

Overall Score:

72 - Moderate

Legal Framework Score:

83 - Strong

Actual Implementation Score:

60 - Weak

Category I. Civil Society, Public Information and Media

I-1. ⁸⁶ Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES

NO

Comments:

This is subject to the general principles governing the right to association.

References:

The 1982 Constitution, Article 33,
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 5253 on Associations, Article 3, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5253&MevzuatIlski=0&sourceXmlSearch=dernekler%20kanunu>

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Permission of the relevant authorities is required.

References:

Law 5253 on Associations, Articles 21 and 38, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5253&MevzuatIisiki=0&sourceXmlSearch=dernekler%20kanunu>

Law 227 on the Establishment and Duties of the General Directorate of Foundations, Article 38.

Law 6760 on the Establishment and Duties of the General Directorate of Foundations, Article 38, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.6760&MevzuatIisiki=0&sourceXmlSearch=>

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

References:

Law 5253 on Associations, Articles 19 and 32, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5253&MevzuatIisiki=0&sourceXmlSearch=dernekler%20kanunu>

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Natural and legal persons who are qualified to act have the right to form associations without prior permission. (Law No. 5253 on Associations, Article 3). Associations must report their annual activities and accounts to the governor of province by the end of April in the following year. (Article 19) All associations are subject to prior permission from the governor of province to open some facilities . (Article 26)

References:

Ihsan Cimen, Department of Interior Affairs, Ministry of Interior Affairs, Sept. 10, 2007, Ankara.

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Although the government of the Justice and Development Party promised to integrate civil society into the policymaking process as early as 2003 in its Emergency Action Plan, this objective seems to be far from being achieved. Some of the CSOs which, among other activities, focus on anti-corruption and good governance, such as the TESEV and TEPAV, do some research, projects and conferences only. The full-time anti-corruption/good governance CSOs, such as Transparency International-Turkey Chapter, do not have sufficient resources and close access to government circles. Therefore, CSOs activities are more directed to public opinion formation for and against the policymaking process.

References:

Emergency Action Plan of the 58th Government,
<http://ekutup.dpt.gov.tr/plan/aep.pdf>;

TESEV, http://www.tesev.org.tr/projeler/yayin_kamu.php;

TEPAV, <http://www.tepav.org.tr/tur/index.php>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

Ihsan Cimen, Department of Interior Affairs, Ministry of Interior Affairs, Sept. 10, 2007, Ankara.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Ihsan Cimen, Department of Interior Affairs, Ministry of Interior Affairs, Sept. 10, 2007, Ankara.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Ihsan Cimen, Department of Interior Affairs, Ministry of Interior Affairs, Sept. 10, 2007, Ankara.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Ihsan Cimen, Department of Interior Affairs, Ministry of Interior Affairs, Sept. 10, 2007, Ankara.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

The 1982 Constitution, Article 51,
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Trade unions have been losing their influence in the policymaking process. There has been a process of de-unionization in some public and private workplaces.

References:

Engin Unal, MemurSendikalari, Boyut Yayin Grubu. (In Turkish);

Toker Dereli,
 Labour Law and Industrial Relations in Turkey,
 Kluwer Law International, 2006;

Perihan Sar, Former Labour Inspector and Secretary General of Revolutionary Labour Union

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

The 1982 Constitution, Articles 28 through 32: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law 5187 on Press, Article 3: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5187&MevzuatIliski=0&sourceXmlSearch=>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

Turkish Penal Law, Article 301, is the major obstacle against freedom of expression. See: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIliski=0&sourceXmlSearch=>

References:

The 1982 Constitution, Articles 25, 26 and 27: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law No 5187 on Press Article 3, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5187&MevzuatIliski=0&sourceXmlSearch=>

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

88

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Constitutional provisions for freedom of the press and of expression exist but are only partially upheld in practice. Although many positive reforms have been passed in recent years in preparation for membership in the European Union—most significantly a new press code in 2004, which mandates heavy fines instead of prison sentences for some press crimes, permits non-citizens to own periodicals and serve as editors, protects against disclosure of sources, and prevents authorities from closing publications or hindering distribution—implementation appeared to lag in 2005 in favor of more restrictive measures.”
<http://www.freedomhouse.org/template.cfm?page=251&country=7077&year=2006>

References:

1982 Constitution, Articles 28, 29, and 30;

Law 5187 on Press, Articles 3, 6, 7, 8, and 9. <http://www.byegm.gov.tr/BASINMEVZUATI/kanunlar.htm>;

Law 5237 (relevant articles);

Yasar Salihpasaoglu, *Turkiye’de Basın Ozgurlugu*, Ankara, Seckin Yayınevi, 2007.
Progress Report 2007,
http://ec.europa.eu/enlargement/key_documents/reports_nov_2007_en.htm;

Freedom Report Turkey 2006, <http://www.freedomhouse.org/template.cfm?page=251&country=7077&year=2006>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The print media owner can appeal to an extraordinary exception (Article 8) upon the decision of the relevant court.

