massive privatization attempts, such as SEKA Balıkesir, Eti Aluminum, Kuşadası Harbor, Çeşme Harbor and part of TÜPRAŞ.¹²⁰ However, these decisions were not implemented. After discussions on this issue, the Council of Ministers decided that the court rulings should be only limited to those privatizations made less than five years ago. Then, the Council of State abolished the decision of the Council of Ministers. However, the government enacted a new law to overcome the cancellation decisions of the Court, which were abolished by the Constitutional Court. Eventually, the judiciary cancelled these massive privatizations; yet, in practice, private companies remain in control over these businesses.¹²¹

The allegations surrounding the building permit of the Presidential Palace is noteworthy. Despite Ankara 5th Administrative Court’s decision to halt the construction and demolish the building, the Presidential Palace is being used by the President.¹²²

Corruption prosecution

To what extent is the judiciary committed to fighting corruption through prosecution and other activities?

According to a survey conducted by TI Turkey in 2015, the judiciary is perceived as one of the most corrupt institutions by 28 percent of respondents.¹²³ The chair of TI Turkey highlighted the ineffective investigation process after the December 2013 corruption investigations as the main reason behind decreasing public confidence in the judiciary.¹²⁴

Four prosecutors, as well as the Judge who took part in two major corruption probes that went public were removed from their positions. The prosecutors, who were leading the investigations, were met with allegations of misconduct, and one judge with negligence of his duties. One of the first prosecutors to be removed from his position a few days following the corruption investigation was Istanbul public prosecutor Muammer Akkaş. In addition, some 19 prosecutors were moved from their posts including the İstanbul Chief Public Prosecutor Turan Çolakkadı who was reportedly reassigned to the Provincial Prosecutor's Office.¹²⁵

On 16 December 2014 the corruption probe was completely closed after the İstanbul Chief Public Prosecutor's Office announced that it had rejected appeals filed against an earlier decision to dismiss corruption and bribery charges against the 53 suspects, formally closing the graft probe.¹²⁶ However, the prosecutors Kara, Akkaş, Yüzgeç, and Öz, and judge Karaçöl were brought to trial since they had "damaged the dignity of their offices through inappropriate acts and behavior."¹²⁷ On 12 May 2015 the HSYK dismissed the aforementioned four prosecutors and the judge from their positions.

A high court judge interviewed by TI Turkey indicated that it is almost impossible to prosecute the people who are involved in major corruption cases.¹²⁸ Thus, it is important to note that the judgment process of the December 2013 corruption scandals seriously damaged the public's trust in the judiciary, particularly with regards to corruption.

Another noteworthy example of corruption prosecution is the Deniz Feneri case. In April 2007, German police began an operation against Deniz Feneri e.V., the German chapter of a Turkish charitable organization, following allegations of fraud. The total endowments amounted 41 million euros. The case involved more than 200 files and was international in its scope, including the following countries: Turkey, Indonesia, Iran, Iraq, Pakistan, Azerbaijan and Mali.¹²⁹

In Turkey, public prosecutors started an investigation into the case. While nine people were initially arrested as part of the trial, six of them were later released.¹³⁰ Similar to the December 2013 corruption scandal, during the investigation all prosecutors assigned to this case were unseated. The prosecutors were removed from the case by the Ankara Public Prosecutors' Office for allegedly violating procedure and falsifying documents for the duration of the trial. However, the Court of Cassation later acquitted them.¹³¹ The deputy chief prosecutor of the Deniz Feneri trial's judgment process Vedat Ali Tektaş decided that the criminal organization and fraud allegations lacked legal grounds.¹³² Subsequently, the court decided to release the defendants. Later in January 2015, Tektaş was appointed as Head of Inspection Board at the MoJ.

These cases show the limits of the judiciary's commitment to sanctioning corruption. A judge interviewed by TI Turkey¹³³ stated that major corruption cases cannot be judged properly and that the government, bureaucracy and the dependent judiciary hamper the judgment process. There is no track record of investigations, indictments and convictions in corruption cases and there is no publicly available data and no specialized court on corruption.

The National Anti-Corruption Strategy and Action Plan 2010-2014 came into force in 2010, but was not implemented effectively. The Prime Minister Inspection Board¹³⁴ claimed that the strategy was developed with the involvement of all public institutions and civil society. Meetings were also held with the MoJ and Public Prosecutors' Office. Despite this seemingly promising step in the direction of transparency, President Recep Tayyip Erdoğan heavily criticized the proposal. He claimed that the time was not right for such steps to be taken, particularly before an upcoming election, and also emphasized concerns with the content, especially regarding the disclosure of assets by public officials.¹³⁵ In fact, so strong was his opposition that the Plan's introduction before parliament was postponed until after the June 2015 general elections, although Prime Minister Davutoğlu refuted this at the time,¹³⁶ thereby also stalling the Plan's implementation.¹³⁷ The Plan, albeit a revised version due to some objections is set to be brought before parliament, though a date is yet to be set.

Turkey became part of the evaluation process of the OECD Working Group on Bribery in 2005, which monitors progress in fighting corruption and bribery. In 2007, the OECD described specific legal and policy measures for combating bribery of foreign public officials, while serious problems were identified, especially with regard to public procurement deals, in the second examination in June 2009. A working group under the MoJ was established to prepare legislative measures prompted by the OECD's recommendations. The 2013 OECD report welcomed Turkey's efforts in enhancing its foreign bribery legislation, but criticized the low levels of enforcement.

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4

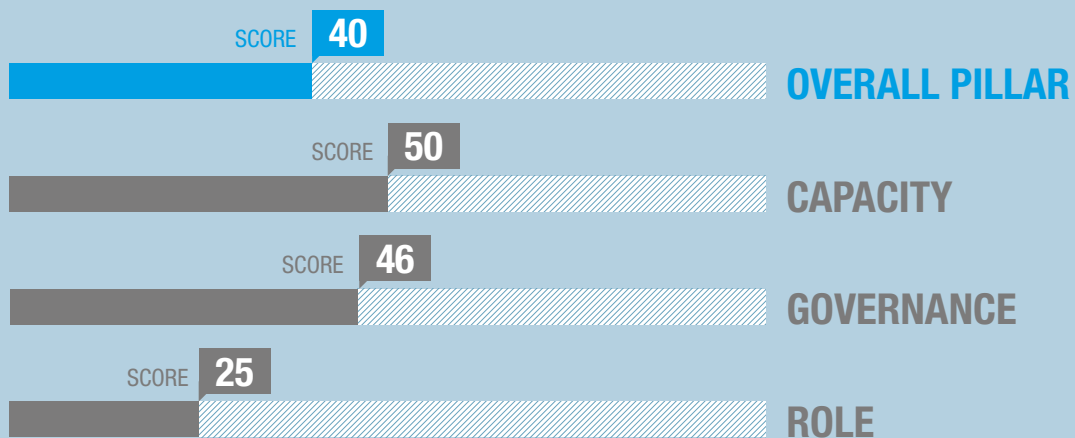
PUBLIC PROSECUTOR

OVERVIEW

Law No. 2802 on Judges and Prosecutors regulates issues related to public prosecutors. Since this law is analyzed in the judiciary pillar, separate evaluations will not be done for the law dimensions of the indicators here except the analysis of integrity indicators.¹

The Public Prosecutors' Offices have adequate levels of financial resources. However, they lack well-trained staff and opportunities to enhance professional knowledge, which lowers the quality of prosecutions. The independence of public prosecutors is one of the most serious integrity concerns in Turkey and weakens the prosecutors' corruption prosecution capacity. There appears to be substantial external interference in their work and they are often faced with intimidation and subjected to unjustified civil, penal and other liabilities, as exemplified by their treatment following the December 2013 corruption investigations in Turkey.² Limited transparency and accountability of public prosecutors is also a concern.

The table below presents the indicator scores, which summarize the assessment of public prosecutors in terms of their capacity, their internal governance and their role within the integrity system. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	100	50
	Independence	50	0
Governance	Transparency	50	25
	Hesap Verebilirlik	75	25
	Integrity mechanisms	75	25
Role	Corruption prosecution	25	

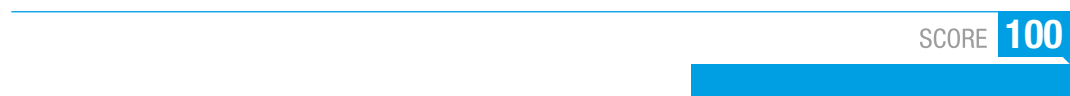
STRUCTURE AND ORGANISATION

Law No. 5235 on Establishment of Courts³ set provisions for establishing a Public Prosecutors' Office in every county. If a county had an already established courthouse, it was possible to organize a Public Prosecutors' Office under the name of the county. Every office is required to have a chief public prosecutor to oversee the actions of other public prosecutors affiliated with the same office. Public Prosecutors' Offices can have any number of deputy chief public prosecutors, as deemed sufficient by the Ministry of Justice and the High Council of Judges and Prosecutors (HSYK).⁴

According to Law No.5235, chief public prosecutors have the duty to represent the public prosecutor's office, divide labor and make sure the units work efficiently and smoothly, carry out judiciary operations when necessary, attend trials and refer to legal remedies, and to execute other duties specified by the law. All public prosecutors have the duties to refer to legal remedies, carry out judiciary operations, attend trials, fulfill judicial and administrative duties assigned by the chief public prosecutor, and deputize for the chief when necessary, as well as executing other duties specified in the law. Their sphere of authority extends to the administrative borders of the province they are located in and the borders of any province that is forensically connected to that province.

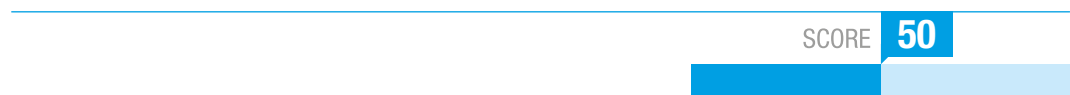
ASSESSMENT

CAPACITY



Resources - Law

See the Judiciary pillar.



Resources - Practice

To what extent does the public prosecutor have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The budget received by the Ministry of Justice has increased over the years, which may, to an extent, explain the increases in salaries for public prosecutors and judges.⁵ However, the proportion of that budget allocated to public prosecutors is not known.

The salary received by a public prosecutor is equivalent to the salary received by a judge, which is higher than the salaries received by public officials in other fields.⁶ However, the salaries of public prosecutors are still unsatisfactory, as they are significantly below the salaries of those who work in the private sector.⁷

As stated by an interviewee, prosecutors do not have a safety net in place. They are often unable to specialize because of the frequent changes in departments.⁸ Therefore, even though there is sta-

bility within the human resource management, there appears to be no guarantees for prosecutors to remain in their respective departments.⁹

In addition, prosecutors often face problems regarding their work environment. According to a report prepared by the Association of Judges and Prosecutors (YARSAV), the working environment of prosecutors is deteriorating as safety and independence problems increase.¹⁰ The report states that the environment is not conducive to fair trials because the workload of the prosecutors and judges exceeds the capacity of the institutions' limitations regarding human resources. This creates major efficiency issues and deteriorates the quality of judicial proceedings.

The report also emphasizes the low morale caused by poor working conditions and the fact that judges and prosecutors are hindered from forming unions. In addition, instances of illegal wiretapping in the country mean prosecutors face a constant threat that hinders them from independently executing their duties.¹¹

In 2014, multiple training opportunities were presented to public prosecutors that saw the participation of 2,682 officials from the judiciary.¹² However, training usually requires prosecutors to find their own accommodation making it less accessible or convenient.¹³ In terms of training abroad, there are limited opportunities, and according to a survey by YARSAV dated 2010, only 13 per cent of the respondents (judges and prosecutors) said that they participated in a training abroad, which can be attributed to language barriers. However, the report concludes that international training is crucial for judges and prosecutors for professional development and more opportunities are needed.¹⁴ In addition, the training opportunities that exist are not in line with the competences demanded of prosecutors.¹⁵

SCORE 50

Independence - Law

See the Judiciary pillar.

SCORE 0

Independence - Practice

To what extent does the public prosecutor operate without interference from the government or other actors?

The independence of public prosecutors in Turkey is under serious threat. There appears to be substantial external interference in their work and they are often faced with intimidation and subjected to unjustified civil, penal and other liabilities.¹⁶

The government appears to have considerable control over the judicial system. There are two important issues that limit independence: first, the cases that public prosecutors are working on can be transferred to others by the chief prosecutor or deputies without proper justification; second, the deputies have to approve files completed by public prosecutors before they can be forwarded to the court.¹⁷ This approval mechanism does not exist in the legislation and is a great obstacle to the independence of prosecutors in practice.

According to the secretary general of YARSAV Leyla Köksal, public prosecutors are concerned with the involvement of the government in the judicial system. Prosecutors are often transferred to

other regions with sudden changes in duty location.¹⁸ For example, the December 2013 corruption investigations and Deniz Feneri e.V. case demonstrated huge outside interference. For the December 2013 case, after two prosecutors were assigned to work alongside Celal Kara in the investigation, a new policy was put in place requiring the signature of two public prosecutors out of three in the investigation in order to proceed. According to one lawyer, this can be interpreted as representing direct interference in the investigation.¹⁹

Additionally, prosecutor Celal Kara and the prosecutor of the December 2013 corruption investigation are both currently facing indictments for malpractice. Kara has since been dismissed from his position.²⁰ This could be seen as a message to other prosecutors not to pursue investigations of this kind, since it is evident that prosecutors who open investigations on corruption tend to face harsh consequences.

External interference also appears to lead prosecutors to delay the execution of the decisions of judges. In May 2015, despite the rule on the innocence of journalist Hidayet Karaca, along with 63 law enforcement officials, he was not released from prison and the prosecutors on these cases were accused of declining to follow the requests of the judges.²¹ Similar instances are observed pertaining to cases involving environmental issues, gentrification projects, laborer deaths, and violence against women.

Other cases of interference in prosecution include intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liabilities. Unjustified exposure to penal liabilities may be observed when looking at the environment faced by the prosecutors that authorized the search of the MIT²² trucks in Adana and Hatay on 19 January 2014. All five prosecutors were removed from their specific cases in 2015.²³ These trucks came to the attention of the public prosecutors after they received notice that trucks carrying bombs would be on the road during that time period.²⁴

In another case of interference, prosecutors of the German-linked Deniz Feneri charity case were abruptly dropped from the case on the grounds that they had misled the authorities into seizing assets belonging to companies in which the suspects were shareholders. The case followed a Frankfurt court's conviction of three managers of Islamic charity Deniz Feneri e.V. on the grounds of embezzlement. The prosecutors were then charged and tried for forgery of official documents and abuse of office.²⁵ Despite the substantial evidence against the suspects from the German investigation, the issue was covered up and the suspects were acquitted. The prosecutors who were removed from the case were then acquitted by a Supreme Court of Appeals verdict.²⁶

Another similar case involves four public prosecutors leading the December 2013 corruption investigations, who were dismissed from their jobs and forbidden to practice as prosecutors elsewhere.²⁷ These prosecutors had compiled a list of individuals for interrogation by the police and this list includes relatives of the ruling elite.²⁸ A large majority of these individuals were not taken into custody as a result of the officer changes in the Istanbul Police Department and the prosecutors were prohibited from proceeding further with the investigation.²⁹ The procedure was not followed in order to determine if those suspected of being involved in corruption were guilty.

GOVERNANCE

SCORE 50

Transparency - Law

See the Judiciary pillar.

SCORE 25

Transparency - Practice

To what extent does the public have access to information on the activities and decision-making processes of the public prosecutor in practice?

A public prosecutor can apply to the Court for a Confidentiality Order, which increases the confidentiality level and means that the prosecutor no longer has to inform anyone else in the case about the findings of the investigation. From that point on, parties can only receive documents that include their signatures or the signatures of their lawyers. In cases where a Confidentiality Order is not approved, both sides of the investigation have to be presented with a copy of all court documents. An important problem with this mechanism is that prosecutors tend to obtain Confidentiality Orders even when it is not necessary and as a result of the lack of sufficient knowledge, investigation parties are unable to properly defend themselves.³⁰

The Public Prosecutors' Offices do not publicize detailed information about their work. However, in the annual reports of the HSYK a part is dedicated to freedom of information requests. In 2014, the HSYK received 1,939 information requests and approved and provided information for 1,516 of them: 113 requests were partially accepted, 189 were completely rejected, and 90 applications remain unanswered.

The press and public relations section of the annual report only concerns itself with the compilation of news about the Public Prosecutors' Office, and corrections regarding misinformation but does not deal with the publication of information regarding cases.³¹

Public prosecutors disclose their assets, but as with all public officials this information is not open to the public.³²

SCORE 75

Accountability - Law

See the Judiciary Pillar.

SCORE 25

Accountability - Practice

To what extent do prosecutors report and answer for their actions in practice?

The Public Prosecutors' Office of the Court of Cassation uploads annual reports on its website regularly. These reports present the activities, applications regarding priorities and the adopted courses of action in a statistical manner.³³ Prosecutors are obliged to base their decisions on a justification regardless of the final verdict. This information is available to the investigation parties. However, it is not possible for the public to see the decisions made or their justifications through the reports. For cases of greater public interest, such as the Sledgehammer³⁴ Case³⁵ and the death

of Ali İsmail Korkmaz³⁶ during the Gezi Protests,³⁷ the justified decisions are published through the press or other mediums.

Public prosecutors, like a wide range of other public officials, have immunity in certain situations that limits the accountability of the Public Prosecutors' Offices. Article 129 of the Constitution and the Law No. 4483 designates that the prosecution of public officials for alleged crimes related to their work is subject to the approval of the superior of that official. These immunities are contrary to equality principles and hinder democracy when put into practice. Prosecutors have this immunity whether they commit an offense that is related to their job or not. As stated by current AKP MP retired prosecutor Reşat Petek, giving prosecutors and other public officials this type of immunity makes it difficult to pursue extensive as well as credible judicial investigations.³⁸

However, an interview with another prosecutor reveals that it is possible to overcome the barrier of immunity, as long as citizens disclose their identities, by referring to the HSYK or to the Office of the Chief Public Prosecutor.³⁹

The prosecution system has some internal accountability. HSYK inspectors and the chief prosecutors and their deputies regularly conduct internal audits. However, given that Law. No. 6087 does not provide for a dismissal process for HSYK members and does not have any responsibilities towards the parliament; it is hard to say that HSYK members are thoroughly accountable for their actions (see judiciary pillar).

Nevertheless, decisions made by prosecutors are subject to judicial review. Through this process, the Criminal Court of Peace and the nearest Heavy Penal Court can review decisions. Also investigation parties can receive copies of case files throughout the investigation and prosecutors are obliged to notify the investigation parties regarding the final decision. This procedure provides a degree of accountability to the system.⁴⁰

SCORE **75**

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of public prosecutors?

There is no specific code of conduct for public prosecutors. However, according to Law No. 2820,⁴¹ they should avoid acts such as receiving gifts and bribery, rude behavior to colleagues, and behavior damaging the reliability of their institution.

The basic ethical rules for public prosecutors are the Budapest Principles,⁴² accepted at the European Conference of Prosecutors in 2005. The HSYK adopted the principles in 2006. They ensure the impartiality of prosecutors under all kinds of circumstances. Prosecutors are required to be objective and coherent; they need to abstain from falling under the influence of the interests of a particular group, the public or the media and they should execute their duties without prejudgment and favoritism, respecting the legal equality of everyone. The principles also state that prosecutors should abstain from a case if it affects them personally or economically, or inappropriately influences their parental, social or other types of relationships or relates to the personal or economic interests of their families or business associates.⁴³

The Budapest Principles call for the fair, impartial, objective implementation of duty in accordance with the legal rules. Prosecutors are responsible of helping the court in fair decision-making and making professional judgments in evaluating objective and appropriate evidence. Concerning the

behavior of prosecutors in their private lives: prosecutors are expected not to endanger the integrity, fairness and objectivity of the prosecution services by the activities they carry out in their own time, and they should conserve and enhance the public trust in their profession. Prosecutors cannot receive hospitality, incentives, gifts, rewards or other benefits from third parties and execute assignments that might jeopardize their integrity, fairness and objectivity.⁴⁴

The laws regulating conflicts of interest and post-employment restrictions are completely the same for judges and public prosecutors.⁴⁵

SCORE 25

Integrity mechanisms - Practice

To what extent is the integrity of public prosecutors ensured in practice?

Disciplinary actions taken against public prosecutors can be accessed through the HSYK website, although the names of the offenders remain undisclosed. The final decisions regarding prosecutors who were accused in 2011 are currently available on the website and the data shows that a total of 26 prosecutors were penalized. These prosecutors were given penalties such as a reduction in salary or warnings. Some of these offenses are directly related to endangering the integrity of the profession.⁴⁶ Even though an ethical committee has not been established by the HSYK, it is stated in the laws, discussed under the judiciary pillar, that ethical codes must be followed at all times by prosecutors.

The Council of Europe's Human Rights Education for Legal Professions (HELP) program operates in 47 countries including Turkey. Through this program, the judiciary, including prosecutors, is trained on human rights such as the freedom of speech and freedom of the press.⁴⁷ In 2012, the Council of Europe also collaborated with HSYK in organizing a symposium consisting of four sessions regarding judicial ethics.⁴⁸ The Turkish Academy of Justice also organizes vocational training seminars. The most recent seminar was in December 2014 and was designed for judges and prosecutors who had not attended a seminar on the same subject and had not completed their first five years in the profession.⁴⁹

ROLE

SCORE 25

Corruption prosecution

To what extent does the public prosecutor investigate and prosecute corruption cases in the country?

A public prosecutor has the authority and obligation to investigate and prosecute all criminal cases in order to reveal the truth. There are no exceptions defined by law for corruption cases. Legally the police department is obliged to follow the prosecutors' orders.

However, as noted in other pillars, immunity of public servants is one of the greatest concerns for the national integrity system in Turkey, and one that poses great challenges for the prosecution of corruption offences. According to the constitution:

“Prosecution of public servants and other public officials for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law.”⁵⁰

Also, parliamentary immunity is defined by the Constitution:

“...a deputy who is alleged to have committed an offence before or after election cannot be detained, interrogated, arrested or tried unless the Grand National Assembly decides otherwise.”⁵¹

In order to prosecute the prime minister and ministers by the Constitutional Court (acting as the “Yüce Divan”), there must be an absolute majority of the total number of members of the Grand National Assembly of Turkey in a secret ballot. As a result, the powers of prosecutors with regard to corruption cases are inadequate.

The Venice Commission, the legal consultation board of the Council of Europe, prepared a report based on the evaluation of admissions from judges and prosecutors. The report indicates interference in judicial processes specifically in three cases: the 17 and 25 December 2013 corruption investigations; the searches of MIT trucks; and the disregard shown to the judgment to release police officers in April (see independence practice). The commission concluded that: (1) prosecutor demands and trial decisions are not fulfilled, (2) cases prosecutors work on for long periods of time are abruptly taken from them, (3) judges and prosecutors are arbitrarily appointed to different courts, and (4) judges and prosecutors are imprisoned due to the professional decisions they make. The Commission claimed that the independence of judiciary was not guaranteed and therefore called on the government to rectify the situation and increase its independence.⁵²

The concepts of state secret and trade secret are not clearly defined in the legal framework. The open-ended descriptions create problems in corruption investigations. By interpreting these concepts in a broadened scope or in a biased way, corruption investigations or sharing information on corruption cases can be restrained. Also, the definition of “benefit-oriented criminal organizations” is very complicated and only certain criminal acts are included in organizational crimes.⁵³

As stated in the Judiciary pillar, there is no track record of investigation, indictment and conviction for corruption and there is no publicly available data on corruption cases.

Endnotes

- 1 For an analysis of the law indicators, please refer to the Judiciary pillar, the scores for which are included in the table below.
- 2 Reuters, 11 August 2015 <http://uk.reuters.com/article/uk-turkey-prosecutors-idUKKCNOQG1KV20150811>
- 3 The Law on Establishment of the Courts, No. 5235, article 16 <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.5235.pdf>
- 4 Selahattin Doğan (2013) “Chiefs of Public Prosecutors’ Administrative Duties and Authorities in Turkey”, *Law & Justice Review*, 4(1)
- 5 See the judiciary section of the report
- 6 Interview of retired Public Prosecutor Ahmet Gündel with the authors, 14 April 2015. Ankara.
- 7 Interview of Ahmet Gündel.
- 8 Interview of an anonymous expert with the authors, Istanbul
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- 10 YARSAV Report on Working Condition in Judiciary <http://yarsav.org.tr/resimler/filemanager/yargi.pdf> p.18-19
- 11 *ibid.*
- 12 HSYK (2014) *Annual Report*, <http://www.hsyk.gov.tr/dosyalar/faaliyet/faaliyet-raporu-2014> p.111
- 13 Seminars of HSYK, <http://www.hsyk.gov.tr/duyurular/2015/nisan/yargitay-meslek-ici-egitim.html>

- 14 SGK Rehberi (16 March 2015) <http://www.sgkrehberi.com/haber/59826>
- 15 Interview of Ahmet Gündel.
- 16 Recent example is the December 2013 corruption case and dismissals of the prosecutors from the profession <http://www.hurriyet-dailynews.com/prosecutors-judge-of-turkeys-massive-graft-probe-dismissed-from-profession.aspx?pageID=449&nID=82294&NewsCatID=509>
- 17 Interview of an anonymous internal expert with the authors
- 18 Evrensel (26 September 2014) <http://www.evrensel.net/haber/92693/hakimler-buyuk-baski-altinda>
- 19 Radikal (19 December 2013) http://www.radikal.com.tr/turkiye/yolsuzluk_operasyonunda_cok_tartisilacak_belge_iki_savci_imzasi_sart-1167083
- 20 Hürriyet (16 April 2015) <http://www.hurriyet.com.tr/gundem/28749740.asp>
- 21 CNNTürk (25 April 2015) <http://www.cnntrk.com/turkiye/hidayet-karaca-ve-tutuklu-polislere-tahliye-karari-cikti>
- 22 National Intelligence Organization of Turkey
- 23 Hürriyet, (15 January 2015) <http://www.hurriyet.com.tr/gundem/27974277.asp>
- 24 Haber Türk, (15 January 2015) <http://www.haberturk.com/gundem/haber/1030901-5-savci-aciga-alindi>
- 25 Hurriyet Daily News, (16 November 2012) <http://www.hurriyetdailynews.com/chp-leader-to-follow-deniz-feneri-hearing.aspx?pageID=238&nID=34780&NewsCatID=338>
- 26 Hurriyet Daily News, (26 February 2014) <http://www.hurriyetdailynews.com/supreme-court-approves-acquittal-of-deniz-feneri-prosecutors-.aspx?pageID=238&nid=62964>
- 27 Cumhuriyet (12 May 2015) http://www.cumhuriyet.com.tr/haber/turkiye/274765/17-25_Aralik_hakim_ve_savcilarina_meslekten_ihrac_karari.html
- 28 Radikal, (26 December 2013) <http://www.radikal.com.tr/politika/bilal-Erdoğan-ıfade-daveti-1168175/>
- 29 Zaman, (13 May 2015) http://www.zaman.com.tr/gundem/yolsuzlugu-sorusturan-4-savci-ve-1-hakim-ihrac-edildi-hukukun-sonu_2294189.html
- 30 Interview of retired Public Prosecutor Ahmet Gündel with the authors, 14 April 2015. Ankara.
- 31 HSYK. 2014 Annual Report - <http://www.hsyk.gov.tr/dosyalar/faaliyet/faaliyet-raporu-2014/2014-faaliyet-raporu.html#p=123> [Last Access 26 June 2015]
- 32 The Law on Asset Declaration and Fight Against Bribery and Corruption, No.3628
- 33 Annual Report of Court of Cassation <http://www.yargitaycb.gov.tr/belgeler/site/documents/YcbFaaliyetRaporu2013.pdf> [Last access 26 June 2015]
- 34 Operation Sledgehammer (Turkish: *Balyoz Harekâtı*) is the name of an alleged Turkish coup plan, which was allegedly organized by army officers to overthrow the government. In 2012 some 300 of the 365 suspects were sentenced to prison term. Yet on June 19, 2014 all the accused were ordered released from prison.
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- 36 On June 3 2013, Ali İsmail Korkmaz - a 19-year-old student in the city of Eskişehir- died after being attacked by a group that eyewitnesses allege included undercover police.
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- 38 Today's Zaman, 26 February 2012 http://www.todayszaman.com/national_wide-ranging-immunity-hurts-transparency-accountability-in-turkey_272500.html [Last access 26 June 2015]
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- 41 The Law on Judges and Public Prosecutors, No.2802 <http://www.mevzuat.gov.tr/MevzuatMetin/1.5.2802.pdf>
- 42 Council of Europe, European Guidelines on Ethics and Conduct for Public Prosecutors: "The Budapest Guidelines" http://www.coe.int/t/dghl/cooperation/ccpe/conferences/CPGE/2005/default_en.asp
- 43 Ibid.
- 44 Uğur Yiğit, "Anayasal İlkeler ve Etik Kuralları Çerçevesinde Savcının Soruşturma Ve Davadan Reddi İle Çekinmesi", TBB Journal, Vol 85, 2009. <http://tbbdergisi.barobirlik.org.tr/m2009-85-569>
- 45 See the judiciary section of the report for details
- 46 HSYK, 2011 Decisions <http://www.hsyk.gov.tr/Mevzuat/disiplin-kararlari.html> [Last access 24 June 2015]
- 47 Council of Europe, "Human Rights Education for Legal Professions" <http://helpcoe.org/national-page/turkey>
- 48 HSYK, Symposium on Judiciary Ethics <http://www.hsyk.gov.tr/etkinlikler/yargi-etigi/yargi-etigi-sempozyumu/yargi-etigi-sempozyumu.html> [Last access 25 June 2015]
- 49 Justice Academy, Ethics Education <http://www.taa.gov.tr/duyuru/mesleki-etik-meslek-ici-egitim-seminerini-duzenlenecektir/>
- 50 Constitution of the Republic of Turkey, article 129 https://global.tbmm.gov.tr/docs/constitution_en.pdf
- 51 Constitution of the Republic of Turkey, article 83 https://global.tbmm.gov.tr/docs/constitution_en.pdf
- 52 Diken, 23 June 2015 <http://www.diken.com.tr/venedik-komisyonu-turkiyede-yargi-bagimsizligina-acikca-mudahale-ediliyor/>
- 53 Hasan Dursun, "Yargı Organlarının Yolsuzlukla Mücadelesi Sırasında Karşılaşılan Sorunlar ve Çözüm Önerileri", TBB Journal, Vol 55, 2004. http://portal.ubap.org.tr/App_Themes/Dergi/2004-55-87.pdf p:133

5

PUBLIC SECTOR

OVERVIEW

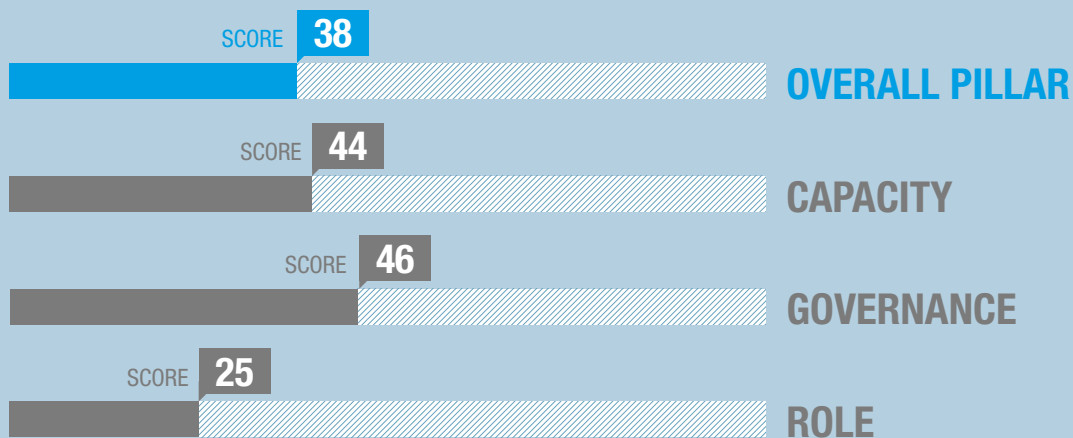
Turkey's public sector has adequate resources to carry out its duties effectively. However, laws do not cover all aspects of the independence of civil servants, resulting in widespread external interference and favoritism (*i.e.* clientelism, nepotism).

The establishment of the Prime Minister's Office's Communication Center (BİMER) in 2006, the Council of Ethics for Public Service in 2004, and the Ombudsman in 2012 have contributed to the progress in transparency and accountability. The enactment of related legal provisions has reinforced this progress to a certain extent with stricter controls.

Nevertheless, in practice, institutional deficiencies are still significant. Despite a comprehensive legal framework ensuring the integrity of public sector employees, bribery and receiving gifts are still matters of concern. Furthermore, the public sector's efforts in raising awareness and cooperation with civil society and business on anti-corruption activities are almost non-existent. Due to numerous amendments to the Public Procurement Law, procurement processes are also highly vulnerable to corruption.

Many legal provisions, Law No. 4483 on the Prosecution of Civil Servants in particular, are obstacles to the accountability of civil servants. Requirements of approval and decision processes on the prosecution of public officials is a source of concern; in the case of human rights violations, in practice, the regulations grant the public official immunity from investigation.

The table below presents the indicator scores that summarize the assessment of the public sector in terms of its capacity, governance and role in anti-corruption. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	50
	Independence	50	25
Governance	Transparency	50	25
	Accountability	75	25
	Integrity mechanisms	75	25
Role	Public education	25	
	Cooperation	25	
	Integrity in public procurement	25	
	Oversight of state owned enterprises (SOEs)	25	

STRUCTURE AND ORGANISATION

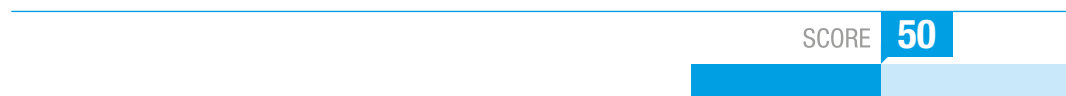
The Law No. 657 on Civil Servants regulates the service, appointment, and promotion requirements of civil servants, in addition to their rights and responsibilities. Simultaneously, there are specific laws and regulations concerning finance, audit, ethics, asset declarations, access to information, and public procurement issues in the public sector.

The Parliamentary Commission for Petitions, Parliamentary Commission for Human Rights, Board of Review of Access to Information, Turkish Grand National Assembly (TBMM), Prime Ministry Communication Center, the Council of Ethics for Public Service, and Ombudsman are the basic institutions to lodge complaints and access to information on the public sector. In addition, several public institutions have their own complaint or information request mechanisms on their website.

The Public Procurement Authority is in charge of policy-making, supervision, providing training and operational support to contracting authorities, publishing tender notices and informing the economic operators.

ASSESSMENT

CAPACITY



Resources - Practice

To what extent does the public sector have adequate resources to effectively carry out its duties?

Public resources are adequate for the effective operation of public institutions. In recent years a number of public buildings have been renewed and several public institutions have moved to new buildings. There have also been improvements in the provision of technological equipment. Moreover, government investment in the public sector and the number of public-private partnerships has increased.¹

However, allocation and efficient use of resources continues to be a major problem. This inefficiency is also reflected in the personnel policy on recruitment. Despite the substantial increase in the number of recruited staff, with the number of people employed in the public sector rising from 3.2 million in 2012² to 3.32 million in 2013³ and to 3.42 million in 2014,⁴ employees still have inadequate qualifications and capabilities.⁵ There is widespread belief that recruitment is based on political affiliation rather than merit.⁶

Furthermore, the employment policy has neither addressed issues of equality in income distribution nor made attempts to increase the quality of public services. Although improvements have been made in the employment opportunities for disabled people,⁷ women are still under-represented in decision-making positions.⁸ The employment policy does not target increases in overall quality and efficiency.⁹

The lowest public servant wage was 2,114 TL (approximately 700 euros) per month in 2015,¹⁰ a low figure considering social development statistics and the corruption hazard. Policies on public servants' salaries can be classified as a layered system,¹¹ according to which personnel in expert positions and high-level bureaucrats are provided with higher salaries and in-kind benefits, while the majority of public servants including teachers and doctors receive comparatively low salaries.

This relative inequality in income distribution has an influence on corruption risk in the public sector.¹² Such hazards include public school teachers willingly reducing the quality of teaching to increase demand for private tutoring, or doctors who might reduce their quality of care to refer patients to private medical services.¹³ In the 2010-2011 academic year, the fees paid for tutoring averaged between US\$ 1,300 and US\$ 6,500, whereas the annual net minimum wage of a worker (16 years of age and over) in Turkey in 2012 was just under US\$ 5,000. This means that many people would not be able to afford or would need to spend a considerable proportion of their income on private tutoring.¹⁴ The overall result is not only an increase in the corruption risk in the public sector, but also deterioration in the provision of public services.

According to the survey conducted by the Turkish Statistical Institute, public satisfaction with public services has decreased since 2013.¹⁵ The highest ratio of satisfaction is with the security services (75.1 percent), followed by transportation services (71.8 percent), health (71.2 percent), education (65.6 percent), social security (58.4 percent), and judicial services (50.8 percent). The European Commission 2014 Progress Report on Turkey indicated that due to administrative simplification and online provision of basic public services (e-government), there has been an improvement in service delivery.¹⁶

SCORE **50**

Independence - Law

To what extent is the independence of the public sector safeguarded by law?

The Constitution and the Law No. 657 on Civil Servants ensures the principle of impartiality of public officials. Public servants cannot be affiliated with any political party or ideological objective.¹⁷

The employment of civil servants can only be terminated at their own request, if they breach any conditions under which they were appointed, upon reaching retirement age or death, or if they are removed from post in accordance with the Law No. 657.¹⁸ Disciplinary penalties cannot be enforced without giving the civil servants an opportunity to defend themselves against the charges. However, although these legal provisions provide a safeguard, there is no institution dedicated to protecting public servants against arbitrary dismissal and political interference. In any case, public officials' right to resort to jurisdiction against public administration is guaranteed. As a result of the amendment to the Constitution (Paragraph 3 of Article 129) dated 7 May 2010, all disciplinary decisions have been put under judicial control.

Law No. 657 regulates the appointment and promotion of civil servants. Vacant positions are announced by the State Personnel Department at least 15 days before the application deadline, and candidate public servants have to pass the Public Personnel Selection Exam (KPSS), which is held centrally. However, there are also interviews, which open up the possibility of political influence.¹⁹ Heavier reliance on oral exams and interviews could make the evaluation of the candidate less ob-

jective than a written exam with a clear marking scheme, and could also allow examiners to screen candidates according to their ideological beliefs.²⁰

The hazard associated with the overreliance on interviews is also present in Article 59 of Law No. 657, which regulates Exceptional Public Service.²¹ This regulation enables the appointment of the public servants without a written exam and lists the positions that are considered to be exceptions, including chief advisors to the prime minister and heads of different departments, to name just a few. This practice enables the recruitment of civil servants without the required qualifications.²²

Law No. 4734 on Public Procurement was approved by the parliament in 2002 and came into force in 2003. It adopted the principles of transparency, competition, equal treatment, accountability, efficiency, effectiveness, reliability and confidentiality.²³ However, the hope of preventing corruption faded in the following years. According to Janos Bertok, head of the Public Sector Integrity Division at the OECD, public procurement carries the biggest corruption risk.²⁴ The OECD estimates that the market volume subject to public procurement is approximately 15 percent of GDP. TEPAV Fiscal Monitoring Group's assessment reported the ratio of potential procurements market to the GDP to be around 8.6 percent.²⁵ It should be noted that this reflects the minimum, as the Mass Housing Administration (TOKİ) was to a high extent exempted from the provisions of Law No. 4734 as regards mass housing projects, as per Article 68/c. Law No. 4734 has been amended 37 times and watered down with special laws, regulations and decrees 175 times since 2002.²⁶ It is difficult to track the amendments and exceptions that have been made to the law, even for a lawyer.²⁷

SCORE 25

Independence - Practice

To what extent is the public sector free from external interference in its activities?

Political influence in recruitment and appointments has always been common practice in the public administration and changes in government have caused personnel changes at all levels of public office, particularly in the higher echelons of the bureaucracy.²⁸ The regulations on recruitment and promotion are not strong enough to prevent political interference. As mentioned above, recruitment based on both written and oral exams or an interview makes the recruitment system vulnerable to political influence.

In addition, in the last nine years, 1,324 public servants were appointed through the exceptional appointment article (Article 59 of Law No. 657).²⁹ The Prime Minister's Office, ministries, and local government administrations make exceptional appointments.³⁰ In 2014, the main opposition party revealed three lists containing information on nepotism, indicating the names of the people connected with the incumbent party, who bypassed the KPSS and entered public office.³¹

As is the case with appointments, dismissals from public office are also prone to political interference. After the onset of December 2013 corruption scandal, public offices were reshuffled³² and many dismissals and new appointments at all levels took place.³³ These dismissals indicate that the public officials have no protection against political interference in practice.³⁴ The cases taken to court have not resulted in reappointments of dismissed civil servants, since courts have no power of implementation. Thousands of judges and police officers in charge of investigating the corruption allegations have been reassigned.³⁵

There is no special body to monitor whether public servants act impartially. However, the Council of Ethics for Public Services was established in 2004, and works upon complaints and has the authority to initiate legal proceedings after an investigation of the complaint.³⁶ Pursuant to Law No. 5176 on the Establishment of the Public Officials Council of Ethics and Certain Laws MPs, members of cabinet, officers of the Turkish Armed Forces and judiciary, as well as civil servants from universities are not subject to inspection by the Public Officials Council of Ethics.

Although not a public entity in the traditional sense, the Central Bank of the Republic of Turkey has continued to provide resources to the public sector through its monetary policies and inflation targeting strategies. Through this mechanism, the Central Bank is essential to the independence of the public sector. In early 2015, the criticisms of the president on the interest rate decisions of the Central Bank underscored the risk of external interference and the loss of independence of the institution. As such, the level of pressure exerted upon the Central Bank by the executive can be deemed harmful to the independence of the public sector.

GOVERNANCE

SCORE

50

Transparency - Law

To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

Law No. 3628³⁷ requires public servants to declare their assets and income. However, asset declarations are confidential and not open to the public. The asset declaration forms need to include the immovable and movable goods of the public servant, their spouse and their children. Public servants make asset declarations upon entry to the post, on the month following their departure and at any time there is a significant change in their assets. Additionally, public servants are required to renew their declaration every five years, at the beginning and the middle of the decade.³⁸ The Public Officials Council of Ethics is authorized to inspect declaration of assets.