References:

Law 5187 on Press, Articles 7, 8 and 9: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5187&MevzuatIiski=0&sourceXmlSearch=>

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 8 of the Press Law, the media owner is given a receipt for his declaration to the public prosecutor after the latter's examination of documents. Legally, it may take less than two months, but in practice only a few days if there is no illegal issue or missing document. However, a print media entity must have a company registry at the Ministry of Industry and Commerce and be registered in the Registration Gazette. These procedures, including commercial registration, and the registration at Tax and Social Security departments, may take longer time.

Regulation on Permission for Establishing Workplace applies too: http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.20059207&MevzuatIiski=0&sourceXmlSearch=i_yeri%20a%çma

References:

Structures of Companies and Stages of Establishing a Company, <http://www.girisimciliknetwork.gen.tr/kitaplar/SirketYapilari.pdf>;

Erol Cetin, Basın Hukuku, Acıklamalı-İctihatlı, Ankara, Seckin Yayınları, 2007;

Naci Alan, Head, Union of Newspaper Owners of Ankara, Istanbul and Anatolia, September 2007, Ankara.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is estimated that establishing a brand new (media) company may cost a minimum of US\$1,000 to 1,500. This includes all bureaucratic costs of establishing a company. If an existing company opens a print media the cost is quite low. In other words, the major cost is not the declaration of establishing a print media entity, but establishing a company.

References:

<http://www.sirketkurma.com/sorucevap/viewtopic.php?f=2&t=16>;

KOSGEB, Structures of Companies and Stages of Establishing a Company, <http://www.girisimciliknetwork.gen.tr/kitaplar/SirketYapilari.pdf>;

Erol Cetin, Basın Hukuku, Aciklamali-Ictihatli, Ankara, Seckin Yayinlari, 2007;

Naci Alan, Head, Union of Newspaper Owners of Ankara, Istanbul and Anatolia, September 2007, Ankara.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

In order to form a broadcast media entity, a joint stock company is required (http://www.rtuk.gov.tr/sayfalar/IcerikGoster.aspx?icerik_id=17e4a071-abaa-4579-80ea-ab53c88fd3b3). In addition to that, the National Security Certificate which is issued by the

Prime Ministry is required. Recently, the Council of State (the superior administrative court) approved that selling stock of a private TV channel to a foreign joint venture is not suitable with the reason of national security (Kanal D'nin halka arz talebi, ulusal güvenliğe takıldı, <http://www.sabah.com.tr/2007/04/06/eko101.html>). The government may also reject or postpone the issuance of this certificate for political reasons. Additionally, the Telecommunication Institution is in charge of frequency distributions, however, there is no procurement for frequency distributions at present. (Kanal D'nin halka arz talebi, ulusal güvenliğe takıldı, <http://www.sabah.com.tr/2007/04/06/eko101.html>)

References:

Declaration of Journalists of Turkey, 10 July 2007, http://www.tgs.org.tr/index.php?option=com_content&task=view&id=263&Itemid=15;

Procedures for Radio and Television Licence,

http://www.rtuk.gov.tr/sayfalar/lcerikGoster.aspx?icerik_id=17e4a071-abaa-4579-80ea-ab53c88fd3b3

Aysel Aziz, Televizyon ve Radyo Yayinciligi, Ankara, Turhan Kitabevi, 2006;

Naci Alan, Head, Union of Newspaper Owners of Ankara, Istanbul and Anatolia, September 2007, Ankara

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES

NO

Comments:

Appealing the judicial review is open against all actions and procedures of the administration.

References:

1982 Constitution, Articles 125 and 155;

Law 2576 on the Establishment of Regional Administrative Courts, Administrative Courts and Tax Courts, Article 5.

http://www.danistay.gov.tr/bolge_idare.htm

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No new license for analog broadcasting is currently given by the Supreme Board of Radio and Television. No procurement for frequency distribution is currently opened by the Telecommunication Institution. However, transferring an existing analog license and frequency is possible, as is satellite and cable broadcasting. There is no set time limit for issuing a license for satellite broadcasting.

References:

Procedures Concerning Application for Radio and Television Licence http://www.rtuk.gov.tr/sayfalar/lcerikGoster.aspx?icerik_id=17e4a071-abaa-4579-80ea-ab53c88fd3b3

Regulation of Satellite Radio and Television Broadcasting License and Permission, <http://rega.basbakanlik.gov.tr/eskiiler/2007/10/20071010-10.htm>;

Aysel Aziz, Televizyon ve Radyo Yayinciligi, Ankara, Turhan Kitabevi, 2006.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Currently, no new license is given for analog broadcasting. The determined cost of a local radio or TV license is higher than the costs for national licenses. Establishing a joint stock company, technical infrastructure, and other financial requirements constitute the major costs. Current license holders pay an annual fee for temporary use of frequencies. Satellite radio and television operators also pay an annual fee, which in 2007 was US\$175 (<http://www.ratem.org/indexhaber.htm>). For satellite operators, license costs varied in 2007 between US\$3,500 and 18,000.