Law No. 657 regulates the method of recruitment in the public services. Following the submission of vacancies to the State Personnel Department, the department has to announce the classes, degrees, and number of positions, general and special conditions of the candidates, and the exam dates and locations 15 days before the deadline for applications.³⁹

Since 2003, according to Law No. 4982 on Access to Information, all public service administrations are obliged to inform the public on request.⁴⁰ They are required to release any information requested from them, as long as this information is directly accessible to them and not in the scope of exceptions.⁴¹ If the information is not available in that institution, they are then required to inform the requesting body in writing where the information can be located.⁴² If the information requested includes classified information, it should be removed, but the remainder of the information should be provided as requested.⁴³

In addition to this mechanism, there is also the Council of Ethics for Public Services and BİMER, accessible via the Internet, telephone, in writing, or in person.⁴⁴ Through this system, citizens can

apply for access to information and the relevant administration is responsible for replying within 15 days. Moreover, under the Law no. 4982 on the Right to Information, any requests, complaints, opinions, and suggestions can also be made through BİMER.⁴⁵ The Parliamentary Commission for Petitions also receives all complaints and has to reply with its decision within 60 days.⁴⁶ However, the Commission does not review petitions without a specific topic, if they require a new law or changes to an existing law, if they fall under judicial authority, or those without a name.⁴⁷

Turkey's legal framework prohibits the sharing of information on state secrets, trade secrets, security intelligence and where the information would violate the right to privacy, or when legal cases are ongoing. However, the definition of secrecy is unclear and there are no formal criteria to identify secret information. Therefore, sharing information with the public depends on the arbitrary decisions of public officials.⁴⁸ The Ministry of Justice had prepared a draft law on state secrets, but it has not been ratified as of the publication of this report. As a consequence of the amendments to several articles from 326 to 339 of the Turkish Penal Code, arbitrary use of "state secret" as a means to judicial discretion has decreased to a minimum.

The real problem lies in areas related to the concepts of *confidential information*, *trade secret*, and *banking secret*. Article 258 of Turkish Penal Code titled "Disclosure of office secrets" is of note for this case. As opposed to the Article 336, Article 258 does not require the condition that disclosure of confidential documents, decisions and orders must be restricted pursuant to the laws and regulations of the legislative authorities due to confidentiality. In this case, any information may be made confidential with the authorities' subjective will.

The most important drawback here is the possibility that the Right to Information Act will become inoperative. The reason for this concern is the following provision in Article 9 of the Right to Information Act:

"Were the required information or the document contain classified elements, such information shall be set aside if separable and the applicant shall be notified of the grounds for this exemption."

This provision may discourage civil servants from disclosing any documents marked "confidential" to the information requester for fear of committing a crime.⁴⁹

Procurements are announced and published by the Public Procurement Authority (KİK). The results of procurements have to be submitted to the KİK within 15 days. These results are published in the Public Procurement Bulletin, which is publicly available.⁵⁰

According to Public Procurement Law, Procurement Commissions open the bids in front of the bidders to confirm that the required documents are present and that the documents fit the requirements. The identity of those submitting a tender, their tender prices, and the amount of estimated cost are announced. Then the Commission closes the session for evaluation of the tenders.⁵¹ This does not comply with the full transparency principle as the evaluation of the various bids, the final decision, and the reasoning behind it take place behind closed doors and are not available to the public.⁵² Additionally, as a result of the legal amendments introduced in recent years the number of exceptions has dramatically increased: exceptions have become the rule, while open tender system has become the exception.

In addition to the aforementioned challenges, the information provided to the public through the Electronic Public Procurement Platform (EKAP) is limited, as it does not disclose information that falls outside of the scope of, or is an exception to, the Public Procurement Law; the decision to disclose any information is left to the discretion of the relevant administration.⁵³

Transparency - Practice

To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

One of the major gaps in the asset disclosure regime is the lack of a monitoring mechanism. Law No. 3628 on Asset Declaration, Bribery and the Fight Against Corruption neither defines a regular monitoring procedure nor authorizes an institution with this special task. An asset declaration can only be audited if a public servant is investigated. Without a check on their contents, the confidentiality of asset declarations, secret files, and the lack of auditing contribute to a culture of secrecy.⁵⁴

The lack of regulations for the investigative body means there is a lack of an internal control mechanism for asset declarations. The most visible shortcoming within the asset declaration framework presents itself in the lack of objective investigation and evaluations of past declarations, which would enable the internal controlling body to observe the changes in the assets of the public servant. The problems pertaining to the previously discussed “banking secrets” or the difficulties in obtaining real estate deeds need to be solved in order to streamline the asset declaration and investigation process. Another important obstacle in the path to transparency is inability of the auditors to regularly check these documents. Organization of asset declaration forms in such a way that clearly shows the sources of capital, reasons for the change over time, methods of borrowing and allows cross-checking would improve the internal control mechanism and allow healthier auditing.⁵⁵

According to Law No. 5018 on Public Financial Management and Control, public institutions are obliged to prepare strategic plans and activity reports.⁵⁶ However, according to Ömürgönülşen, the quality of these reports are also a matter of question since a number of these reports are just repetitions of previous ones, and the link between the activities and the strategic targets is not always established accurately. Furthermore, a lack of public awareness and the fact that citizens do not question activities of the public institutions and authorities was observed.⁵⁷

In practice, there is limited sharing of the records on public procurement. There are many public procurement practices that fall outside the scope of the existing procurement legislation. In addition to exceptions for the security sector, the scope of exceptions to the Public Procurement Law No. 4734 has been constantly extended since it entered into force.⁵⁸ As a result of these amendments, government business enterprises (KIT), and energy and transportation (among others) fall out the scope of the law.⁵⁹ Any procurement that falls outside the scope of the Law No. 4734 is not shared through the EKAP.⁶⁰ However, even when procurement processes fall within the scope of the law, only partial and inadequate information for full transparency is shared.

EKAP only shares the final decision, meaning the deliberation that went into choosing the bids is not made public, as the decision is taken behind closed doors.⁶¹ Therefore, the information on the EKAP is very limited. In order to evaluate the fairness of procurement, the offers and capacity of all bidders should be shared in all cases. However, the content of shared information depends on the arbitrary decision of the related administration.⁶²

Another concern regarding transparency is related to recruitment. The KPSS is the main qualification exam for public servant appointments, but there is no record or standard for the interviews that follow and finalize the decision on which applicants are admitted to the civil service in certain public institutions.

Another noteworthy problem in this area is the absence of an Administrative Procedure Law, addressing the various components of administrative acts such as form, duration, and judicial remedies. The law in question should also include the principles laid out in Council of Europe's Recommendation on Good Administration No. (2007) 7. In this context, the most problematic issue is the exercise of discretionary power. The definition and the exercising of discretionary power should be in compliance with the Council of Europe Council of Ministers Recommendation No. (80) 2. The term "discretionary power" means a power that leaves an administrative authority some degree of latitude as regards the decision to be taken, enabling it to choose from among several legally admissible decisions the one which it finds to be the most appropriate. An administrative authority, when exercising a discretionary power; i) observes objectivity and impartiality, ii) observes the principle of equality before law, iii) maintains a proper balance, and iv) takes a decision within a reasonable timeframe. In the absence of these principles, discretionary power involves arbitrariness, which has no place in rule of law.

SCORE **75**

Accountability - Law

To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?

According to Law No. 3628 on Asset Declaration and the Fight against Corruption and Bribery, public servants who come across misconduct or corruption should directly report it to the public prosecutor.⁶³ The anonymity of whistleblowers is ensured with the clause, "the identity of whistleblowers must not be revealed without their consent", and unless the denunciation is deemed valid in which case a whistleblower's identity shall be shared upon the request of the prosecuted person. However, no clause exists for their protection.

The By-law on Complaints and Appeals protects the rights of public servants when reporting wrongdoing. Public servants who report a crime should not be subject to any sanctions, which may worsen their conditions or lead to dismissal.⁶⁴

Inspection boards and internal auditing units constitute the dual audit structure of the public administration. The duties of the inspectors are to audit and inspect all of the sub-divisions and give recommendations to ameliorate the organization's performance. The Prime Ministry Inspection Board coordinates the inspection boards.⁶⁵

Law No. 5018⁶⁶ requires the establishment of internal audit boards. These are responsible for auditing of the functioning and resource management of public departments to determine if they are used in an economically effective and efficient way, and for providing consultancy services in the form of advice and guidance in order to ensure that the goals are met and that the processes run smoothly and systematically.

The legal framework ensures the right of citizens to make complaints against public servants and public institutions. Every citizen has the right to submit petitions or complaints either to the Parliamentary Commission for Petitions or the related institution. Competent authorities are required to reply to citizens within 30 days. Every public institution or agency has an online service for citizen complaints on their website.⁶⁷ In addition, BİMER was launched in 2006 and is used for lodging complaints; it ensures that the relevant public authority receives the complaint lodged through this system and applicants can track the status of their complaints.⁶⁸

Applications on the violations of rules of ethics can also be made to the Council of Ethics for Public Service regarding public servants who are at least general managers or at an equivalent level.⁶⁹

Another important institution available to lodge complaints is the Ombudsman. According to Law No. 6328 on the Ombudsman, every natural and legal person may apply to the institution with a complaint and applications shall be kept confidential upon request (see the Ombudsman pillar for further details).⁷⁰

As indicated by EU Progress Reports, the right to access information in Turkey is restricted by lack of independence and autonomy of the responsible bodies. As a result, responses to requests often do not provide the relevant information requested and do little to promote transparency or the fight against corruption. Considering the number of information requests rejected, it is clear that the scope of the legislation in this area needs reconsidering.⁷¹

SCORE **25**

Accountability - Practice

To what extent do public sector employees have to report and be answerable for their actions in practice?

Despite comprehensive legal provisions, the oversight mechanisms for public institutions are ineffective. An individual expert interviewed by the authors highlighted a lack of public trust in complaints mechanisms. He claimed that citizens do not believe that public servants will be punished after they submit a complaint, so the number of applications is quite low.

To illustrate, from 2005 until 2015, the Council of Ethics for Public Service received 1,821 complaints.⁷² Of these 1,237 complaints were rejected due to procedural deficiencies in those complaints; 469 were investigated and only 71 were finalized with the decision indicating an ethical violation. In 2014 the Council received 218 complaints, 23 of which included allegations of corruption, 87 nepotism/ discrimination, and 28 conflicts of interest.⁷³ In addition to the high number of applications that were denied, there were also a low number of sanctions handed down by the Council, raising serious concerns about its effectiveness and impartiality.⁷⁴

The decisions of the Council of Ethics for Public Service on violations of ethics rules used to be published in the official newspapers, but following the annulment of this rule by the Supreme Court this requirement was removed in 2010. The head of the Council commented that this annulment is a matter of concern, as public access to these decisions contributed remarkably to the sanctioning power of the Council of Ethics for Public Service.⁷⁵

Public servants have constitutional immunity from direct prosecution except in some cases envisaged by Law No. 6328; they can only be brought to court on criminal charges with the prior authorization of their superiors.⁷⁶ According to the CIMAP Report dated 2010, superiors do not usually authorize the prosecution of civil servants under their authority.⁷⁷ In this context, one of the biggest obstacles to the accountability of civil servants is the high number of laws, Law No. 4483 in particular, which provides judicial immunity for civil servants.

SCORE **75**

Integrity mechanisms - Law

To what extent are there provisions in place to ensure the integrity of public sector employees?

Public servants must sign an “ethical contract” according to the By-Law on the Principles of Ethical Behavior of Public Servants and Application Procedure and Principles. Law No. 657 and the By-Law provide similar codes of conduct and cover the requirement to enforce legislation from a position of neutrality and equality. Moreover, the law ensures the adherence of civil servants to human rights and the Constitution.⁷⁸

The concept of “conflict of interest” was integrated into the legislation in 2005 by the By-Law. This defines conflicts of interest as:

“...The situation in which the ability of public servants to execute their duty in an impartial and objective manner is or seems to be affected and the fulfillment of financial or other personal interests, as well as any benefit or profit gained by the individual, their relatives, friends, or other persons or organizations that they have relations with.”⁷⁹

According to the regulation, public officials have personal responsibility; therefore, must avoid enjoying any benefits through conflicts of interest.⁸⁰

Law No. 657 puts a general ban on gift giving and receiving, and also gives the authority of determining the content of the rules on gifts to the Council of Ethics for Public Services.⁸¹ The By-Law mentioned above describes the gifts and as a basic principle highlights that public servants should not receive or give gifts. The rules on gifts seem quite clear and comprehensive, but there are six exceptions: donations; books, magazines, etc.; gifts with the value of a souvenir and given in publicly held meetings; prizes gained from events or contests open to the public; advertisement and handicraft products with symbolic value; and credits received from financial institutions based on market conditions.⁸²

Bribery is an offense according to the Criminal Code and either actor of bribery may be punished by four to 12 years’ imprisonment (according to the Articles 252, 253 and 254).⁸³ The articles clearly define bribery and the relevant actors.

Discrimination and nepotism are prohibited by the By-Law concerning the Principles of Ethical Behavior of Public Servants and Application Procedure and Principle. According to Article 14 of the By-Law, public officials cannot use their position, authority and related information to derive benefit in favor of themselves, their relatives or third parties. Public officials cannot use official or

secret information acquired during their term of employment or as a result of a duty in order to derive social, economic and political benefit.⁸⁴

In public procurement processes, all attempts to commit procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, fraud, bribery, or other actions are prohibited.⁸⁵

The UN Convention against Corruption prohibits fraud, trickery, assurance, threat, exerting influence, misconduct, gaining benefit, unjust behavior, agreement, embezzlement, bribery, money laundering and all sorts of other bid rigging.⁸⁶

SCORE 25

Integrity mechanisms - Practice

To what extent is the integrity of public sector employees ensured in practice?

Although legal provisions ensure the integrity of public servants, implementation of these provisions is quite weak. The Council of Ethics for Public Service organizes periodic training seminars to raise public servants' awareness of legal provisions and international ethics standards. However, these seminars are not sufficient to prevent breaches.⁸⁷

Of the respondents to the 2013 Global Corruption Barometer, 42 percent felt that public officials and civil servants were corrupt or extremely corrupt.⁸⁸ Furthermore, in a survey carried out by TI Turkey, 28 percent of the participants said yes when asked if they or any of their acquaintance had to make illicit payments or give gifts to officers in public institutions during the last 12 months.⁸⁹ It is reasonable to expect a significant increase in this area as a consequence of the December 2013 corruption investigations, which represented one of the biggest corruption scandals in the country's recent history, thereby reducing public trust in public servants. As discussed in the Corruption Profile of this report, this case investigated corruption allegations against certain ministers and their family members, but was dropped and resulted in the dismissal or reappointment of a number of police officers, prosecutors and judges. This has tarnished public trust in the justice system and harmed the reliability of the public sector.

According to a 2010 CIMAP Report, the implementation of regulations governing gifts and hospitality is very weak. Gift giving and hospitality are seen as a major cultural component of Turkish society.⁹⁰ A recent survey on corruption and bribery conducted in Istanbul on a sample of 801 representatives of the business community revealed that 17 percent thought that "offering part of the progress payments to public officials in public contracts" is not corruption whereas offering an advantage to a public official to get a regular and legal job done was not perceived as corruption by 14 percent.⁹¹

ROLE

SCORE 25

Public education

To what extent does the public sector inform and educate the public on its role in fighting corruption?

The Council of Ethics for Public Services organizes periodic training seminars on ethics. However, these seminars are limited to public servants and do not contribute to raising public awareness of corruption.⁹²

An individual expert interviewed by TI Turkey states that there is no public service broadcasting on fighting corruption on TV at prime time. He added that the Council of Ethics for Public Services and ethic commissions of public institutions and agencies are not advertised properly, so the public is unaware of their role and facilities.⁹³

Although it is clear that the public sector does not provide adequate information to the public on how to combat corruption, the 2013 Global Corruption Barometer⁹⁴ found that 86 percent of respondents said they would report incidents of corruption. Of that 86 percent, 69 percent said that they would report corruption directly to an institution or through a government hotline, which is relatively high considering the limited public education provided on how to report corruption. The rest of the 86 percent stated they would report corruption either to independent non-profit organizations or to the media. The 14 percent that would not report corruption said they would not do so because they did not know where to report it (17 percent), because they were afraid of the consequences (29 percent), or because they did not believe their reporting would make a difference (54 percent).

SCORE 25

Cooperation

To what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?

The cooperation of public institutions and agencies with civil society organizations (CSOs) and the private sector in anti-corruption activities is quite limited. The Ethics Platform, which was launched by the Council of Ethics for Public Services and Council of Europe in 2013, made the only significant attempt. However due to the lack of regular communication and active cooperation this platform is not working efficiently and effectively.

The Platform aimed to raise the awareness of public officials and the public on ethical standards. At the beginning, partners of the Platform were the ministries, the Public Procurement Authority, the General Directorate of Security, the Presidency of Religious Affairs, the Turkish Radio and Television Authority (TRT) and the General Directorate of Land Registry and Cadaster (TKGM).⁹⁵ CSOs

working in related fields are also invited to participate the Platform. However, as of 2015, there is no readily available information mechanism on the activities of the Platform, except its annual meetings organized by the Council.

SCORE **25**

Integrity in public procurement

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

The Public Procurement Law No. 4734, established the Public Procurement Authority as a financially and administratively autonomous regulatory body, managed by a 10-member board.⁹⁶ It is in charge of policy-making, supervision, providing training and operational support to contracting authorities, publishing and regulating rules of tender notices, and compiling records of companies that are banned from bidding. According to Freedom House, the authority is “not in a position to ensure consistent policy in all areas related to public procurement, nor does it effectively steer the implementation of the procurement legislation”.⁹⁷

Article 19 of Law No. 4734 defines the open tender method in which all eligible firms are allowed to participate in a procurement process. Although the majority of procurements are carried out by open tender, the Law defines a variety of other procurement methods.

Construction works with an expected cost higher than a half of the threshold value,⁹⁸ and goods/service works that require advanced technology or specialization can be carried out through the “invited participants” method.⁹⁹ This method allows the procuring institution to invite selected firms to participate in an auction. Similarly, institutions can invite at least three firms without making any announcement of the procurement through the “bargaining method”.¹⁰⁰ Article 22 of Law No. 4734¹⁰¹ describes the conditions of the “direct purchase method”, which allows the institutions to make a contract without announcement and warrant. By hampering competition, these methods raise serious concerns with regards to public interest. In addition, the criteria for applying to use these alternative methods are not clearly defined, so abuse of the provisions is another concern.

Furthermore, there have been several amendments to Law No. 4734 since it was enacted, each bringing new exceptions to competitive bidding. Article 3 defines the exempted institutions, areas and facilities. The number of subsections of the Article 3 has climbed from six to 20 with these amendments. For instance, goods and services purchases of state-owned enterprises and state-related companies (more than 50 percent of the shares should be owned by state bodies) are exempt if the contract value is less than 7,726,990 TL (approximately 2.6 million euros).¹⁰² The Law allows some state bodies such as the Turkish Coal Institution (TKİ), Student Selection and Placement Center (ÖSYM), and the Ministry of Youth and Sports to make all purchases without organizing a competitive procurement procedure.¹⁰³

The announcement requirements of procuring institutions depend on the scale of the procurement. According to threshold values and expected costs, procurements are grouped into four categories: small, medium, large and big procurements.¹⁰⁴ Small procurements are announced in at

least two local newspapers, which are published in the region of the work at least a week before the auction day. Details of medium procurements should be published by at least one local newspaper and by the Public Procurement Bulletin at least two weeks before the auction. For large procurements, the announcement should be published by at least one local newspaper and by the Public Procurement Bulletin at least three weeks before the date of the auction. Institutions should announce the details of big procurements through the Public Procurement Bulletin at least 40 days before the auction in “open” procurements; at least 25 days before in the “bargaining” method; and at least 14 days before in the “invited participants” method.¹⁰⁵

A recent example regarding corruption allegations in public procurement process can be seen in the investigations against 52 people including the head of the State Railways of the Turkish Republic (TCDD). The allegations were about bribery and bid rigging worth 210 million TL (approximately 70 million euros). The company that won the tender was accused of granting a significant donation to the Foundation of TCDD to influence the procurement process. When it was revealed, the Public Procurement Agency and the Council of State decided to cancel the procurement. However, by arguing that the project should be completed for the public benefit, TCDD decided that the company would complete the project. In 2015, Ankara Prosecutor’s Office discontinued the investigation and expressed that the donations were in compliance with the related legal regulations and were made against a receipt.¹⁰⁶

Amendments, dated 11 April 2013, to Article 235 of the Turkish Penal Code, which regulates bid rigging, have not been in the right direction. Despite the variety and intensity of legal benefits specified in the Article 235, the punishment decreased from the range of five to 12 years to three to seven years’ imprisonment. The most important change is related to the issue of damage to a public institution. In case of damage to public institutions, the punishment had to be between 7.5 to 18 years. As a consequence of the amendments, this matter of aggravation has been abolished. In the case the court decides that no damage has been done to a public institution, the punishment can only be between one to three years. This change was criticized in the EU Progress Report 2013.¹⁰⁷

SCORE **25**

Oversight of state owned enterprises

To what extent does the state have a clear and consistent ownership policy of state owned enterprises (SOEs) and the necessary governance structures to implement this policy?

The government does not have a clear and consistent policy on state owned enterprises (SOEs). There is no independent central coordinating unit to exercise the ownership function of the state, and individual SOEs operate under the related or affiliated ministries.

The expected role of SOEs in the economy was not mentioned in the 10th Development Plan covering the period 2014–2018. The Report instead highlights the principle of efficiency. In 2013, the economic share of SOEs was 1.3 percent of GDP, down from 6.3 percent in 1985, clearly indicating the downward trend that is expected to decrease to 0.8 percent in 2018.¹⁰⁸

The formation of the SOEs can be dated back to the early years of the Republic, creating fields of employment by the state at a time when private capital was scarce and inadequate. Until the 1980s, this continued to be the case, as the SOEs existed purely out of need. The decreasing share

of the SOEs in the economy can be traced back to then-Prime Minister Turgut Özal with the mandates of the World Bank and the IMF in favor of privatization.¹⁰⁹ The economic reforms that followed the 2001 double-crisis with Kemal Derviş as the Minister for Economic Affairs and Finance at the helm expedited this process. The succeeding governments have focused their efforts on privatization instead of restructuring the management of SOEs and increasing their profitability

Sönmez identifies two major fields in which SOEs have superseded private ventures in Turkey. The first is livestock, fisheries, and dairy production and distribution, and the second is high-tech metal and petrol industries. Neither has drawn much attention from the private sector, due to low profit margins and high-levels of entry to the market, respectively. Crucial for development and sustained growth of the population and economy, these SOEs augmented the private sector, bridged the economic gap between regions, dampened the effects of unemployment, and facilitated unionization.¹¹⁰

For such valuable instruments, the aforementioned dissolution and privatization efforts were undertaken without the requisite level of feedback from society.¹¹¹ The winds of privatization, bolstered by the post-2000 legal framework, facilitated the transition period and resulted in the sale of large SOEs such as Türk Telekom, Tüpraş, PO, Petkim, and Erdemir. Sönmez criticizes the process on the grounds that public benefit was not the priority in the dissolution process – that SOE restructuring efforts would have provided higher total welfare. The manner in which the privatization of these SOEs took place was also problematic and plagued by similar issues with public procurement practices in previous sections. SOEs are within the scope of the Court of Accounts audits, which reported a considerable number of allegations of irregularities and corruption, further supporting the concerns regarding the management of SOEs.

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6

LAW ENFORCEMENT AGENCY: Turkish National Police

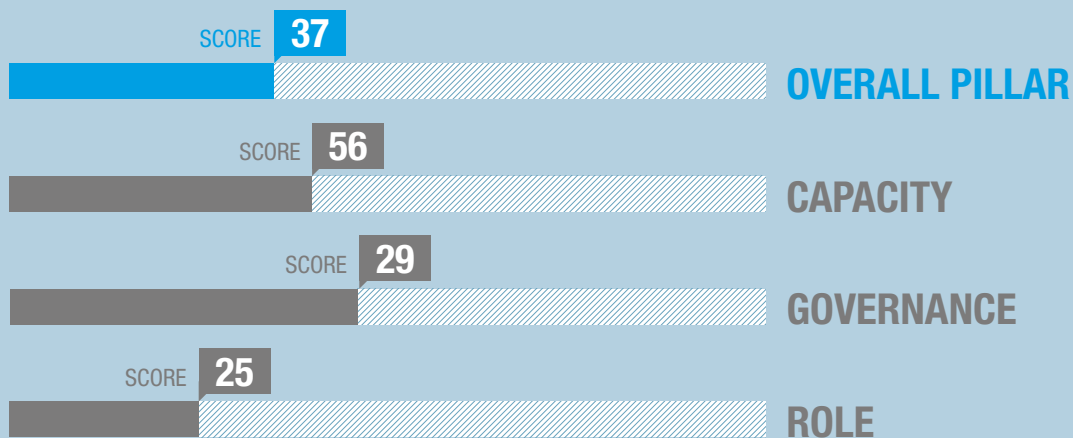
OVERVIEW

In this section, among the law enforcement agencies in Turkey, only the Turkish National Police (TNP) will be analyzed. The Turkish National Police is the main Turkish law enforcement agency. It has adequate funding from the central administrative budget, which has made it possible to increase its material and human resources in recent years.

However, the independence and integrity of the TNP is seriously compromised by nepotism and partisanship. Moreover, the legal framework regulating the activities of the TNP is insufficient in providing necessary measures of transparency, and specific integrity and accountability regulation mechanisms for the TNP are not in place.

Although the police still have significant authority in investigating corruption, there are serious questions regarding external interference. Recent cases of numerous dismissals and reassignments following corruption investigations are concrete examples of this problem.

The table below presents the indicator scores that summarize the assessment of the law enforcement agency in terms of its capacity, its governance and its role in anti-corruption. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	75
	Independence	50	25
Governance	Transparency	25	25
	Accountability	25	25
	Integrity mechanisms	50	25
Role	Corruption investigation	25	

STRUCTURE AND ORGANIZATION

The TNP operates under the Ministry of Internal Affairs in the form of the General Directorate of Security.¹ The general responsibilities of the TNP are defined in two separate laws; Law No. 3201 on the TNP² and Law No. 2559 on the Duties and Powers of the Police.³

The TNP is composed of three pillars: the central organization (headquarters), the provincial police departments and district directorates, and lastly the organization abroad.⁴ There are five deputy general directors attached to the General Directorate and 35 departments working under Deputy General Directorates. Departments' duties vary based on their specialization in different fields. There are also offices directly attached to the General Directorate such as the Intelligence Department, Police Academy and the Inspection Board.⁵ Structural changes in the TNP can only be made by permission of the Minister of Internal Affairs.⁶

ASSESSMENT

CAPACITY

SCORE **75**

Resources - Practice

To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The TNP's budget is allocated from the central administrative budget. There is an increasing trend in its budget allocation and has increased by 76 percent between 2010 and 2014.⁷ It should also be noted that apart from the formal budget; POLSAN, the police pension fund has grown exponentially through partnerships in the course of the AKP governments, and its 2014 assets have reached close to 1,3 billion TL (approximately 470 million euros).⁸

There has also been an increase in investment in infrastructure and technical equipment; new camera systems and information database systems were put in place in recent years.⁹ The number of staff in the department has also increased.¹⁰ These developments have contributed greatly to the investigative and preventive capacities of the TNP and provided a baseline for the examination of criminal statistics and risk areas.¹¹ When it comes to human resources, one of the most urgent areas for improvement is the working conditions which should be drastically changed in order to ensure the psychological and physical health of the officers, and as a result their performance. The by-laws should be improved in accordance with the international human rights norms.

The TNP recruits police officers that successfully complete the education in police vocational schools and police vocational training centers. High school graduates are required to attend a two-year training program in police vocational schools. University graduates receive basic six-month police training.¹²

The starting salaries for police officers are higher than the salaries of newly recruited teachers.¹³ Police officers' salaries are more than adequate compared to other categories of the public sec-

tor.¹⁴ However, their salaries remain significantly lower than those of lawyers and under-secretaries.¹⁵ According to a 2013 Report by the Turkish Court of Accounts, 157,913 police officers were rewarded with 1.4 million extra payments during the year.¹⁶ The Report highlights that these bonuses were not awarded consistently, so that some personnel were rewarded for carrying out routine activities, thus corrupting the system's original aim (to reward exceptional work).¹⁷ Nevertheless, Koca, an associate professor at the Police Academy, believes that the TNP has adequate resources to function effectively in practice despite the deficiencies mentioned above.¹⁸

SCORE **50**

Independence - Law

To what extent are law enforcement agencies independent by law?

To ensure the independence of the TNP and prevent political activities within, police officers are forbidden from forming labor unions and associations.¹⁹

Promotions of police officers are based on their educational background, occupational training and seniority.²⁰ The Central Assessment Board and the Supreme Assessment Board determines if an officer merits promotion.²¹ The criteria are too vague to ensure that there is independence from influence in the system of promotions, however.

In April 2015, the parliament passed the controversial Domestic Security Package, bringing in a number of amendments to existing laws regulating the duties of the police.²² The package was criticized as the amendments expanded police power and authority to use weapons during unrest or protests.²³ The package also authorized governors and district governors to command the police and gendarmerie forces to conduct criminal investigations and find offenders.²⁴ Public prosecutors were the only officials with this authority prior to the amendment of this package. Considering this change in light of the reassignments and arrests of public prosecutors²⁵ since December 2013, it can be argued that there is a trend towards the consolidation of control over both law enforcement and the judiciary.

Furthermore, the 2015 Package, gave the Minister of Interior the authority to subject any member of the TNP to disciplinary penalties,²⁶ and the Minister's Office was given the power to supervise all the activities of the TNP.²⁷ Therefore, the agency is open to political influence.

SCORE **25**

Independence - Practice

To what extent are law enforcement agencies independent in practice?

Nepotism during the recruitment process is one of the major problems for the independence of the TNP. Personal relations, kinship and political connections play role in recruitment and reassignment processes.²⁸

Another important deficiency in the TNP's independence is its lack of a human resource policy to target the gender balance and equality in other social aspects. Alevis, Kurds and Armenians are

not seriously considered as candidates to the TNP and have been excluded during recruitment processes.²⁹ While this situation erodes public trust in the TNP among the several groups that are excluded, it also opens space for politicization due to influence by a particular (nationalist and Islamist conservative) ideological perspective.

The December 2013 corruption investigations revealed severe politicization within the TNP and interference in their operations. On December 25th, many police officers did not follow the instructions of prosecutors to detain suspects. This situation raised concerns regarding the independence of law enforcement from the executive. Following the corruption investigations, the Regulation on Judicial Police was amended.³⁰ This amendment required law enforcement officers, when acting upon the instructions of prosecutors, to notify their superiors about any criminal notices or complaints. However, the Council of State later annulled this amendment.³¹

In the following months, a large number of police officers were dismissed from their posts or reassigned for their involvement in the investigations of the corruption allegations.³² These interventions raised serious doubts regarding the independence of the TNP in investigating corruption cases. The OECD recommended in its Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Turkey that Turkey should take “all necessary steps to ensure that any reassignment of police and prosecutors does not adversely affect foreign bribery investigations and prosecutions”.³³

The current environment in the TNP is shaped by the political dissidence between the supporters of the Gülenist Movement and others.³⁴ This is further reiterated by some news agencies, which claim that the Gülenist Movement has recruited 41,000 police officers over the years.³⁵ After allowing the formation of such an organization within the police force with political benefits in mind, the ruling elite has decided that this very organization they allowed to form within the police force is detrimental to the integrity of law enforcement following the recent events. This political polarization poses threats to the independence of the TNP.³⁶

GOVERNANCE

SCORE **25**

Transparency - Law

To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?

The legal framework regulating the activities of the TNP is not adequate to provide necessary transparency. There are certain by-laws that are not open to the public, such as the by-laws regulating the duties and the activities of the Special Operations Department and Police Intelligence Department.³⁷ This situation represents a blind spot for the police where their compliance with the rules of procedures cannot be monitored effectively.³⁸

There are also deficiencies related to asset declarations of police officers. Personnel of the TNP are subject to Law No. 3628 on Declaration of Assets and Fight Against Bribery and Corruption.³⁹ However, since it does not require asset declarations to be made public, they are kept confidential unless an investigation is launched against an officer.

Transparency - Practice

To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?

Establishing the principles of transparency in the TNP is a major challenge, and public institutions authorized as security forces are among the leading establishments that hide information.⁴⁰ Even in sharing information on crime statistics, the TNP acts extremely cautiously and avoids providing detailed information.⁴¹ The 2014 Operations Report of the TNP provides statistics that do not contain sufficient detail.⁴² The report examines the operations of the TNP against a number of crime categories, but provides information that lack qualitative details and therefore is not comprehensive.⁴³

A couple of recent examples demonstrate the challenges of making an information request to the TNP. A lawyer submitted an information request to Ankara Provincial Police Department for information on the amount of tear gas used in a public protest and the number of police officers on duty during the protest. Only vague and inadequate information was provided by the TNP.⁴⁴ In another case, an information request was made by a lawyer, regarding the number of police officers on trial related to allegations of torture and death due to torture, and the number of police officers subject to disciplinary proceedings, dismissal or reassignment.⁴⁵ However, the General Directorate of Security rejected this information request by pointing to Article 25 of Law No. 4982 on Right to Access Information and asserting that “the information and documents of the institutions that do not concern the public and solely in connection with their personnel and the internal affairs are out of the scope of the right to access information”.⁴⁶

Accountability - Law

To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?

According to Law No. 4483 on the Trials of Civil Servants and Other Public Servants, it is necessary to get the permission of an administrative superior of a public servant in order to investigate them for activities related to their duties.⁴⁷ Although in 2003, this “permission” prerequisite was abolished, via an amendment, in cases of torture and ill treatment,⁴⁸ this gap in the Law has created a practice that systematically implies “impunity” for the police.⁴⁹ These permissions are hard to get and even in cases where permission is granted, the prosecution process is often initiated via Article 86 of the Penal Code on intentional injury, rather than the related articles (Article 94 and Article 95) that would result in harsher punishment.⁵⁰

Another part of the legislation regulating accountability principles is the Disciplinary Code. However, there are serious deficiencies in the Code, which superiors can misuse as a tool against officers. To illustrate, “not shaving daily”, “not responding to question of a place or person”, “making a hab-

it of not paying debts”, “ignoring warnings of superiors” are reasons that may be misused.⁵¹ There are criticisms regarding the unquestionable position of the superiors in maintaining the order and their authority.⁵²

A tool to investigate police misconduct is still being drafted. A commission under the name of “Law Enforcement Oversight Commission” will be established to investigate complaints regarding human rights violations committed both by the law enforcement. The Commission will be an outcome of a twinning project of EU Pre-Accession Program.⁵³ However, based on the recent draft law, there are criticisms over the planned structure of the Commission since there are plans for it to be established within the scope of the Ministry of Interior.⁵⁴

Under the principles of financial transparency and accountability, the TNP prepares reports that are available to the public.⁵⁵ According to the By-Law on Procedures and Principles on Strategic Planning in Public Administrations,⁵⁶ the TNP prepares strategic plans, but the only one publicly available is the 2009-2013 Strategic Plan. However, the 2015 Performance Program, which includes the performance objectives, indicators and activities, the 2014 Activity Report, and the 2014 Administrative Financial State and Prospect Report are available on the TNP’s website.⁵⁷

The legal provisions for the investigation of corruption cases are very limited. Corruption is listed under disciplinary misconduct in the administrative law and its punishment is dismissal from office.⁵⁸ Although there is impunity in practice from crimes against the public, the institution is very active in punishing disciplinary misconduct, including corruption.⁵⁹ This harsh yet partial jurisdiction is executed by the police administration itself, which is outside of the scope of the independent courts. In the legislation, there is no immunity from criminal proceedings applied exclusively to the police.⁶⁰ The police officers are also subject to Law No. 4483.⁶¹

SCORE 25

Accountability - Practice

To what extent do law enforcement agencies have to report and be answerable for their actions in practice?

A prosecutor has no authority to investigate a complaint about the police without the permission of the relevant superior of the officer authorized by the Law No. 4483, except in determining evidence that is at risk of loss.⁶² By sending a copy of the complaint document to the related administration, the prosecutor asks for permission from the officer’s superior. The police administration has the right to initiate a pre-investigation before deciding to give permission. The timescale for the decision on the investigation cannot exceed 30 days. If necessary, it can be extended up to an additional 15 days.⁶³ In practice, the time limit is used to its full extent and the mechanism works slowly.⁶⁴

The financial audit of the police is ineffective at both individual and institutional levels. As discussed in the relevant sections, the Turkish Court of Accounts can conduct performance audits only within the scope of the performance targets of the institution under audit. Moreover, security and intelligence departments can hide information in a “secrecy” clause, which is open to interpretation and exploitation due to its unclear definition.⁶⁵

Despite these problems of permission and the sub-culture of solidarity, police officers are more easily dismissed than those in other professions, even though these dismissals are not publicized.⁶⁶

It is very easy to get fired or to receive punishment due to political influence, although “impunity” is mostly observed in police misconduct related to public protests. According to Amnesty International:

“...While the authorities have aggressively sought to punish the protest movements and its supporters, impunity is prevailing for the large scale police abuses that took place.”⁶⁷

Furthermore, the National Police Discipline Code states that the police are obliged to wear registration numbers.⁶⁸ However, the media has reported on many instances of the police deliberately covering their registration numbers.⁶⁹ This practice precludes identification of the police and gives them the opportunity to act arbitrarily. While the practice has evoked reaction from the public, in their statements, some government officials and/or MPs have chosen not to condemn the police misconduct.⁷⁰

In addition to the problems of identity determination in the public protests, there are also cases, from the Gezi Park protests in particular, of impunity even when the identity of the police officer is known.⁷¹ Police impunity is enabled by the need to get permission from the superior of the officer to investigate, deficiencies in the investigation processes, and the attitudes of prosecutors and judges.⁷² As such, the investigations and lawsuits of those injured or killed by the police are often neglected.

One victim, Berkin Elvan, was shot with a tear gas capsule and died as a result of his injuries.⁷³ Relevant authorities of the TNP delayed the process of identifying the officer responsible for a long time.⁷⁴ Another victim, Ethem Sarısülük, was shot by the police during the Gezi Park Protests and died; the police officer responsible, Ahmet Şahbaz received a minor sentence of four years and 10 days.⁷⁵ During the Gezi Park protests, more than 2.5 million people took part in the protests; over 8000 has been wounded and 8 protesters died during or after the protests due to complications.⁷⁶ Apart from the Gezi Protests, there are countless examples of unprosecuted police brutality, and there is a prevalent culture of impunity among the members of the institution.

SCORE 50

Integrity mechanisms - Law

To what extent is the integrity of law enforcement agencies ensured by law?

Except for a translation of the European Police Ethics Code (APEK), there is no other document that outlines ethical guidelines for the police. In 2007, the police adopted the Code with few alterations.⁷⁷ It is mandatory for every police officer to carry this document.⁷⁸ It states that taking gifts and financial benefits in any shape or form related to the duty of the police is considered as a threat to the independence of the officer and therefore is forbidden.⁷⁹

Moreover, police officers are also subject to the By-Law on the Principles of Ethical Behavior of the Public Servants and Application Procedures and Essentials. This By-Law, which is drawn from the Code, regulates the prevention of any conflict of interest,⁸⁰ and highlights the importance of the principles of transparency and objectivity in the duties of public officials.⁸¹ These two documents complement each other.⁸²

The By-Law holds individuals responsible in cases of conflict of interest.⁸³ If there is a conflict, officers must inform their supervisors and ensure that they do not benefit from the situation.⁸⁴ There is no coherent regulation on post-employment restrictions, but Article 21 of the By-Law states that a former official should not exploit their former position for monetary gain.⁸⁵

There is no exclusive regulation for the police on asset declarations. According to the Law no. 3628, officers have to declare their assets every five years and at the beginning and at the termination of their employment.⁸⁶ There is no special commission for the investigation of asset declarations and all officers declare their assets to the institution they serve under.⁸⁷ The files are examined only upon a complaint to the officials' respective institution.⁸⁸ Law No. 3628 neither defines a regular monitoring procedure nor authorizes an institution with this special task.⁸⁹

SCORE **25**

Integrity mechanisms - Practice

To what extent is the integrity of members of law enforcement agencies ensured in practice?

The field study by Cerrah *et al.* shows that gifts are perceived to be harmless and difficult to control or check and are seen as a reflection of Turkish culture and therefore more acceptable in routine work.⁹⁰

Since police officers in superior positions accept the situation as unavoidable, the internal disciplinary system does not work properly in cases of gift receiving,⁹¹ and because of professional solidarity, which is high among the police, disciplinary mechanisms are neither independent nor effective.⁹²

According to the 2013 TI Global Corruption Barometer, 38 percent of interviewees believed that the police were either corrupt or extremely corrupt. Of the interviewees, 23 percent claimed to have bribed a police officer within the past 12 months. This bribe ratio is the second highest in Turkey following bribery in education.⁹³

According to detailed field research conducted on 571 traffic police officers; education, internal discipline mechanisms and cultural factors seem to be important contributors to this situation.⁹⁴ More than a half (58.3 percent) of the traffic police officers stated that they were not controlled by their supervisor when taking gifts.⁹⁵ This number is high for a system whose disciplinary mechanism is constructed internally. The results revealed that the complaints mechanism does not work and most police officers (70.6 percent) declared that they are not tested on a regular basis on their ethical behavior if there is no complaint from the public.⁹⁶

In 2001 Police Schools were upgraded to provide a two-year course and a police ethics course was included in the curriculum. Ethics training also became obligatory in in-service training activities. Since 2005, education on ethics has been a compulsory course in the Security Sciences Faculty of the Turkish National Police Academy and Police Vocational Higher Education Schools.

The research on traffic police officers revealed that almost a half of the officers had graduated before 2001,⁹⁷ and only a half declared that they had received training on the gift policy.⁹⁸ Also, the number of training activities attended declined after the officers started the profession. Indeed, 62.5 percent of officers stated that they had not had any in-house training.⁹⁹

Corruption investigation

To what extent do law enforcement agencies detect and investigate corruption cases in the country?

From the perspective of the police, the legal powers they have to investigate corruption are adequate. Although a new Law No. 6526, passed in March 2014, limited the authority of the police,¹⁰⁰ the police still have significant authority.

The Department of Anti-Smuggling and Organized Crime (KOM), which is administratively affiliated with the TNP, is in charge of narcotic crimes, financial crimes, smuggling and organized crime. The renewal of the department's building, equipment and technology has helped to make the KOM more effective.¹⁰¹ Law No. 5271 on Criminal Procedure¹⁰² sets extensive jurisdiction power with regard to determination, tapping and recording of communications.¹⁰³ The KOM carried out 584 operations during 2013 and initiated legal action against 7,902 suspects on corruption grounds.¹⁰⁴

The 17 and 25 December corruption investigations invoked uproar in the media and the public.¹⁰⁵ After the outbreak, thousands of public offices were reshuffled and there were many dismissals as well as demotions.¹⁰⁶ The Financial Department Office was almost totally dismissed, suspended or re-appointed after the investigation.¹⁰⁷ This recent example is an indicator that the power of the TNP in corruption investigations can be eliminated by political influence.

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7

ELECTORAL MANAGEMENT BODY

OVERVIEW

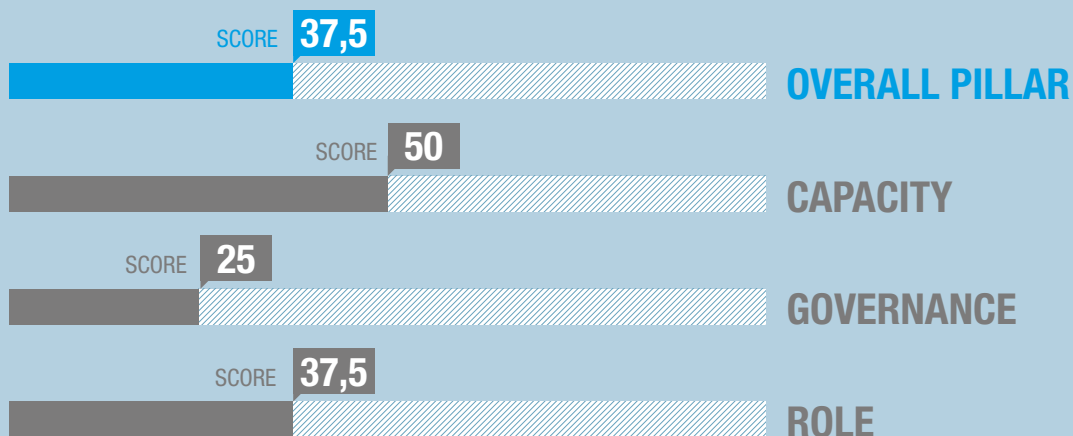
The Supreme Board of Elections (SBE) is one of the most important integrity pillars, due to its key role in administering and controlling election processes. The assessment finds that there are no provisions in place to ensure the transparency and accountability of the SBE and this deficiency in the legal framework is the key concern with regards to its governance.

Despite its financial dependence on Ministry of Justice (MoJ), the SBE does have administrative autonomy. However, observers such as the OSCE/ODIHR, Equal Rights Watch (ESHR), and the “Sandık Başındayız” initiative have criticized the performance of the SBE in election processes and there has been no significant progress in terms of free and fair elections.

More specifically the ambiguities in Law No. 298 on Basic Provisions on Elections and Voter Registers, concerning the implementation of presidential elections and gaps on key issues such as regulations on recounts and invalidation of results were strongly underlined by the OSCE/ODIHR election observation report.¹ The OSCE also cited criticisms on President Recep Tayyip Erdoğan’s allegedly unconstitutional involvement in campaigning for the Justice and Development Party (AKP) and on the media’s biased coverage.²

In the March 2014 local elections, the SBE came under fire for its performance. Some critics claimed that hundreds of attempts to cheat at the ballot box had occurred in many districts, particularly in the capital Ankara.³ Given limited domestic capacity to ensure transparency, and the concerns regarding the potential for vote rigging, several civil initiatives (such as *Oy ve Ötesi* - “Vote and beyond”) assigned volunteers to monitor the counting and logging of votes in the elections. In the 7 June elections, Vote and Beyond was present at voting centers in 46 out of 81 provinces and 174 districts with 56,000 volunteers, verifying some 130,000 ballot box protocols.⁴ In the November elections the organization was present in 50,000 to 60,000 of the 175,000 ballot boxes and reported that it indeed identified election discrepancies during its tour of election facilities. However, they found that their total differed from the government’s by only 10,000 votes and described the discrepancies as “minor incompliances.”⁵

The table below presents the indicator scores that summarize the assessment of the electoral management body in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	50
	Independence	75	25
Governance	Transparency	50	25
	Accountability	0	0
	Integrity mechanisms	50	25
Role	Campaign regulation	25	
	Election administration	50	

STRUCTURE AND ORGANISATION

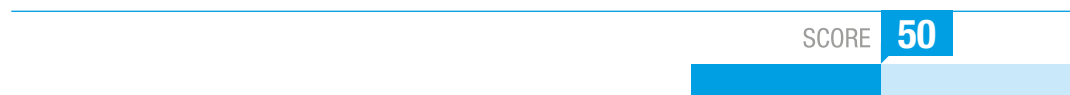
The SBE is a permanent body tasked with overall authority and responsibility for the conduct of elections. It is the final decision-making authority with regard to issues on elections. However, it is not regarded among the supreme courts in the Constitution.

Its board consists of 11 members; senior judges elected by the high courts. The institution also has permanent boards in provinces and districts. Provincial Electoral Boards (PEB) have three members, plus substitutes, appointed from judges in the province, based on seniority. The District Electoral Boards (DEB) are chaired by the most senior judge in the district. They also have two civil servants and four political party representatives. The Ballot Box Committees (BBCs) are constituted for each election and consist of seven members: five members are nominated from political parties, one member is nominated from the respective local council, plus substitutes, and the BBC chairperson is chosen by lot from among nominations of political parties. However, in 2014 local elections, this procedure was not followed in several DEBs (e.g. in Bartın, Beyoğlu, Cihanbeyli, Kırşehir, Kırklareli, Pertek, Tunceli, and Zonguldak), which applied various selection methods including appointing chairpersons directly.⁶

Under the control of the SBE, 81 PEBs, 1,067 DEBs and 174,220 BBCs were functional in the 2014 presidential elections. The SBE maintains a permanent central voter register linked to the civil and address registry operated by the Ministry of Interior. Overall, the voter registration system is well developed. The total number of eligible voters was 53,741,838 in country and 2,866,940 out-of-country.⁷

ASSESSMENT

CAPACITY



Resources - Practice

To what extent does the electoral management body have adequate resources to achieve its goals in practice?

The budget of the SBE is sufficient for it to carry out its duties in electoral periods and for the running of the institution. However, there are deficiencies in human resources to manage election processes and ensure efficiency.

The funding allocated to SBE is from the Ministry of Justice's (MoJ) budget. The SBE prepares its estimated budget and presents it to the MoJ and the final decision is made by parliament. The annual expenditure of the SBE was 155 million TL (approximately 50 million euros) in 2013⁸ and 90 million TL (approximately 30 million euros) in 2012⁹. In election years the expenditure of the SBE increases.

In 2010 a referendum was organized and the budget of the SBE was 163 million TL (approximately 55 million euros)¹⁰. The local elections were held in 2011, therefore the expenditures of the SBE

climbed to 211 million TL¹¹ (approximately 70 million euros). Interviewees¹² agree that SBE does not have any financial constraints on its performance. However, the OSCE/ODIHR argued in 2014 that the SBE does not have the resources necessary to undertake a comprehensive audit, although it is legally required to conduct an inspection of campaign finance reports and to determine irregularities.¹³

The SBE is an 11-member administrative body. Its members are senior judges who are elected by and from the Council of State and the Court of Cassation for a six-year term.¹⁴ Also, non-voting representatives of political parties that have representation in parliament have the right to participate in the meetings and express their opinions. Election boards in provinces and districts are permanent organizations with members appointed for two years.

The DEBs conducts training for chairpersons and one additional member of the BBCs in a generally organized manner. Training materials are prepared by the SBE and consist of a video featuring the procedures, manuals and sample forms. Political parties organize training for their BBC members.¹⁵

There have been several¹⁶ claims that despite its 64-year history, the institutional structure of the SBE is weak. As a result of its dependence on the MoJ and the high turnover of SBE members, the SBE does not retain a strong institutional memory. Although the SBE has a long institutional history its decisions and policies are still not consistent.¹⁷

SCORE **75**

Independence - Law

To what extent is the electoral management body independent by law?

The SBE was established by Law No. 5545 on the Elections of Members of the Parliament in 1950. Law No. 298 on General Rules of Elections,¹⁸ which was enacted in 1961, includes the same articles on the SBE as Law No. 5545 and Article 79 of the Constitution defines the duties and organization of SBE.¹⁹

The members of the SBE are senior judges who are elected by the General Board of the High Court of Cassation and the General Board of the Council of State from amongst their own members. After the members are elected an absolute majority in a secret vote selects one as the director. Judges are required to be impartial and fair by definition.

The organizational structure of the SBE allows a clear division of powers between policy-makers and its administration. The Board, the supervisory policy-making body of the SBE, has no administrative duties. The General Directorate of Administrative and Financial Affairs of the SBE, which was established by an amendment in 1987, carry out all operation and administrative duties.²⁰ The head and branch directors of the General Directorate are appointed through Board decisions and the rest of the staff are appointed by the director of the SBE. However, there is no specific law to determine the human resource policy of the SBE, and it applies the same processes of appointment and dismissal as the MoJ.

The dependence of the SBE on the MoJ is a concern. Its falls within the budget of MoJ and all members of the Board are judges who work under the MoJ. Hence, institutional alterations and financial limitations of the MoJ affect the decisions and operations of the SBE.

Independence - Practice

To what extent does the electoral management body function independently practice?

The composition and neutrality of the SBE depends on the dynamics in the political arena. Public confidence in the SBE has deteriorated over recent elections and reached a critical level during the local elections held on 30 March 2014.²¹

Ahead of these elections, the SBE largely remained ineffective in using its authority over the Radio and Television Supreme Council (RTÜK), which should give fair coverage to all parties according to the votes they received in the most recent election.²² The opposition parties publicly voiced their dissatisfaction over the RTÜK's lack of transparency and inaction over the extensive coverage given by some national broadcasters in favor of the AKP and the president.

Moreover, there were serious concerns about the transparency and accountability of the vote counting process. For example, in Ankara, where the votes had been swaying between the AKP candidate Melih Gökçek and the Republican People's Party (CHP)'s Mansur Yavaş, the vote-count pages stopped refreshing. At the time, a sizeable portion of votes were left to be counted in two neighborhoods that were CHP strongholds, and Gökçek was leading by only 3,000 votes. For almost an hour, there was no incoming data.²³ In the meantime, citizens reported that Interior Minister Efkan Ala, arrived at a polling station with riot police, while Melih Gökçek went to the building that houses the SBE. When the data page was finally refreshed, people saw that all the results were uploaded at once, and Gökçek was leading by 20,000 votes.²⁴ This raised significant concerns of undue external inference on the vote counting process.²⁵ Protests were organized in front of the SBE building following the local elections. The main argument of the protesters was that the election and vote-counting processes could not be trusted.²⁶

Meanwhile, in its report on the 2014 presidential elections, the OSCE/OIDHR noted "the SBE suffered from a lack of trust due to concerns over its level of institutional independence".²⁷ It further underlined the recently adopted reforms: amendments, which saw the judiciary under the increased control of the government and the MoJ. The increased control of the MoJ undermines the perception of independence and impartiality of the members of the SBE and PEBs and heads of the DEBs.²⁸

One recent example regarding the independence in decision-making process of the SBE is the refusal of requests to transfer the ballot boxes away from the conflict zones in the eastern regions to ensure the safety of the parliamentary elections held in November 2015. The motion to move the ballot boxes was regarded to be open to election fraud and against the constitution.²⁹

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the electoral management body?

The final and leading decisions of the SBE are published in the Official Gazette. Regulation of electoral rolls, Election Day procedures, and publication of election results are transparent thanks to the legal framework.³⁰ That said, the decision-making processes are not regulated through open and transparent means.

There are no legal requirements to ensure the transparency of the SBE. Members of the Board are judges, and as such, according to the law they cannot be forced to explain the basis of their decisions and the details of decision-making processes.³¹ Its written decisions do not provide a sufficient legal basis.

The SBE is required to present financial reports to the MoJ because the budget of the SBE is a part of its budget, but they are not accessible to the public. After several election observation missions, the recent OSCE/ODIHR report underlined the lack of transparency of the SBE. The 2014 report mentioned that deficiencies in existing frameworks concerning full disclosure, comprehensive reporting, and sanctions, limit the transparency and accountability of the process.³²

There is also no established mechanism for accrediting independent citizen and international observers or any SBE requirement for the BBCs to record the number and affiliation of partisan observers who visit polling stations. This undermines the transparency of election observation efforts.³³ Moreover, the legal framework does not establish a transparent and effective monitoring and reporting procedure between the RTÜK (Radio and Television Supreme Council), as the monitoring body, and the SBE, the sanctioning body.

One of the key recommendations of the observers is that the legal framework should ensure that all regulations and decisions of the electoral boards be made publicly available. This should include publishing candidate campaign finance reports to allow for public scrutiny of campaign funding. They also recommend that observers and the media should be allowed to participate in all electoral board meetings.³⁴

Transparency - Practice

To what extent are reports and decisions of the electoral management body made public in practice?

The SBE's website provides a variety of information including events and election data. Ballot box level data on the latest presidential elections is also available on the SBE website. The SBE also posts all circulars presenting organizing details of election processes on its website. A detailed schedule of operations is published in the Official Gazette and posted on the website in advance of elections.

The schedule of the presidential elections in 2014 was detailed enough and published two months before the Election Day.³⁵ Although some of the decisions (regulations, administrative decisions, including the determination of election results, and decisions on complaints) can be found on the website, there is no information on how the institution selects the decisions to publish and most decisions and decision-making processes remain unknown. The 2014 OSCE/ODIHR report underlined that none of the media-related complaints or related SBE decisions were made public. In addition, the RTÜK monitoring results were not published.³⁶

The SBE does not reply to most formal information requests.³⁷ For example, Equal Rights Watch asked for detailed information about voters by using the right to access information on 25 July 2014.³⁸ The requested information was about the numbers of disabled and elderly voters, illiterate voters, voters in prison and women in shelters, and the gender distribution of voters. The SBE turned down the application on 5 August 2014 by referring the Article 7 of Law No. 4982 on Access to Information.³⁹ The article allows institutions to reject appeals that require additional or special work, research, examination or analysis. Equal Rights Watch, however, claimed that the information requested would not require any special research or work and that keeping these records is one of the SBE's legal duties.⁴⁰

A delegate of the main opposition party (CHP) on the Board of SBE, Attorney M. Hadimi Yakupoğlu, argued the political party delegates have a vital role in enhancing the transparency of the electoral process.⁴¹ He added that he has disseminated most of the critical decisions and decision-making processes to the public through his connections in the media. Yet, it should be noted that the dissemination of important information should not be at the discretion of individuals.

The reporting mechanism at the level of electoral boards to the SBE is not regulated and in practice communications were insufficient for the presidential election, as mentioned in the OSCE/ODIHR report.⁴² In particular, the BBCs, DEBs and PEBs were not required to inform the SBE about the number and subject of complaints, enquiries from voters or political parties at the local level, or the participation of voters on the Election Day. These shortcomings considerably reduced the oversight of the SBE. Moreover, election observation efforts caused procedural problems on the Election Day since there is no established mechanism for accrediting citizen and international observers.⁴³

Accountability - Law

To what extent are there provisions in place to ensure that the electoral management body has to report and be answerable for its actions?

There are no provisions to ensure the accountability of Turkey's electoral management body. The decisions of the SBE are not subject to judicial review. Article 79 of the Constitution includes following statement: "No appeal shall be made to any authority against the decisions of the Supreme Board of Election". There is the sole exception to judicial review defined by Article 125 of the Constitution, which makes judicial review available against all actions and acts of the administration. And, non-final decisions of lower level electoral boards can be appealed to higher-level boards, up to the SBE. Political parties, voters, party observers, and candidates can lodge complaints, but not civil society organizations.⁴⁴

The law does not provide a legal basis for campaign-related complaints and appeals processes, reasonable deadlines for submission and adjudication of complaints, a requirement for the publication of complaints and decisions, or public proceedings for adjudication of complaints.⁴⁵

The SBE is not required to file any reports except the SBE budget reports to the MoJ. However, even for such reports there is no clear provision on the details of budgetary reporting and auditing of expenditures.

Accountability - Practice

To what extent does the electoral management body have to report and be answerable for its actions in practice?

The SBE does not have to file any reports, therefore information on its decision-making processes, budgets, activities and resources is not available. As stated in the previous section, SBE decisions are also not subject to appeals. Hence, there is no mechanism to question SBE members. The institutional structure of the SBE is a part of the judicial tradition and SBE members, as senior judges, prefer not to be questioned by any institution or civil society.⁴⁶ The OSCE/ODIHR report recommends that the law establish a right for civil society organizations to lodge complaints to increase the accountability of the election dispute process.⁴⁷

Voters, political parties, party observers and candidates can lodge complaints. The OSCE/EDIHR reported that there were 35 complaints before the presidential election in 2014. Most of these complaints were related to the Prime Minister's eligibility as a candidate, resignation from his public post and the misuse of administrative resources. However, all complaints were dismissed.⁴⁸ Moreover, the OSCE/EDIHR observers highlighted that lower level boards do not have to report any information on complaints to the SBE.⁴⁹ This structure weakens the general oversight of the complaints process.

TI Turkey actively pursued election violations before the general election in June 2015 and contacted congressmen and the SBE. TI Turkey categorized election violations under three main categories: the use of public resources to run political campaigns; buying votes and giving gifts for the purpose of propaganda; and the behavior of state officials, ministers, prime minister and congressmen contrary to the election period prohibitions. The violation of election safety standards and the violation of equal and unbiased competition conditions were also two other categories alongside the three main groupings.

During the campaign period, TI Turkey identified 26 violations throughout the country and applied to the SBE for information through both electronic and written petitions. There were 12 violations in regards to the behavior of state officials, ministers, the prime minister and congressmen during the process, 10 violations regarding the use of public resources for political campaigning, five violations concerning safety of elections, four violations on buying votes and giving gifts and two violations on impartiality and equality of electoral competition.

The feedback provided by the SBE for these applications was not satisfactory. The SBE has responded to various applications by either stating its position as not being an advisory entity or by referring TI Turkey, through its website, to Law No.236 in which the methods and the bases for the campaign and propaganda period of the election are explained. The applications made by TI Turkey, along with the responses received by the SBE are available for public access on the TI Turkey website.⁵⁰

SCORE 50

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of the electoral management body?

Although there is no specific Code of Conduct for electoral officials, there are a number of provisions on the integrity of SBE members, staff and the ballot box committees.

The composition of the SBE contributes to the integrity of SBE in law. All interviewees⁵¹ agreed that SBE members are assumed to be fair and committed to maintaining the integrity of all electoral processes, because of their profession as judges. Yet, the SBE may face different integrity challenges to other institutions and so an institutional code of conduct is vital to ensure enforcement of integrity provisions.

All staff of the SBE are civil servants who must sign a Code of Conduct after they start their job under Article 6 of Law No. 657 on Civil Servants,⁵² and Article 7 ensures the neutrality and impartiality of the staff. In this regard, civil servants cannot be members of political parties, cannot act to favor or to disadvantage any political party, individual or group; cannot discriminate on the basis of language, race, gender, political thought, philosophical belief, religion or sect; and cannot express views and act politically and ideologically in any form.

Civil servants have to protect the interests of the state in any circumstances. Moreover, the law prohibits civil servants from accepting gifts in connection with their duties. Members of the ballot box committee are required to swear an oath to be fair and impartial on the morning of election days.⁵³

Integrity mechanisms - Practice

To what extent is the integrity of the electoral management body ensured in practice?

The Code of Conduct of civil servants and the oath of the ballot box committee are perceived as mere formalities, so these provisions do not effectively ensure integrity of the election processes.⁵⁴ An ethical council would be more effective for the SBE and its staff than the oaths in the law.

After the Local Elections in March 2014 in Kağıthane, the district head of the main opposition party (CHP) opposed the election results with the claim that the votes had been miscalculated in favor of ruling party (AKP). The heads of 29 various ballot box committees in the Kağıthane District are still on trial,⁵⁵ and one of the heads in the same district has been sentenced to four years and two months' imprisonment.⁵⁶ However, there are no provisions preventing these suspects from being members of ballot box committees in future elections.

ROLE

Campaign regulation

Does the electoral management body effectively regulate candidate and political party finance?

The SBE is not authorized to regulate and audit campaign finance in local and parliamentary elections in line with the Law No. 298 (articles 55/B, 57, and 63-65). The Constitutional Court audits party political finances. With the new Law No. 6271 on Presidential Elections that was enacted in 2012,⁵⁷ the SBE is authorized to control the campaign processes of the presidential elections. Thus, the only basis on which to evaluate the performance of the SBE on campaign finance oversight is the presidential election held in August 2014.

The new rule of generating the electoral budget only through individual donations and the candidate's own wealth became compulsory in the presidential election. The upper limit of these donations was 9,082 TL (3,000 euros) according to the SBE. While donations below 1,000 TL (330 euros) could be collected in return for a receipt, amounts above this limit could only be transferred to bank accounts opened by the candidates.⁵⁸

The SBE examined the donor lists, the donation amounts and other related campaign financing details. The process was subject to many controversial discussions. Various claims were made and discussed widely through parliamentary questions and the national press, which mainly set the agenda of public opinion during the elections of 2014. These included allegations that business people donated on behalf of their workers, the municipalities financed some political rallies, and that some workers were forced to donate to particular campaigns.⁵⁹

The financial evaluation conducted by the SBE was expected to dispel these doubts. However, the report published on its website on 4 December 2014 did not include any explanation of these problems.⁶⁰ Another essential deficiency of the audit report was the lack of information on expenditure details and donors. Optimistic expectations on the transparency of campaign regulation were diminished after the SBE's audit report was published.⁶¹

The RTÜK reported breaches of media outlets during the election campaign processes. After the presidential elections, 203 cases were reported to the SBE and many pro-government TV channels, including ATV, NTV, and state broadcaster Turkish Radio and Television Corporation (TRT), were sanctioned with removal of related program from air for biased election coverage.⁶²

Decisions of the SBE must be implemented and there is no way to reject its sanctions. However, Sever argues that the sanctions of the SBE on broadcasters were not a deterrent and insufficient to provide unbiased election coverage.⁶³ The OSCE/ODIHR media monitoring results showed that three out of the five TV stations that were monitored, including the public broadcaster TRT1, displayed a significant bias in favor of the prime minister. The report also underlined the legal gap of a clear definition of the impartiality requirement for broadcasters.⁶⁴

SCORE **50**

Election administration

Does the electoral management body ensure the integrity of the electoral process?

The administrative work of the SBE during the latest parliamentary, local and presidential elections was enough to ensure free elections for a certain group of voters who are literate, can read Turkish and have no obstacle to reaching a ballot box. The SBE prepares the voters list by using the Address Based Population Registration System (ADNKS) data, which is collected by Turkish Statistical Institute. The data is based on matching the unique identity numbers of individuals with residence addresses. Voters can check their status both the website and at the office of every neighborhood's *muhtar* (the head of a village). The SBE prepares brochures and public service broadcasting to inform voters on the details of the elections. The SBE also prints and distributes ballots, which include a surplus. Yet, there are no regulations defining clearly the number of ballots to be printed and distributed.⁶⁵

Before the 2014 presidential elections the SBE prepared televised spots on voter information for in-country and out-of-country voters. The information regarding voting procedures and the key deadlines for out-of-country voters was available on the SBE website. The SBE introduced special arrangements for voters with disabilities and those over 75 years of age; these voters were included in voter lists of polling stations designed to be fully accessible to them.⁶⁶ However, these services were not adequate to inform all voters, particularly the disabled, illiterate or those who do not know Turkish.

An independent expert⁶⁷ underlined that SBE made no attempt to strengthen the voting system to ensure fair elections. One of the main criticisms was the inadequate voting rights of seasonal agricultural workers, who are not able to vote in elections held in the summer.⁶⁸ There is no readily available data of the number of these laborers because they mostly work informally, but the estimated number is more than 1.5 million, corresponding to 3 per cent of voters.⁶⁹

The observation reports of Equal Rights Watch on the presidential and local elections in 2014 and the parliamentary elections in 2011 highlighted the lack of support and infrastructure provided to disabled people to enable them to vote. In addition, homeless people who live on the streets and women who live in women's shelters are not recorded by Address Based Population Registration System (ADNKS), so they are not on the voters list.⁷⁰

The OSCE/ODIHR also mentioned that the SBE did not post preliminary results on its website; polling station results protocols were accessible on webpages restricted to eligible political parties in the 2014 presidential elections. Although 26 parties were eligible to access these results, only six applied to the SBE for access prior to the Election Day as required.⁷¹

The law does not provide criteria for conducting re-counts on the validity of results. In order to detect problems in voting mechanisms, Equal Rights Watch applied to the SBE to allow citizen observers. This application was repeatedly rejected for the latest nationwide elections.⁷² Although the SBE justified its decision based on the law, Taştan states that there is no provision to prevent independent observers. He added that there is a gap in the legal framework and the SBE has used this gap to prohibit observers.⁷³ Civil society initiatives such as "Oy ve Ötesi" (Vote and Beyond) and "Sandık Başındayız" (We are at the Poll) managed to distribute observer cards from all interested political parties to their volunteers.⁷⁴

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8

OMBUDSMAN'S OFFICE

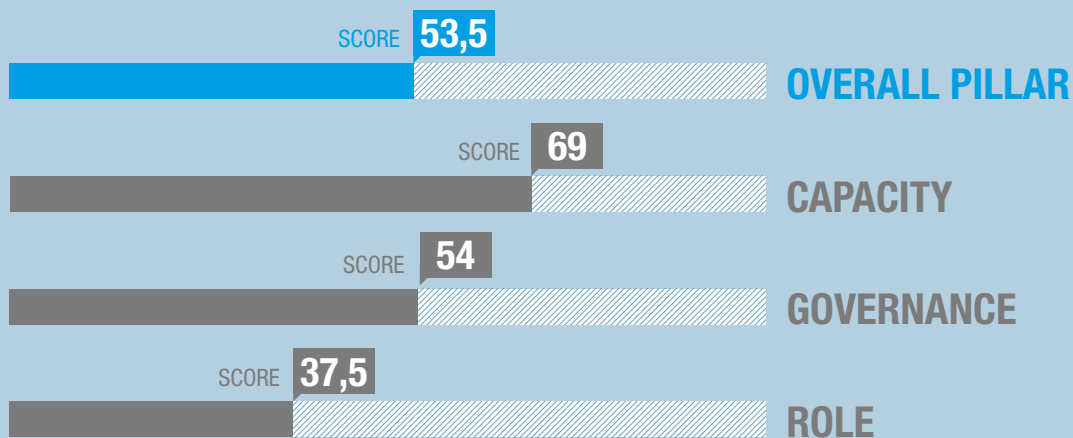
OVERVIEW

The Ombudsman's Office is the youngest institution in Turkey's national integrity system. The current ombudsmen institutions were established very recently, and are based on the pioneering practices in Scandinavian countries. Similarly, the Ombudsman's Office in Turkey depends both on these experiences, and the local auditing institutions of the past.

The Ombudsman's Office has received complaints only since March 2013, but it is expected to contribute greatly to the integrity of the country. The legislative framework regulating its organizational structure, activities and role provides an enabling environment for it to carry out its functions unhindered. It has sufficient capacity in terms of financial and human resources, and is equipped with the fundamental capacity to solve disputes between individuals and the state.

However, improvements are needed in order to ensure the integrity and effectiveness of the Ombudsman's Office itself. Independence and transparency in practice have been major concerns with the election of ombudsmen from the beginning. It should be noted that the Ombudsman's Office is not only accountable to parliament, but there is potential for it to be interfered with or empowered by the parliament depending on the political nature and structure of the legislative body. Political will is needed to prevent such interference and empower the Ombudsman's Office.

The table below presents the indicator scores that summarize the assessment of the Ombudsman's Office in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	100
	Independence	50	25
Governance	Transparency	75	50
	Accountability	50	50
	Integrity mechanisms	50	50
Role	Investigation	50	
	Promoting good practice	50	

STRUCTURE AND ORGANISATION

Even though the foundations for the Ombudsman's Office were laid under the Law No. 5548 on 28 September 2006, the Supreme Court abolished the law on 25 December 2008 due to the justification that the institution lacked a constitutional base.¹ Later, The Grand National Assembly (TBMM) adopted the legislation on the Ombudsman's Office on 22 April 2010 with 334 voting 'yes', 70 'no' and two abstentions. The establishment of the Ombudsman's Office was confirmed by a referendum on 12 September 2010, accompanying several constitutional amendments.² Law No. 6328 on the Ombudsman Institution in 2012³ established the Ombudsman's Office as an institution within the structure of the TBMM Presidency. The first chief ombudsman took the oath in December 2012.

There are five deputy ombudsmen and one chief ombudsman. Each ombudsman has a different area of expertise, for example: Zekeriya Arslan deals with complaints related to the environment, urbanization, energy, industry, customs, local governance and property rights; and Mehmet Elkatmış deals with issues related to human rights, justice, security, refugee policy and regulations on civil servants.⁴

Contrary to its European counterparts, the Ombudsman's Office does not act as a national preventive mechanism. The Council of Ministers decided with a Decree that the National Human Rights Institution, which was established by Law No. 6332 in 2012, should take on this role and perform the duties and exercise its authority as anticipated in the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵

The Ombudsman's Office is an independent complaints mechanism for the delivery of public services and has the power to analyze, research and make recommendations about whether public authorities' actions, attitudes and behaviors are in conformity with the law and equity. Individuals and legal entities, including foreign nationals, can submit complaints to the Ombudsman's Office.

The Ombudsman's Office began to receive complaints in March 2013. Until May 2014, the Office had received some 10,000 complaints, which were distributed between the five deputy ombudsmen.⁶ The total number of complaints received by the Ombudsman Office has been 5,639 in 2014. From 2013, 1,528 cases were passed to 2014. In 2014, it took decisions on 89 percent of the 7,167 complaints received.⁷ The Office issued 56 recommendations and 60 complaints were finalized through an arbitration procedure. Due to the advisory quality of the Office, it only succeeded in making the administration take action on five of the issued recommendations.⁸

ASSESSMENT

CAPACITY

SCORE **100**

Resources - Practice

To what extent does the Ombudsman's Office or its equivalent have adequate resources to achieve its goals in practice?

According to Law No. 6328 the budget comes from the parliamentary budget and other incomes.⁹ For 2013, its first year, the budget was allocated by the Ministry of Finance and 2013 totaled 17,575,000 TL (approximately 5.6 million euro), with expenditures of 14,129.183 TL.¹⁰ The budget for 2015 is 15,368,000 TL (approximately 5.1 million euro). According to a specialist, the chief inspector of the Prime Ministry Inspection Board, the Ombudsman's Office has adequate financial and human resources to properly function.¹¹ Moreover, in cases where the ombudsmen need technical assistance, they have the right to access relevant technical expertise externally by assigning expert witnesses.¹²

The ombudsmen have the same social rights as other public officials in comparable positions. While the chief ombudsman has equal social rights and the same salary as the under-secretary of the Prime Minister's Office, the deputy ombudsmen have equal rights with the deputy secretaries of the Prime Minister's Office.

An internal expert, interviewed during our visit to the Ombudsman's Office, stated that its human resource capacity has expanded through training and study visits, aiming to enhance the skills and expertise of its personnel. As reflected in its annual activity reports, the Ombudsman's Office cooperates with relevant public authorities such as law enforcement bodies in these activities. Moreover, the Office has official agreements with some universities for graduate studies and each year sends two experts to study abroad.

The evaluation period of complaints is limited to six months; a period sufficient for the Ombudsman's Office to examine cases, ask for information from relevant parties and review the findings. In 2014, 50 new assistant experts were recruited to the Office in order to shorten the evaluation period further.

SCORE

50

Independence - Law

To what extent is the Ombudsman's Office independent by law?

With the 2010 constitutional referendum, Article 74 of the Constitution on the use of the right to petition was amended and the right to apply to the Ombudsman's Office was added. Following the constitutional amendment, Law No. 6328 established the Ombudsman's Office in June 2012.

The independence of the Ombudsman's Office is enshrined in Article 12 of Law No. 6328. The legislative framework regarding its independence is in line with the European standards to some extent. Yet, there are serious concerns with regard to the appointment procedure for the chief ombudsman and deputy ombudsmen.

According to the Law, the chief ombudsman is elected with the two-thirds majority of the total number of TBMM members through a secret ballot system. If this majority cannot be obtained in the first voting round, then a two-thirds majority is sought in a second round vote. If this fails again, a third vote is held in which the candidate securing an absolute majority is elected. If no candidate achieves an absolute majority in the third vote, a fourth round is held between the top two candidates.¹³

This voting system appears to be comprehensive and in line with international standards. However, in Turkey, where political partisanship and polarization are at serious levels and pluralism and

fair representation in the parliament are under threat due to the high election threshold, even a system of this kind may not result in a just outcome. As discussed under the legislature pillar, the election threshold of 10 percent for the TBMM allows the political party that receives the majority of the votes to gain dominant power, leaving those that fail to receive 10 percent of the vote without representation. Therefore, the political party that holds the majority can be quite influential in the election of the ombudsmen.

The Council of Europe also criticized the appointment procedure for the five deputy ombudsmen in a 2013 resolution and mentioned the political character of the procedure, since the Joint Committee that is composed of members of the Petitions Committee and the Human Rights Inquiry Committee decide on the candidates to be voted on by the parliament according to Article 11 of Law No. 6328. The Council urged the parliament to review the criteria for the selection and election of the chief ombudsman and deputy ombudsmen to ensure the credibility and effectiveness of this newly established institution and its funding.¹⁴

Law No. 6328 and the related By-Law on Procedures and Principles concerning the Implementation of the Law identify the required criteria for the election of the chief ombudsman and deputy ombudsmen, and limit their terms of office to four years, with no option of reappointment. A deputy ombudsman and a chief ombudsman can only perform these roles for one more term.

Article 15 of Law No. 6328 defines the conditions that must be met for the removal of ombudsmen from their positions. Accordingly, if the chief ombudsman or deputy ombudsmen are found by the Commission¹⁵ not to have met the criteria set out in Article 10 (criteria on age, experience, compliance etc.) or if they happen not to meet them following their election, the termination of the tenure of the chief ombudsman and deputy ombudsmen is decided by the TBMM without deliberation. Since the conditions are clear, there is limited opportunity for the ombudsmen to be removed from their positions due to political interference.

The Law also identifies the conditions of appointment of the Ombudsman's Office staff. The secretary-general is appointed by the chief ombudsman from among those who have graduated from a four-year university program, have worked in the public sector for at least 10 years and who meet the criteria set out in Article 48 of Law No. 657 on Civil Servants. The chief ombudsman also appoints the other staff members. The Law also lists the general requirements for expert and assistant expert positions and these conditions contribute to the independence of the institution and prevent interference from the executive. Article 30 of Law No. 6328 prohibits all staff from being members of a political party.

SCORE **25**

Independence - Practice

To what extent is the Ombudsman's Office independent in practice?

Beginning with the nomination period for the chief ombudsman, independence in practice is a major concern. There were several protests against the nomination of the current chief ombudsman, Mehmet Nihat Ömeroğlu, and these protests were also brought to the parliament during the election process.

The main opposition party, Republican People's Party (CHP), did not participate in voting and its MPs carried banners criticizing the process in the TBMM. According to the statements by CHP,

only 15 of the 733 candidates were sent to the Upper Parliamentary Commission. The Commission selected five ombudsmen out of the 15 candidates. During this process the government rejected all the proposals given by the opposition parties.¹⁶ Since the party in power has a majority in the joint committee and since two-thirds majority is not required at that stage, nominations by the opposition parties were not taken into consideration during the appointment process.

According to the law, an absolute majority is not required for selecting the chief ombudsman and deputy ombudsmen. This led to the perception that they were appointed solely according to the will of the ruling party, and so this institution became subject to debate from the very beginning.

Indeed, reference to other countries with respected ombudsman institutions demonstrate the weaknesses in the office. For instance, the selection of the Spanish ombudsman (El Defensor Del Pueblo) requires a three-fifths majority of the bicameral parliament. According to Article 148 (Paragraph 2) of the Austrian Constitution, three ombudsmen, each of whom are nominated by the three biggest parliamentary parties, are appointed to the Board of Ombudsman. Furthermore, Paragraph 3 states that the speaker position of the Board of Ombudsmen rotates every year. In Sweden, the ombudsman is selected by a council consisting of equal numbers of members from each houses of the bicameral parliament.¹⁷

There were also criticisms against the chief ombudsman and ombudsmen regarding their former political relations with the ruling party, AKP, and their roles in major human rights cases. Human Rights Watch criticized the first chief ombudsman for a history of failing to respect human rights standards, and stated that his appointment risked the effectiveness of the new Ombudsman's Office.¹⁸

Indeed, Ömeroğlu was among the judges in the Court of Cassation who charged Turkish-Armenian journalist Hrant Dink in 2006 with "insulting Turkishness", which is forbidden under Article 301 of the Turkish Penal Code. Ombudsman Muhittin Mıhçak was also one of the judges in the case. Furthermore, Ombudsman Abdullah Cengiz Makas was among those who prepared the AKP's Party Internal Regulations and was a former candidate for an MP position in the AKP; Ombudsman Serpil Çakın was a member of the Steering Committee of the AKP's Women Working Group; Ombudsman Mehmet Elkatmış was one of the founders and a former AKP MP; and Ombudsman Zekeriya Aslan was a former AKP MP.¹⁹

Since the beginning of their term of office, most press statements by the ombudsmen and chief ombudsman Ömeroğlu have been targets of allegations of political connections. A recent allegation against Ömeroğlu, accused him of threatening former Istanbul Chief Prosecutor Zekeriya Öz on behalf of the prime minister over the December 2013 corruption investigations. Following the allegations concerning Ömeroğlu, Parliamentary Speaker Cemil Çiçek stated that he had launched an investigation into Turkey's first chief ombudsman and highlighted that the chief ombudsman demanded to be investigated as well (to prove his innocence).²⁰

There have also been criticisms of the ombudsmen's work and the findings of their reports.²¹ For example, in the decision on the Gezi incidents, where it was found that disproportionate police force had led to human rights violations, rather than highlighting the responsibility of the law enforcement agencies for injury and death, the report focused on the need to harmonize local laws with international and European norms on human rights.²² Part of the reason for this obvious omission in holding the law enforcement agencies accountable was that when the report was prepared there were on-going criminal cases under the jurisdiction of the courts. However, the bias inherent in the report is demonstrated by the report's sensationalized cover photograph—depicting a man throwing a Molotov cocktail. The report is available on the Ombudsman's Office website.²³

GOVERNANCE

SCORE **75**

Transparency - Law

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman's Office?

According to Article 17 of Law No. 6328, complaints are kept confidential upon the request of complainants, but example cases are available on the website. The decisions of the Ombudsman's Office should include their rationale and the reasons, according to the By-Law on Procedures and Principles concerning the implementation of the law.

The Ombudsman's Office prepares an annual report on its activities and provides recommendations at the end of every calendar year. This report is submitted to the Parliamentary Commission by the last day of January of the following year. The Commission reviews this report and prepares its own report with comments and sends it to the Speaker's Office to be discussed by the TBMM. The Ombudsman's Office's annual report is made public in the Official Gazette. The Ombudsman's Office can also prepare special reports and make public statements when necessary without waiting for the annual report.²⁴

The personnel in charge of the Office for Complaints are liable for informing citizens and legal entities about their legal rights and this may also be done on the telephone. An internal expert interviewed during a visit to the Ombudsman's Office stated that providing information by phone is a common practice in order to provide quick and effective responses to applicants.²⁵

The Ombudsman's Office may also perform any publicity activities concerning the procedures and principles for lodging a complaint in different languages.²⁶ Decisions and reports are published on the official website or in other ways as long as there are no legal obstacles and personal data are protected.²⁷

The Secretary General performs the duties assigned to the financial services units and strategy development units under Law No. 5018 on Public Financial Management and Control, and under the Article 15 of the Law on Amendments to Law No. 5018 and to Miscellaneous Laws and Statutory Laws. Therefore, the law ensures transparency in financial management and that information on the budget is publicly available.²⁸

SCORE **50**

Transparency - Practice

To what extent is there transparency in the activities and decision-making processes of the Ombudsman's Office in practice?

The Ombudsman's Office published its first annual activity report in 2013. The report included information on its organizational structure, human resources statistics, activities carried out, financial information and statistics on complaints based on subjects and decision status. However, the report is not available on its website.

For cases of significant concern to the public, the Ombudsman's Office publishes details of decisions made, including the documents obtained from relevant parties to examine the case. The decision for Gezi incidents (as described above) was published and a few other human rights violation cases have been compiled into a report. Several decisions on various subjects are published on its website.²⁹ According to the information obtained during the interviews, there have been no cases of violation of the time requirements for concluding decisions and providing feedback on complainants.

During the examination of the complaints, the Ombudsman's Office requests information from relevant parties including civil society and meets with civil society representatives. However, considering the rate of complaints sent back to applicants due to procedural deficiencies,³⁰ it can be argued that there is a need for strengthening dialogue between the Ombudsman and civil society.³¹

Short biographies of the chief ombudsman and deputy ombudsmen are available on the website. However, their asset declarations are not published. Although it is not mandatory for the chief ombudsman and deputy ombudsmen to make their asset declarations public, considering their public position it would demonstrate considerable good will towards integrity and transparency principles if they were to do so.

SCORE

50

Accountability - Law

To what extent are there provisions in place to ensure that the Ombudsman's Office has to report and be answerable for its actions?

The Ombudsman's Office is solely accountable to the parliament, according to Law No. 6328. Reports prepared by the Ombudsman's Office covering information on activities, recommendations and decisions are required to be submitted to the parliament annually, as mentioned above.³²

Decisions of the Ombudsman's Office are subject to judicial review, but a review by the courts needs the permission of parliament. The supervision of the chief ombudsman and deputy ombudsmen is also an area in need of improvement. There is no clear and comprehensive policy regulating the auditing of their activities. Since they are also subject to Law No. 4483, which prevents effective investigations of public officers by requiring the consent of their superiors (as explained in more detail in the public sector chapter), the mechanisms securing accountability of the Ombudsman's Office lack some crucial elements.

Another important deficiency in the legislation is the lack of a comprehensive regulation on auditing the financial accounts and reports of the Ombudsman's Office. There is no specific article in the Law defining the auditing principles or the body authorized for this task.

SCORE

50

Accountability - Practice

To what extent does the Ombudsman's Office report and is answerable for its actions in practice?

The reports submitted by the Ombudsman's Office cover information on organizational structure, human resources statistics, activities carried out, financial information, recommendations and statistics on complaints based on subjects and decision status. According to information obtained through interviews, reports by the Ombudsman's Office are submitted within the proper time-frames, and are discussed in the parliament and in the public sphere.

As mentioned above, a judicial review mechanism needs the permission of the parliament. There is only one case in which an investigation of the Ombudsman's Office came onto the parliament's agenda. In January 2014, the Speaker of Parliament Cemil Çiçek stated that he had launched an investigation into Chief Ombudsman Ömeroğlu over allegations that he tried to threaten Zekeriya Öz, Istanbul's former chief public prosecutor to drop a corruption investigation.

SCORE 50

Integrity mechanisms - Law

To what extent are there provisions in place to ensure the integrity of the Ombudsman's Office?

The chief ombudsman and the deputy ombudsmen are required to take an oath when they are appointed. This oath is defined by Law No. 6328 and ensures compliance with the principles of impartiality, integrity, justice and equity during their term of office.

The "Pledge of Ethics", an annex of the By-Law on Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials, which highlights principles such as transparency, integrity, accountability and the rule of law is also applied to the personnel of the Ombudsman's Office and is available on its website.

The Ombudsman's Office is subject to legislation regulating ethical principles in the public sector and therefore all staff (including the ombudsmen) have to comply with the rules related to conflicts of interest, gift-taking and giving, restrictions on political engagement, and asset declarations. However, there is no specific legal framework regulating ethical principles for the Ombudsman's Office.

The chief ombudsman and ombudsmen are required to declare their assets according to Law No. 3268 on Asset Declaration and Fight Against Bribery and Corruption.³³ However, since this does not require information on asset declarations to be made publicly available, they are kept confidential.

SCORE 50

Integrity mechanisms - Practice

To what extent is the integrity of the Ombudsman's Office ensured in practice?

There has been no evidence presented in the media or mentioned during our interviews regarding violations of integrity rules on gifts and hospitality, post-employment or conflicts of interests by the Ombudsman's Office. However, there are allegations regarding the independence and impartiality of the ombudsmen, as mentioned above.

It should be noted that there have been efforts to enhance the ethical standards within the Ombudsman's Office, and training on ethical principles for personnel was organized in 2013.³⁴ However there is a need for a communication strategy on integrity principles; a media review provided only a few examples of statements by the chief ombudsman regarding integrity mechanisms and principles.³⁵

Another crucial deficiency in integrity mechanisms is the lack of public disclosure and regular audit mechanisms for asset declarations. Asset declarations of the chief ombudsman and the deputy ombudsmen are not available on their website as a result of the shortcomings in the legislation.

ROLE

SCORE 50

Investigation

To what extent is the Ombudsman's Office active and effective in dealing with complaints from the public?

The procedure for making complaints to the Ombudsman's Office is not complicated and instructions for issuing complaints through electronic forms, fax and email are available on the website. There are also videos and sub-sites for the disabled and children in order to better respond to their expectations and needs.³⁶

In 2014 more than 50 percent of complaints were submitted through electronic forms on the website. The office addressed 6,348 complaints in 2014. Of the addressed applications approximately 37 percent were referred to a relevant administrative/judicial body. However, 34 percent were "not to be examined" decisions, indicating that the case was out of the scope of duty of the Ombudsman's Office, lacked necessary information, or was already within the jurisdiction of the courts.³⁷

The statistics provided in the 2014 Annual Activity Report reflected that only 1 percent of the decisions were concluded with "recommendations", which is quite low. This rate indicates the need for better outreach and communication programs with the public. There is a lack of knowledge on the issues that the Ombudsman's Office is able to examine and on administrative complaint procedures to be followed before submitting complaints.

Guidelines, brochures and publications about the Ombudsman's Office aimed at people with different levels of education should help raise awareness about the functions and the significance of this institution.

The level of compliance with recommendations provided by the Ombudsman's Office is unsatisfactory.³⁸ In order to enhance compliance a culture of consultation and dialog should be promoted in the public sector.

The complaints were mainly related to subjects on civil servants, the rights of people with disabilities, education, tax, human rights, and social security.³⁹ So far, there were only a few complaints regarding issues of freedom of expression, which could be partly due to a lack of awareness on this use, given the high number of complaints in other fields. In particular, there were no complaints received from journalists or the media.⁴⁰

Promoting good practice

To what extent is the Ombudsman's Office active and effective in raising awareness within government and the public about standards of ethical behavior?

The Ombudsman's Office examines cases related to public administration under the central government, social security institutions, local governments, affiliated administrations of local governments, local government unions, organizations with the circulating capital,⁴¹ the funds established under laws, public legal entities, public economic enterprises, associated public organizations, and their affiliates and subsidiaries, professional organizations with public institution status, and private legal entities providing public services.

However, complaints about the actions of the president on his/her own competence, the decisions and orders signed by the president ex-officio, acts regarding the use of the legislative power, acts regarding the use of judicial power, and acts of the Turkish Armed Forces, which are purely military in nature, are out of the scope of the duties of the Ombudsman's Office.⁴² According to the Article 144 of the Constitution, supervision of judicial services and public prosecutors with regard to their administrative duties shall be carried out by the Ministry of Justice through judicial inspectors and internal auditors. This means that these officials are beyond the scope of the Ombudsman's Office, which stands as a deficiency in its abilities to provide adequate oversight.

The limitations imposed on the Ombudsman's Office regarding its inability to investigate the military or legislative powers have been a target of criticism from opposition parties and even the chief ombudsman himself.⁴³ These restrictions mean that the mechanisms for questioning these bodies are weak and in many cases they can act with impunity. In this sense, the Ombudsman's Office is limited in its ability to promote good practice. The Council of Europe underlines the "lack of competence to call the Constitutional Court to question the constitutionality of legal provisions".⁴⁴ For example, ombudsmen in Spain and Poland are authorized to appeal to the Supreme Court for the reversal of laws that appear to contradict the Constitution.

The main awareness-raising activity of the Ombudsman's Office is the publication of its examination of cases, including the content of the complaint and the Office's rationale behind its findings. However, beyond this, the Ombudsman's Office's role in promoting good governance has been questionable. Public statements on good governance are not placed at the top of the news related to the Ombudsman's Office and the chief ombudsman's presence in the media is too limited to be influential on public opinion.

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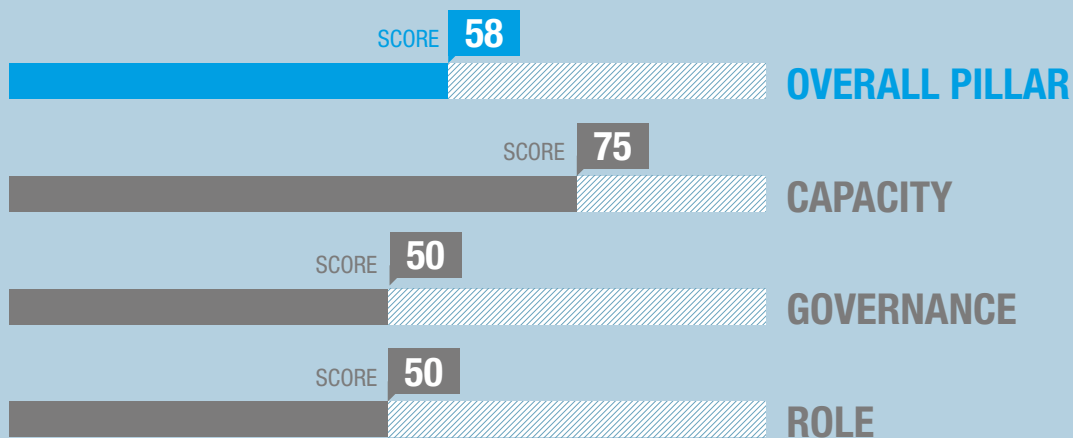
SUPREME AUDIT INSTITUTION: The Turkish Court of Accounts

OVERVIEW

The Turkish Court of Accounts (TCA), the supreme audit institution, has a crucial role in detecting inefficient management in the public sector and the loss of public resources. The TCA has adequate resources to conduct this task.

However, there are serious challenges preventing the TCA from carrying out its tasks in a proper manner. Gaps in the legislation and lack of political will to enhance checks and balance mechanisms appear to be the main concerns. Deficiencies in the performance audit framework and weaknesses in cooperation for effective legislative oversight are major obstacles. The legal framework provides opportunities for political influence in the recruitment processes and restrains the power of the TCA and its inputs into audit mechanisms.

The table below presents the indicator scores that summarize the assessment of the supreme audit institution in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	100
	Independence	50	50
Governance	Transparency	50	50
	Accountability	50	25
	Integrity mechanisms	75	50
Role	Effective financial audits	50	
	Detecting and sanctioning misbehavior	50	
	Improving financial management	50	

STRUCTURE AND ORGANISATION

The TCA was established by an imperial edict of Sultan Abdulaziz I in 1862 and defined as the supreme audit institution in the first Ottoman Constitution of 1876. The TCA acts as the supreme audit institution authorized by the 1982 Constitution and carries out financial and compliance audits of public administrations, including the central government and social security institutions; local governments; joint stock companies, established by special laws and with more than 50 per cent of its capital directly or indirectly owned by the public sector; and other public administrations (with the exception of professional organizations). The TCA also has judicial power and functions and its chambers carry out this function.

The organization comprises of: a) Presidency, b) Chambers, c) General Assembly, d) Board of Appeals, e) Board of Chambers, f) Board of Report Evaluation, g) High Disciplinary Board, h) Board of Promotion and Discipline of Professional Personnel, i) Board of Auditing, Planning and Coordination, j) Office of the Chief Prosecutor.

The personnel of the TCA are as follows:

a) Professional personnel:

- 1) President of the Turkish Court of Accounts
- 2) Chair-people of chambers and members
- 3) Auditors of Turkish Court of Accounts

b) Chief prosecutor and prosecutors

c) Support staff

The Grand National Assembly of Turkey (TBMM) elects the president of the TCA by secret ballot from among two candidates determined by the Pre-Election Ad Hoc Committee for the President and Members of Turkish Court of Accounts. This consists of 15 members selected by drawing lots from among the members of the Plan and Budget Committee in proportion with the representation of political parties and independent MPs in the TBMM. The term of office of the president of the TCA is five years and an individual may be elected twice.

The chambers take final decisions on matters related to public finances, express opinion on audit reports, and express opinions or decide on the matters that the president of the TCA demands to be negotiated. Each chamber has one chairperson and six members. Chair-people are elected by secret ballot and an absolute majority by the General Assembly of the TCA from among the members who have served for at least three years. The term of office is four years, but they may be re-elected once. Two deputy presidents are assigned from among TCA members by the president and have the status of chairperson of the chamber.

The chief prosecutor and other prosecutors of the TCA are assigned by the joint decree of the minister of finance and the president of the TCA. The office is responsible for implementing the appeals requested by the auditors.¹

ASSESSMENT

CAPACITY

SCORE **100**

Resources - Practice

To what extent does the audit institution have adequate resources to achieve its goals in practice?

The TCA drafts its own budget and presents it to the parliament's Plan and Budget Committee. The TCA has no external budget resources; its budget is allocated from the general government budget. There has been an upward trend in budget allocations. In 2012 the budget was 143,399,473 TL (approximately 48 million euros); in 2015, it reached 186,372,500 TL (approximately 62 million euros).² If extra financial resources are needed, the TCA may apply to the parliament and request additional allocation from the government budget. Thus, the TCA has sufficient financial capacity to perform its duties and controls and manages its own financial resources.

There is stability in the human resources of the TCA and there has been an increase in the number of staff in recent years.³ According to the 2014 Annual Report, the number of personnel was 1,544, including the president, two deputy presidents, eight chairs of chambers, 45 members, a chief prosecutor and eight prosecutors, 893 auditors and 586 administrative staff.⁴ The TCA is also able to attract and recruit suitably qualified staff.⁵

Training and career opportunities of the TCA are adequate. The auditors start their career as assistant auditors and have two years' training. This training takes place under the supervision of the trainer auditors. Following the training, the assistant auditors complete a period of internship. Following the training and the internship, they must then pass an exam to be authorized to work as professional auditors.⁶

The auditors also have various training opportunities during their careers, through the Audit Development and Training Center.⁷ The educational background of professional personnel are adequate; 17 members have a Ph.D. degree (1.1 per cent), 279 members (18.6 per cent) have a master's degree and 822 members (54.7 per cent) have a bachelor's degree in related fields of study.⁸ There are certain criteria defined by Law No.6085 for members and the president. They must have served at least 16 years in public service after graduation from university.⁹

SCORE **50**

Independence - Law

To what extent is there formal operational independence of the audit institution?

The TCA is established directly by the Constitution, but the independence of the TCA is not direct-

ly defined in it. Articles 160, 164, and 165 define the general scope of tasks and authority of the TCA.¹⁰ Article 160 states that the TCA is charged with auditing on behalf of the parliament. The TCA also has judicial power.¹¹

The independence of the TCA is ensured in Law No. 6085 on the Turkish Court of Accounts. The law states that the TCA shall have functional and institutional independence in carrying out its duties of examination, audit and taking final decisions.¹² The TCA is expected to set its own agenda in line with a self-determined program and methods. Law No. 6085 states that “The TCA shall not be given instruction in planning, programming and executing of the audit function”, but the parliament may request an extra audit based on parliamentary investigation and inquiry committees’ decisions.¹³

After the enactment of Law No.6085 in 2010, the length of the term of office of the president changed from seven to five years, which is still a year longer than the term of office for MPs. The president of the TCA is elected by the parliament through a secret ballot majority vote between two candidates. The president cannot be elected for more than two terms. Former presidents take their place among the members of the TCA, at the most senior member position.¹⁴

The members are elected through a more complicated system. The Presidency of the TCA calls for applications when there are five vacant seats. The General Assembly of the TCA evaluates the applicants and prepares a list that consists of four candidates per seat. The list is sent to the parliament through the Plan and Budget Committee to pre-select two candidates per seat. Final candidates are determined at the General Assembly meeting of the Parliament with a secret ballot.¹⁵ Elected members can stay in office until retirement at the age of 65.¹⁶

The president, the chair people of the chambers and the members cannot be dismissed and cannot be retired before the age of 65, unless they desire to do so.¹⁷ If evidence is found that the chair-people or members have behaved in a manner that is not in compliance with the dignity and honor of their office, or in a manner that causes inconvenience in the performance of their duties, the disciplinary prosecution is initiated by the decision of the president

If it is necessary to take disciplinary action against the president of the TCA, the High Disciplinary Board assigns three people (from among the chair people and members) from outside of the Board to reach a decision following the results of an investigation. The Board can send an invitation for the retirement or resignation of the president and implement its decision within one month.¹⁸

The auditors are recruited in a three-stage procedure: two examinations prepared by the Public Personnel Selection Exam (KPSS) and an interview at the TCA, which replaced the oral exams in 2010.¹⁹ Despite the two-stage central examination system, there are still risks of nepotism and political influence in the third stage. Interviews are conducted with three times the number of candidates than there are places. This opens space for subjective evaluations and elimination of candidates. Moreover, there is a risk of interviews being used as a tool for subjective evaluation of the candidates during the recruitment period, since it is not mandatory to record the interviews.²⁰

The professional personnel excluding the president, the chair-people of the chambers, and the members cannot be dismissed from the office for reasons other than those listed in the Law No. 657 for all civil servants. They cannot be deprived of their salaries and other rights or employed in non-professional positions. However, personnel subject to disciplinary or criminal prosecution may be temporarily removed from office by the TCA upon the decision of the Board of Promotion and Discipline of Professional Personnel.²¹

Law No. 6085 prohibits personnel from accepting any other duties or employment in any public ad-

ministrations with or without payment or from acting as expert witnesses. There are exceptions for those who work as auditors or are board members of cooperatives and charitable organizations, or who conduct professional lectures with the knowledge and approval of the president of the TCA.²²

SCORE 50

Independence - Practice

To what extent is the audit institution free from external interference in the performance of its work in practice?

In the recruitment processes of the president, the members, and auditors, there is risk of political influence linked to the procedure of their election. At the second stage of the election procedure of the members, the Plan and Budget Committee may make decisions based on their political orientation. The opposition parties have raised concerns regarding the structure of the Plan and Budget Committee in relation with the independence of the election of TCA members, as 25 of the 40 members of the Committee are from the ruling party.²³

In an example of political influence in the recruitment of auditors, the Council of State suspended and then cancelled the appointment of assistant auditors who had passed the TCA oral exams held on 2nd and 6th February 2009. The Council of State stated that “the questions that were asked to candidates and the answers that were given by the candidates were not recorded and there is a lack of minutes that document the scores given by the oral exam commission.”²⁴ Following the decision, the government amended the Law No. 6085 on the TCA and replaced the oral exam with an interview. This amendment stated that, “the scores are recorded in the minutes and no recording system is used thereof”.²⁵

In addition to such cases, political influence in promotions was also mentioned during an interview with a TCA auditor.²⁶ Furthermore, the election of the current president of the TCA who has no background in auditing in 2009 has also been subjected to criticism from the opposition parties.²⁷ These relate to the politicization of the TCA and its independence. Until now there has never been any case of removing the president of the TCA due to political concerns or any other relevant justification.²⁸

As stated in the transparency section, the annual reports were not submitted to the TBMM, and the general impression is that the government has avoided their submission as that they would damage the government’s credibility drastically before the upcoming election. The Minister of Economy has not denied these comments which were leaked to the press from the Chamber of Ministers, and which were completely in line with the aforementioned impression.²⁹

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decisions by the supreme audit institution?

According to the Constitution, after the Final Accounts Bill is submitted to the parliament by the Council of Ministers, the TCA has to submit the Statement of General Conformity to the parliament within 75 days.³⁰

According to Law No. 6085, the TCA is responsible for preparing the External Audit General Evaluation Report,³¹ the Accountability General Evaluation Report,³² the Financial Statistics Evaluation Report,³³ and the Statement of General Conformity.³⁴ The TCA also prepares consolidated reports on the state owned enterprises. These annual auditing reports must be submitted to the parliament to be discussed in the relevant committees (Plan and Budget Committee or the State Owned Enterprises Committee). The TCA reports are shared with the public by the president or deputy president within 15 days of their submission to parliament and other related public administrations, unless the law forbids their publication.³⁵

During the enforcement period of the previous Law No. 832 on the TCA, the TCA General Assembly decided the accounts and units under audit. However, the new Law No. 6085 gives this authority to a smaller body that consists of the president and the deputy presidents. This change in the planning phase raises an important concern due to its potential to hinder transparency and accountability in the decision-making process.³⁶

The TCA reports are sent to the legislature to be discussed. By adopting Law No. 5018 on Public Financial Management and Control in 2003 and Law No. 6085 in 2010, the sharing of information with the public and legislature has become obligatory by law.³⁷ However, since the individual audit reports on public institutions, which are prepared by the auditors of the TCA, are not submitted to parliament and this has been an issue of criticism during the budget planning process in the parliament in recent years.³⁸

Matters regarding the public announcement of reports to be prepared as a result of auditing the assets owned by public administrations related to defense, security and intelligence shall be laid down in a by-law, that will be prepared by Turkish Court of Accounts upon taking the opinion of the relevant public administrations, and issued by the Council of Ministers.³⁹

Judicial reports are not required to be announced to the public due to their content including allegations related to loss of public resources caused by a public officer. According an auditor of the TCA, this provision provides a shelter for the auditors against possible external interference.⁴⁰ However, the lack of requirement of public disclosure of the final judgments on these reports prevents monitoring of the effectiveness of the judicial processes based on the TCA audits and judicial reports.

SCORE **50**

Transparency - Practice

To what extent is there transparency in the activities and decisions of the audit institution in practice?

The TCA reports have been subject to intense discussion in recent years. To illustrate, following the adoption of the Law No. 6085, the TCA did not send the 2011 audit reports of public institutions to the parliament. MPs from opposition parties such as Akif Hamzaçebi made press statements and requested information from the TCA.

In 2013 a similar issue was raised since these reports were not submitted to the parliament again. The TCA published an official statement highlighting that audit reports, judicial reports and TCA reports are subject to different procedures and the new legal framework regulating these procedures varies accordingly.⁴¹ Since the TCA is not required to submit individual audit reports of relevant public institutions, it stated that the TCA was acting according to the legislation and had submitted all the reports it was obliged to submit. These included reports of the TCA itself, Statements of General Conformity, the External Audit General Evaluation Report, the Financial Statistics Evaluation Report, and the Accountability General Evaluation Reports.

Apart from the discussions over submission of reports to the parliament, the TCA performs well in providing information on its activities. It provides various reference resources related to its field of expertise on its website. The website is up to date and annual activity reports covering the period of 1999–2014, strategic plans covering the period of 2000–2014, and performance programs covering the period of 2009–2014 are available online. The annual reports contain information on the TCA's structure, aims and objectives, its financial statements and results of financial audit, and lastly its SWOT analysis.

SCORE 50

Accountability - Law

To what extent are there provisions in place to ensure that the supreme audit institution has to report and be answerable for its actions?

The president of the TCA is responsible for informing the Plan and Budget Committee of the parliament, and if necessary, other related committees twice a year about the activities of the TCA.⁴² According to Law No. 5018, any institutions attached to the general administrative budget have to report their activities to the public every six months, and announce their budget and the plans for the next six months. The reports are submitted to the Ministry of Finance on request and institutions are responsible for announcing the reports to the public through Institutional Financial State and Expectation Reports.⁴³ The TCA prepares an Institutional Financial State and Expectation Report in July and an annual activity report at the end of the year.

The legislative framework requires the TCA to consolidate the audit reports of individual public institutions/bodies and submit them to the TBMM as a report presenting the overall findings. The publication of this consolidated report in public channels would greatly benefit the accountability of the TCA and the audited institutions.

According to Article 160 of the Constitution, the TCA is an institution attached to the general administrative budget; therefore, it is subject to the audits by the TCA itself. However, Article 79 of Law No. 6085 regulates the audit of the TCA and authorizes a commission delegated by the Bureau of the parliament (the Speaker's Office) with this task. Audit reports prepared by the Commission as per Article 69 of Law No. 5018 and Article 79 of Law No. 6085 were submitted to the Bureau until 2013. The Constitutional Court declared that this practice was in conflict with Article 160 of the Constitution defining the authority of the Court of Accounts, and therefore concluded with a repeal of Article 79 of Law No. 6085.⁴⁴ Based on this decision, the TCA audits its own financial reports.

In the exercise of its judicial function, the TCA decides whether or not the accounts and transactions of the competent departments are in accordance with legal arrangements. At the end of the audit process, the auditors prepare an enquiry into any losses of public resources. When the auditors are still not satisfied with the counter-arguments of the competent officials, they prepare a judicial report, which contains the institution's arguments and the auditors' opinion. The chambers of the TCA reach a final decision on any charges of public loss in this judicial report. For these judicial reports, there are legal remedies such as an appeal, a re-trial and a correction of decision. For other types of reports, such as financial or performance reports, to be subject to a judicial review the conditions defined by Law No. 2557⁴⁵ should be met. The TCA also submits the audit reports to the related institutions to get their explanations, justifications or counter arguments; in this way the TCA provides room to question their findings.

SCORE **25**

Accountability - Practice

To what extent does the supreme audit institution have to report and be answerable for its actions in practice?

The TCA's annual activity reports are publicly available.⁴⁶ The content of the reports includes the financial statements and performance of the institution. However, critics point to parliamentary discussions over audit reports prepared by the TCA. In the European Commission 2013 Progress Report on Turkey, the lack of effective parliamentary discussions was highlighted. The report emphasized that:

"Parliamentary deliberations on the 2013 general budget were held in December without proper feedback on previous public expenditure management. This was due to a government-sponsored amendment to the Turkish Court of Accounts (TCA) Law adopted in July 2012, which weakened the TCA's legal mandate and working procedures, including parliamentary oversight."⁴⁷

There are also criticisms regarding the "quality control" or "report evaluation" procedures of the audit reports. Media outlets reported that 15 of the 31 findings in the initial audit reports on public institutions had been omitted during this process before the preparation of the TCA consolidated report was submitted to the TBMM.⁴⁸ Following the news and discussions in the media, the TCA published a press release stating that the procedure is related to the standard "quality control" procedure. During the interview with a TCA auditor the negative impacts of this process were raised with strong emphasis.^{49x}

Until the amendment of Law No. 6085 in 2013, a Commission authorized by the parliament used to audit the TCA. The findings of these audits were published in annual activity reports and they are available on the TCA website.

SCORE **75**

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

In the 2009 Action Plan on Internal Control of the TCA, ethics is one of the major targets for improvement through structural and cultural changes. Within this framework establishing an ethics commission, which is envisaged by the By-Law on the Principles of Ethical Behavior of Public Servants and Application Procedure and Principles, was stated as a target to be met by 2009. However, a review of the 2015–2016 Action Plan on Internal Control, demonstrates that the TCA has not accomplished any structural change on this target. In this recent Action Plan, the TCA defines its targets regarding integrity mechanisms as: establishing an ethics commission, integrating ethical principles in training programs, developing and enforcing an ethics guideline, and identifying professional ethical standards for TCA personnel.⁵⁰

TCA staff are subject to the same legislative framework regarding ethical principles as other public servants, as discussed in the public sector chapter. In addition, TCA auditors are also subject to special regulations,⁵¹ including rules on gift taking and giving, conflicts of interest, disclosure of information and impartiality.

SCORE **50**

Integrity mechanisms - Practice

To what extent is the integrity of the audit institution ensured in practice?

Penalties for violations of disciplinary rules vary based on the nature and significance of the action. Corporate culture and tradition is also of the utmost importance in such institutions. Auditors are reminded of corporate values, such as impartiality, independence and not accepting benefits from those being audited. As an example, an auditor who was investigated for using a car of the institution they were auditing lost their position following the investigation.⁵²

Nevertheless, criticisms regarding the lack of systematic integrity training and screening and also the ineffectiveness in enforcement mechanisms were raised during an interview with a TCA auditor.

Effective financial audits

To what extent does the audit institution provide effective audits of public expenditure?

In order to carry out effective financial audits, the TCA needs to obtain relevant information, examine the results of internal audits and have capacity and authorization to conduct performance audits. It is common for the TCA to examine the effectiveness of internal audits within government departments. However, there are obstacles to the other pre-conditions for achieving effective financial audits.⁵³

There are cases that the auditors note where the related public institution did not provide the necessary information or documents to conduct a proper audit. Unwillingness to cooperate and provide requested information results in inadequacies in the audit reports.⁵⁴ The TCA is authorized to request necessary information and documents, and if a public officer declines to provide the information or documents, the TCA can demand that the institution cut the staff member's salary in half until the information is provided. If they refuse to provide the information for three months, the related public institution launches a disciplinary or criminal investigation.

Moreover, through an amendment to Law No. 6085, the scope of audits was restructured to limit the scope of performance audits. Based on this new framework, TCA reports have to focus on legality and regularity concerns, and not examine whether certain public expenditures are based on the needs of the institution or society, or examine the efficient allocation of resources. A performance audit is defined in Law No. 6085 as the "measurement of results of activities with respect to objectives and indicators determined by public administrations within the framework of accountability". This has resulted in narrowing the scope of the performance indicators to the declared targets of the institution and excluding assessment on the effective use of public resources. Through this definition, the performance audit is replaced by a performance measurement, which is supposed to be carried out by the institutions itself and not the audit institution. This is a major deficiency in the auditing system.

Although these restrictions limit the capacity of the TCA, it has nevertheless presented the consequences of the ineffective use of public resources in various reports. The recent reports on expenditures of the Ministry of Education,⁵⁵ and the Public Hospitals Institution⁵⁶ are examples of such reports. The audit report on the Ministry of Education highlighted that in most public schools the unit price for electricity was based on the rate for for-profit institutions, although they are eligible to receive the service for a lower price by registering as "eligible consumer" (*serbest tüketici*). The report on the Public Hospitals Institution identified a lack of transparency and competition and also over-priced payments in procurements in public hospitals.

Detecting and sanctioning misbehavior

Does the audit institution detect and investigate misbehavior of public officeholders?

If misbehavior or public loss as a result of an action by a public officer is detected by the TCA, evidence is collected during the audit process and judicial reports are prepared and sent to the TCA chambers for a final judgment. The chambers ask the chief public prosecutor for a written opinion and then can conclude by reclaiming the loss in public resources.

However, there are certain areas that the TCA is not authorized to audit. The European Commission 2014 Progress Report on Turkey noted “some institutions that provided services in the name of metropolitan municipalities (e.g. the Tax Settlement Board and municipality-owned private companies) were exempt from the Court of Accounts’ ex post audit and posed a risk for corruption”.⁵⁷ Therefore, the TCA is unable to detect misbehavior in these areas.

Municipality-owned private companies can bid for the tenders of the municipalities. This results in violation of the fair competition principle in public procurements while it also implies an important gap in the auditing of these institutions.⁵⁸ According to the Turkish Penal Code, public officials in these institutions are liable in cases of bid rigging; therefore, the lack of audit by the TCA is one of the crucial deficiencies in this field. It is of utmost importance to amend the legal framework to overcome this gap in the authority of the TCA.

Improving financial management

To what extent is the supreme audit institution effective in improving the financial management of government?

As discussed in the “Effective Financial Audits” indicator, the TCA does not have the authority to conduct performance audits based on efficiency, effectiveness, and economic criteria. The role of the TCA in improving the financial management of the public sector has been restrained through a narrowed definition of performance audits. Therefore, auditors restrict their analysis to the legality and regularity of an institution’s activities.

Although the audit reports provide recommendations, there are no mechanisms to track progress on these recommendations, or to report any progress to the public. In addition to improving financial management through individual and consolidated audit findings and recommendations, the TCA could also be influential more broadly and contribute to policy improvements. However, there are no structured policy recommendation mechanisms and the TCA authorities do not raise policy discussions.

The lack of risk-based and sectorial audits hinders the role of the TCA in improving financial management at the macro level. Not only is it necessary to free up the TCA to perform its auditing role, but the legislature also needs to use the TCA audits as the basis for effective oversight of the functioning of state institutions.

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10

INSPECTION BOARDS

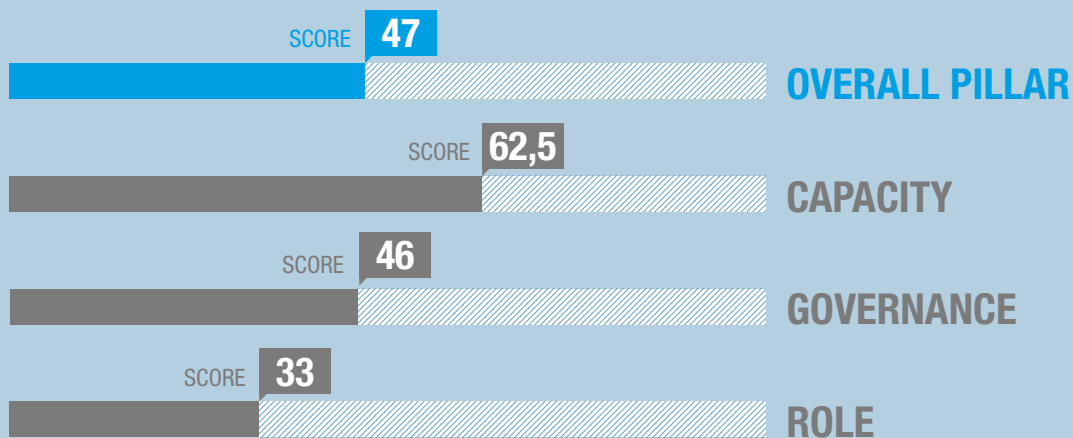
OVERVIEW

The institutional structure of the anti-corruption field is complex. Turkey does not have a specialized anti-corruption agency, and the lack of coordination between boards and various public institutions working in the field of anti-corruption and ethics reveals the need for an umbrella institution to organize and coordinate the process in a transparent manner. Considering their central role in identifying and investigating corruption in the public sector, this analysis focuses on inspection boards (inspectorates). These boards are authorized with the tasks of auditing, inspection, investigation, and preparing recommendations to enhance the financial management of the public institutions attached or affiliated to the ministries.

The independence of inspectorates has revealed itself as a challenge, since they are directly attached to the Prime Ministry, ministries, the general administration or regulatory bodies. Regarding the transparency and accountability of inspectorates, gaps in the regulations and lack of effective monitoring mechanisms have resulted in poor performance. Lack of coordination among inspection boards and their limited competency in terms of proactive investigation procedures are also major problems, raising concerns about their effectiveness. Even though the Prime Ministry Inspection Board is authorized to coordinate the working of other inspection institutions, there are challenges as far as communication and cooperation are concerned. The authority granted by the law to the Inspection Board is not sufficient to function efficiently. The legal framework should be renewed to ensure that the Boards has the authority to start ex officio investigations.

A legal provision is needed to ensure that all inspection services and inspectors are functionally independent from the government.

The table below presents the indicator scores that summarize the assessment of the inspection boards in terms of their capacity, their internal governance and their role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	100	75
	Independence	50	25
Governance	Transparency	50	25
	Accountability	50	25
	Integrity mechanisms	75	50
Role	Prevention	50	
	Education	25	
	Investigation	25	

STRUCTURE AND ORGANISATION

Turkey does not have a specialized anti-corruption agency dedicated to combatting corruption. However, besides the public prosecutors (that have a monopoly on opening investigations in almost all cases) and law enforcement officers, there are public agencies working in related fields; such as enhancing ethical standards in the public sector (i.e. the Council of Ethics for the Public Service), or dealing with offences like money laundering (i.e. the Examination Board for Financial Crimes), smuggling and organized crime (i.e. the Department of Anti-Smuggling and Organized Crime). However, the inspectorates of ministries and other public institutions carry out the main task in the anti-corruption field and are coordinated by the Prime Ministry Inspection Board.

Keeping in mind this framework, this analysis focuses on an assessment of these inspectorates. They are authorized with the tasks of auditing, inspection, investigation, and preparing recommendations to enhance the financial management of the public institutions attached or affiliated to the ministries. Representatives from all inspectorates have responsibilities in different working groups defined by the government's Anti-Corruption Strategy (2010–2014).

In the case of an investigation covering several ministries, the Prime Ministry Inspection Board is authorized to take responsibility. The Board also acts as the coordinating agency in the anti-corruption field and is authorized as the secretariat for the Commission on Improving Transparency in Turkey and Enhancing Good Governance in the Public Sector. The Prime Ministry Inspection Board has also been authorized to coordinate with the European Anti-Fraud Office (OLAF) and the Anti-Fraud Coordination Service (AFCOS) in cases of investigation into and prosecution against the misuse of EU funds. Moreover, it is also the focal point for the UNCAC Review Process and the G20 Anti-Corruption Working Group and the Open Government Partnership (OGP). The Board also conducted the EU project, Strengthening the Coordination of Anti-Corruption Policies and Practices in Turkey, with the support of the Council of Europe.

ASSESSMENT

CAPACITY

SCORE **100**

Resources - Law

To what extent are there provisions in place that provide the inspection boards with adequate resources to effectively carry out their duties?

The inspectorates attached to ministries and the Prime Ministry Inspection Board are subject to Law No. 5018 in terms of planning and managing their budgets. They do not have autonomous budgets as they are allocated from the general government budget based on the ministries to which they are directly attached. They do not have the option of acquiring funding through imposing fines, as they are not authorized with the power to impose fines in accordance the Articles 54 and 55 of the Criminal Code.

Their budgets are prepared during the planning and preparation of the general budget. Article 13 of Law No. 5018 defines the budgetary principles and emphasizes the concepts of negotiation, evaluation, ensuring macro-economic stability, transparency, clarity and accuracy.

Bülent Tarhan, chief inspector at the Prime Ministry Inspection Board, states that their inclusion by law in the general budget affords some fiscal stability over time in the budget of these agencies. Where additional budget is needed, transfers from other budget items within the general budget are possible.

Within this framework, legislative regulations provide adequate resources for the inspectorates to carry out their anti-corruption duties effectively.

SCORE **75**

Resources - Practice

To what extent do the inspection boards have adequate resources to achieve their goals in practice?

As discussed above, there is stability over time in the budgets of inspectorates, since they are included in the general administrative budget. In addition, inspectorates also receive significant support from international organizations such as the European Commission and the Council of Europe. The Prime Ministry Inspection Board was the main beneficiary of the project Strengthening Anti-Corruption Policies and Practices in Turkey, which was a joint project co-funded by the two European institutions. Its total budget was 1.4 million euro for two years, and provided a significant financial resource to enhance the expertise of the institution and its staff.¹

However, salary levels are not adequate considering the scope of the inspectors' tasks and functions and there has been a decreasing trend in salaries of inspectors for about 15 years in service. This trend leads to high turnover of staff in several Inspectorates including the Prime Ministry Inspection Board and Inspectorate of the Ministry of Finance.² The lack of a policy to protect salaries and the working standards for inspectors puts the stability of human resources at risk.

The academic background and work experience of staff members and inspectors are sufficient to perform their duties effectively. Inspector candidates must pass an exam (KPSS) conducted by the Student Selection and Placement Center (ÖSYM) with a very good rank and then accomplish another two-day exam conducted by the recruiting institution. Lastly, candidates have to pass an oral exam. Successful candidates gain the right to a three-year internship, during which time they are subject to several evaluations. In order to become an expert or inspector they must pass a proficiency exam and in some cases a dissertation. There are also opportunities to complete foreign language courses or related master's programs.³ The criteria to be a part of the institution and the vocational training are adequate to ensure that inspectors have the necessary background in terms of education and work experience.

Independence - Law

To what extent are the inspection boards independent by law?

The heads of the inspectorates are appointed rather than elected through open competition. The criteria for becoming a candidate are defined in related by-laws. The head of the Prime Ministry Inspection Board is appointed from among the inspectors who have experience as an under-secretary or deputy under-secretary,⁴ whereas the head of the inspectorate attached to the Ministry of Labor and Social Security is appointed from among inspectors with 10 years' experience.⁵ Appointments from outside of the inspectorates are also possible and in such cases the head of an inspection board may not have a sufficient background in inspections. However, the general practice is that the appointment is from among candidates within the agency. There is no fixed term of office defined for the head of an inspection board in the legislation. The fact that the boards are accountable to and a part of the Prime Ministry, raises questions about their ability to investigate independently.

It should be noted that, since there is not an election process there is a risk of political influence in the appointment of the heads of the inspectorates. An auditor interviewed by TI Turkey stated that the oral examination process instils the risk of a political bias

By-laws regulating each inspectorate ensure "security for inspectors". It is only possible to dismiss or relocate an inspector when there are proven deficiencies related to ethical principles, health or professional incompetence in conflict with the requirements of their duties.⁶ Another positive measure regarding independence is the prohibitions on becoming a member of a political party under Article 68 of the Constitution and the Law No:2820 on Political Parties.

Independence - Practice

To what extent are the inspection boards independent in practice?

As stated in the law section, one may not talk about the organic independence of the inspection boards. All of the inspectorates are directly attached to the Prime Ministry, ministries, and chiefs of relevant institutions or regulatory bodies. Functional independence of inspectors should be strengthened. Inspectors are protected from arbitrary removal or relocation by law. Nonetheless, a new classification of civil servants called "Inspection Services" should be introduced and inspection staff should be protected from appointments to positions outside the above-mentioned classification.⁷

Even though some of the experts have stated that they have not faced any political pressure, it should also be noted that there is no specific measure to prevent political influence on inspectors and that existing regulatory mechanisms to protect inspectors should be improved.

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the inspection boards?

Inspectorates attached to ministries or the Prime Ministry are subject to Law No. 5018 on Public Financial Management and Control. Article 7 requires the public institutions to:

“prepare government policies, development plans, annual programs, strategic plans and budgets; have them deliberated in the competent bodies; carry out their implementation and make the implementation results and the relevant reports available and accessible to the public; ... and to publicize the incentives and subsidies provided by the public administrations within the scope of general government, in certain periods not exceeding one year.”⁸

During preparation of these reports, inspection boards report on their findings and recommendations to the minister.

However, there is also a need for a comprehensive legal framework regulating the information management of inspectorates and mechanisms of transparency related to their activities, findings and recommendations. Reports on inspection activities and regular assessments on the anti-corruption activities of the inspectorates should be made available to the public. This practice should become a legal obligation except in cases that may violate the right of privacy.

SCORE 25

Transparency - Practice

To what extent is there transparency in the activities and decision-making processes of inspection boards in practice?

The Prime Ministry Inspection Board has its own website containing information on legislation, international conventions, tasks of the institution and official announcements. Annual activity reports, which are available on the website of the Board are only for 2008, 2009 and 2010. Annual reports by the Prime Ministry Inspection Board cover general information on the institution and relevant legislation, statistics and basic information on activities. However, the level of detail regarding investigations is inadequate, only the number of investigations and institutions related with these investigations are reported.

During the preparation phase of the UNCAC Self-Evaluation Report, Transparency International Turkey offered to cooperate with the Prime Ministry Inspection Board several times through official letters. However, it neither provided an answer to the request nor made the final evaluation report available to the public. Within this framework, the Prime Ministry Inspection Board's per-

formance on transparency is poor. This approach negatively affected the Board's performance in the transparency field.

Among the 20 ministries, there are only eight inspectorates with their own websites. Examining the limited information they publish online, and the annual reports by the Prime Ministry Inspection Board, it can be concluded that their performance in sharing information with the public is weak. In most cases annual activity reports are not available on their websites or the website of the related ministry. Therefore, it is difficult to obtain information on their activities and monitor their effectiveness.

SCORE **50**

Accountability - Law

To what extent are there provisions in place to ensure that the inspection boards have to report and be answerable for their actions?

Inspectorates are required to be accountable to their superiors; these are the ministries or the chiefs of the regulatory bodies they are attached to directly. This diminishes the practice of right to information for citizens who are supposed to apply to BIMER in order to be informed about the activities of the boards. An auditor interviewed by TI Turkey stated that none of the complaints and applicants were responded to positively by the Ministry.

The Prime Ministry and the ministries are subject to Law No. 5018 and are therefore required to file annual activity reports (Article 41), and publicly disclose and submit a copy of them to the Turkish Court of Accounts and to the Ministry of Finance. While inspectorates submit their activity reports to the ministries and the Prime Ministry, they are also required to file reports on investigations. The types of these reports are defined and regulated by the specific by-laws for each institution. In addition, inspectorates also prepare inspection reports in connection with the crimes defined in Article 17 of the Law No:3628 on Declaration of Property, Anti-Corruption and Anti-Bribery and when they detect corruption, they are required to take the reports along with the evidence to the public prosecutor.

While there are regulations on reporting, which contribute to accountability, there are deficiencies in the legal framework. For example, the regulations on whistleblower protection are not sufficient to provide an enabling environment for reporting misconduct in public institutions, including within inspectorates.

Law No. 5726 on Witness Protection provides protective measures for those who testify as witnesses to a crime. However, there are certain criteria for the provision of protective measures; such that the crime must be subject to more than a 10-year prison sentence. Since the penalty for bribery or bid-rigging is less than 10 years, this article does not apply to whistleblowers reporting corruption. Law No. 3628 on Declaration of Assets, Combating Bribery and Corruption only ensures that the identity of whistleblowers cannot be made public without their consent. However, when statements by whistleblowers are found to be baseless, their identity can be disclosed to those accused. Therefore, there is no effective whistleblower protection to ensure accountability within the inspectorates or to encourage whistleblowers.

Although there is no specific civil monitoring mechanism for inspectorates to ensure their accountability, the public is able to file complaints against a public officer under Law No. 4483⁹ and has the

right to petition in Law No. 3071.¹⁰ Furthermore, requests submitted within the framework of the Law No:4982 on the Right to Information as well as the practices within Prime Ministry Communications Center (BİMER) provide citizens with assurance.

SCORE 25

Accountability - Practice

To what extent do the inspection boards have to report and be answerable for their actions in practice?

As discussed above inspectorates file annual activity reports. However, their performance in providing information on activities is poor. There is no database for compiling and publicising information on inspection activities. Therefore, assessing the accountability of the inspectorates in practice is challenging.

There is also a lack of monitoring mechanisms to ensure accountability of the inspectorates. A citizen oversight mechanism monitoring their activities does not exist and cooperation between civil society and inspectorates is also quite limited. While this limits the capacity of agencies and cooperation in the fight against corruption, it also weakens trust in the inspectorates' effectiveness.

SCORE 75

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of members of the inspection boards?

Law No. 657 on Civil Servants and the Law No:5176 on Council of Ethics for the Public Service define prohibitions on political and commercial activities, gift receiving, conflicts of interest and misuse of public resources. Moreover, the Council of Ethics for the Public Service published the By-Law on the Code of Conduct for Inspectors. This regulates the principles of impartiality, objectivity, equality, integrity, avoiding conflict of interest, respect and kindness, secrecy, professional diligence and competence. There are also articles related to codes of conduct in the regulations and by-laws for each inspectorate.

The staff of the inspectorates are subject to Law No. 3628 on Declaration of Assets and Fight Against Bribery and Corruption. They are required to submit asset declarations when they start their duties and renew these declarations by the end of February in the years at the beginning and middle of each decade. Further, whenever a considerable increase is observed in public officials' assets the public official is obliged to declare this. The Law also defines regulations on gifts, such that gifts or grants worth more than 10 months' minimum wage must be returned. However, the obligation stemming from Law No. 3628 only concerns gifts from foreign states, and international legal or natural persons. The regulation issued pursuant to the Law No:5176 contains more detailed provisions in line with the relevant international conventions. Public officials' declaration of assets may be inspected by officials authorized by the institutions or by the Council for Ethics in Public Service if necessary – those concerned are obliged to provide the Council with the requested information

within 30 days in order for the Council to verify them. Nevertheless, the Law does not require that asset declarations are made public or checked regularly for accuracy. In order for declarations of assets to be publicly available, Article 20 of the Constitution must be amended.

Post-employment restrictions are set by Law No. 2531 on Prohibited Activities of Former Public Servants, and prohibit officers from doing business or working in fields related to their role as public servants in the three years following their departure from public office.

SCORE **50**

Integrity mechanisms - Practice

To what extent is the integrity of members of the inspection boards ensured in practice?

According to the Council of Ethics for the Public Service's 2013 Annual Report,¹¹ there were five complaints related to the staff of the Prime Ministry Inspection Board and other inspectorates. However, there is no information on how these complaints were handled, or whether decisions have been made on them. It should also be stated that according to an expert auditor interviewed by TI Turkey, there is a strict inner integrity mechanism applied for selection and promotion procedures. The national intelligence institutions are also involved in the research process regarding the candidates and the by-laws clearly define the ethics required to start and pursue a career in Inspection Boards.

ROLE

SCORE **50**

Prevention

To what extent do the inspection boards engage in preventive activities regarding fighting corruption?

Although inspectorates have preventive roles, there are certain limitations on them functioning effectively. The scope of inspections should be widened to encompass performance and operation audits, in order to detect misconduct in a timely manner and prevent corruption.

Inspectorates also engage in prevention activities through their research and by providing inputs for anti-corruption strategies. The Prime Ministry Inspection Board had an important role in the preparation phase of the 2010 National Anti-Corruption Strategy. Inspectorates also took part in working groups during the implementation phase of the Action Plan related to the National Strategy. However, the impact and outputs of these efforts is a matter of debate, since there has been no significant information shared with the public on the progress of implementation and a number of commitments have been left unfulfilled such as conducting annual country-wide corruption perception surveys and establishing comprehensive tracking of data on corruption.¹²

Education

To what extent do the inspection boards engage in educational activities regarding fighting corruption?

There are some programs designed to increase investigators' expertise and competency, such as the European Union funded project, Improving Anti-Corruption Policies and Coordination Practices. The Council of Ethics for Public Service also cooperates in ethics training.

However, there is no structured or regular training mechanism managed by the inspectorates. The will of inspectorates to engage in educational activities is quite limited. Meetings need to be organized on this matter under the guidance of the Prime Ministry Inspection Board, which have noteworthy theoretical and practical knowledge of the subject. There is no program or action plan devoted to raising public awareness or strengthening dialogue and cooperation with civil society.

Investigation

To what extent do the inspection boards engage in investigations regarding alleged corruption?

Inspectorates are authorized to conduct routine audits, inspections and investigations based on complaints and intelligence information. A significant deficiency in this framework is lack of proactive investigations and inspections. Moreover, inspectorates suffer from the confusion between the respective objectives, roles and responsibilities of inspectorate functions and internal audit units. The Public Finance Management Law established functionally independent internal audit units throughout the administration. These units were expected to help the Turkish Court of Accounts (TCA) to perform its new tasks. However, due to lack of coherent application of the law with regard to internal audit units these newly established units had an adverse impact on the inspection system in general.¹³

The scope of investigations includes assessments of efficiency and effectiveness of activities in terms of the aims and legislative context of the section or unit, the protection of assets and resources, accounting, financial management, information and human resources management and reform areas.¹⁴

Inspectors have the authority to access any information from a relevant institution, which gives them a crucial power. Although they can recommend criminal proceedings, dismissal and recovery of public assets, their reports have the status of recommendation only.¹⁵ When corruption is detected during investigations, the inspectorates are required to gather the relevant data and send a report to the public prosecutor.

The role of the inspectorates in revealing important corruption incidents is highlighted in TESEV's report, which was prepared and published within the scope of the SELDI (Southeast European

Leadership for Development and Integrity) Network. According to the report, the Susurluk, Nesim Malki, Emlak Bank, İmar Bank, Neşter, Paraşüt and Akrep operations were examples in which inspectorates had a role in conducting investigations and collecting evidence on alleged corruption.¹⁶

There is no comprehensive database on corruption cases or investigations conducted by inspectorates. Therefore, it is difficult to evaluate their effectiveness. For example, the Prime Ministry Inspection Board's annual reports cover information and statistics about the public institutions in which investigations or inspections were conducted, but provide no information on the findings or results of these investigations. An electronic information system to compile and disclose this information is essential to improve and ensure the effectiveness of the inspectorates.

The Council of Europe implemented the project Strengthening the Coordination of Anti-Corruption Policies and Practices in Turkey; the Prime Ministry Inspection Board along with 10 other institutions were beneficiaries. Among the outcomes of the project is the draft Administrative Investigation Guide. Turkish and foreign experts, judges and prosecutors from the Council of State and the Court of Cassation, directors of ministries' inspection units, the Union of Turkish Bar Associations, Confederations of Public Officials' Unions, as well as several public institutions such as Public Oversight, Accounting and Auditing Standards Authority, the Financial Crimes Investigation Board and State Personnel Department contributed to the preparation phase of the draft guide. It determines the standards of administrative investigations (corruption allegations in particular) and ensures that there is harmony in practices and offers solutions to many of the problems underlined here. However, the guide in question has not yet been implemented.

Endnotes

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11

POLITICAL PARTIES

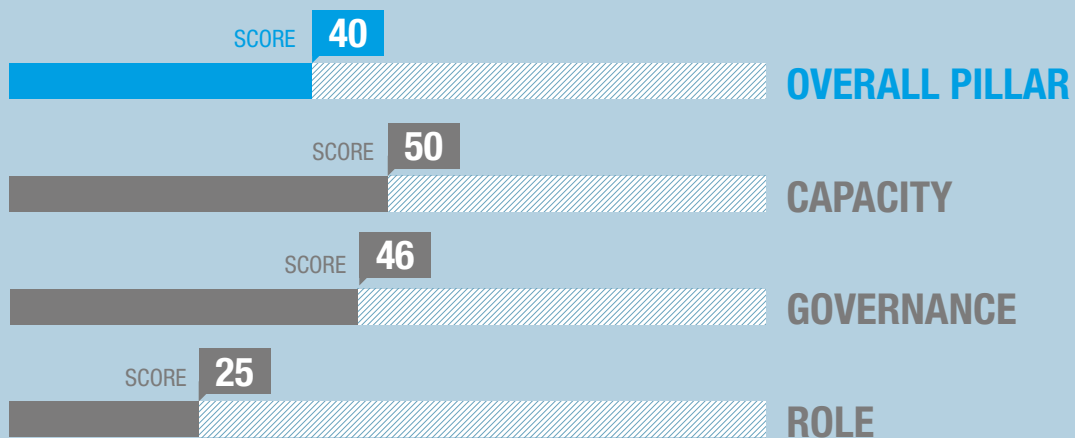
OVERVIEW

Political parties are one of the most vulnerable institutions in terms of corruption risk. The Global Corruption Barometer in 2013 indicated that two thirds of respondents perceived political parties as corrupt.¹ Similarly, in the survey conducted by TI Turkey in 2015 measuring corruption perceptions, political parties are the most corrupt institutions in the eyes of the public with 50% of the responders answering as such.²

The National Anti-Corruption Strategy and Action Plan came into force in 2010 in order to develop mechanisms for transparency and effective auditing of political financing, and also to finalize legislative initiatives on political ethics by 2012. Despite these commitments to ensure transparency in political financing and political ethics, no progress has been made and the deficiencies in legislation regulating political financing remain. Unlike its counterparts in Europe there is no independent agency, which is mandated to oversee the operations and finances of political parties in Turkey. Instead the Constitutional Court is authorized with auditing the financial accounts of political parties and dissolving them.³

The degree of independence, transparency and accountability of political parties ensured by the current legislation is unsatisfactory. The shortcomings in implementation also raise concerns in terms of the effectiveness of the auditing of political party financing. As a result of vague definitions in legislation, long auditing periods and a lack of political will for transparency among parties, political corruption risk remains unchecked. Despite the emphasis on the rules regulating intra-party democracy specified in Law No. 2820 on Political Parties and parties' statutes, the Law's general features encourage rather centralized decision-making practices and the strong influence of party leadership in most political parties.

The table below presents the indicator scores that summarize the assessment of political parties in terms of their capacity, their internal governance and their role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	50	50
	Independence	50	50
Governance	Transparency	50	25
	Accountability	50	50
	Integrity mechanisms	75	25
Role	Interest aggregation and representation	25	
	Anti-corruption commitment	25	

STRUCTURE AND ORGANISATION

The first political parties in Turkey date back to the end of the 19th century in the form of committees and associations.⁴ They were regulated under the Law on Associations until the 1961 Constitutional period. The separation in the treatment of political parties from associations came into force by the Law No. 648 on Political Parties in 1965. The current Law No. 2820 on Political Parties was adopted in 1983.

Following the failed attempts at a multi-party system in the early years of the Republic, the multi-party system was established in 1946. Until the elections in 1950, the Republican Peoples' Party (originally the *Halk Firkasi*) remained the sole ruling party. Democrat Party, which came to power following the 1950 elections was then subsequently dissolved with the military coup in 1960. Three years later, the Constitutional Court, which was founded on the basis of 1960 Constitution, was authorized to audit and dissolve political parties. Since then a total of 24 political parties have been banned by the Court.⁵

Turkey has been ruled under a single-party government since the 2002 elections that brought the Justice and Development Party (AKP) to power. As of December 2015, the single party government in Turkey remains in office following the November 2015 general elections in which AKP won the majority of the parliament with 49.50 percent of the total votes (317 deputies). The main opposition party is the Republican Peoples' Party (CHP), which received 25.32 percent of the votes (134 deputies). While the pro-Kurdish People's Democracy Party (HDPs) earned 10.76 percent of the votes (59 deputies), the Nationalist Movement Party (MHP) got 11.90 percent of the votes (40 deputies). Other minor political parties and independents were unable to pass the 10 percent threshold rule and thus remain unrepresented in the parliament for this term.

ASSESSMENT

CAPACITY

SCORE 50

Resources - Law

To what extent does the legal framework provide an environment conducive to the formation and operation of political parties?

Under Article 68 of the Constitution and Law No. 2820 on Political Parties, political parties can be established without consent.⁶ Every Turkish citizen over 18 years old has the right to be a member of a political party. Political parties gain their legal status upon the submission of the required documents from 30 Turkish citizens as founding members, as a minimum requirement, and other documents, such as the party program and statute to the Ministry of Interior. To participate in elections, parties should establish local branches in at least a half of the cities at least six months before an election day, or already be represented in parliament. Hence, there are no major legal obstacles for the establishment of political parties.

Political parties can be established without prior permission, but Chapter 4 of Law No. 2820 restricts them in terms of their objectives and activities. These include the unitary state principle, the prohibition of the emphasis on minority, religious, ethnic and linguistic differences, and the protection of Atatürk's principles and reforms. Article 68 of the Constitution also states these restrictions briefly, and emphasizes that a political party can be banned for failure to abide by them. These ideological restrictions are considered major obstacles to the full representation of the ideological spectrum.⁷ However, during the last five years these restrictions have lost their practical significance mainly due to the Constitutional Court's attitude in harmony with the European Court of Human Rights' decisions. For instance, in judgments of the Court with regard to the Rights and Freedoms Party (Hak ve Özgürlükler Partisi - HAK-PAR) the ECHR decisions played a major role in the judgment in question. Again in its decision not to dissolve AKP the Court's decision coincided with the adopted approach of ECHR such as in the Case of United Communist Party v. Turkey.⁸

The Office of the Chief Public Prosecutor is entitled to inspect the activities of political parties. There are procedures under which the Minister of Justice or another political party may demand that the Public Prosecutor take action. However, the Public Prosecutor may also initiate cases ex officio and according to his or her own discretion, without any form of political checks or balances.⁹ The dissolution of political parties is decided finally by the Constitutional Court after the filing of a suit by the office of the Chief Public Prosecutor.¹⁰ The Constitutional Court reviews bans of political parties, and also examines their annual financial accounts.

Political parties have to submit their final integrated (including central and local organizations) annual accounts to the Court by June of the following year. The court examines the suitability of income and expenditure according to the submitted documents and available data. With an amendment in 2011,¹¹ the scope of political party expenditure was extended in such a way that parties can make any expenditure in line with their purposes and there is no upper limit for expenditures. Given that the purposes of political parties are broadly defined; this condition is open to misuse.

The state provides annual direct financial aid to political parties that received at least 3 percent of the valid votes in the previous general election.¹² These shares are calculated in proportion to the share of votes received by the political party that passed the ten percent national threshold with the lowest share of votes. Eligible political parties receive twice the amount of annual state aid for local and triple for parliamentary elections. Political parties that participate in parliamentary and local elections are provided with free air-time on the state radio and TV stations; however, the governing parties get more air time.¹³

SCORE

50

Resources - Practice

To what extent do the financial resources available to political parties allow for effective political competition?

Until recently, state aid to political parties constituted the major portion (about 90 percent) of the annual income of the eligible parties.¹⁴ However, looking at the three parties that receive state aid (AKP, CHP, and MHP), we see that this ratio has dropped to around 50 percent.¹⁵ Although the threshold for eligibility for state aid was reduced from 7 to 3 percent in 2014, parties not eligible for state aid face serious financial issues.

Above all, the 10 percent national threshold in parliamentary elections is the major obstacle to representation. The parties that are not represented in parliament find it difficult to recruit new members and so fail to collect membership dues and donations. While the biggest parties benefit from state aid easily, small parties have difficulty gaining financial support from private and corporate resources. This burden creates unequal competition among them. There are significant differences in the amount of state aid disbursed to the government and opposition parties.¹⁶ This method has been working in favor of the ruling party in terms of equality in political competition. According to the results of the 2015 parliamentary elections, only four political parties will receive state aid in 2016.

Law No. 2820¹⁷ lists the sources of eligible income for political parties, which includes donations, in-kind support, membership fees, sale of party publications, and revenues from events such as concerts, balls and from party assets. State entities cannot provide any support to political parties by any means, financially or in-kind. Trade Unions and associations cannot financially support political parties, but there are no restrictions on support from foundations and cooperatives. Both private and corporate legal persons can donate or provide in-kind support to political parties up to a certain limit, which is re-valued each year.¹⁸

Air-time is also a particular concern for opposition parties. Even though the same amount of campaign time is allocated for each political party a week before the elections on state radio and television, the distribution of total air-time in practice is quite unequal. According to an OSCE evaluation, during the latest presidential election in 2014, the major media channels including the state television displayed explicit bias in favor of the ruling party in discussions, news and current affairs programs.¹⁹ A similar case was also seen during the election campaigns for the 2015 general elections.²⁰

SCORE 50

Independence - Law

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

The Constitution (articles 68 and 69) and Law No. 2820 (articles 98, 99, and 100) allows the dissolution of political parties. The Office of the Chief Public Prosecutor of the Court of Cassation have the right to file a lawsuit to dissolve political parties by a Constitutional Court decision under the following conditions: if the charter of party program is against the independence of Turkey; human rights; equality and the rule of law; the sovereignty of individuals; or democratic or secular principles. Parties can also be dissolved if they promote any kind of dictatorship or criminal activity, acquire support from foreign states, international organizations or individuals who are not Turkish citizens. The Constitutional Court can sever state aid partially to parties, which derogate from these rules (article 101). These articles give substantial legal power to the chief public prosecutor first and then the Constitutional Court, which undermines the independence of political parties.

The Office of the Chief Public Prosecutor keeps a record of each political party, which includes the personal details of party officials, a list of members, publications and the revisions to party programs and by-laws (article 10). Apart from this, there are no additional mechanisms for surveillance of political parties in the legal framework. On the other hand, the legal framework does not

completely prevent unwarranted external inference in the activities of political parties. “Despite a few reforms in the last decade, political parties are still defined as units of the state”, as a result of the centralist and hierarchical nature of the law on political parties.²¹

SCORE **50**

Independence - Practice

To what extent are political parties free from unwarranted external interference in their activities in practice?

Even though political party dissolution cases and decisions have diminished in recent years, there were two significant cases in the 2000s. The first was opened against the Justice and Development Party (AKP) due to alleged actions against the secular establishment of the state in 2008. The ruling AKP narrowly avoided being dissolved. At least seven of the 11 members of Constitutional Court must vote in favor of the dissolution of a party for it to be implemented. In the AKP case, six members voted for dissolution and five rejected it. The court chose to keep the ruling party under close scrutiny by declaring it “a focal point of anti-secular activities”, and imposed a financial sanction. In this regard, the case was settled by the decision to cut the amount of state aid given to the party.²²

The second was against the pro-Kurdish Democratic Society Party (DTP) and filed due to alleged action against the indivisibility of the state in 2009. The DTP was dissolved, and the 37 party members including two members of parliament and four regional mayors were banned from politics for five years.²³ The pro-Kurdish movement had established a new party, the Peace and Democracy Party (BDP), as a precautionary measure one year before the Court’s dissolution decision.

Nevertheless, the current approach of the chief public prosecutor of the Court of Cassation and the Constitutional Court is compatible with the European Court of Human Rights.²⁴ In his regard, despite a total of 25 political parties being banned between 1962 and 2009²⁵ and shortcomings in the current legal framework, the achieved progress in the practices of dissolving and prohibiting political parties should not be ignored.

At the grassroots level of politics, the most important concern arises with regard to the pro-Kurdish movement. Several local pro-Kurdish politicians have been arrested with the “KCK”²⁶ cases; KCK is an umbrella organization that includes Kurdish Workers Party (known as PKK). PKK is considered as a terrorist organization by the Turkish government and also designated as a terrorist organization by United States. KCK is alleged as PKK’s urban and political wing and seen as the main reason behind the escalation of violence in Southeast Turkey. During operations that were rounded by government between 2009 and 2011 many members of pro-Kurdish Peace and Democracy Party (BDP)²⁷ including elected mayors and municipality officers were taken under custody and charged under anti-terrorism legislation with various crimes such as being member of a terrorist organization.²⁸ This represents clear interference in the independence of political parties. In this context, Human Rights Watch in its 2014 Turkey Report recommended that the government end “the misuse of terrorism charges (contained in the Turkish Penal Code and Anti-Terror Law) against individuals for whom there is no evidence of violent activities, plotting, or logistic help to illegal armed groups”.²⁹

GOVERNANCE

SCORE 50

Transparency - Law

To what extent are there regulations in place that require parties to make their financial information publicly available?

All registered political parties must submit their annual accounts to the Constitutional Court to audit. The complete audit reports are published in the Official Gazette and on the website of the Constitutional Court, following the recent amendment to Law No. 2820 on 30 March 2011.³⁰ However, political parties are not obliged to publish their accounts. According to GRECO, there has been partial progress in strengthening the transparency of political party financing, but there should be a more transparent regime in which all information on party finances is accessible to the public.³¹

There is no expenditure limit for political parties, yet there is an upper limit for donations to political parties, which is re-evaluated each year. Only Law No. 298 on the Basic Principles of Elections and Electoral Registry requires the announcement of the resources financing the opinion polls when the results of these polls are broadcasted.³²

Until the August 2014 presidential elections, there was no law to deal with the transparency of campaign financing directly. Law No. 6271 on Presidential Elections³³ has now created a framework for the transparency and accountability in the financing of presidential election campaigns. The Supreme Election Board audits the campaign financing of presidential candidates and the reports are published. However, the legislation does not cover in-kind donations and third party financing. In order to increase transparency of contributors by third parties GRECO recommends Turkish authorities inspect the accounts of entities related to political parties or come under the influence of a party: not necessarily entities established by parties such as women's and young branches or political academies, but foundations and associations that have become hidden supporters of the party.³⁴ Most importantly, however, despite this limited progress, there is still no law that requires transparency of campaign funding during parliamentary and local elections.

SCORE 25

Transparency - Practice

To what extent can the public obtain relevant financial information from political parties?

The only way to access the financial information of political parties is to search the Constitutional Court's audit reports. The Court has designed an online search engine to help find the decision reports on the audit process.³⁵

There are concerns regarding the content of the reports and the extent to which they are up-to-date.³⁶ For example, by the end of October 2014, the latest audit report on the financial accounts of the ruling party AKP was for 2009.³⁷ Moreover, of the details of party financing and expenditures, the reports provide only general items. Even though there is not any requirement by law,

a few parties have disclosed their accounts on their websites.³⁸ However, this has not been publicized adequately to raise public awareness on party financing.

Transparency International Turkey followed the 7 June 2015 parliamentary elections closely, including the election campaigns of political parties and individual candidates. Since there is no regulation to monitor the funding of election campaigns for either political parties or candidates, TI Turkey called on political parties and candidates to voluntarily declare their election campaign budgets and resources publicly, in order to support transparency and accountability in politics. None of the political parties declared their party budgets for the elections, but 33 candidates declared their personal election campaign budgets.

At the same time, TI Turkey called on candidates to disclose their assets during the campaigning period: only 34 of the thousands of candidates disclosed their assets by filling in and signing the asset declaration forms.³⁹ While this is a very small number, what is significant with these voluntary declarations is that they were the first in Turkey's political history.

SCORE

50

Accountability - Law

To what extent are there provisions governing financial oversight of political parties by a designated state body?

The legal framework sets the basic auditing principles for accountability of political parties. To ensure accountability of political parties, Article 69 of the Constitution and the Law No. 2820 authorizes the Constitutional Court to audit the incomes, expenditures and acquisitions of political parties. The Court can receive assistance from the Turkish Court of Accounts in performing the audit. The Court's decision is final and the law defines sanctions not only for inconsistent and inaccurate reporting, but also for late submission of financial reports.

Although the GRECO finds the Court's performance acceptable to a point, some experts have criticized its tasks from different perspectives.⁴⁰ In most democracies the auditing of political parties is carried out by either the Court of Accounts, an Electoral Management Body, or special independent commissions designed for this purpose.⁴¹ In any case, the Court's capacity in terms of qualified human resources needs to be improved.⁴²

Political parties are required to submit their financial reports annually to the Constitutional Court. While income items are identified in Law No. 2820, such as membership fees, MP fees, candidate fees, donations, revenues earned by selling merchandise or publications, and from events and organizations etc., items of expenditure are not specified. According to the law, "any purchase to meet the aim of the party is considered as 'expenditure'".⁴³ This vague definition brings about the possibility of making subjective judgments during the auditing process. GRECO recommends Turkish authorities to include expenditure incurred individually by elected representatives and candidates of political parties, which remain excluded from the auditing process.⁴⁴ Moreover, since the auditing process only covers the consolidated accounts of headquarters, local branches are not subject to detailed auditing.

As reflected in the European Commission's Progress Reports in 2012, 2013 and 2014, deficiencies in the legal framework on political financing not only stem from vague and narrow definitions, but

from exclusions in terms of investigations and auditing processes of in-direct financial support.⁴⁵ The 2014 Progress Report stated that no further reform of the provisions for political funding has taken place, and shortcomings regarding audit of campaign budgets, donations and candidates' asset disclosures remained during local elections.⁴⁶ GRECO concludes that Turkey has not satisfactorily implemented any of the nine recommendations related to transparency of party funding, except for the provisions in the Presidential Election Law (see transparency law).⁴⁷ A recent GRECO report also stated that there has been no progress with regard to transparency of party funding since the adoption of the Second Compliance report in 2014. Although a draft bill on the Amendment on certain laws for the purpose of Ensuring Transparency in the Financing of Elections was prepared by a working group under the Ministry of Justice, the bill has not yet been forwarded to the cabinet and parliament.⁴⁸

SCORE **50**

Accountability - Practice

To what extent is there effective financial oversight of political parties in practice?

The annual accounts of political parties do not provide detailed and comprehensive information on income and expenditure. Although there is a lack of concrete and measurable data, the volume of indirect financial support could be more than the reported incomes of political parties, especially during campaign periods in which candidates are not subject to any declarations.⁴⁹

The Constitutional Court audits the party accounts, and experts have identified several deficiencies in the audits. The limited human resource capacity of the Constitutional Court is the main challenge in the auditing process. The audit reports prepared by the Constitutional Court are published on the Court's website.⁵⁰ However, although the Court's decisions recommending enforcement of sanctions are discernable in these reports, the auditing period is quite long so most of the decisions published relate to the financial accounts of five years previous to the time of the decision. These long auditing periods are subject to criticism as they prevent public access to information on the auditing process and results in a timely fashion.⁵¹

When the Constitutional Court judges that there is evidence that income was acquired against the rules defined by the Law No. 2820, the Treasury has the authority to seize the assets. However due to the limited information provided to the public, it is difficult to assess the effectiveness of the sanctions. Although decisions of the Constitutional Court are published online, official statistics on the judicial system are not detailed enough to include information on cases and investigations into political parties' financial activities, or the seizure of assets.⁵²

SCORE **75**

Integrity mechanisms - Law

To what extent are there organizational regulations regarding the internal democratic governance of the main political parties?

Law No. 2820 (articles 7 and 13) provides a framework for regulating the governance structure of political parties, which includes the Grand Party Congress, the party leader, the Central Decision

Board, the Managing Board, the Execution Board and the Disciplinary Board. Main party decisions are made through the Grand Party Congress. Members of the congress have the right to elect a party leader, members of the Board of Directors and the Disciplinary Board through secret ballot voting; to make amendments on the party program and statute; and to approve or reject the party's final accounts. According to the law, the Grand Congress elects the leader of the party with an absolute majority. If none of the candidates receive an absolute majority in the first two voting rounds the candidate who receives the most votes is elected in the third round.

According to Law No. 2820, in order to change the statute of the program of the party, the party leader, members of the Board of Directors and the Central Decision Board and/or 20 percent of the members of the Grand Party Congress should propose the change or related amendment. In cases of urgency when the Grand Party Congress cannot meet, the Central Decision Board can make any decision except to change the statute of the party or its program or the decision to dissolve the party.

The Law enables political parties to choose a system of nomination from among several models, but the nomination process is basically finalized by the Central Executive Board or the party leadership in most political parties.

There are also some good examples of internal rules regulating democratic governance, representation and nomination processes within parties. The ruling party AKP, for example, formulated a Democracy Arbitration Committee responsible for dispute resolution.⁵³ Through the latest amendments in the party statute and circulars of the CHP in 2012 and 2014, the main opposition party also took important steps by adopting a quota for the representation of women and young people. For candidates recommended by the headquarters of the party during nomination processes, the quota for women is 33 percent, and 10 percent for young candidates.⁵⁴ In addition to this, a 15 percent ceiling was identified for the rate of candidates nominated by the headquarters.

SCORE **25**

Integrity mechanisms - Practice

To what extent is there effective internal democratic governance of political parties in practice?

Despite the articles and rules regulating the governance of political parties, integrity in practice is still questionable. Top-down decision-making processes and leaders' strong influence in decision-making were specified as the main challenges during TI Turkey's interviews with three experts Gençkaya,⁵⁵ Tuncer⁵⁶ and Gürkan.⁵⁷ The priorities and policies followed by the party are usually not open for discussion either with the public or party members.

There is a consensus on the lack of democratic procedures and integrity regarding parties' managerial bodies. While a democratic culture in decision-making existed until the 1980s, it disappeared following the military coup in 1980. Following the dissolution of all political parties by the coup, a new hierarchy was established in the parties' managerial structures. The selection of parliamentary candidates by the leader and the Central Executive Board became common practice.

There are also signs that disciplinary mechanisms and the Disciplinary Boards of political parties serve to eliminate counter-views within parties. The latest examples of such cases are from the

ruling party and the main opposition. AKP's Central Executive Board sent former Culture Minister Ertuğrul Günay, İzmir MP Erdal Kalkan and Ankara MP Haluk Özdalga to the Disciplinary Board following statements criticising government policies regarding private teaching courses and their approach to dealing with corruption allegations. They were sent to the Disciplinary Board for "verbal and written remarks stigmatizing the party and the government". They announced their resignations from AKP after this decision.⁵⁸ CHP MP Suheyl Batur was also sent to the Disciplinary Board following his criticism of party policies.⁵⁹

A remarkable example of the lack of democratic discussion and participation in political parties is the weekly party group meetings carried out in recent years. While these meetings used to be the sessions where party members and MPs came together to discuss the party agenda, in recent years these events have been transformed into party leaders' press meetings. Only the leader's speech during these meetings is broadcast and published online by parties and covered by the media.⁶⁰

ROLE

SCORE 25

Interest aggregation and representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

In general, major political parties in Turkey are based on clientelism and focus on a limited number of very specific interests. Many relevant social interests do not find a voice in the party system. Moreover, the threshold of a 10 percent share of the vote for representation in parliament limits the space for alternative voices in political life.

Electoral competition is squeezed between the four major parties and political debates are carried out between those that have a seat in the parliament. The four parties' vote share equals more than 90 percent of electoral votes. Constructive dialogue and cooperation is quite limited among these parties. Polarization leads to engagement with only specific segments of society for each party, and social dialogue has suffered as a consequence.

The European Commission's 2014 Progress Report also emphasized the challenge of political polarization referring to the local elections in which parties tended to focus on particular issues and appeared caught up in short-term political fights. In December 2013 a graft probe involving government ministers exacerbated the already polarized political climate following the Gezi protests in May 2012, when a small sit-in protest against the demolition of a park in Istanbul turned into a country-wide demonstration and riot against the Turkish government.⁶¹ This can also be seen in President Erdoğan's rhetoric, which took on a sectarian Sunni Islamic tone as he attacked secularists and members of non-Islamic faiths, and Turkey's heterodox Alevi community has undoubtedly played a role in rising political tensions in an already deeply polarized society.⁶²

Clientelistic relationships between some parties and business areas, such as construction and the media, have become a serious concern resulting in an increased perception of political corruption and a decline in public trust. Transparency International's Global Corruption Barometer 2013

found that political parties were considered the most corrupt institutions, demonstrating their weak legitimacy in the eyes of the public.⁶³

In 2002, Cem Uzan, owner of the Star TV and Newspaper, was elected as the party leader for Young Party and ran as a candidate in the 2002 and 2007 general elections. Biased media coverage in favor of Uzan was identified in the Star Newspaper by Tunç and Arsan's study of media coverage during the 2002 elections.⁶⁴ Today relations between media owners and politicians continue to raise serious concerns. Media organizations, known to be pro-government, have investments in the energy and construction sectors and get the major public procurement contracts. A collective data gathering and mapping study visualized by activists, Network of Disposessions (*Mülksüzleştirme Ağları*) brings these relations into view online.⁶⁵ Developing close ties with various domestic capital groups and media owners the AKP government consolidated its power in the national setting.

SCORE 25

Anti-corruption commitments

To what extent do political parties give due attention to public accountability and the fight against corruption?

Anti-corruption commitments are common in political parties' programmes and election manifestos. However, they are generally left unfulfilled. The 2002 Election Manifesto of the ruling AKP was based on three principles: the fight against corruption, fight against poverty and fight against restrictions and bans. The anti-corruption commitments pointed to several specific deficiencies with regard to legislation and proposed actions to overcome them, including amendments to political financing and public procurement regulations. Despite its 12 years in power, and a number of legal amendments made by the parliament, progress regarding commitments such as transparency in campaign funding and asset declarations is limited and the main deficiencies still remain in both legislation and practice.

Following the corruption investigations in December 2013, corruption became the main item on political party agendas. These cases were considered by many to be a conspiracy by the government and any discussion over the cases was avoided within the ruling party. The AKP neither conducted an intra-party investigation nor did it send the ministers implicated to the Disciplinary Board.⁶⁶ The four ministers involved in the corruption allegation resigned from their posts before a drastic cabinet reshuffle took place. Later in May 2014 a parliamentary investigation committee was established in order study prosecutor's files alleging wrongdoings of four ministers. The media was not allowed to cover the investigations of the committee. In December 2014 the newly appointed prosecutors dropped cases against 53 probe suspects.⁶⁷

Instead, MPs who criticized the party and the government were subject to disciplinary mechanisms. This political environment prevented these allegations from being addressed in a non-discriminatory, transparent and impartial manner. As stated in the European Commission's 2014 Progress Report, the response of the government following these allegations gave rise to serious concerns regarding the independence of the judiciary and separation of powers.⁶⁸

Opposition parties have also promised to fight corruption in their election declarations and public statements. However, their efforts remain insufficient due to their limited representation in the parliament and lack of a consistent will to take anti-corruption action.

There are a few MPs like Aykut Erdoğan from CHP who regularly ask parliamentary questions on corruption and lead anti-corruption actions. However, there is no systematic and continuous effort to prioritize anti-corruption at the party level. Following the December 2013 corruption allegations, the CHP proposed a law to declare December 17 as the Day to Fight Against Corruption⁶⁹ and posed a parliamentary question on progress made on the GRECO recommendations.⁷⁰ Although these are important steps, for a change in the legislation and practice, cooperation among parties and strong will to combat corruption is necessary.

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12

MEDIA

OVERVIEW

Freedom of expression is ensured by the Constitution. However, in practice, there is serious concern surrounding Law No. 3713 on Anti-Terror, and Article 299 and Article 301 of the Turkish Penal Code, which have been repeatedly used to censor and prosecute journalists. International reports are usually at one in criticizing the imprisonment of journalists, the blocking of the Internet, the bans on certain publications, and political intervention and self-censorship, which characterize state control of the Turkish media sector.

In recent years, media censorship has become an important issue. Freedom House and the Committee to Protect Journalists have named Turkey as the world's leading jailer of journalists, followed closely by Iran and China. According to the Committee, by the end of 2012, 49 journalists were behind bars, compared to only eight a year earlier.¹ The government's actions to suppress freedom of speech have intensified since the emergence of the major corruption scandal in December 2013.²

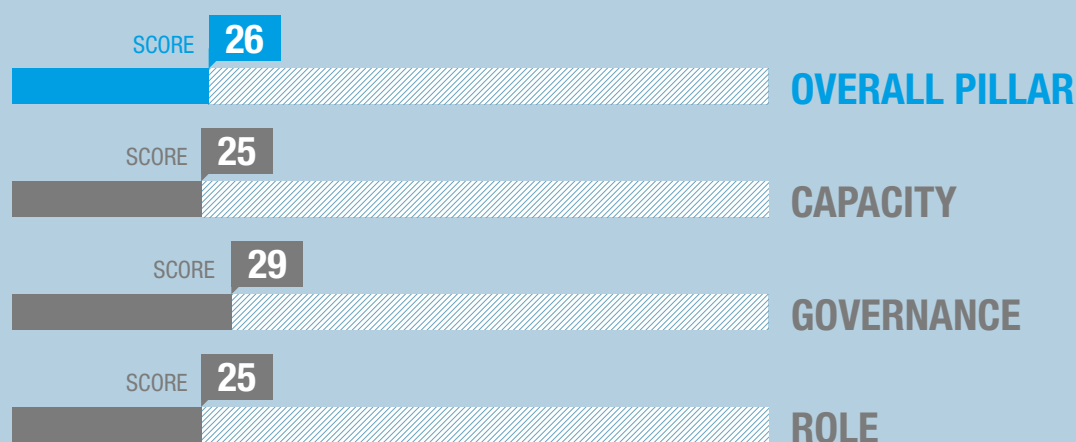
Over the past year, dozens of journalists have been fired as a result of government pressure, and threats to journalists from government officials have become prevalent. On 14 December 2014 a large number of journalists were arrested and prosecuted.³ This has helped to reintroduce a climate of intimidation in the media, which is reflected in Turkey's decreasing ranking in global indices on press freedom. On the 2013 World Press Freedom Index, Turkey ranks 154 out of 180 countries, falling six places from the previous year.⁴ Similarly Freedom House downgraded Turkey's status from "Partly Free" to "Not Free" in its Freedom of the Press 2014 report issued in May, citing a "significant decline" in press freedom and increasing self-censorship and media polarization.⁵

The regulatory authority for broadcasting is the Radio and Television Supreme Council (RTÜK). As a regulatory authority, it should be objective and have administrative and financial autonomy. However, decision-making within and the RTÜK, as well as its overall structure, are highly political and usually favor the government. The Bertelsmann SGI Turkey Report indicates that RTÜK's political composition (*i.e.* the general director) raises concerns and has created difficulties for the media outlets that are openly against the government, especially following the December 2013 corruption scandals.⁶ Despite the efforts of Journalists Association and Journalists Union, public trust in the media is low.

There are no legal provisions to ensure the integrity of the media. Despite the best efforts of the Journalists' Association and the Union of Journalists, the public still does not trust those who work in the media.

There are several big private media groups (Doğan, Çalık, Doğuş, Turkuvaz, Çukurova and Ciner), which are typically part of wider conglomerates controlled by wealthy individuals. According to a recently published report these groups are active in economic life; they have investments in different sectors such as energy, trade, tourism, banking etc., and participate in public tenders.⁷ These groups are split between supporters and opponents of the government. As a result, it is not easy for citizens to find objective news on the government's activities and the media is a long way from performing its watchdog function.

The table below presents the indicator scores that summarize the assessment of the media in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	50	25
	Independence	25	0
Governance	Transparency	25	25
	Accountability	50	25
	Integrity mechanisms	25	25
Role	Exposing corruption	25	
	Inform public on corruption and its impact	25	
	Inform public on governance issues	25	

STRUCTURE AND ORGANISATION

According to official statistics, there are 24 national, 17 regional and 205 local TV enterprises currently broadcasting.⁸ TV channels receive the bulk of commercial revenue generated in the media, which predominantly derives from advertising. The public broadcaster, Turkish Radio and Television Corporation (TRT), was established in 1961 and the first private television station was launched in 1990.⁹

Newspaper circulation per 1000 inhabitants is 96, which is relatively low compared to European countries.¹⁰ Three fundamental laws regulate the media sector in addition to the Constitution: Law No. 5187 on Press, Law No. 2954 on Radio and Television and Law No. 6112 on the Establishment of Radio and Television Enterprises and their Broadcasting Services.

The purpose of the Press Law is to arrange freedom of the press and the implementation of this freedom. It was published on the Official Gazette on 26 June 2004. The objective of the Radio and Television Law is to prescribe the principles and procedures relating to the regulation of radio and television broadcasts and the establishment, duties, competence, and responsibilities of the Radio and Television Supreme Council. The law entered into force in 1983 and it is still valid. However, several amendments have been introduced since 2002. Finally Law on Establishment of Radio and Television Enterprises and their Broadcasting services (in short Broadcasting Law), which came into force in 2011 regulates and supervises radio, television and on demand media services and determines the procedures and rules in relation to the administrative, financial and technical structures and obligations of media service providers and the establishment, organization, duties, competences and responsibilities of the Radio and Television Supreme Council. Moreover, the Turkish Parliament adopted a new Internet law in February 2014 with the aim of promoting Internet regulation in Turkey that allows the Information and Communication Technologies Authority (ICTA) to block any website within four hours without first seeking a court ruling.¹¹

ASSESSMENT

SCORE

50

Resources - Law

To what extent does the legal framework provide an environment conducive to a diverse independent media?

The legal framework does not present any obstacles to the establishment of print media, nor does it impose any restrictions on entry into the journalistic profession. However, several restrictions exist regarding the establishment of broadcast media entities. Foreign ownership and control of broadcasters are restricted under laws regulating the media sector,¹² even though Law No. 6112 of 2011 replaced its previous version dating back to 1994, to comply with the related European Union directives.

The only requirements for setting up a newspaper, magazine or other print publication is the presentation of a proclamation outlining the ownership and content details of the publication to

the Office of the Local Chief Prosecutor. If the proclamation fails to meet the conditions prescribed by law, the owner of the publication must correct the submission within two weeks of being notified. If the submission is not corrected in time, the Office of the Prosecutor will petition the Criminal Court of First Instance to stop the publication. The Criminal Court of First Instance has two weeks to produce a verdict, but this verdict can be appealed and in the meantime the publication can apply for an emergency stay order, to enable it to continue working.¹³

On the other hand, broadcasting legislation is not conducive to a diverse media environment. A license issued by the RTÜK is necessary to establish broadcast media entities.¹⁴ Only incorporated companies can receive this broadcast media license,¹⁵ so a broadcast license cannot be granted to political parties, labor unions, professional organizations, cooperatives, associations, societies, foundations or local governments. This is regarded as an obstacle to diversification in the broadcast media and received criticism from the Communication Research Association, which stated that the broadcasting ban on faculties of communication at the universities prevents news making, education and specialized broadcasting.¹⁶

The permitted ratio of foreign shareholding in one radio and television enterprise increased to 50 per cent in 2005 (it was previously 25 per cent) and the restriction on “direct” foreign shareholding is limited in a media service provider. This provision eliminated a significant obstacle to the foreign capital that started to show interest in the Turkish media sector.

In addition to the license, corporations must be assigned a frequency, a fundamental element for terrestrial television and radio. The number of frequencies is limited and assigned through a procurement process.¹⁷ While a company does not need a frequency for satellite broadcasting, one is required for terrestrial broadcasting. The allocation of such frequencies, however, has been problematic. During the 1990s the conflict between the military and the Islamist Welfare Party (*Refah Partisi*) led to the adoption of security measures against Islamist organizations and media. Thus, the allocation of frequencies halted. In the beginning of the 2000s various legal and structural arrangements were made empowering the Telecommunications Authority with the task of frequency planning.¹⁸ Yet, the new law reassigned the task of frequency planning to the RTÜK. Article 26 (4) of the new law requires a sorting tender to be held for private radio and television enterprises:

Media service provider enterprises that have been established as radio and television broadcasting companies and have operated in the field of radio and television broadcasting for at least one year, that fulfill the prerequisites specified in the tender specifications and that have obtained a qualification certificate from the Supreme Council to bid in the tender can participate in the sorting tender.¹⁹

In this regard it could be argued that the new legal provisions provide advantages to old players in the sector for participating in the sorting tender, which is against the principle of equality guaranteed under the Constitution.²⁰

In order to prevent monopolies, the law determines the maximum share of the market for the media service providers. Although the old law disallowed the shareholders of a radio or television enterprise becoming a shareholder in another radio or television enterprise, Law No. 6112 allows real or legal entities to hold shares directly or indirectly in a maximum of four media service providers. However, a media service provider’s market share should not exceed 30 per cent of the total commercial communication revenue of the sector in case of holding shares in more than one media service provider. In case this is exceeded, the real or legal person must assign its shares in

the media service providers to stay within this legal bound within 90 days. Otherwise, the Supreme Council may impose a fine of 400.000TL (130,000 euros) per month.²¹ The only concern here is that the law does not define a calculation method to assess total revenue and the shares of the real or legal persons.²²

SCORE 25

Resources - Practice

To what extent is there a diverse independent media providing a variety of perspectives?

Turkey has a wide variety of domestic and foreign periodicals. There are 43 national newspapers and 3,450 periodicals, a half of which published weekly. The total circulation of national newspapers is around 4.5 million in a country of 74 million. There are nine newspapers published in languages other than Turkish, but minority newspapers have extremely limited circulation ranging from 500 to 2,000.²³

In 2003 a total of 257 television stations and 1,100 radio stations were licensed to operate, but others operated without licenses. Large multi-sectorial groups, such as the Doğan Group, Doğuş Group, Zirve Holding, Ciner Group, and Feza Group dominate the media landscape.²⁴ All the major commercial channels and newspapers belong to these media holdings. However, as a result of increasing political polarization during the era of the AKP and the excessive role of the government in the media, opposition media outlets do not have adequate financial resources. Thus, the survival of the opposition media is a concern.²⁵

Advertising and public notices represent the sole income sources of media enterprises. However, as the sole public service broadcaster TRT is funded by a combination of public and commercial revenues. The major sources of funding are: a broadcasting (license) fee generated from the sale of television and radio receivers, music sets and VTRs; two per cent of electricity bills paid by each consumer; and a share allocated from the national budget.²⁶

There is a lack of clarity on how to calculate the total amount and the shares of the companies, although the legal framework allows no media outlet more than 30 per cent market share in commercial communication revenue.²⁷ That said, the regulatory board is not transparent in either the collection of data or their auditing mechanism. RTÜK shares only the total revenue of the media outlets from the previous year, with no disaggregated data on their website, justified in order to keep trade secrets.²⁸ In addition to these deficiencies, pro-government media outlets mostly enjoy the financial benefits of the government's public notices.²⁹ The government has huge power over the entire business sphere and its relations with the media sector. Hence, enterprises with close ties to the government and state institutions tend to advertise in pro-government media outlets.³⁰ Press Advertising Agency (PAA) is authorized to allocate official announcements and advertisements. This institution has been widely criticized for using this authority as a means of punishment. Sözeri suggests that the PAA violates media ethic codes by allocating the advertisements to pro-government media groups.

In addition, the allocation of frequencies for broadcast media has created irregularities in practice. Broadcasting companies are subject to licensing requirements on the grounds that they use scarce or finite frequencies. However, the expansion of available frequencies has still not been completed.

Therefore, an enterprise entering the terrestrial broadcasting market has no other alternative than to buy an existing frequency license owned by another media outlet. As mentioned by Kurban and Sözeri “the predicament regarding the allocation of frequencies has created a barrier by increasing the cost of entry to the market and has become a major obstacle to diversity and pluralism in the broadcasting media”.³¹

The media also fails to reflect the diverse nature of society.³² Kurds and Alevis enjoy disproportionately less news coverage than the Turkish majority in the mainstream media. The words “Armenian”³³ and “Rum”³⁴ are used as swear words in extreme conservative newspapers. Similarly, humiliating treatment of atheists and LGBT individuals can also be observed.³⁵

SCORE 25

Independence - Law

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?

Under Law No. 2954 on Radio and Television, the RTÜK is the government appointed media watchdog. This raises concerns about the independence of the media, as it is argued that the institution, which is dominated by figures appointed by the government, has applied double standards against anti-government TV channels.³⁶

The Constitution ensures freedom of expression. Article 26 stipulates that individuals and groups are free to express and disseminate their opinions and thoughts. However, the exercise of freedom can be restricted in the interests of national security, public order, state secrets, indivisible integrity of the state, and preventing crime.³⁷ With such broad and unclear restrictions, the scope of Article 26 has been brought into question. Kurban and Sözeri,³⁸ for instance, claim that beyond its liberal façade, nationalism, cultural conservatism, and statism are the supreme values of the Constitution, and are the major obstacles to freedom of expression in the media.

Law No. 3713, the Turkish Criminal Code No. 5337, and Law No.6112 on Broadcasting have provisions that significantly curtail media freedom and thus indirectly control media output and allow the government to prosecute and fine media outlets and journalists on broad bases relating, for example, to threats to national security, public decency, and protection against libel.³⁹

Article 301 of the Turkish Penal Code is a serious concern when it comes to the independence of the media and freedom of expression. The Article defines denigration of Turkishness, the Republic, and the foundation and institutions of the state as crimes.⁴⁰ This has been used to prosecute a wide range of individuals including journalists, writers and academics.⁴¹

Another legal obstacle to independence is Law No. 3713 on Anti-Terror, which has been repeatedly used to censor and prosecute journalists. Use of this law to prosecute journalists has increased since a 2006 amendment. Under Article 7 propaganda connected to terrorist organizations shall be punished with imprisonment. According to Reporters without Borders:

As neither propaganda nor terrorist organization is defined, the article can easily be interpreted in the broadest possible way to target almost any journalist or media.⁴²

In April 2013, the government amended several laws used to limit free speech by adopting the fourth judicial reform package. The main aim of the package was to reduce the number of violations found by the European Court of Human Rights in this field. The amendments included lifting limits on severe restrictions on publishing or reporting statements by illegal organizations (Article 6/2 Law No. 3713) and narrowing the scope of the crime of “making terrorist propaganda” (Article 7/2, Law No. 3713; Article 220/8, Turkish Penal Code). This came in response to violations identified by the European Court of Human Rights in many judgments against Turkey.⁴³ Although Articles 6/2 and 7/2 of Law No. 3713 were amended to be less restrictive regarding the publication of the statements of illegal groups (publication would only be a crime if the statement constituted coercion, violence, or genuine threats) the reform package did not amend problematic provisions of the Penal Code such as Articles 125 (on criminal defamation), 301, and 314.⁴⁴

Following the December 2013 corruption scandal, critical information, voice recordings and indictments were leaked through the Internet. The government then tried to control the information flow by widening its scope to censor the Internet and block numerous websites.⁴⁵ In this context, the amendment of the Law No:5651 on Internet in February 2014 was described as amounting to the legalization of censorship.⁴⁶ The law allows the High Telecommunication Authority to shut down and block access to websites within four hours based on a mere allegation that a posting violates private life, without any further investigation.⁴⁷

SCORE

0

Independence - Practice

To what extent is the media free from unwarranted external interference in its work in practice?

The 2014 World Press Freedom Index ranks Turkey 154 out of 180 countries.⁴⁸ Its report described Turkey as one of the biggest prisoners of the media, with around 60 journalists in detention at the end of 2013. Dozens of imprisoned journalists were released during the year, but still face charges. Additionally, provisional detention is used to punish media personnel who repeatedly “spend months if not years in prison before being tried”.⁴⁹

The Committee to Protect Journalists condemned detention of at least two-dozen individuals, including journalists, television show producers, scriptwriters, and police officers on the 14 December 2014. The authorities accused them of a number of offences including “using intimidation and threats” to “form a gang to try and seize state sovereignty”, “forgery” and “slander”.⁵⁰ The operation was the most significant against supporters of US-based Turkish cleric Fethullah Gülen, a former supporter of then-Turkish Prime Minister Erdoğan. After police and prosecutors who were allegedly linked to Gülen Movement opened a corruption investigation into Erdoğan’s inner circle in 2013 Erdoğan turned against Gülen and his followers, accusing them of constituting a “parallel state”.⁵¹

Publication bans are one of the major obstacles to the rights of access to information and freedom of expression. Freedom house states:

“Ten books were newly banned in 2012, adding to a list of around 400, while 12 newspapers were among 46 publications that were confiscated during the year. Publications were banned under

orders from a variety of different ministries and offices. Restricted topics included Kurdish issues, the Armenian genocide, or any subject deemed offensive to Islam or the Turkish state.”⁵²

A recent parliamentary question revealed that 149 publication bans were applied between January 2010 and June 2014.⁵³ From match-fixing and mining disasters to parliamentary inquiries into corruption allegations, a wide range of issues has been banned.⁵⁴

Media outlets are sometimes denied access to events and information for political reasons. In September 2012, seven publications – *Cumhuriyet*, *Sözcü*, *Birgün*, *Evrensel*, *Aydınlık*, *Özgür Gündem*, and *Yeniçağ* – were denied the accreditation needed to cover the AKP’s fourth party congress.⁵⁵ In November 2014, the media was prohibited from disseminating information on the investigation commission of the 17 and 25 December corruption scandals. The Turkish Journalists’ Association, and the Journalists’ Union of Turkey concluded that the Court’s decision amounted to censorship.⁵⁶ Nevertheless, some media including Today’s Zaman and the T24 news portal announced that they would not comply with the Court’s verdict and published certain details revealed in the testimonials.

According to Professor Yaman Akdeniz, there are 90,000 blocked websites in Turkey;⁵⁷ more than 90 per cent of which were banned by the High Council for Telecommunications. The Freedom on the Net report evaluates the Internet freedom status of Turkey as “partly free” with a score of 49 out of 100 (0=best, 100=worst).⁵⁸ Twitter and YouTube were banned in 2014, but the bans were lifted within two months, as a result of rising dissatisfaction in society and a declaration by the Constitutional Court in favor of freedom of expression.⁵⁹

Şener⁶⁰ states that the government wishes to control the media in order to prevent news coverage critical of the politics of the ruling party and of the declarations of high-level officials. According to Şener, a striking example of government intervention in the media is provided by the so-called “Alo Fatih” case. During the Gezi protests, Prime Minister Erdoğan, telephoned Fatih Saraç, one of the board members of Habertürk TV from Morocco, and requested that the speech of the MHP (*Milliyetçi Hareket Partisi*) leader be pulled from the airwaves. Saraç called the editor to pass on the necessary instructions.⁶¹ The conversation between Yıldırım Demirören, the owner of the *Milliyet* and *Vatan* newspapers and then-Prime Minister Erdoğan that leaked onto the Internet indicates the depth of external intervention in the print media.⁶² Erdoğan scolded Demirören for the headline “İmralı Records” that appeared in *Milliyet* newspaper on 28 February 2013. He then added “he will not take anyone from Milliyet on his plane again”.⁶³ According to *Bianet*, an independent Turkish press agency established in 2000, this conversation gives an indication of the background behind the sacking of famous journalists Hasan Cemal, Can Dündar, editorial chief Derya Sazak and the broadcast coordinator Tahir Özyurtseven at the *Milliyet* newspaper.⁶⁴

One of the most crucial indicators of pressure on media owners by the government is the growing level of self-censorship. Sözeri indicates that self-censorship is quite common in the media and is becoming institutionalized. Accordingly, journalists are intrinsically aware of topics that are hazardous to report on.⁶⁵ Because of surveillance and pressure from the government, media owners cannot tolerate employees who disseminate anti-government opinions through newspaper columns or TV programs.

In this context, it is illustrative that, at the beginning of the Gezi Protests, one of the largest protests in decades, the mainstream media failed to report on the event. Major TV channels chose to broadcast documentaries about penguins and a cookery program while police used brutal force and tear gas against protesters.⁶⁶ As a result, people tend to use social media instead of mainstream

outlets in order to ascertain what was happening on the streets.⁶⁷ It should also be noted that the media fails to report sufficiently on critical issues such as the death of workers because of the lack of independence from business sector and the executive.

According to Freedom House,⁶⁸ the greatest leverage the government exercises over the media is economic. One of the most surprising claims during the December 2013 corruption scandal, was the alleged attempt made by the prime minister's son and a minister to prompt some of Turkey's wealthiest and politically best-connected businessmen (from Çalık Group whose CEO was the son-in-law of Prime Minister Recep Tayyip Erdoğan) to acquire Turkuvaz Media, one of the largest media outlets that owns *Sabah* daily and ATV channel.⁶⁹ The vast majority of the total transaction (690,000 euros out of 1 million euros) was provided by loans from state banks Vakıfbank and Halkbank. Katar Investment Authority secured a 25 per cent stake holding in Turkuvaz media.⁷⁰ A parliamentary question was submitted in 2008 demanding information as to the duration, instalments and other conditions relating to these loans provided by state banks to Turkuvaz Media. In response to this parliamentary question, the regulatory authorities and state banks provided no information, claiming that the information requested was a commercial secret.⁷¹

Afterwards, the Turkuvaz Media group sold the same assets, ATV and *Sabah*, to Kalyon Construction in 2013. In the indictment of the 25 December 2013 corruption case, one of the most shocking claims was that a fund was created by the then-prime minister's son and a minister to transfer ATV and *Sabah* from Turkuvaz Media to Kalyon Construction.⁷² Assets of seven well-known and politically connected businessmen who contributed to this fund were temporarily frozen.⁷³ However, these assets were eventually unfrozen, no one was charged, and the court chose to call an end to criminal proceedings. As such, Kalyon İnşaat (a construction company) still enjoys a substantial role in the Turkish media.

In addition to this, companies with media outlets that are critical of the government have been targets of tax investigations and forced to pay large fines.⁷⁴ For instance, enormous fines⁷⁵ levied at the once-dominant Doğan Media Group resulted in the group having to sell off several of its media properties, including one of the country's leading papers, *Milliyet*, after its reporting on corruption linked to the ruling AKP party infuriated the government.⁷⁶ Hence, big media companies do not dare challenge the ruling party for the sake of their activities in other sectors.⁷⁷

The information regarding internal staff, reporting and editing policies of the media are not publicly available. However, editorial hegemony prevails in all major media outlets. Moreover, the existence of large conglomerates controlling major media outlets undermines editors' ability to provide truly independent and critical reporting. The situation is aggravated when one takes into account the traditionally weak trade unions, a significant unemployment rate in the profession, and ideological divisions.⁷⁸

The working conditions of journalists are another area of concern. While the rights of young journalists and correspondents vis-à-vis editorial staff is not protected, journalists who are committed to truthful reporting suffer from very precarious work conditions.⁷⁹

GOVERNANCE

SCORE 25

Transparency - Law

To what extent are there provisions to ensure transparency in the activities of the media?

As noted above, under Law No. 5187 on Press, media entities have to present a proclamation to the Office of the Chief Prosecutor, including details on the ownership and content of their publication.⁸⁰ Similarly, broadcast companies are required to report their ownership structures to the RTÜK according to Law No. 6112.⁸¹ Despite this, the legal framework is insufficient to guarantee transparency of media ownership.

SCORE 25

Transparency - Practice

To what extent is there transparency in the media in practice?

The disclosure of media ownership raises questions regarding the triad of politicians, media owners and businesspeople. The relative absence or non-compliance concerning legal arrangements on broadcasting has caused a media ownership structure that is devoid of transparency. An investigatory look at media owners' stakes in other companies reveals a wide sphere of activities ranging from energy, industry, and construction to health, finance, and education. As such, the notion that large stakeholders and investors use the media as a tool to enforce their dominance over other businesses has become widely accepted.⁸² This leads to censoring and self-censoring mechanisms that have hampered the trust in large broadcasters and their ethics.

It should be also noted that due to the political debate over ownership, the actual ownership structures are obscured from the public eye. RTÜK has access to the stakeholders behind media groups and makes this information public, yet the concerns that pertain to the links between media owners and their business partners remain problematic. In this regard, NGOs and other groups play a significant role in exposing the details of media ownership.⁸³

As discussed above in previous sections, there is also a lack of transparency surrounding the sale and purchase of media entities. Moreover, there is no publicly available information on the amount and the shares of the media outlets.

Accountability - Law

To what extent are there legal provisions to ensure that media outlets are answerable for their activities?

The Radio and Television Supreme Council as the regulatory authority for broadcasting,⁸⁴ both regulates and supervises the media sector. According to law, the regulating authority should be objective and have administrative and financial autonomy. However, the selection process of the Supreme Council members (as defined in Article 35 of Law No. 6112⁸⁵) is highly political and open to abuse in favor of the ruling party.

Each party presents candidates in proportion to the number of its MPs. In 2014, the AKP was designated five of the nine members, with the remaining members comprising two from the CHP, one from the Nationalist Action Party (MHP) and one from the Peoples' Democratic Party (HDP). Some members of the RTÜK claim that the council has been used as an instrument by the government and tends to organize the broadcast media in such a way so as to favor the ruling party.⁸⁶

The Turkish Press Council, which advocates for freedom of expression and freedom of communication, was founded in 1988 as an independent body that monitors the media from within the profession. Being affiliated with the UN it is set up under the slogan "a freer and more respected press". It aims to establish the self-regulation of press compliance with professional ethical rules and codes:

We declare that we will follow the legal procedures and that we are particularly against any sort of struggle to undermine the right of the media to make news and the right of the public to be informed.⁸⁷

The basic function of the Council is to monitor incidents and evaluate claims and reports made by media entities of intimidation and threats.⁸⁸ Annually the Press Council receives approximately 160 complaints. However, not all of these cases require action as some are withdrawn following a compromise between the parties.⁸⁹ Currently, the Press Council "accounts to very few newspapers and does not enjoy significant respect among the media community".⁹⁰ As such, the main issues of concern are the credibility and objectivity of the Council.⁹¹ As mentioned in a report published by TESEV, the Council is a contentious body whose autonomy from state ideology is widely contested by members of the profession.⁹²

The Constitution defines the right of rectification and reply in such cases where a personal reputation and honor is damaged or in the event of a publication making unfounded allegations.⁹³ Law No. 6112⁹⁴ regulates this process. Real or legal persons should send a rectification and reply letter to the relevant media service provider within 60 days of the date of broadcast. Media outlets are obliged to broadcast the exact correction without any additions or edits in the same program. Similarly, in the print media,⁹⁵ the editor must publish a correction in the same place and in the same sized text, and without any amendments. The rectification and reply letter must be published within three days in the daily press and in the forthcoming issue of weekly/monthly periodicals.⁹⁶ Despite these clear and strong provisions, the legal framework does not ensure the accuracy of correction letters, so it is sometimes unclear that the letters are correcting erroneous information.

Accountability - Practice

To what extent can media outlets be held accountable in practice?

The main regulatory authority for broadcasting and radio, the RTÜK, is under political influence.⁹⁷ Its political composition is especially a matter of concern. It has nine members elected by the parliament for a period of six years from a pool of candidates nominated by political parties. The board is composed of nine members who are elected by the parliament, a majority of whom are from the ruling party.⁹⁸

The RTÜK contributes little to the accountability of the media. On the contrary, it can be claimed that RTÜK denigrates the public perception of media accountability. For instance, one of the former heads of the RTÜK was accused of being a pivotal actor in the 'Deniz Feneri' international fraud case.⁹⁹ In April 2012, the Ankara Serious Crimes Court accepted an indictment against 20 suspects including former RTÜK and Kanal 7 CEO in a fraud case concerning the Germany-based Turkish charity Deniz Feneri on charges of forgery, abuse of authority and the participation of a public servant in forgery. The Deniz Feneri administration is accused of funneling money collected for charity in Germany into various companies and businesses affiliated with Kanal 7, a Turkish television network, which also established the charity.¹⁰⁰

According to Sözeri,¹⁰¹ the impact of the Press Council on the print media in terms of accountability is negligible, as it has no sanctioning power. One of the previous heads of the Council remained in office for 23 years, after which time he was selected as an MP in 2011. One of journalists mentions that he was constantly re-elected, since Council's foundation in 1988. This shows that "it was a one-man act rather than a sincere attempt to promote journalism and ethics".¹⁰² Another important factor hindering the credibility of the Council is the fact that it is dominated by one of the biggest media companies in the country.¹⁰³ It is defined as the construction of the Doğan Media Group and so it is criticized for not having the capacity, ability or will to contribute to the development of media policy.¹⁰⁴

A number of major newspapers such as *Hurriyet*, *Sabah*, *Cumhuriyet* and *Milliyet* have ombudsmen.¹⁰⁵ Considering the share of these newspapers as a proportion of total circulation,¹⁰⁶ however, the proportion of the media that has an ombudsman is unsatisfactory.

Şener asserts that the publication of corrections is rare and when done they are often inconspicuous due the small print size and located in the most unobtrusive sections of the publication.¹⁰⁷

Integrity mechanisms - Law

To what extent are there provisions in place to ensure the integrity of media employees?

Turkey has no legal provisions to ensure the integrity of media employees. There are also no sector-wide compulsory codes of conduct. However, a few media companies have made attempts

at developing integrity mechanisms. For instance, in recent years, newspapers have started to select ombudsmen from among their columnists or editors to respond to readers' concerns and critiques concerning the ethical rules of journalism.¹⁰⁸

Currently, four Turkish newspapers (*Hurriyet*, *Sabah*, *Cumhuriyet* and *Milliyet*) have active ombudsmen who (self) monitor the compliance of their papers with codes of journalistic ethics. Moreover, 34 national and local television channels have "audience representatives", whose contact information is listed on the RTÜK's website.¹⁰⁹ Similarly, several media outlets have their own ethics codes such as Doğan Media, *Cumhuriyet* newspaper and TRT.¹¹⁰ An example of in-house self-regulation is Doğan Media Group's:

The primary function of journalism is to uncover and convey objective information to the public without distortion, exaggeration or outside influence, in the shortest time period and with complete truthfulness. Journalist must separate their professional endeavors from personal benefit and influential relationships.¹¹¹

The Turkish Journalists' Association's Turkish Journalists Declaration of Rights and Responsibilities underlines that:

Every journalist and media organization should defend the rights of journalists, observe professional principles and ensure that the principles defined below are followed. The executive directors of media organizations, chief editors, managing editors, responsible editors and others are responsible for the compliance with professional principles by the journalists they employ and the media product they produce with professional principles. Journalists' rights constitute the basis of the public's right to be informed and its freedom of expression. Professional principles, on the other hand, are the foundations of an accurate and reliable communication of information.¹¹²

Although the Turkish Journalists' Association's declaration is comprehensive and unambiguous, it is not mandatory.¹¹³

SCORE 25

Integrity mechanisms - Practice

To what extent is the integrity of media employees ensured in practice?

The integrity of media employees in practice is a problematic area. The public is quite suspicious and mistrustful of media employees. According to TI's Global Corruption Barometer, 56 per cent of the respondents felt that the media was corrupt or extremely corrupt.¹¹⁴ Yet, there is no system of press (media) self-regulation and codes of ethics are not applied in any consistent fashion.¹¹⁵

Some media (T24 and Today's Zaman) outlets covered certain details in the testimonials related with the investigations of the 17 and 25 December corruption scandals, although the media was prohibited from disseminating information on the investigation commission. In the documents, Economy Minister Zafer Çağlayan is accused of accepting bribes 28 times amounting to 47 million euros. He stands accused of "establishing a criminal group for the purpose of committing crimes", "conducting imports with fake documents" and "violating the Anti-Smuggling Law". According to the summary of proceedings, an investigation into Environment and Urban Planning Minister Erdoğan Bayraktar began following a separate investigation into the construction company of Ali

Ağaoğlu. The document accused Bayraktar with helping Ağaoğlu undergo ministry inspections without any problems.¹¹⁶

Media research conducted by the Friedrich-Ebert Stiftung reveals instances of unethical practices in journalism, such as pro-government newspapers using “fabricated and fictional” news. One extreme case was the fake interview of *Takvim* with the anchor-woman of CNN, Christian Amanpour.¹¹⁷ The newspaper announced the interview with a headline on 18 June 2013 quoting her as saying that CNN editorial board had made her cover recent protests in Turkey with the intention of “destabilizing” the country for international business interests. According to this fake interview, Amanpour stated that they distorted the facts for money. Amanpour alleged that the interview was faked Amanpour tweeted: “Shame on you [@Takvim](#) for publishing FAKE interview with me”.¹¹⁸ Another fake interview featured linguist and philosopher Noam Chomsky with a pro-government newspaper, *Yeni Şafak*. Some quotes in the interview were not made by Chomsky; a fact that was only detected due to mistranslation.¹¹⁹ The ombudsman Yavuz Baydar, from *Sabah* was fired following his revelation about misinformation in a piece of public research. Following this, the ombudsman’s digital archive was deleted from the website.¹²⁰

Both interviewees¹²¹ argued that the acceptance of gifts/hospitality offered by editors and popular journalists is quite widespread. In this context, they underlined the mutual trust between representatives of media outlets and businesspeople and politicians.

Media research conducted by the Friedrich-Ebert Stiftung also underlines the fact that:

Journalists were rewarded with gifts in exchange for reporting positively on a certain brand, sports team or restaurant. Technology firms in particular presented journalists and page editors with gadgets such as cell phones in order to promote new products, and most journalists accepted these gifts without question.¹²²

Moreover, an invitation to board the president or prime minister’s plane during international visits is the most prestigious unofficial accreditation for journalists, and pro-government journalists have enjoyed this privilege predominantly. Thus, solely government-approved media reports on these international political events.

ROLE

SCORE 25

Investigate and expose cases of corruption practice

To what extent is the media active and successful in investigating and exposing cases of corruption?

The mainstream media is not particularly active and successful in investigating and exposing cases of corruption. The opposition media has too few resources and connections to expose high-profile cases.

The largest corruption scandal in recent history erupted in December 2013. Although many journalists and businesspeople were aware of the corruption network, the public prosecutors rather than the media exposed the scandal.¹²³ The mainstream media tends not to publish corruption cases connected to top-level public officials. Similarly, as a result of political and financial pressure, media outlets do not dare to publish/broadcast stories that may denigrate the reputation and image of the ruling party.¹²⁴ As underlined in a special report by Freedom House:

The government and its supporters acknowledge that media owners are eager to please the prime minister (president), and even that these owners may be afraid of the consequences of displeasing him.¹²⁵

Extreme control exercised by businesspeople on the media through advertising is another barrier to investigating and exposing corruption. In the mainstream media, it is not possible to see or read any negative news about the top 10 largest enterprises in Turkey.¹²⁶

Furthermore, the high number of imprisoned and detained journalists is an intimidating factor, affecting the willingness of young journalists to specialize in “dangerous” topics such as corruption. A number of journalists who investigated the details of the 17 and 25 December corruption cases and prepared the news coverage after the scandal erupted have since been sentenced.¹²⁷ There are 120 on-going cases against 70 journalists who covered the scandal. Again in December 2014, 31 people, including journalists and television producers, known to be close to a US-based Muslim cleric Fethullah Gülen, were detained.¹²⁸

According to the Turkish Journalists’ Association, 1,037 journalists were fired in the first six months of 2014 because of news coverage on corruption cases.¹²⁹ Moreover, coercive measures were taken against 217 journalists and a total of 83 people were forced to resign. There are 22 journalists effectively serving time in the prison and another 61 have been ordered to pay compensation to Erdoğan for “insult”.¹³⁰ The most recent publication ban on the activities of the parliamentary commission to investigate corruption allegations is an extreme example of obstacles for investigative journalism.¹³¹

Notwithstanding these pressures, one positive example of investigative journalism is the Objective Investigative Journalism Program, which aims at developing investigative journalism in the Western Balkans and Turkey. Eight proposals were selected from Turkey in 2013, all of which are being supported for four years.¹³² Another positive example is the announcement of Turkish investigative

journalist, Ahmet Şık, as the winner of the 2014 UNESCO Guillermo Cano World Press Freedom Prize by an international, independent jury of media professionals.¹³³ It should be noted that Şık, was arrested and detained in 2011 on charges of being linked to Ergenekon, an alleged terrorist organization. His book, *The Imam's Army*, was also seized and banned. In 2012 he was released from detention and got injured during demonstrations in Istanbul's Gezi Park in 2013.¹³⁴

SCORE **25**

Inform public on corruption and its impact

To what extent is the media active and successful in informing the public on corruption and its impact on the country?

The media do not run any specific programs to inform the public on corruption and how to curb it. However, since the 17 and 25 December corruption investigations, corruption has been a hot topic on discussion programs in which participants have begun to evaluate corruption in the context of politics.

The pro-government media prefer not to publish or broadcast news related to the 17 and 25 December corruption scandals. Furthermore, the print media's reaction to the launch of Transparency International's 2014 Corruption Perceptions Index (CPI) serves as an example, which supports this trend. Turkey suffered the biggest decline of any country, dropping five points (from 50 to 45) in the CPI 2014. After the press conference given by TI Turkey, many newspapers (*Hürriyet*, *Cumhuriyet*, *Taraf*, *Birgün*, *Bugün*, *Posta*, *Sözcü*, *Zaman*) published the news on their front page (4 December 2014). However, none of the pro-government newspapers (*Sabah*, *Milliyet*, *Akşam*, *Star*, *Takvim*, *Güneş*, *Habertürk*, *Türkiye*, *Vatan*, *Yeni Şafak*) touched upon the topic.¹³⁵

SCORE **25**

Inform public on governance issues

To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?

In order to suppress the media's proper role as a check on power, the government has employed strong-arm tactics. As discussed above, these have included mass firings, intimidation, buying off or forcing out media moguls, wiretapping, and imprisonment. The government has used its leverage over the media to quash public debate on the accountability of government.¹³⁶ As a result, self-censorship is widespread in the mainstream media and the news is mostly biased in favor of the government.

According to Baydar, close ties between media owners and the government open the way to the abuse of media power. Owners of the mainstream media also have investments in other sectors such as telecommunications, banking and construction, and some have profited from public procurements including massive urban regeneration projects.¹³⁷ A few small and independent media outlets maintain their critical approach towards the government, but the mainstream media

mostly ignore this news and therefore so remain ineffective in informing the public more broadly.¹³⁸

The public is not informed about the government's justifications and explanations for undertaking certain activities such as enacting laws, all of which may directly affect people in their day-to-day lives. On the other hand, all TV and newspaper outlets announce some activities and decisions taken by the government. Hence, Şener claims that the government controls the scope and content of the news that is disseminated by the mainstream media.¹³⁹

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13

CIVIL SOCIETY

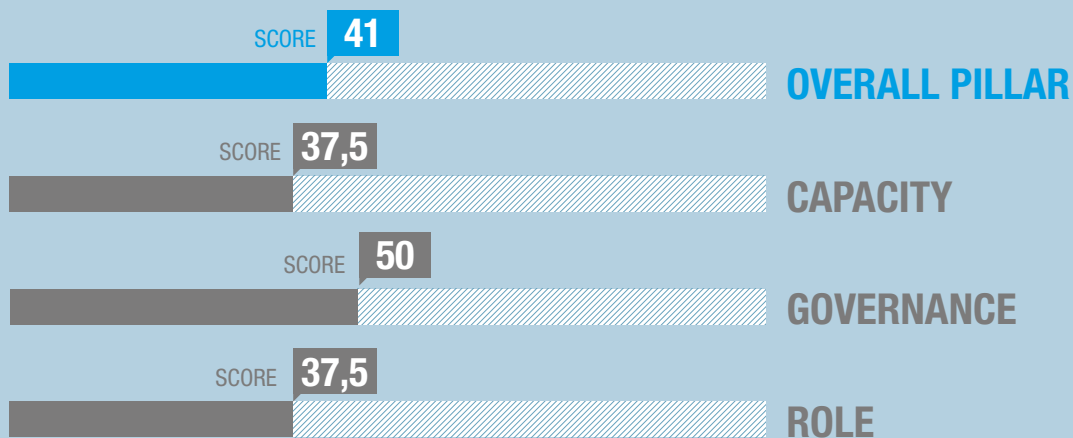
OVERVIEW

Civil society organizations (CSOs) are crucial actors in Turkey's development and democratization process. Turkey has a strong paternalistic state tradition, which has been shaped by a strong center and a weakly organized periphery, and civil society has been traditionally weak.¹ However, during the 2000s, the number of the CSOs drastically increased as a result of the accelerated EU accession process.² While the number of CSOs and the level of citizens' engagement are increasing, CSOs' limited capacity in terms of know-how, and their human and financial resources remain a challenge.

Turkish legislation on the right to association needs improvement in order to provide an enabling environment for civil society participation and to be brought in line with European standards. Double standards in the treatment of CSOs and lack of a structured and continuous dialogue between CSOs and the public sector limit the influence of civil society in the policy-making process.

As well as challenges stemming from certain policies relating to the participation of CSOs, there are also areas that can be improved with regards to the governance of CSOs, such as in the adoption of integrity principles.

The table below presents the indicator scores that summarize the assessment of the civil society in terms of its capacity, its internal governance and its role. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	50	25
	Independence	50	25
Governance	Transparency	N/A	50
	Accountability	N/A	50
	Integrity mechanisms	N/A	50
Role	Hold government accountable	50	
	Policy reform	50	

STRUCTURE AND ORGANISATION

Based on their legal status, civil society organizations in Turkey can be divided into four categories: associations, foundations, professional chambers, and unions. Other forms of CSOs such as civil networks or platforms are not defined in the related legal framework. Considering their differences in functions and legal status, only associations and foundations are discussed in this study.

Article 56 of the Civil Code defines associations as, “societies 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”. Article 101 of the Civil Code defines foundations as, “charity groups in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use.”

In 2003, the Department of Associations was established under the Ministry of the Interior in order to carry out services related to associations. All associations in Turkey are registered through the Department of Associations and its function is primarily to make the procedures for creating, registering, and maintaining associations more efficient and cost-effective. To this end, in 2014, the Department created the Information System of Associations (DERBIS) and is also in charge of registration of unions and political parties.³

According to the records of the Department of Associations, the number of associations in Turkey is 104,149.⁴ These associations range from those undertaking charitable activities (8.6 percent), fellow-countrymen associations⁵ (18.9 percent), organizations supporting sports activities (15.2 percent), and religious organizations working to support the building of prayer-rooms and mosques (24.6 percent).⁶ There are also a number of associations working for the protection of human rights, social services associations (e.g. literacy, health, education), educational associations, professional solidarity associations, associations for the protection of the environment and cultural associations.

TÜSEV in its 2014 report, report that the number of association membership increased to 9.6 million in 2014.⁷ Considering that Turkey’s population in 2011 was 77 million, the membership rate for associations is approximately 12.2 percent.⁸ Despite the large number of associations, the number of rights-based organizations is quite low.⁹ Therefore the impact of civil society participation in democratization and policy reforms is limited. The total membership of associations in the country, relative to the total population, is 2.3 percent of women (1,850,945) and 9.9 percent of men (7,939,923).¹⁰

There are 166 minority (non-Muslim community) foundations,¹¹ 275 Mülhak foundations,¹² one artisan foundation, 975 social assistance and solidarity foundations, 32 foundations for environmental protection, 3,767 foundations working in other fields,¹³ and 41,720 fused foundations (*mazbut vakıf*).¹⁴

The CIVICUS Civil Society Index 2011 ranked Turkey 29 out of 33 countries, with a total score of 46.5 out of 100 for the state of its civil society. The rate of citizen participations was identified as 31.4 percent, which is low compared to European standards.¹⁵

ASSESSMENT

CAPACITY

SCORE **50**

Resources - Law

To what extent does the legal framework provide an environment conducive to civil society?

The Constitution guarantees fundamental rights for civil participation. The right to freedom of communication (Article 22), the right to freedom of thought and opinion (Article 25), the right to express and disseminate thoughts and opinions by speech, in writing or in pictures or through other media, individually and collectively (Article 26), the right to form associations, or become a member of an association, or withdraw from membership without prior permission (Article 33), the right to establish trade unions and the right to exercise trade union rights (Articles 51, 52), and the right to hold unarmed and peaceful meetings and demonstration marches without prior permission are defined in the Constitution.

There are various laws regulating the civil society environment.¹⁶ They provide a workable environment for CSOs. However, although the EU accession process promoted improvements in the legislation regarding associations and foundations during 2004, there are still significant limitations.

The challenges regarding the enabling environment for CSOs begin with a lack of definition in the legal framework. As mentioned above, associations and foundations are recognized as legal entities, but other types of CSO such as platforms and networks are excluded from these legal definitions. Such organizations are not prohibited, but due to their lack of legal status they do not have the opportunity or right to collect donations, apply for public funds or employ individuals. As a result, this narrow definition limits civil society activities and possibilities for cooperation.

In order to establish an association, seven founding members are required. In addition, nine more members must be engaged within the first six months, and a managerial board created. There are no requirements for foundations regarding the number of founding members; nevertheless, the organization should be in possession of assets worth a minimum of 55,000 Turkish Liras (approximately 18,000 euros). There is no option for registering online.

The Turkish Civil Code restricts the areas in which CSOs can work, such as supporting an ethnicity.¹⁷ Moreover, concepts in the law like “public morality, national unity and national interest”,¹⁸ continue to be a barrier and a threat for civil society activists and organizations. These restrictions are open to interpretation and subjective judgments about their conflict with CSO activities.

To illustrate, Article 56 and 101(3) of the Turkish Civil Code bans acts against “morality”. Such an unclear term opens space for suppressing CSOs. The court case against Kaos Gay and Lesbian Cultural Researches and Solidarity Association (KAOS-GL)¹⁹ reflects this challenge. In 2005, Ankara’s deputy governor officially called for the closure of the KAOS-GL arguing that the establishment of

this association was against the law and “immoral” according to Article 56 of Section 4721 of the Civil Code. However, the Ankara Public Prosecutors’ Office rejected this call and did not close the organization.²⁰

The cases of the Association of Anatolian Arab Union Movement in March 2015 and the Association of Mardin Assyrian Union in April 2015 also demonstrate the barriers to freedom of association for civil society. These were the first Arab and Assyrian associations founded in Turkey, and were sued with a demand of closure by the 2nd Midyat Court of First Instance on 31 March 2015. These cases resulted in the dissolution of the associations due to the vague and disconnected aims and the extensive scope of activities to reach those aims. In addition, the Court cited concerns that there was co-chairmanship, positive discrimination in favor of women and disabled people in their membership processes, the use of old names of cities in the charters of the organizations and the use of the word ‘union’ in the associations’ names. Following this decision, both associations have filed an appeal with the Supreme Court.²¹ Foreign CSOs face challenges registering with the authorities: lack of transparency in the registration process and rejections without explanation appear to be the main problem areas.²²

Moreover, approval of the Council of Ministers is required for associations and foundations to gain public benefit status, which provides tax exemptions for CSOs. However, as the law does not define the concept of public benefit clearly, the decision-making process is subject to discretion of the Council and raises concerns about impartiality and lack of transparency, as highlighted in European Commission 2014 Progress Report on Turkey.²³

Deficiencies in the legal framework create inequalities among CSOs. Law No.5253 on Associations²⁴ defines an “association for public benefit” and Law No.2860 on Collecting Donations²⁵ excludes a great number of CSOs from cooperation with local governments and also from securing the sustainable financial resources. At the same time, the municipalities “are able to collaborate on services with foundations that work for the public interest, and are granted tax exemptions by the Council of Ministers”. However, foundations and associations that are excluded from the definition above can “only be eligible to collaborate by receiving a permission of the highest local administrative authority”.²⁶

The sustainability of CSO activities is generally at risk due to the lack of a supportive legal framework for the development of their financial and human resource capacities. The 2014 European Commission Progress Report points out the challenges regarding the financial resources of CSOs, stating that:

Instead of encouraging domestic private funding of civil society organizations through measures like tax incentives, Turkey continued to complicate their financial management through often disproportionate accountancy requirements. At the same time, public funding for civil society organizations was not sufficiently transparent and rule-based, as tax-exemption and public benefit status were granted to a very limited number of civil society organizations.²⁷

Furthermore, Law No. 2860 on Collecting Donations imposes additional restrictions. As of November 2014, only 20 associations have the right to fundraise without prior permission. Considering the total number of CSOs, this number is extremely low.²⁸ Moreover associations and foundations are required to establish economic enterprises in order to receive any income from services. However, economic enterprises also involve extra expenses since they are treated like the private sector. CSOs are required to pay VAT, corporate and personal income taxes.²⁹ They can apply for VAT exemption for expenditures related with EU projects, however.

Although tax incentives to encourage individual or corporate donations exist, 5 percent of annual income is the threshold for donations with a tax deduction and it is only applicable for CSOs with public benefit status.³⁰ Therefore tax deductions do not generate adequate incentives for philanthropy.

Meanwhile, associations and foundations are required to notify related public authorities – the Directorate of Associations under the Ministry of Interior and the Directorate General of Foundations under the Prime Minister’s Office – when they receive a grant from an international organization. Associations cannot use foreign funding without this prior notification and if they do not notify the Department of Associations, they are fined.

According to Law No. 5072 on Relations of Public Institutions with Associations and Foundations, no subsidy, grant or resources can be allocated from the budget of public institutions and organizations for associations and foundations.³¹ Despite this provision, some foundations and associations may receive funds through resources such as the Promotion Fund (Tanitim Fonu). The same law also imposes certain restrictions on associations established by public officials.

Another significant challenge for CSOs is related to human resources. One of the main deficiencies is a lack of definition of volunteering in the legal framework. Since there is no definition for volunteerism in the legislation that relates to civil society, several CSOs define their volunteer relations with respect to their tailor-made policies in line with their organization’s aims. However, the absence of concrete definitions causes some CSOs to face penalties. The lack of a legal framework that defines volunteering in Turkey causes restrictions in practice and challenges CSOs financially. As stated in a 2012 TÜSEV report, a CSO that incorporated volunteers into its activities was given a significant financial penalty, following a public audit by the Ministry of Labor and Social Security, due to “employing an uninsured worker”.³²

SCORE **25**

Resources - Practice

To what extent do CSOs have adequate financial and human resources to function and operate effectively?

CSOs secure their financial resources through membership fees, income procured from service/product sales, individual donations and support from companies within the scope of corporate social responsibility activities. Aside from these they are able to apply for the grant programs run by some public institutions, EU programs, international institutions and embassies.

According to the survey data published in the draft Turkey Baseline Report, 66 percent of CSOs had income from membership fees, 44 percent from citizens, 24 percent from local self-government and/or regional administrations, 17 percent from other foreign private or state resources, 29 percent from the EU funds, 23 percent from governments/ministries/state administration bodies, 19 percent from private companies operating in the country, 11 percent from public companies.³³

The 2015 Index of Philanthropic Freedom shows that the tax and fiscal incentives are not adequate for civil society organizations to function effectively.³⁴ Besides the institutional and legal framework, culture and social habits are also influential in the low levels of donations to civil society organizations. According to the 2014 World Giving Index measuring giving behavior – the

percentage of people who in a typical month donate money to charity, volunteer their time or help a stranger – Turkey ranked at 128 among 135 countries.³⁵

There is no coordinating mechanism, framework strategy or implementing guideline for the public funding of civil society organizations. This is observed as a good practice in some EU and EU candidate countries, but in Turkey individually structured support programs exist under various public institutions.³⁶

There is no comprehensive policy or coordination among the relevant institutions.³⁷ Ministries, development agencies and the Directorate of Associations have different grant programs. For example, in 2013 a total amount of 10,043,712 TL (approx. 3.3 million euros) was provided as financial support to associations. In 2014, the total amount of the budget for supporting CSOs was 31,952,732 TL (approx. 10.5 million euros).³⁸ Similarly, within the framework of Social Support Program of the Ministry of Development (SODES), a total amount of 66,505,583 TL (approx. 22 million euros) was allocated to various projects of CSOs in 2012.³⁹

Furthermore, there is no centralized communication channel providing information on these grants and some of these grants are not continuous, and the evaluation and announcement processes are not transparent. The Ministry of Youth and Sports does not publish the organizations it gives funds to on its website. The search engine on the website only provides information through the reference numbers of the project proposals. Therefore, the lack of integrity and transparency in public funding prevents many CSOs from accessing information and benefiting from equal opportunities. The 2014 TÜSEV report also highlights that there is no clarity on the criteria used or any transparency in the selection of CSOs to enter into joint projects with ministries.⁴⁰

The financial resources of CSO have not been comprehensively assessed. The Department of Associations collects information regarding financial resources of associations annually, and also regarding foreign funds after each receipt of a grant, but there is no information platform to analyze this data and/or share it with the public.

The Directorate of Foundations has published the last five years of data and provided information on items of incomes and expenditure.⁴¹ This data for foundations shows that the main source of funding changes depending on the status of the foundation. There is information available on the resources of minority foundations, *mülhak* foundations and new foundations between 2009 and 2013.⁴² The Directorate of Foundations also publishes the number of civil society employees. In 2014, the total number of employees working in 1,884 foundations that employ personnel out of the total 4,893 is 16,773.⁴³

There are also several EU projects that grant financial recourses to CSOs. However, these are not accessible to many CSOs due to strict project application and management procedures. Moreover, lack of access to professional human resources and language barriers are also important problems in accessing EU funding. Considering the need for more flexible grant programs, the Sivil Düşün program was introduced in 2013, directly implemented by the EU Delegation in Turkey. It allocated small funds to 45 individual activists and 96 CSOs and set a good example for funding schemes responding the needs of civil society.⁴⁴ Moreover, 1.4 million euro was awarded to some 65 CSOs through a comprehensive project implemented by the EU Delegation to Turkey for strengthening civil society development and civil society-public sector cooperation. The EU also provides technical assistance and financial support to CSOs within the framework of several programs such as Instrument for Pre-Accession Assistance (IPA), Erasmus +, Cordis and Creative Europe.⁴⁵

There is a significant need for communication and information channels to develop cooperation among CSOs. According to an independent survey run by TACSO (Technical Assistance for Civil Society Organizations), 17 percent of CSOs stated that they belong to one international network, 10 percent belong to two international networks, 15 percent belong to more than three international networks. However, 16 percent belong to one national network, 13 percent belong to two national networks, and 27 percent belong to more than three national networks.⁴⁶

In order to share and expand expertise and to work together for common purposes CSOs need a user-friendly information platform. The Department of Associations in cooperation with TÜSEV and with the financial support of British Embassy established an online platform in 2008. However, it had limited impact and since the platform was formulated as an output of a project its sustainability was not secured; there is no access to this platform today.⁴⁷

SCORE

50

Independence - Law

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?

Turkish citizens are allowed to form associations and this right guaranteed by the Constitution. According to Article 33 defining freedom of assembly and right to form associations:

“...no one shall be compelled to become or remain a member of an association, and freedom of association may only be restricted by law on the grounds of protecting national security and public order, or prevention of crime, or protecting public morals, public health. The formalities, conditions, and procedures governing the exercise of freedom of association shall be prescribed by law.”⁴⁸

Article 33 defining freedom of assembly and the right to form associations, also defines how associations are dissolved or suspended from activity by the decision of a judge:

“In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge in charge within twenty-four hours. Unless the judge declares a decision within forty-eight hours, this administrative decision shall be annulled automatically. Provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require.”⁴⁹

The provisions of this article are also applicable to foundations.⁵⁰

There is no legal framework addressing the right to protection of freedom of speech or association. This gap in the legislation opens room for interference by third parties such as the police, government and judiciary. Moreover, there are certain restrictions for specific occupation groups to form associations. Armed forces’ officials can only be founders of sports clubs and cannot form associations with other purposes; law enforcement officers are also subject to similar restrictions.

There is no law stipulating the membership of civil servants on CSO boards. Nevertheless, according to the Law No:3294 on Promotion of Social Assistance and Solidarity, boards of trustees of the Social Assistance and Solidarity Foundations are composed of state representatives among others: the governor as the head of the foundation, and the mayor, provincial director of finance, provincial director of education, provincial director of health, provincial director of agriculture, provincial director of family and social policy, provincial Mufti, village Muhtar, neighborhood Muhtar, and representatives of NGOs.⁵¹

Further, vague concepts, which restrict the freedoms of CSOs, such as the protection of “public morality” and “Turkish family structure”, continue to be a threat for LGBT individuals and organizations. Law No.5253 cites the Turkish Civil Code that restricts establishing foundations against the fundamental principles of the Constitution, law, morality, national unity and national interest⁵² and therefore these concepts are left to prosecutors’ interpretations, which usually results in creating obstacles against civil society.

Turkey is a party to international conventions such as International Covenant on Economic, Social and Cultural Rights, Paris Charter and International Covenant on Civil and Political Rights, which protects the right to association. Nevertheless, the Constitution imposes restrictions on exercising this right. Relevant to this chapter is Paragraph 6, which reads “Provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require”.

Likewise, while Article 4 of the former Associations Law barred certain public officials from establishing associations, Article 16 stated that the auditors of Court of Accounts and the officials of National Education Ministry could only become members of associations upon approval. Although Law No. 5253 on Associations is much more progressive, its Article 3 reads “However, restrictions on officials from the Turkish Armed Forces, law enforcement officers and employees of public institutions who have the ‘civil servant’ status are reserved” thereby it – in accordance with the Constitution – imposes restrictions on the public officials’ right to association. Although not allowing civil servants and the military to take part in the political process to ensure their impartiality may seem beneficial for the democratic process, the restrictions disallow unionization and therefore may be abused.

SCORE **25**

Independence - Practice

To what extent can civil society exist and function without undue external interference?

Studies analyzing the situation of CSOs in Turkey report several problems including arbitrariness in terms of implementing the law, unequal treatment, and the exercise of pressure by authorities over CSOs, particularly over those working in the field of human rights.⁵³

The European Commission 2014 Progress Report on Turkey states that:

Discriminatory practice was reported regarding the frequency, duration and scope of audits for rights-based associations. One international NGO has been waiting six years for its registration, and another has an on-going court case. A number of other international NGOs wishing to provide assistance to Syrian refugees in Turkey or in Syria, found their work blocked for reasons unclear to them.⁵⁴

Furthermore, interpretations of civil society activities based on Law No. 3713 on Anti-Terror often hinder freedom of speech and association. The 2012 Civil Society Monitoring Report by TÜSEV stated that “arrests which occurred in 2011 or 2012 based on the Anti-Terror Law usually target human rights activists living in the Eastern and South Eastern cities as well as in the cities of Aegean and Marmara Regions”. The European Commission 2013 Progress Report on Turkey report also emphasized that human rights defenders are faced with legal proceedings related to charges of making propaganda for terrorism during demonstrations and meetings and following their attendance at press conferences, and of breaking the Law No:2911 on Demonstrations. In 2013, 10 NGOs in Van were accused of helping terrorist organizations and engaging in terrorist propaganda. The court case for the closing-down of those NGOs was rejected for lack of evidence, however.⁵⁵

The 2012 Civil Society Monitoring Report by TÜSEV also pointed out that, “funds allocated by the EU, or project-based funds provided by an EU member state also have a tendency to be investigated within the scope of criminal charges brought under the Anti-Terror Law”.⁵⁶ The use of anti-terror legislation in prosecutions results in aggravated prison sentences and pre-trial detention periods. It was reported in a 2014 Human Rights Watch report that after 1,570 days of pre-trial detention, human rights defender Muharrem Erbey was released from charges of being a member of an illegal organization due to a “lack of evidence”.⁵⁷

Concepts of “general morality”, “Turkish family structure”, “national security”, and “public order” are also widely used to hinder freedom of speech and association. LGBT rights organizations have faced court orders to close down of their Internet sites based on the “general morality” concept.⁵⁸ Siyah Pembe Üçgen (Black Pink Triangle Association) was brought to court through a complaint from the governor’s office claiming that the association’s aims and purposes violated “Turkish moral values and family structure” in 2009. The court rejected the call in 2010.⁵⁹ The case against the Association is not the sole closure case in this field in recent years. In 2005 KAOS-GL, in 2006 Pembe Hayat (Pink Life) and in 2013 Ekogenç faced closure cases. Although they won these cases, they were faced with several challenges to their ability to continue their activities during these processes. In the Ekogenç case, not only sexual orientation, but also the horizontal governance structure of the organization was raised as reason for the closure and during the lawsuit process, the Association was banned from conducting any activity.

Besides unequal treatment, there are other cases raising serious concerns about the independence of CSOs. Just a few weeks after the December 2013 corruption investigations, the Civil Solidarity Platform composed of civil society groups known for their strong support of the government, initiated a campaign to show support for President Erdoğan. Thousands of large campaign posters appeared across the country showing photographs of Erdoğan together with the slogan “*Sağlam İrade*” or “Strong Will”.⁶⁰ During the presidential election period, the platform also placed full-page advertisements in more than 10 national newspapers.

TÜRGEV (Service for Youth and Education Foundation of Turkey) became the center of national attention as a result of the December 2013 corruption allegations. Bilal Erdoğan, President Erdoğan’s son and member of the executive board of the foundation, was accused of receiving unlawful donations for TÜRGEV. It was claimed that plots of land had been donated to TÜRGEV by certain municipalities,⁶¹ and it was also argued that a plot of land worth 606 million TL (approx. 202 million euros) was allocated to the foundation for only 3 million TL (approx. 1 million euros).⁶²

Such cases raise concerns about the existence of government operated NGOs or government organized NGOs (GONGOs)⁶³ and manipulation and conflict of interest in the field. This was also manifest in the choice of NGOs to participate in monitoring the implementation of the **Council**

of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence in 2014. Known for their close ties to the government, three NGOs, the Women and Democracy Association (KADEM), the Women Health Workers Association for Solidarity (KASAD-D), and the Association for Women's Rights Against Discrimination (AKDER) were "selected" to represent Turkey in GREVIO and other interested experts and groups are excluded.⁶⁴ It is argued by the Istanbul Convention Monitoring Platform that the monitoring of an international convention on violence against women by a committee formed of a majority of public officers and limited "civil society" representation dominated by GONGOs is unacceptable.⁶⁵ CIVICUS also raised criticisms regarding GONGOs in 2015.⁶⁶

GOVERNANCE

SCORE 50

Transparency - Practice

To what extent is there transparency in CSOs?

Most CSOs use online tools such as websites, email groups, Facebook and Twitter accounts to reach their audiences, and to share opinions, press statements and information on their activities.

While submitting their annual reports, associations declare whether they agree to make the information, including the financial statements they provide to the Directorate of Associations, publicly available. The data provided by the Department of Associations based on our information request shows that more than 90 percent of the associations that submitted statements in 2013⁶⁷ approved disclosure. The statements reveal the fact that there are a crucial number of associations that prefer to have disclosed budgetary data.

A survey conducted for a TACSO report identified the obstacles CSOs encounter when adopting transparency, accountability and good governance measures. According to the results, inadequacy of financial resources, human resources and time are the biggest obstacles followed by a lack of a road map, system and technical knowledge on these issues.⁶⁸

SCORE 50

Accountability - Practice

To what extent are CSOs answerable to their constituencies?

The boards of the CSOs are composed of members of the organization. The main managerial bodies are the board of directors and board of auditors. The Civil Code requires these bodies to present their activity and audit reports during annual membership meetings. A few CSOs publish their internal and/or external audit reports. According to a survey by TACSO, 47 percent of CSOs stated that they do not even have an external audit.⁶⁹

However, self-regulation is also weak. As Ayça Bican pointed out, self-regulation measures can only be implemented with sufficient financial resources, which is a crucial challenge for CSOs. TASCO's research also demonstrated this problem with self-regulation systems.⁷⁰

CIVICUS⁷¹ highlights that boards of directors and/or chairs of organizations have a strong influence on decision-making processes with limited democratic accountability to their constituencies. This tendency brings about deficiencies in terms of democratic governance and accountability of the boards. As has already been explored, this results in flawed decisions, which raise the question of whether these organizations are accountable to their stakeholders. CIVICUS also notes that consultation meeting participants emphasized the relations of patronage and hierarchy presenting obstacles to internal democracy in civil society.

Another challenge concerning the minority foundations is that the by-law on their elections has been suspended by the Directorate of Foundations, so that no new boards of directors have been elected since 2013.⁷²

SCORE

50

Integrity mechanisms - Practice

To what extent is the integrity of CSOs ensured in practice?

The 2009 Civil Society Index stated that more than two-thirds (68.7 percent) of CSOs did not have publicly available codes of conduct, but it should be noted that there has been an increase in attention paid to codes of conduct by organizations in recent years.

Although there is no sector-wide code of conduct, efforts have been made by some CSOs to self-regulate. According to survey conducted for the TACSO report, 56 percent of the CSOs reported having a code of conduct for regulating the actions of the executive board, employees and volunteers.⁷³

Based on our online research we can conclude that ethical concepts, principles and codes of conduct are available in the statutes and declared visions of many CSOs working in a variety of fields ranging from education⁷⁴ to humanitarian aid.⁷⁵ Kal-Der (Quality Association) has an internal whistleblowing mechanism, which would be good practice for the sector to adopt.⁷⁶

Hold government accountable

To what extent is civil society active and successful in holding government accountable for its actions?

CSOs have limited impact and success in holding the state accountable. However, the EU accession process has led to the creation of a set of joint bodies and structures to monitor the implementation of reforms and to hold the government accountable. In 2002, 175 CSOs formed a civic platform, the European Movement 2002, to push further EU reforms and to raise awareness about the EU at the grassroots level.

Yet, CSO and public sector relations depend on individual contexts and circumstances. The European Commission 2014 Progress Report acknowledges an overall lack of sustainable and structured dialogue between CSOs and the public authorities. The report states:

Several pieces of legislation proposed by the ruling majority, including on fundamental issues for the Turkish democracy, were adopted without proper parliamentary debate or adequate consultation of stakeholders and civil society. The overall decision making process, both nationally and locally, should involve more structured and systematic consultation of civil society. It is essential to reform the existing legal environment and make it more conducive to the development of civil society organizations in general.⁷⁷

During the recent consultations around the new Constitution process, CSOs and public sector relations seemed to improve. Using online tools, 440 CSOs provided their views regarding the new Constitution. However, this process eventually came to a halt and as a result the input of the CSOs was not followed up on and there was no feedback on the consultation provided to the public.

The current government's approach to law-making also prevents CSOs from monitoring discussions on legal amendments and draft laws. The government practice of preparing and proposing omnibus bills, which cover a number of diverse or unrelated topics, ensures that public discussions over proposed regulations are limited. CSOs are thus faced with the challenges of following up, monitoring and commenting on such changes in the legislation.

There are only a few CSOs working in the field of anti-corruption. The leading organizations are TI Turkey, TEPAV, TÜSİAD, SAYDER (Association of Court of Account Auditors), TESEV, DENETDE (Association of Public Auditors) and TUMİKOM (Association of Committees for Monitoring Parliamentarians and Elected Officials).

Besides these registered CSOs, there are also a few new anti-corruption initiatives such as Oy ve Ötesi, Sandık Başındayız, Türkiye'nin Oyları and Ankara'nın Oyları; all of which work on election monitoring. Volunteers in metropolitan areas formed these groups and they engaged thousands of people during the local and presidential elections in 2014 and the parliamentary elections in 2015. They provided training to volunteers to enable them to effectively monitor and report on violations.

Formed in 2012, the Checks and Balances Network is another civic platform that consists of more than 180 CSOs. The Network's campaigns and advocacy programs aim to strengthen checks and balances,

broadly defined as encompassing the separation of powers among government institutions as well as checks by individual citizens, civil society organizations and the independent media.⁷⁸

However, polarization also manifests itself in public-CSO dialogue. In general, certain CSOs have much more influence on and access to policy-makers than others and their views are often taken into account by the government whereas others are ignored or discriminated against. The recent Gezi Park protests and the new restrictive Internet regulations (despite extensive criticism from several CSOs) are concrete examples of this polarization effect. During these processes, several efforts for consultation were not taken into consideration and protests against the policy-makers' approach were ignored.

SCORE **25**

Policy reform

To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

The 2010 Civil Society Index illustrates that civil society is perceived to have a very limited policy impact: in its survey 73 percent of internal stakeholders agreed that civil society has limited or no impact on policy.⁷⁹

In politically sensitive areas, such as anti-corruption reforms, the role of CSOs is even more limited. Leading CSOs – TI Turkey, Turkish Economic and Social Studies Foundation (TESEV), Economic Development Foundation (IKV), Turkey Economic Policy Research Institute (TEPAV), and Turkish Industry and Business Association (TÜSIAD) – aim to keep and/or put corruption on the political agenda by organizing or supporting awareness-raising campaigns and publishing review reports on the anti-corruption policies of the government. They also make policy recommendations for government. Despite this, the government did not reflect the views of CSOs in the discussions around and implementation of the National Anti-Corruption Strategy and Action Plan 2010–2014, even though a few CSOs were consulted during the preparation phase.⁸⁰

The European Commission 2014 Progress Report on Turkey also stated that although implementation of Strategy and Action Plan had continued, no information had been given to parliament or civil society on the resulting impact.⁸¹ The withholding of information on anti-corruption processes was also seen during the UN Convention against Corruption Review Process. Although TI Turkey requested information on the process, the government refused to provide any on their self-assessment of the implementation of the UNCAC. In such an environment, the input CSOs can provide to anti-corruption reform discussions is limited.

During the process surrounding the development of the new Constitution, TUMIKOM submitted a proposal on the transparency and accountability of the parliament and political ethics. However, the process was left incomplete and no progress has been made in the field of political ethics

In 2014, during the first implementation of Law No. 6271 on Presidential Elections, TI Turkey and the Checks and Balances Network carried out public campaigns, and published policy papers and reports pointing out the deficiencies in the legislation regarding transparency in political financing. TI Turkey collected thousands of signatures for an online petition demanding publication of candidates' asset declarations. Three of the candidates declared their assets, but legislation changes for ensuring transparency have not featured on the parliament's agenda.

A recent development regarding civil society engagement in policy reform is the C20 Anti-Corruption Working Group, which aims to produce policy recommendations on thematic areas, namely beneficial ownership, open governance, impunity and public procurement. The group organized several meetings, prepared joint recommendations and presented them to the governments during G20 meetings in 2015.

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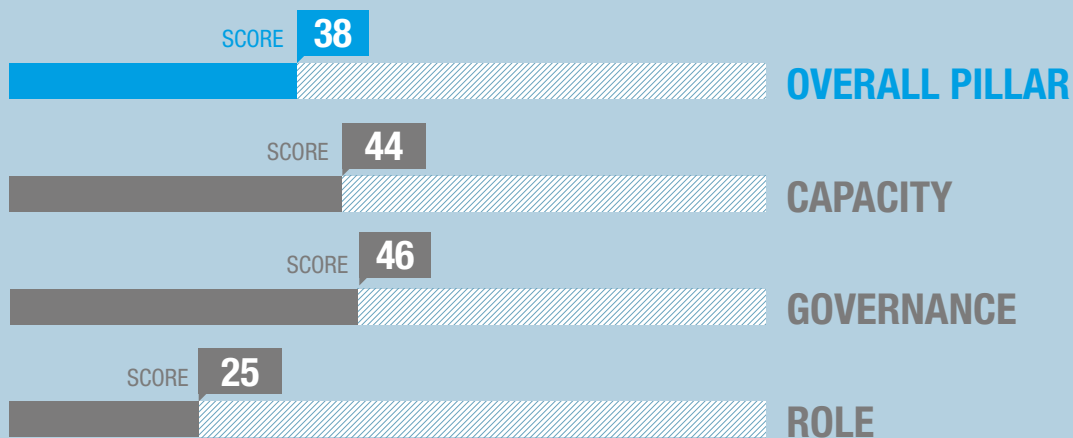
BUSINESS

OVERVIEW

Starting a business is not a burdensome process and operation costs are lower than the OECD average. However, in cases of operational disputes and conflicts on intellectual property rights, the duration of judgments is a serious concern.

There is limited legal provision preventing interventions of public officials in the activities of business enterprises, and the government tends to use its authority over the economy to provide benefits to pro-government businesspeople. The integrity of actors in the business sector is problematic and not ensured by the legal framework. In terms of anti-corruption policies and activities, the connection between business actors, government and civil society is very limited.

The table below presents the indicator scores, which summarize the assessment of the business sector in terms of its capacity, governance and role in anti-corruption. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	75	50
	Independence	25	25
Governance	Transparency	75	25
	Accountability	75	50
	Integrity mechanisms	25	25
Role	Anti-corruption policy engagement	25	
	Support for/engagement with civil society	25	

STRUCTURE AND ORGANISATION

Turkey is the 18th largest economy of the world with a GDP of US\$ 798 billion.¹ While direct activities of the government in the economy has been decreasing through the privatization of state owned enterprises, it still has a great controlling power on business enterprises through regulatory institutions, financial audits and transfer mechanisms such as public procurements and licenses.

According to latest available data from the Turkish Statistical Institute, the share of small and medium-sized enterprises is 75.8 per cent of total employment, 54.5 per cent of total wages, and 54.2 per cent of value added at factor cost.² The top 1,000 industrial enterprises represent 11 per cent of the GDP, 4 per cent of total employment, and 40 per cent of annual exports in the economy.³

After the financial crisis in 2001, a number of regulatory institutions were established. Independent institutions are authorized to control the banking, energy, information technologies and financial sectors.

The main laws governing the business sector are the Turkish Commercial Code, Law No. 6362 on Capital Markets, Law No. 5411 on Banking, Law No. 4054 on the Protection of Competition, Law No. 4857 on Labor, and Law No. 5846 on Intellectual and Artistic Works.

ASSESSMENT

CAPACITY

SCORE **75**

Resources - Law

To what extent does the legal framework offer an enabling environment for the formation and operation of individual businesses?

The new Turkish Commercial Code, adopted in 2011, aims to develop a corporate governance approach that meets international standards to foster private equity and public offering activities, and to create transparency in managing operations.⁴

With the new Code the regulatory environment has become more business-friendly. It is possible to establish a business irrespective of nationality or place of residence. To incorporate and register a new firm, an entrepreneur must follow seven bureaucratic and legal steps: 1) submit the memorandum and articles of association through the Central Registry System (CRS), 2) prepare and notarize company documents, 3) deposit a percentage of the capital to the account of the Competition Authority, 4) deposit at least 25 per cent of the start-up capital in a bank and obtain proof, 5) apply for registration at the Trade Registry Office, 6) have the legal books certified by a Notary Public, 7) follow up with the tax office on the Commercial Registry's company establishment notification.⁵

The registration and establishment procedures have been simplified to a great extent, after the enactment of Law No.4875 on Foreign Direct Investment and revisions made in the Commercial Code and various other laws. These efforts made Turkey one of the most liberal legal regimes for foreign direct investment in the OECD.⁶ The 2012 *Doing Business* report, which measures regulations that enhance or constrain business activities, noted that Turkey made starting a business easier by eliminating restrictive clauses such as notarisation fees for the articles of association and other documents, reducing the time required for dealing with construction permits and licenses and administrative costs (getting electricity etc.), and improving access to credit information.⁷

Yet, Turkey's score decreased in 2015 with recent changes making it more difficult to do business. In 2014 the government increased the minimum capital requirement for starting a business and in 2015 increased the notary and company registration fees.⁸ As a result, Turkey ranked 55 out of the 189 countries in the 2015 *Doing Business* report. The 10 topics included in the ranking in the 2015 *Doing Business* report are: starting a business, dealing with construction permits, getting electricity, registering property, getting credit, protecting minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency. In the ranking list of "starting a business", Turkey is in the 79th place.⁹

Although starting a business in Turkey requires a similar number of procedures as in other OECD countries, it costs almost 140 per cent more. The tax burden on firms is slightly lower than the OECD average and stands at 56 in the 2015 *Doing Business* report. Firms are taxed on 11 different types, which correspond 40.1 per cent of the annual profit; corporate income tax takes the largest share with an 18.13 per cent tax rate, followed by social security contributions at 16.90 per cent.¹⁰ In 2012 the government lowered the social security contribution rate for companies by offering them a 5 per cent rebate, but in 2015, made paying taxes costlier for companies by increasing employers' social security contribution rate.

Law No. 4054 on the Protection of Competition regulates competition in the market. The Turkish Competition Authority, established in 1997, is the regulatory institution. Law No. 4054 is likely to undergo significant changes in the near future, despite being a relatively new law, published in 1994 and having been amended in both 2005 and 2008. In 2008 the amendment altered the calculation of administrative fines. A new draft amendment proposes changes to merger control rules, sight inspections, monetary fines and investigations.

The 2015 *Doing Business* report shows that the insolvency framework is weak, with Turkey at the 109th place with a score of 8 out of 16. In case of a dispute, the number of procedures to enforce a commercial contract is 35 and the process takes 420 days on average.¹¹

The 2014 European Union Progress Report highlights insufficient specialization of commercial court judges as one of the reasons for the lengthy processes in enforcing commercial contracts.¹²

Article 35 of the Constitution protects property rights. Turkey's legal system protects and facilitates the acquisition and disposal of property, including land, buildings, and mortgages. The legal system provides a means for enforcing property and contractual rights, and there are written commercial and bankruptcy laws. The rights can be limited only in cases of public interest by the passing of a law.¹³ As indicated in the 2014 European Union Progress Report, "a reasonably well-functioning legal system has been in place in the area of property rights for several years".¹⁴

Intellectual property rights (IPR) are protected by Law No. 5846 on Intellectual and Artistic Works,¹⁵ which is comprehensive and defines the works subject to this law in detail. According to the Guide

on Intellectual Property Rights, which was prepared by the EU Office for Harmonization in the Internal Market: “Turkish IPR laws are mainly compatible with EU legislation and provide a legal basis in combating against IP infringement”.¹⁶ A department specialized in copyright issues has been operating in the Ministry of Culture and Tourism since 1989.

SCORE **50**

Resources - Practice

To what extent are individual businesses able in practice to form and operate effectively?

In the 2014-2015 *Global Competitiveness* report, Turkey ranks 45 out of 144 countries. According to the report, the strength of Turkish institutions, one of the weaker areas, has deteriorated. This reflects a decline in trust of politicians (from 37 to 62) and a perception that the judiciary is less independent (85 to 101) and the police force is less reliable (80 to 103) than in previous years. Businesses also voiced concerns about the burden of government regulation (71) as well as some areas of physical security, which remains fragile and costly for business (99).¹⁷

The *Global Competitiveness* report revealed that, according to businesspeople, “inefficient government bureaucracy” and “policy instability” are the most problematic factors for doing business. In the start-up period, firms have to complete seven procedures, which take 6.5 days on average to complete, compared to the OECD average of 4.8 procedures taking 9.2 days.¹⁸ Thus it can be asserted that the number of procedures makes the start-up period difficult, rather than the length of time it takes. The average cost of starting a business is 16 per cent of income per capita, which is a higher than the OECD average of 3.4 per cent. Minimum paid-in capital of a new business corresponds to 12.1 per cent of income per capita.¹⁹ The average cost of starting a business increased to 12.7 per cent of per capita income from 10.5 per cent in the preceding year. Obtaining a construction permit is still very cumbersome and time-consuming.²⁰

Although the incumbent government has adopted legal and structural changes to promote the business environment, the tax rates, excessive bureaucracy, macroeconomic instability, weaknesses in corporate governance, unpredictable decisions made at the government level, and frequent changes in the legal and regulatory environment hold back foreign investors.²¹ Another problem that hampers the business environment is a substantial informal economy. It is estimated that the informal economy amounts to over 60 per cent of the economy.²²

Corruption also remains a major problem and stands as an obstacle to doing business. As noted by the European Union and the OECD in their 2011 SIGMA report the lack of transparency and the lengthy procedures in public administrations create opportunities for corruption.²³ The 2008 Business Environment and Enterprise Performance Survey (BEEPS) showed that corruption is seen one of the biggest obstacles to doing business, along with macroeconomic instability, inefficient bureaucracy, uncertainty about regulatory policies and tax rates.²⁴

The International Intellectual Property Alliance underlines the obstacles to effective legal protection of intellectual property rights. The main issues hampering judgment process are: the growing backlog of cases, low level and frequently postponed penalties, and recidivism.²⁵

Turkey has made enforcing contracts easier by introducing an electronic filing system for court users in 2014. This is expected to decrease the number of processes and to shorten the duration of enforcement. According to data collected by The World Bank *Doing Business* report, resolving

insolvency takes 3.3 years on average and costs 14.5 per cent of the debtor's estate.²⁶ The 2014 European Commission Progress Report notes that the number of businesses closing down or being liquidated fell by 20.6 per cent in 2013 compared with 2012. In conclusion, market exit remains costly and long, and insolvency proceedings are still heavy and inefficient.²⁷

Apart from the technological and economic factors, the lack of efficient protection for intellectual property also diminishes the patent applications. The number of patent applications in the world is above 2,3 million, whereas for Turkey the number is 12.000.²⁸

SCORE **25**

Independence - Law

To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?

The public bodies that are included in registration and licensing of companies include notaries, *Halk Bankası* (Ankara corporate branch), and the Commercial Registry and Tax Office. The legal framework has provisions to prevent public officials from taking any advantage for themselves, their family, close relatives, friends and persons or organizations with whom they have or have had business or political relations.

For example, Law No. 657 on Civil Servants contains many principles of conduct and disciplinary penalties for misconduct to prevent bribery and conflicts of interest. Law No. 4734 on Public Procurement and Law No. 4735 on Public Procurement Contracts aim to prevent all sorts of unethical conduct including bribing and conflicts of interest through increasing transparency in the public sector.²⁹

The legal framework does not provide effective safeguards to private businesses against unwarranted external inference. In any disagreement between firms and public officials or state bodies, firms should first use the complaints mechanism of the institution. Only then can they apply to the Administrative Court for all disputes except debt cases, which are in the area of the Trade Courts.

The Competition Authority has been in charge of regulating the market ensuring free competition and preventing concentration of market share with agglomerations since 1994. It is responsible for applying Law No. 4054 on Competition,³⁰ which does not include clear articles on the independence of business firms. Despite the fact that the Competition Authority is attached to the Ministry of Customs and Commerce, the law ensures its administrative and financial autonomy.

The existing legal framework does not prevent external influence and creates obstacles to market openness. In the 2015 Index of Economic Freedom, Turkey's economic freedom score decreased to 63.2 by 1.7 points from 2014, with declines in five of the 10 economic freedoms, including labor freedom, business freedom, the control of government spending, and property rights, outweighing improvements in freedom from corruption, and investment freedom. Business freedom ranked 106 and monetary freedom is ranked 133 out of 187 countries.³¹

Business freedom, labor freedom and monetary freedom of the business sector are collected under the category of regulatory efficiency, which remains cumbersome. Particularly, independence

of the central bank is measured with the financial freedom index. The score of Turkey was 70 over 100 between 1995 and 2000. In 2001, the score dropped to 50 and stayed stable until 2011. Since 2012, financial freedom index of Turkey has risen to 60, which was ranked at 39 out of 187 countries in 2015.³²

Kalaycıoğlu argues that one of the reflections of the centralization process is that the executive has directly affected businesses. The president criticized the interest rate decision of the Central Bank and argued that the authorities of the Bank have a negative attitude against the executive, and are undermining stability. The president associate decisions of the Bank with possible external interferences and loss of independence of the institution.³³ This raised concerns about the lack of independence of the bank,³⁴ and the functionality of the legal framework safeguarding the independence of the business.

SCORE 25

Independence - Practice

To what extent is the business sector free from unwarranted external interference in its work in practice?

External interference in business practices has always been considered a problem. According to the Bertelsmann Foundation, the business interests of government officials sometimes conflict with their duties.³⁵ Similarly, the 2008 World Bank Enterprise Survey showed that 42 per cent of companies surveyed identified corruption as a major constraint to doing business, and reported that they still encounter a high number of demands for bribes in order to “get things done”.

The 2013-14 *Global Competitiveness* report found that 23 per cent of companies expect to give a gift to secure a government contract. When only medium-sized firms are taken into account, this ratio increases to 48 per cent. In this regard, corruption increases the costs of doing business and creates an unfavorable investment environment.³⁶

Independent business expert Özlem Zingil underlines the traditional hesitancy of businesses in Turkey to apply to courts against the state.³⁷ Businesspeople avoid confronting state officials in courts as much as possible. Nonetheless, a Freedom House report in 2011 demonstrates that doing business has been made easier in recent years; simplifying the procedures to register a company has reduced demands for bribes by public officials.³⁸

An issue of concern is that discretionary government decisions tend to favor business groups aligned or related to the ruling party and “punish” those companies that are not. The government has been heavily involved in infrastructure and in the construction sector, which has created vast opportunities for politically supported capital accumulation during the last decade. Mostly represented by the Independent Industrialists’ and Businessmen’s Association (MÜSİAD), these business groups gained better access to resources through personal or organizational linkages to the government. MÜSİAD as an Islamic-oriented business association is well known for its close relations with the AKP government. The new Anatolian-based businesses, sharing a common religious identity/ideology with the government, entered the market and benefited from selective incentives especially in public procurements³⁹ and the privatization of state owned enterprises.⁴⁰ The case of Turkish Confederation of Businessmen and Industrialists (TUSKON) provides interesting

insight on executive control over business; known to be heavily connected to the Islamic Gülen Movement, TUSKON's rapid rise-and-fall in parallel with the government's fallout with Gülen demonstrates government's underlying control over business. In this regard, certain domestic capital groups grew rapidly and turned into giant conglomerates competing with the established business actors.⁴¹

This paved the way for the worsening of relations between the government and the Turkish Industrialists and Business Association (TÜSİAD) relative to the other major associations, which is composed of secularist and liberal big business in İstanbul.⁴² Post-2007 the government has tended to pressure firms through tax fines and other administrative penalties. Former head of TÜSİAD Muharrem Yılmaz also emphasized this in his speech in 2014. An independent expert interviewed by TI Turkey also asserted that financial audits have been repeatedly utilised as a tool to punish various business groups and are still used in manipulating the business market in line with the government decisions.⁴³ For example, the Dogan Media Group was fined 4.82 billion TL following a tax audit in 2009 after Prime Minister Erdoğan declared his discomfort with the policies it advocated and called the public to boycott them.⁴⁴

Another example is the increasing pressure on Koç Holding, which is the biggest capital group in Turkey. During the Gezi protests in June 2013, Prime Minister Erdoğan accused Koç Group and the Divan Hotel of assisting the protesters. Then, he claimed that some capital groups including the Koç Group – collectively calling them the “high interest lobby” – had provoked the protest in order to enjoy the benefits of the financial environment. In July 2013, the Ministry of Finance's audit teams raided nine provincial offices of the three major energy companies of Koç Group. The investigation was not a regular one, perceived to be retaliation for the alleged support during the Gezi protests. After repeated investigations on various companies, Koç Group was fined more than 600 million TL (200 million euros).⁴⁵

Another recent example is the Bank Asya case. Bank Asya is an Islamic lending institution known for its ties to the Gülen Movement. Following the December 2013 corruption investigations, the prime minister accused the Gülen Movement of organizing a conspiracy against the government.⁴⁶ Then, some public institutions and businesses connected to the state including Turkish Airlines withdrew their funds from Bank Asya.⁴⁷ The Bank's standard agreement with the Ministry of Finance to some regular operations was cancelled. In the stock exchange, public trading in Bank Asya was suspended three times. Finally, a state body, the Savings Deposit Insurance Fund seized the control of Bank Asya in February 2015.⁴⁸

GOVERNANCE

SCORE **75**

Transparency - Law

To what extent are there provisions to ensure transparency in the activities of the business sector?

The overall legal framework to a great extent provides for adequate reporting mechanisms to ensure transparency. In the area of corporate accounting, the legal and institutional framework

for financial reporting is in place. Turkey has a score of 6.8 out of 9 on the Corporate Transparency Index, with a higher score indicating higher transparency.⁴⁹

The Capital Markets Board and Banking Regulation and Supervision Agency are authorized to conduct regulatory tasks in the field of accounting and auditing. The Capital Markets Board is the sole national authority to regulate and supervise the capital markets and has exclusive standard-setting powers and extensive supervisory powers regarding the corporate governance of publicly held companies and other capital market institutions. For the breach of mandatory rules, the Capital Markets Board is empowered to determine the breach, ask courts for precautionary legal measures, and file a lawsuit for execution of the related corporate governance principles. New Turkish Commercial Code increases the range of Capital Markets Board enforcement powers and increases sanctions for non-compliance with the regulations.⁵⁰

The Public Oversight Accounting and Auditing Standards Authority which was established in November 2011, is responsible for setting accounting standards in full compliance with the International Financial Reporting Standards. According to the New Turkish Commercial Code, companies are obliged to maintain statutory books and individual or consolidated financial statements in accordance with Turkish Accounting Standards and Turkish Financial Reporting Standards (TAS/TFRS).⁵¹

Publicly held companies traded in the Istanbul Stock Exchange and banks have to prepare their financial statements and their explanatory notes quarterly. These reports are uploaded on a Public Disclosure Platform (PDP) website and announced to the public. Financial statements are comprised of a balance sheet, profit and loss and comprehensive income statement, statement of changes in equity, cash flow statement, and explanatory notes to financial statements.⁵²

Turkey published legislation to adopt international standards on auditing. According to Law No. 6455 (amended the new Turkish Commercial Code), all joint stock companies are subject to an audit. The main goal of the new Turkish Commercial Code is to develop a corporate governance approach that meets international standards, fosters private equity and public offering activities, and creates transparency in managing operations.⁵³

The audit service is strengthened through a new Turkish Commercial Code, which allows shareholders to request the appointment of an auditor to investigate alleged conflicts of interest. The listed companies are audited twice a year by approved independent auditors and audit firms, which should have authorizations and certificates to provide audit services. Each audit firm has to prepare annual transparency and quality assurance reports, which should be announced to the public. The reports should include information on its independence policies, ownership and operational structure, monitoring and quality control systems, and its continuing training processes as a requirement of the Public Oversight Accounting and Auditing Standards Authority and the Capital Markets Board legislation.⁵⁴

The banking and securities sectors are regulated by two autonomous administrative bodies: The Banking Regulatory and Supervision Agency, and the Capital Markets Board, respectively. They have regulatory tasks in the field of accounting and auditing. The Banking Regulatory and Supervision Agency publishes detailed information regarding the entities that are subject to supervision, which is publicly available in daily, weekly, monthly or quarterly reports, and in interactive systems on its website.⁵⁵ In addition, the Financial Crimes Investigation Board working under the Ministry of Finance is responsible for combating financial crime, such as money laundering and smuggling.

Transparency - Practice

To what extent is there transparency in the business sector in practice?

The transparency in the business sector is considered weak in practice since there is very limited information available regarding the ownership of companies and their control structures, anti-corruption and corporate social responsibility activities. All companies have to keep their records according to Turkish Tax legislation. They declare their corporate tax statements by uploading them onto the Revenue Administration website. However, companies are not required to publish their financial and operational data. Information is only available from companies themselves and authorized legal authorities. The scope of compulsory independent audit has been extended in recent years, so the number of approved independent auditors and audit firms has also increased.⁵⁶

The only exceptions are firms registered on the stock exchange. These firms are required to present their balances to the public and announce their data. However, without permission of the company, third parties cannot share financial information. Thus, an audit firm has to get authorization in order to collect a company's data. Unfortunately, most of the companies do not to give such authorization.⁵⁷ Although the precedents set by these companies paint a negative picture, a 2015 study by TI Turkey suggests that the organizational transparency of the companies in the study is much higher (85 points) than the global average of 39 points.⁵⁸ Out of the 100 companies in the study, 36 of them scored a perfect 100 and another 41 fell in between the 75-100 quartile.

It is not easy to get information on the ownership structure of the firms unless they are registered on the stock exchange. These legal obligations are only compulsory for listed companies; there are a number of large companies that do not post the details of the owners and the board members on their website due to this deficiency in the legal framework.⁵⁹

There are two civil society organizations working exclusively in the field of corporate social responsibility (CSR): the CSR Association of Turkey and the Turkish Business Council for Sustainable Development. These organizations aim to raise awareness of CSR and sustainability and also improve the contribution of different actors to the development of these concepts. Although there is no separate legislation on CSR, there are regulations linked with the elements of CSR in respective laws such as the Law No:6502 on Protection of Consumers.⁶⁰ CSR is an emerging concept for Turkish companies. In a 2013 study 52.9 per cent of companies stated that they were aware of CSR, while, 47.1 per cent had never heard of it.⁶¹

In addition, there are other civil society organizations that do not exclusively deal with CSR, but refer to the related subjects in their works. The largest business association, TÜSİAD, tries to improve the implementation of "four fundamental principles of corporate management – transparency, accountability, equitability and responsibility"; and the Corporate Governance Association of Turkey (CGAT) attempts to enhance good governance in corporations by providing assistance and guidance and encouraging the best practice.⁶²

Accountability - Law

To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?

Turkey has a strong regulatory framework for governing oversight of the business sector and corporate governance. The Commercial Code sets forth the framework of corporate governance, but some challenges remain.

Corporate governance is one of the major concepts of the Turkish Commercial Code, which was enacted in 2011.⁶³ The new Code highlights the four dimensions of corporate governance: full transparency, fairness, accountability, and responsibility. Under this Code, all capital stock companies must create a website and these websites must include a section called “information Society” for proactive disclosure of information.

Company websites should include all data that is relevant to the company and in which shareholders, minorities, creditors and stakeholders have an interest including documents and calls regarding General Assembly (GA) meetings; year-end and interim financial statements and merger and division balance sheets; audit and valuation reports; and announcements related to liquidation and action for cancellation.⁶⁴

The Law No. 6362 on Capital Markets, which was enacted in 2012, marks progress in the legal framework.⁶⁵ It states that its main aim:

“is to ensure the effective functioning and development of the capital markets in a reliable, transparent, stable, fair and competitive environment and to protect the rights and interests of the investors.”⁶⁶

The authority of Capital Markets Board extends to companies listed in the stock exchange and non-listed publicly held companies.

The key institutions with responsibilities and statutory powers related to corporate governance are the following: the Capital Markets Board, Banking Regulations and Supervisory Agency, Istanbul Stock Exchange, Competition Authority, Financial Crimes Investigation Board, Accounting Standards Board, Chambers of Independent Accountants and Certified Public Accountants, and TÜRMOB, sworn-in certified public accountants.⁶⁷ Additionally, there are voluntary professional associations with no statutory rights.⁶⁸

Under Law No. 5411 on Banking, the Banking Regulations and Supervisory Agency, which is the principle competent authority for banks, oversees and controls the banks’ compliance to governance principles:⁶⁹

Corporate values and strategic goals shall be established within the Bank. Authorities and responsibilities within the bank shall be clearly specified and implemented. Members of board of directors and the higher management shall be equipped with qualifications to fulfill its duties effectively and be conscious of its role undertaken in the corporate governance. The bank shall make the best use of the works carried out by its auditors as well as the independent auditors effectively. The compliance of the wages policy with the bank’s ethical values, strategic goals and

internal balances shall be provided. Transparency shall be ensured in the corporate governance.⁷⁰

The financial and administrative autonomy of the Banking Regulations and Supervisory Agency is guaranteed clearly by the law.

SCORE 50

Accountability - Practice

To what extent is there effective corporate governance in companies in practice?

The provisions on corporate governance discussed above partially ensure that companies are held accountable in practice.⁷¹

After the enactment of the new Turkish Commercial Code, which assigns various responsibilities to board members, the frequency and efficiency of financial auditing has significantly increased. At the end of 2012, there were 600 companies registered with the Capital Markets Board (including the 404 Istanbul Stock Exchange-listed companies) and the Istanbul Stock Exchange had become the second best performing stock exchange in the world.⁷²

Firms in the Stock Exchange publish detailed financial reports quarterly. In addition to official requirements, investors expect to see periodic reports, including on the financial situation and performance indicators regularly.⁷³ However, there are still some deficiencies in practice. For example, listed companies are characterized by concentrated ownership, often in the form of family-controlled groups. The corporate conglomerates dominating the economy are typically controlled through pyramidal structures, and have often been operated by family members for several generations. Therefore, the monitoring capacity of shareholders is relatively weak.⁷⁴

An expert interviewed by TI Turkey⁷⁵ claimed that the Banking Regulations and Supervisory Agency was one of the influential actors in the preparation process for the Turkish Commercial Code No. 6102. As a result of the effective oversight of the Banking Regulations and Supervisory Agency, the financial and annual reports of firms in the banking sector are quite detailed and effective. She also highlighted the impact of the Financial Crimes Investigation Board, particularly in preventing money laundering.⁷⁶

The Capital Markets Board is also explicitly empowered to regulate corporate governance of listed companies. There are also other oversight bodies as mentioned above, such as the Public Oversight, Accounting and Auditing Standards Authority, the Competition Authority and Accounting Standards Board. It is clearly stipulated that they narrow the gaps in oversight.

The impact of the laws enacted in 2011 and 2012⁷⁷ on the business environment is reflected in the 2014 *Global Competitiveness* report. The accountability of private institutions is measured with the following variables: strength of auditing and reporting standards, efficacy of corporate boards, protection of minority shareholders' interests, and strength of investor protection. The value of all of these variables and Turkey's rank significantly increased from 2011 to 2015.⁷⁸

In 2011, Turkey's score for strength of auditing and reporting standards was 4.4 out of 7, efficacy of corporate boards was 4.2, protection of minority shareholders' interests was 3.9 and strength of investor protection (0-10 best)⁷⁹ was 5.7. In 2015, Turkey's score for strength of auditing and reporting standards increased to 4.8, efficacy of corporate boards increased to 4.4, protection

of minority shareholders' interests increased to 4.2 and strength of investor protection (0-10 best) increased to 6.3.⁸⁰ TI Turkey's expert interviewee asserted, however, that the state does not incentivize companies to disclose anti-corruption relevant information.⁸¹

SCORE **25**

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?

There are no sector-wide codes of conduct or integrity mechanisms in place. Thus, no specific regulatory body is authorized to prevent corporate or business fraud. Companies can issue their own regulations and guidelines to prevent fraud and corruption, however.⁸²

The Turkish Criminal Code criminalizes various forms of corrupt activity, including active and passive bribery,⁸³ attempted corruption, extortion, bribing a foreign official, money laundering and abuse of office. Articles 252, 253 and 254 of the Turkish Criminal Code define bribery, actors (public officials, individuals) and the punishment in detail.

Both actors are punished by four to 12 years' imprisonment.⁸⁴ The amendments made to Article 252 of the Turkish Criminal Code also introduced private commercial bribery into the legislation.⁸⁵ However, according to a 2009 GRECO report, "bribery in the private sector is criminalized only with regard to a very limited number of entities acting in the private sector, i.e. certain entities with public participation or acting in the public interest".⁸⁶

The OECD Anti-Bribery Convention, of which Turkey is a signatory, prohibits bribery of public officers in the international business operations of Turkish companies and their subsidiaries and applies heavy penalties for the breach of its provisions. For the first time this act was defined as a criminal activity in 2003 under Law No. 4782. Since 2004, it is also regulated under the Turkish Penal Code, Article 252/9.

If the actors of the bribery confess the crime before it is revealed, they are not punished. The actors of foreign bribery are the exception of this article defining "effective regret".⁸⁷ It should be noted that provisions on effective regret had been amended to abolish the restitution of the bribes to the bribe-giver and to ensure that this defense could not be invoked in any situations where the bribery act had already come to the knowledge of official authorities.⁸⁸

Law No. 6362 on Capital Markets⁸⁹ aims to ensure the effective functioning and development of the capital markets in a reliable, transparent, stable, fair, and competitive environment and to protect the rights and interests of the investors. The Capital Markets Board can restrict or temporarily suspend a capital market institution from its activities or cancel its licenses fully when it is found to be engaged in activities contrary to the legislation.⁹⁰

The general role of the Financial Crimes Investigation Board is to develop policies and collect data on suspicious transactions in the context of financial crime such as money laundering and smuggling.

Integrity mechanisms - Practice

To what extent is the integrity of those working in the business sector ensured in practice?

Limited mechanisms are in place to ensure integrity in the business sector, but the issue of corruption and bribery is growing in importance for private companies within the framework of international regulations and agreements. Provisions of the US Foreign Corrupt Practices Act and the UK Bribery Act for example govern many international companies in Turkey. Therefore, companies (such as Roche) usually have codes of conduct and anti-corruption programs although there is no legal requirement to do so.⁹¹

The Ethical Values Center Association conducted a survey among corporate executives asking the most significant ethical problems they perceive within Turkish society in 2013. According to the survey, 55 per cent identified corruption, 45.5 per cent economic rent (unearned income), 45 per cent discrimination and 39.6 per cent bribery.⁹² Aside from these results, another structural problem lies within the adaptation mechanisms regarding business ethics. International and institutionalized actors, in compliance with their integrity mechanisms may strive to uphold their company cultures, while it is easier for smaller businesses to benefit from certain workarounds regarding ethical problems.

According to a 2014 TÜSİAD report, those working in the transportation sector perceive corruption as the biggest problem; those in the construction sector perceive it as the smallest problem. However, perhaps paradoxically, respondents in the construction sector believed corruption was a higher financial burden than respondents in other sectors. Respondents revealed that the biggest three problems with doing business were high taxes, labor costs and the informal economy. Bribery and corruption were seen as mid-level problems. The respondents saw the three main causes of corruption as “income inequality”, the “profit and power seeking impulse”, and the “lack of legislative enforcement”. Shockingly, 60 per cent of respondents stated that they do not even report corruption, with 30 per cent giving the reason that “there is no legal reporting procedure”, 12 per cent saying that reporting “would not yield any results”, and 6 per cent saying that they were concerned that reporting “could result in uncovering the identity of the one who is reported on”.⁹³

According to the Law No.. 4857 on Labor, an application to an administrative or judicial authority against an employer in order to seek rights arising from the employment contract or laws or participation in a proceeding do not constitute a just reason for termination of a contract. Therefore, this article partially provides security for employees.

The Public Procurement Authority instituted a blacklist of companies excluded due to previous violations of public procurement rules. The Authority debars blacklisted companies from tendering for public projects for a specified period of time.

The OECD Working Group on Bribery expressed concerns about Turkey’s level of detection and investigation of foreign bribery. Only 10 allegations have come to the attention of Turkish authorities since foreign bribery became an offence in 2003. Turkey has opened investigations into only six of these allegations, three of which were then closed. Turkey’s level of enforcement of its foreign bribery laws – with just a single prosecution leading to an acquittal in 11 years – is low. The OECD Working Group is therefore concerned that Turkey is insufficiently proactive in its enforcement efforts.⁹⁴

ROLES

SCORE 25

Anti-Corruption policy engagement

To what extent is the business sector active in engaging the domestic government on anti-corruption?

Business sector involvement in government's anti-corruption activities has been very limited. Corruption is not a priority on the agenda of business and government relations.

There have been, however, a few episodes in which the business sector has advocated for improved rules and policies related to anti-corruption. For instance, The Turkish Contractors Association published a Declaration of Construction Sector⁹⁵ containing recommendations related to the common problems of the construction sector. In criticizing public procurement processes as being unfair and lacking of transparency, the Turkish Contractors Association demanded a new public procurement law.

TÜSİAD has also has called the government to take concrete steps in fighting corruption and bribery after the December 2013 corruption scandal. The former president of TÜSİAD, Muharrem Yılmaz, stated that: "There should be an attitude of continuity for dealing with corruption and bribery. It requires reform and regulation."⁹⁶

There are 311 Turkish signatories of the UN Global Compact as of February 2016, but there is a need for monitoring their compliance with the UN Global Compact Principles and a strategy to promote the Principles.

According to Özlem Zıngıl, the business sector is not sufficiently active in this regard. She noted that it only expresses an opinion when corruption reaches a point that prevents competition.⁹⁷ Another expert interviewed by TI Turkey declared that fighting against corruption is perceived as a political power struggle or a political discourse. Therefore, the fight against corruption becomes more difficult.⁹⁸

SCORE 25

Support for/engagement with civil society

To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?

The cooperation between the business sector and civil society in fighting corruption is seemingly weak. As reported in the previous section, the number of firms that have signed the UN Global Compact is on the rise. As far as the efforts of the business engagement with civil society, Corporate Governance Association of Turkey (CGAT) and Turkish Integrity Center of Excellence (TICE) both boast sizable membership figures. Nevertheless, the push for combating corruption does not go beyond the efforts of a few working groups.

Support given to civil society organizations by the business sector leaves much to be desired; civil society relies heavily on other sources in their efforts. TÜSİAD aims to set a good example with its support to civil society. In addition to its latest research on anti-corruption perceptions of businesspeople, TÜSİAD also supports the private sector project of Transparency International Turkey.

All things considered, although ideal case scenarios are present, they are too few to mention a positive trend. Practice reveals that contributions from business to the civil sector in fighting corruption need to increase in order to broaden and deepen the collaboration between the two.

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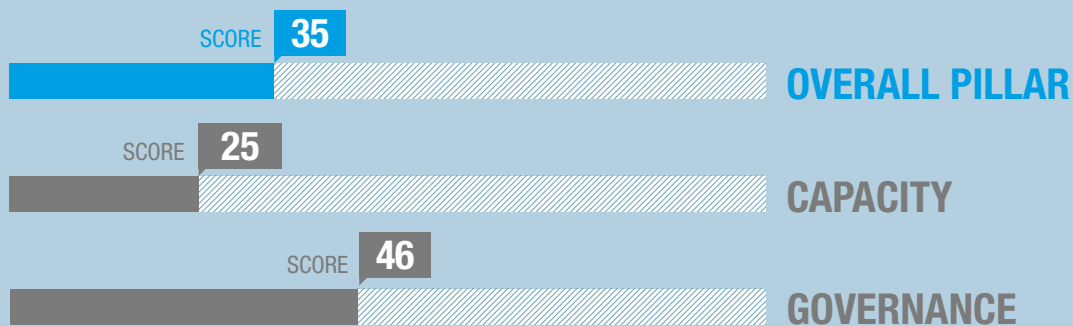
15

STATE OWNED ENTERPRISES (SOEs)

OVERVIEW

The greatest concerns in the assessment of state owned enterprises (SOEs) are related with the independence and integrity dimensions. Although they are autonomous (functionally decentralized) institutions, the legal and regulatory framework does not protect their independence. Ministries are authorized to appoint most of the board members and decide on the prices of goods and services produced by them. Since there are no specific integrity regulations for SOEs, it is a challenge to ensure the implementation of the ethical principles and measures in these institutions.

The table below presents the indicator scores, which summarize the assessment of SOEs in terms of their capacity and governance. The remainder of this section presents the qualitative assessment for each indicator.



	Indicator	Law	Practice
Capacity	Resources	N/A	N/A
	Independence	25	25
	Transparency	50	75
Governance	Accountability	75	50
	Integrity mechanisms	25	0

STRUCTURE AND ORGANISATION

In spite of the recent privatization waves, state owned enterprises are still significant economic-commercial and administrative actors in the public sector. Decree Law No. 233 on State Owned Enterprises dated 1984 binds the SOEs.

The term SOE is used for both economic state establishments and public economic organizations (i.e. public utilities).¹ The capital is state owned for both types of these enterprises. Economic state establishments operate on a commercial basis in the market whereas public economic organizations are public monopolies producing and marketing specific monopolized goods and services.² Given their public interest, the former has to be a profitable state actor whereas the latter does not have to make a profit.

The qualifications required for the said enterprises are emphasized in Article 4 of Decree Law No. 233 on State Owned Enterprises:

These enterprises are legal entities; aside from the aspects reserved by this Decree Law, the organizations are bound by their private legal orders; and are not subject to State Tender and General Accounting Laws; are not audited by the Turkish Court of Accounts³ The responsibility these organizations have is restricted to their capital, which is determined by the coordination board of the related ministry.⁴

There is a decrease in the levels of employment in this sector. In 2000 SOEs employed 435,000 people, but that figure had dropped to 124,000 by the end of 2014,⁵ equaling almost 0.5 per cent of total employment in 2014.⁶

ASSESSMENT

CAPACITY

SCORE **25**

Independence - Law

To what extent does the legal and regulatory framework for SOEs protect the independent operation of SOEs and ensure a level-playing field between SOEs and private sector companies?

SOEs are established through a decision of the Council of Ministers.⁷ Each SOE is administratively related or affiliated to a Ministry. SOE boards consist of one chair and five members. Two members of the Board of Directors may be appointed by joint decision upon the proposal of the Minister concerned, one upon the proposal of the Minister in charge of the Undersecretary of Treasury, two among the appointed Deputy General Managers of the Enterprise upon the proposal of the Minister concerned.⁸ This composition clearly indicates the controlling power of the government on SOEs.

According to Decree Law No. 233 on State Owned Enterprises, state owned enterprises, institutions and affiliated partnerships are free in determining prices of goods and services produced. However,

in the next clause states that the prices of goods and services produced may be determined by the Council of Ministers when necessary and in case the prices determined by the Council of Ministers are found below their cost prices, the loss is compensated through allocation from the general budget.⁹ The calculation method and conditions of duty loss is defined explicitly by a Council of Ministers' decision.¹⁰ The Treasury, upon the suggestion of the Ministry concerned, designates each duty loss. This legal framework on price determination and duty loss enables the government to influence the day-to-day management of SOEs. There are no regulations on economic and financial relations among SOEs.

SCORE **25**

Independence - Practice

To what extent are the day-to-day operations of SOEs performed independently of state interference in practice?

Although SOEs are theoretically and legally autonomous (functionally decentralized) institutions in the constitutional and administrative system, the Ministries appoint the chairs and the members of the boards of directors. Therefore, it is impossible to state that SOE board members act independently. An SOE expert¹¹ interviewed by TI Turkey declared that the impact of the government on SOEs is evident.

According to the Decree Law, SOEs are authorized to determine the price of goods and services they produce, and only when it is necessary can the Council of Ministers decide. However, an anonymous expert underlines that the government always determines the prices of SOE products.¹² As such, there exists risk of lobbying the Minister by the private sector to set a suitable price.¹³

An SOE expert declared that there is no objective criterion in regards to expertise and integrity in the selection process of board members and the general directors of SOEs. Loyalty to the governing party, friendship and kinship are more common criteria than professional merits in this process.¹⁴ For instance, the previous Minister of Transportation, Maritime Affairs and Communications appointed three people to positions of importance, a day before his resignation.¹⁵ These positions were the Director General of State Railways of the Turkish Republic (TSR), the Director General of General Directorate of State Airports Authority of Turkey (SAA) and the Director General of Communication.¹⁶

GOVERNANCE

SCORE **50**

Transparency - Law

To what extent are there provisions to ensure transparency in the activities of SOEs?

SOEs and their associate companies are required to prepare annual reports, balance sheets, and strategic plans and present these documents to the authorities. However, there are no regulations to require these reports and plans to be open to the public.

According to Law No. 6085 on the Turkish Court of Accounts (TCA)¹⁷, and the Decree Law No. 233 on State Owned Enterprises,¹⁸ SOEs are audited by the TCA. The TCA is responsible for preparing reports for each SOE each year, as well as a general, cumulative report. These reports can be found on the official TCA website.¹⁹ The Constitution, auditing designed by the Law No. 6085, and the Decree Law no. 233 as well as Law No. 3346 on the Arrangement of Auditing of State Economic Enterprises and Funds by the Turkish Grand National Assembly²⁰ create the infrastructure for the parliamentary audit of SOEs.

The parliamentary supervision of the SOEs is done through the Grand National Assembly of Turkey State Owned Enterprises Commission. It analyses the reports prepared by the TCA, reports prompted by the prime minister and any other subjects determined by the Commission.²¹

According to the new Law No. 6102 on Trade,²² incorporated companies are subjected to annual independent external audits and eight out of 26 SOEs fall into this category.²³ Aside from that, there is no regulation and practice on independent external auditing.

There are no regulations on anti-corruption programs for SOEs. Articles 271 and 272 of the 10th Development Plan, which was prepared and coordinated by the Ministry of Development for the period of 2014–2018, state that a legislative arrangement is needed to increase efficiency, accountability, and flexibility in the decision-making processes of SOEs. According to this Plan, internal audit units will be created and the efficiency of internal and external audit mechanisms will be increased.²⁴ It should be underlined that there is nothing in the Development Plan to ensure transparency in the activities of SOEs.

SCORE **75**

Transparency - Practice

To what extent is there transparency in SOEs in practice?

Governance, ownership structures and detailed information on SOE activities are available on the SOEs' websites. The annual reports of 24 of the 26 SOEs can also be accessed through their websites. The two SOEs that do not share their annual reports provide some information on their financial situations and major operations. Most of the annual reports are up to date, but the latest available annual reports for three SOEs are from 2012.

Internal supervisors audit each SOE department every two to three years. According to an expert,²⁵ internal audit mechanisms of SOEs focus on detecting malpractices, but prevention is not within their scope. The Ministry of Development intends to increase the effectiveness of the internal audit mechanisms of SOEs.²⁶ This implies that the current impact and quality of the auditing mechanism is a matter of concern.

There is no centralized coordinating unit for SOEs. The Higher Supervisory Council of the Prime Ministry was responsible for auditing these institutions until it was abolished during recent reforms. However, the TCA and the Under-secretary of the Treasury publish annual aggregate reports on SOEs, which are available on their websites. Aggregate reports cover topics such as: the share of SOEs in the economy, employment, financial situation, operations and transactions, investments, and privatizations. Moreover, the Under-secretary of the Treasury provides detailed statistics on SOEs including income, value added, revenue, number of employees, costs, and duty losses.²⁷

Accountability - Law

To what extent are there rules and laws governing oversight of SOEs?

By the Decree Law No. 233 on State Owned Enterprises, which regulates the organizational structures and functions of SOEs, the duties and responsibilities of the SOE board members are clearly defined.²⁸

The TCA is responsible for preparing reports for each SOE every year. According to Law No. 6085 on the TCA,²⁹ the reports prepared by TCA auditors regarding the supervision of SOEs have to be sent to the Report Evaluation Board by the end of September of the following financial year. The Evaluation Board has until October to finalize each report and send a copy to the SOE being audited and the affiliated Ministry. The SOE must prepare and send its responses to the TCA and the affiliated Ministry within 30 days of receiving the finalized report. The Ministry then has to add its input to the responses and send this version to the TCA within 15 days of receipt. This report, together with the responses from the SOE and the input from the Ministry is then forwarded to the parliament, the Under-secretary of the Treasury and the Ministry of Development before the end of the year.

The Parliamentary Commission of SOEs is responsible for evaluating all of the reports presented, as well as the balance sheets and decides whether any irregularities have been detected. If irregularities are found, the parliament is required to begin judicial procedures, and inform the Prime Minister's Office and relevant judicial authorities.

The Parliamentary Commission of SOEs evaluates the conditions of the SOEs autonomously; so this auditing can be beneficial to the national economy, in accordance with economic rules and necessities, as well as productivity and profitability principles. It is also vital that SOEs achieve their institutional objectives and conform to long-term development plans.³⁰

SOEs are also audited by other organizations. All SOEs are affiliated to a Ministry. The enterprises that are part of the privatization program under Law No. 4046 on Privatization Applications³¹ are directly connected to the Directorate of Privatization Administration. The affiliated Ministries are responsible for ensuring that the SOEs operate in accordance with the laws and regulations. Ministries carry out audits when necessary rather than periodically and they use their own boards of inspection.

SOEs are public enterprises as much as they are economic and commercial establishments. Therefore, auditing institutions that have a general right to audit public administrations can also audit SOEs. These include the Presidency State Supervisory Council, the Prime Ministry Inspection Board, Banking Regulation and Supervision Agency and Energy Markets Regulation Agency. The Prime Minister's Office, the Ministry of Development, the Treasury, the State Personnel Department, and the Public Procurement Agency all have regulatory authority over SOEs. SOEs are also subject to the same audits as other commercial institutions.

Accountability - Practice

To what extent is there effective oversight of SOEs in practice?

Most SOEs prepare their annual reports and make these reports available to the public on their websites. The annual reports of SOEs provide a base for external auditing.³²

In terms of the accountability of SOEs in practice, experts interviewed by TI Turkey agree that the reports of the TCA auditors are quite comprehensive and sufficiently detailed. However, as discussed in the Turkish Court of Accounts section of this report, there are serious criticisms over an alleged censorship mechanism in the quality control process of these reports.

The SOE boards obtain authority directly from the affiliated Ministries as a result of the appointment mechanism, so in theory there should be no obstacle to carrying out their function of strategic guidance and monitoring of management. However, as a result of the lack of control mechanism on the appointments of board members, the competency and objectivity of SOE boards regarding management practices is a matter of concern. Non-state shareholders do not have an effect on the management of SOEs.³³

Integrity mechanisms - Law

To what extent are there mechanisms in place to ensure the integrity of SOEs?

There is no specific code of corporate governance for SOEs, and the Decree Law No. 233 on State Owned Enterprises does not include a code of ethical conduct or anti-corruption provisions (*i.e.* regarding conflicts of interest, bribery and corruption, good commercial practices, financing of political activities or whistleblowing).³⁴ The only exception is that SOE employees cannot accept gifts or borrow money from business associates.³⁵ There are also no legal provisions placing restrictions on the SOEs from making donations to political parties.

According to Law No.4734 on Public Procurement,³⁶ all SOEs are exempt from the Law if the expected cost of the contract is below the threshold of approximately US\$ 2.5 million in 2015.³⁷ When considering the weaknesses of auditing mechanisms over public procurements,³⁸ the exemption of SOEs from the Law causes a serious concern.

Integrity mechanisms - Practice

To what extent is the integrity of SOEs ensured in practice?

The lack of a code of corporate governance for SOEs, the lack of a specific code of ethical conduct and anti-corruption provisions, and the lack of integrity screening are all serious concerns.

In recent years, there have been various accusations against SOEs. One of these is directly related to alleged corrupt bidding taking place in the Turkish State Railways. According to the allegations, 52 people including the Turkish State Railways general director were subject to an investigation with allegations of bid-rigging and bribery in two tenders worth a total of 210 million TL (approximately 70 million euros). The prosecutor leading the investigation found that companies held more advantageous positions compared to rival bidders by donating a significant amount of money to the Foundation of TSR Personnel. According to the reports on the media, the prosecutor leading the investigations was removed from the case and in 2015 the new prosecutor and Ankara Prosecutor's Office discontinued the investigation.³⁹

These allegations create an environment unsuitable for free and objective competition, which is vital in public tenders and makes SOEs more vulnerable to corruption.⁴⁰ Moreover, according to an expert on SOEs, with the guidance of a specific Ministry, various expenses of the Ministry are covered and donations are made to various sport clubs and associations.⁴¹

Another accusation against SOEs was made with regards to the 17 and 25 December 2013 corruption investigations. The investigation focused on a transaction of money from an undetermined source by an Iranian businessman, Reza Zarrab, and how various ministers and businesspeople eased the transaction process, for example by helping to cover irregular transactions and speed up the gold smuggling process,⁴² in return for the alleged lavish bribes provided by Zarrab. The Ministers were also accused of allowing the process to run smoothly by helping to organize fake documents regarding the transactions,⁴³ specifically false declarations of the gold bullions' codes.⁴⁴

Halkbank, an SOE, and the general director of the bank were at the center of these alleged money transfers. Allegedly, the bank was the main institution involved in the transactions made to acquire oil and gas from Iran, as well as for other transactions completed by Zarrab using his numerous companies. Due to sanctions imposed on Iran, any monetary transactions in dollars and euros were illegal, so gold was used to make payments.⁴⁵

Although Halkbank claims that its actions regarding the transactions, and their individual components, were not illegal,⁴⁶ the bank's general director was accused of accepting bribes for such transactions.⁴⁷ A search conducted in the general director's house in response to these allegations led to the discovery of shoeboxes containing US\$ 4.5 million.⁴⁸ The general director was released 57 days after he was taken into custody and was never tried in court.⁴⁹

In a separate allegation related to a loan, Çalık Holding, a company known for its connections with the former Prime Minister Recep Tayyip Erdoğan, received from two government banks. The company in question received a loan worth US\$ 750 million in total from two state banks, Vakıfbank and Halkbank, in order to purchase one of the largest media groups in Turkey (Sabah-ATV).⁵⁰ Additionally, other allegations claim that the difficulty with the repayment of these loans led to the granting of an additional US\$ 200 million loan to the company by Halkbank.⁵¹

Such actions have violated various banking laws,⁵² and the conditions under which the company was able to obtain such significant loans, and whether the company would have received the same terms from private banks also raises numerous questions.⁵³ Moreover, a report by the Prime Ministry Supreme Audit Board in 2009 claimed that these loans were obtained by showing the value of the collateral inflated by nine times.⁵⁴ Also of particular concern was whether the company would be able to pay back the loan, the consequence of which ends up bearing down on ordinary citizens.⁵⁵

Once it became evident that Çalık Holding would require more time to repay the loan, certain conditions were removed and adjustments were made to the payment schedules.⁵⁶ The media groups were later sold to a Turkish company, which allegedly also has close ties to Erdoğan.

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VII

CONCLUSION AND RECOMMENDATIONS

In terms of the political structure, legal framework and the technical, financial and human resources, there is some strength within Turkey's national integrity system. It is in the implementation in practice that the real challenges to anti-corruption activities and the institutionalization of good governance really reside.

The most prominent obstacles to the effective implementation of these principles is the undermining of the democratic principles of the separation of powers and at times the disregard and negligence of the legal framework. The executive's dominance over all the assessed pillars demonstrates the need to re-establish the checks and balances inherent in the system. The centralized power of the executive is undemocratic – effectively excluding alternative voices, such as the political opposition and civil society.

Furthermore, this abuse of power has led to recent legislative changes, often under the cover of omnibus bills that do not enable effective scrutiny of draft laws, which indicate that the legal framework is at risk of being severely disrupted. The so-called reform process of the early 2000s has been reversed, dismantling many effective elements of a strong national integrity system.

This assessment succinctly illustrates Turkey's institutional landscape and its capacity to function in compliance with good governance principles. It demonstrates that the national integrity system is weak, with relatively low scores in every institutional pillar. No institution scored above 60 out of 100 and all but four institutions – the supreme audit institution, the ombudsman, inspection boards and the legislature – have been classified as “weak”.

The Grand National Assembly of Turkey has a high degree of independence through the legal framework, but MPs are not held accountable for their actions when in office. Furthermore, the high election threshold for representation in the parliament (of 10 per cent) excludes minority parties from the Assembly and has a negative impact on the effective oversight of the executive.

As a core institution of governance, it is particularly concerning that the executive has failed to prioritize anti-corruption measures and good governance. The key problem, however, is the very limited constraint on the executive's power – official misconduct has rarely been prosecuted and punished.

Indeed, the independence of the judiciary is one of the most serious concerns in the national integrity system. The High Council of Judges and Prosecutors needs greater transparency to instill effective and accountable judicial processes and to tackle corruption. This cannot be achieved without an independent and effective public prosecutor and law enforcement agency.

However, political interference in the work of prosecutors and the police has been demonstrated time and again. Prosecutors have been intimidated and subjected to unjustified civil, penal and other liabilities, and furthermore demonstrate low levels of transparency and accountability themselves. The police force has been compromised by nepotism and partisanship, and the dismissal or reassignment of police working on corruption investigations raises questions over its integrity.

The poor performance of the Supreme Board of Elections has put the legitimacy of Turkey's democracy at risk – there are no provisions in place for the transparency and accountability of the board and there are deficiencies in the legal framework, limiting its scope to regulate and audit campaign financing in local and parliamentary elections. Furthermore, political party financing poses a high corruption risk, and the practice of dissolving parties on spurious grounds has caused concern over interference in the free functioning of political parties.

The public sector also demonstrates vulnerability to corruption, despite its comprehensive legal framework and adequate resources, civil servants lack independence. The role of state owned enterprises also compromises the public sector, with a lack of independence and executive control over management structures. The legal framework controlling the private sector ensures adequate reporting mechanisms and transparency, but there are concerns about the close links between some public officials and business interests and distortions in public procurement and privatization processes.

While civil society has benefited from the EU accession process, it tends to have limited capacity to pose a serious challenge to power and needs to increase its influence in policy-making forums in order to reach its full potential. The media – with its essential role as the public watchdog – is assessed as the weakest pillar in the national integrity system. This is alarming and is largely attributed to the political pressure under which it operates, including the use of anti-terrorism legislation and the Penal Code to censor and prosecute journalists.

Nevertheless, the low scores and highlighted problems should not be read in a wholly pessimistic light. The assessment provides hope that stakeholders can alleviate weaknesses and there is considerable potential for improvement. For example, the Turkish Court of Accounts has adequate financial and human resources to detect inefficiencies in the public sector and the loss of public resources, despite its limited scope, authority and inability to provide oversight of the executive.

The Ombudsman's Office – the youngest institution in the national integrity system – provides strength, although like many others it is challenged by lack of independence and transparency in practice. The role of inspection boards, in the absence of a specialized anti-corruption agency, is crucial for identifying and investigating corruption in the public sector. Again, however, the dependence of the boards on the ministries they serve and the coordinating Prime Ministry Inspection Board is a challenge to their effectiveness.

The recurring theme found throughout the analysis is the inability of the national integrity system, as it stands, to balance the power of the executive. While corruption and integrity risks are present in all pillars, the overriding challenge will be to instill stronger democratic processes in the form of checks and balances on power; without these anti-corruption and transparency reforms are likely to have limited impact on the integrity system.

RECOMMENDATIONS

Legislature

- In order to ensure better representation of votes in the parliament and truer representation of voters' political positions, the election threshold should be decreased. By doing so, institutions such as RTÜK, Ombudsman, or Supreme Board of Elections, whose organizational structures are heavily dependent on the parliament through appointment procedures would be improved in accordance with the principles of equal representation.
- Legal framework regulating integrity measures for MPs should be established and a Political Ethics Law formulated. In this context, MPs regular declaration of assets that allows for comparative audits should be implemented. These financial statements should be accessible by the public.

- TBMM should increase efforts to establish an Ethics Committee to deal with corruption, favoritism, nepotism and clientelism in particular, and introduce a code of conduct for the MPs.
- The scope of parliamentary immunity should be reformulated to protect the freedom of speech and narrowed to allow proceedings on cases related to corruption.
- Turkish Court of Accounts' reports should be submitted to the parliament before the annual budgetary sessions in order to ensure parliamentary oversight.
- The budget-making process should be increased to at least three months to enhance oversight and planning by the parliament. This supervisory procedure should be done in a participatory manner including citizens and civil society organizations.

Executive

- Separation of powers should be protected to allow the branches of state to check and balance each other. The Executive should maintain Rule of Law and not overstep its boundaries defined by the Constitution.
- A comprehensive legal framework regulating integrity and conflicts of interest for members of the executive should be put in place.
- The scope of executive immunities should be narrowed to allow proceedings on cases related to corruption.
- The executive should introduce incentive mechanisms to enhance integrity, transparency, and accountability in the public sector.
- A new national action plan to fight corruption should be developed in consultation with civil society with a commitment to introduce an effective monitoring mechanism.
- Consensus on fundamental concepts such as corruption should be protected; the executive should refrain from instigating political polarization that may lead to consolidation of the culture of immunity and impunity.
- A permanent Anti-Corruption Commission with the sanctionary power to investigate corruption allegations against public officials should be established under the TBMM.

Judiciary

- Independence of the Judiciary must be protected; to this end, external interference and politicization of the Judiciary must be prevented, organizational links between the Executive and the Judiciary must be reviewed, and legislation be made clear.
- The appointment process for judges should be transparent and based on clear and objective criteria.
- The appointment mechanism for HSYK members should be revised to ensure that it is independent and free from undue executive influence.
- The security of tenure for judges and prosecutors should be protected, and transfer of judges to other locations should be only be done when necessary based on objective criteria and should not be used as a tool to reward or punish judges.

- The judiciary should establish a track record of investigations, indictments, justifications, and convictions in corruption cases and detailed statistics on these should be available to the public in an understandable and machine-readable format.
- The authority to assess examinations for the selection of judges and prosecutors should be transferred from the Ministry of Justice to the HSYK in order to eliminate the concerns of executive control over the judiciary. The independence and transparency of the selection process of judges and prosecutors is directly tied to the transparency of the HSYK and should be addressed.

Public Prosecutor

- A regulation should be enacted to restrict the authority of the chief public prosecutors over public prosecutors.
- The practice of approval and redistribution of cases, which is at the sole discretion of chief public prosecutors, should be abandoned.
- Public Prosecutors' Offices should publish their annual reports.
- Detailed statistics on corruption cases should be made available to the public in a standardized format.
- Interference in prosecution, including intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liabilities should be put to an end. Dismissal from profession should not be used to coerce or intimidate prosecutors from performing their jobs.

Public sector

- Law No. 4734 on Public Procurement should be revised in accordance with EU public procurement directives to limit the scope of exceptions and no new exceptions should be added to the law.
- Concepts such as "state secret" and "trade secret" should be defined in the legal framework to prevent abuse and arbitrary rulings used to block information requests should be eliminated.
- Definition of corruption in The Law on Asset Declaration and Fight Against Bribery and Corruption No. 3628 should be extended to allow for regular asset declarations that are open to the public. Standardized and detailed regulation should be formulated to make sure asset declarations are comparable between periods and other officials.
- The executive body should cease practices that bypass Public Procurement Authority and avoid the procurements' supervision by the institution. All applications to procurements should be published in detail, and the practice of allowing companies to arbitrarily exceed their financial provisions should be avoided. The 2010 amendments that give the authority to the government to forego procurement process should be abolished and the exceptions to purchase goods or services without procurement should only be recognized within the limitations of the law.
- Oversight mechanisms for public institutions should be improved and public trust in complaints mechanisms should be restored. The Right to Information Law No. 4982 should be made more effective and the non-response rates should be lowered.

- The public sector should intensify efforts to raise awareness among society on corruption issues.
- The public sector's cooperation with civil society in anti-corruption activities should be strengthened in all policy processes. Current law protecting the anonymity of whistleblowers should be amended to extend the protection of whistleblowers.

Law enforcement agencies

- Laws regulating the duties of police and providing excessive powers to the police should be amended in order to increase accountability. Impunity in cases related to violence, torture and misconduct should end.
- A mandatory code of conduct should be enacted for the police.
- The recruitment and reassignment process of the police should be made more transparent.

Electoral management body

- All decisions of the Supreme Board of Elections (SBE) should be subject to judicial review.
- All SBE decisions, with their justifications, should be made publicly available.
- The SBE should have an independent budget.
- Independent observers and the media should be allowed to participate in the meetings of the SBE and to monitor elections.
- In order to provide free and fair elections, all election infringements such as the unfair representation of the opposition parties in the media and the abuse of public funds for election campaigns should be prevented and investigated.
- Mobile ballot boxes should be provided for citizens who are disabled, living in women's shelters, homeless, as well as for detainees and seasonal agricultural workers.

Ombudsman

- The Ombudsman's Office should have a proactive role and be given the right to implement sanctions to allow for preventive measures.
- The limitations regarding the working areas of the Ombudsman should be reviewed and necessary amendments should be made to ensure effective investigation of rights violations in areas such as the military.
- The Ombudsman should proactively engage in activities to enhance its visibility and raise awareness of its functions and powers through various public campaigns, especially during Ethics Week.
- The Ombudsman's services and procedures should be explained clearly and promoted regularly to the public through channels such as public service announcements and the mainstream and social media.

- Law No.6328 on Ombudsman and Law No.6332 on National Human Rights Institution should contain explicit provisions on their cooperation and engagement as necessary with governmental agencies, the justice system, parliament and any other relevant state bodies.
- The Ombudsman's Office should be given the rights to audit the legislative body. A legal framework that enables the Ombudsman's Office to audit military spending should be enacted.

Supreme audit institution

- The Turkish Court of Accounts (TCA) should be authorized to conduct performance audits based on efficiency, effectiveness and economy.
- The TCA should be authorized to conduct sectoral audit reports.
- Concerns related to censorship in the TCA should be resolved. Audit reports should be fully submitted to the Grand National Assembly before the budgetary sessions.
- The interviews in the recruitment of auditors, which replaced the oral exams, should be streamlined and standardized to ensure a merit-based selection process.

Inspection boards

- Coordination and cooperation deficiency among inspectorates should be resolved through the formation of a regulatory anti-corruption framework.
- Measures to ensure the transparency of inspectorates should be adopted, such as regular reporting to the public through online tools.
- A comprehensive database on corruption cases and investigations conducted by inspectorates that cover information and statistics about the public institutions should be maintained to compile and disclose information and improve and ensure the effectiveness of the inspectorates.

Political parties

- The campaign finances of all candidates for local, parliamentary, and presidential elections should be regulated and subjected to auditing. In-kind donations for campaign finance should also be clearly regulated and enforced.
- The Law on Political Parties should be strengthened to ensure internal rules regulating democratic governance are universal and allows for better representation of women and young people. Practices from existing internal regulations may be referred to this end.
- The prerequisite 3% threshold for eligibility for state funding to political parties should be reduced and funding be given in proportion to parties' electoral performance.
- Political parties should publish their detailed balance sheets on their website at regular intervals. Balance sheets of organizations associated with, or controlled by, political parties should also be subject to auditing subsequently with the party finances.
- The proclamation period for audit reports of the Constitutional Court on political parties should not exceed one year.

- The legal basis for party dissolution should be reviewed to comply with the suggestions of the Venice Commission.

Media

- Law No.3713 on Anti-Terror should be reformulated in accordance with international human rights legislation and Articles 299 and 301 of the Turkish Penal Code should be abolished.
- Administrative autonomy and political neutrality of the Radio and Television Supreme Council should be ensured.
- Transparency in media ownership, which is necessary to enable the public to monitor conflicts of interest and the accountability of media organizations, should be ensured.
- The provisions on freedom of expression should be strengthened to ensure editorial independence.
- Aside from political pressures, media owners' stakes in other businesses are a major cause of censoring and auto-censoring in the media. To ensure transparency and eliminate self-censoring, media ownership structures need to be regulated by an independent RTÜK and media owners' other businesses made public knowledge.

Civil society

- The legal framework regulating tax exemptions and collections of donations should be reviewed in order to eliminate inequalities and create an enabling environment for civil society.
- A national strategy with respect to public funding based on principles of transparency and accountability should be developed. The relevant public institutions should periodically disclose detailed information on the public funding provided to CSOs.
- A structured and continuous CSO-public sector dialogue mechanism should be established.
- Freedom of association and freedom of expression should be guaranteed in practice.
- Public benefit status given to associations and foundations should be objectively defined and the granting of public benefit status should be freed from political influence.

Business

- The provisions on transparency in the business sector, which were removed from the Turkish Commercial Code, should be re-enacted.
- The independence of regulatory institutions and financial audits should be strengthened by amendments to related laws.
- The government should promote the engagement of companies in anti-corruption activities.
- In order to decrease the excessive burden of the commercial courts, mediation mechanisms should be promoted.

State owned enterprises (SOEs)

- An independent coordinating unit should be established to monitor governance issues, particularly appointment mechanisms, in SOEs.
- A mandatory code of conduct should be enacted for all SOE employees.
- Privatization process should follow transparent and accountable measures. The process should be open to supervision of independent organizations.



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