References:

Procedures Concerning Application for Radio and Television Licence http://www.rtuk.gov.tr/sayfalar/lcerikGoster.aspx?icerik_id=17e4a071-abaa-4579-80ea-ab53c88fd3b3

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

50

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | **50** | 25 | 0

Comments:

Law No. 5651 on Regulation of Publications on the Internet and Struggle against Crimes Committed on the Internet came into effect on Nov. 23, 2007. According to article 8 of this law, crime related contents, such as child pornography, use of drugs and addictive items, gambling, pornography and anti-Ataturk content, which are describes by the Penal Code, will be monitored and prevented by a judge or a court decision. <http://www.tbmm.gov.tr/kanunlar/k5651.html>

Experts say that it is highly difficult to prevent the users from accessing online content available published in other countries – for example, what will be the status of search engines such as google and yahoo?

References:

Oninternet sansürü cuma günü ba_lıyor,
<http://www.hurriyet.com.tr/teknoloji/7732503.asp?top=1>

B0L0^0M-0NTERNET SUÇLARI,
http://www.hukukcu.com/bilimsel/kitaplar/bilisim_i_nternet_suclari.htm

B0L0^0M AI H0ZMETLER0N0N DÜZENLENMES0 VE B0L0^0M SUÇLARI HAKKINDA KANUN TASARISI GÖRÜ^LER0ö
http://www.tbd.org.tr/genel/bizden_detay.php?kod=188&tipi=5&sube=

Internet sansürü cuma günü baslıyor
<http://www.hurriyet.com.tr/teknoloji/7732503.asp?top=1>

BILISIM-INTERNET SUÇLARI,
http://www.hukukcu.com/bilimsel/kitaplar/bilisim_i_nternet_suclari.htm

BILIO0M AGI HIZMETLERININ DUZENLENMESI VE BILISIM SUÇLARI HAKKINDA KANUN TASARISI GÖRÜSLERİ
http://www.tbd.org.tr/genel/bizden_detay.php?kod=188&tipi=5&sube=

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | **50** | 25 | 0

Comments:

Access to YouTube was prohibited by a court decision in March 2007. Atatürk'e hakaret görüntüleri için YouTube'ye eri_im yasa1 karar1", <http://www.memurlar.net/haber/87985/>.

References:

Onternetine Sahip Ç1k" bildirgesi, 10 Mart 2007ö http://www.sabah.com.tr/ozel/panel3651/dosya_3648.html

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

1982 Constitution, Article 28;
Law 5187 on Press, Articles 18 and 19.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In some cases either the government censors media companies indirectly, or media companies will practice self-censorship.

References:

Emin Colasan, *Kovulduk Ey Halkim Unutma Bizi*, Ankara, Bilgi Yayinevi, 2007;
Umur Talu, *Dipsiz Medya*, Istanbul, Iletisim Yayinlari, 2007.

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

Comments:

It is argued that the government requested the editors or media owners to stop publishing some corruption related stories without concrete evidence.

References:

Emin Colasan, Kovulduk Ey Halkim Unutma Bizi, Ankara, Bilgi Yayınevi, 2007;

L. Dogan Tilic, 2000'ler Türkiye'sinde Gazetecilik ve Medya1 Anlamak, İstanbul, Su Yayınları, 2001.
<http://www.istanbul.edu.tr/iletim/76/haberler/m3.htm>;

Ahmet Abakay, Chairman of the Association of Contemporary Journalist, Ankara, September 2007.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

75

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

Law 3628 on Declaration of Property and Struggle Against Bribery and Corruption, Article 8/p <http://mevzuat.basbakanlik.gov.tr/Mevzuat/metinx.asp?MevzuatKod=1.5.3628>;

Regulation 90/748 on Declaration of Property, Article 3/g,
<http://mevzuat.basbakanlik.gov.tr/Mevzuat/metinx.asp?MevzuatKod=3.5.90748>

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

Law 3984, Article 29, amended by Law 4756 on the Establishment and Broadcast of Radio and Televisions, <http://www.mevzuat.adalet.gov.tr/html/1180.html>;

Regulation on Administrative and Financial Requirements for Private Radio and Television Institutions, <http://www.mevzuat.adalet.gov.tr/html/20754.html>

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Although professional principles are set by the Council of Press, in practice it is hard to say that all journalists pay attention to these principles.

References:

<http://basinkonseyi.org.tr/basin-meslek-ilkeleri>

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya, Turkey," Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes, T.D. Grant (Eds.), pp. 513-530, Oceana Publications, New York (2005);

Atilla Sav, member of Ankara Bar Association, July 2007;

Association of Contemporary Journalists, September 2007;

Ahmet Abakay, Chairman of the Association of Contemporary Journalists, September 2007

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

Government party or parties get more time in the state-owned media. The relevant laws (Law No. 298 and Law No. 3984) basically set inequitable air time for political parties. Candidates do not have any chance to use free air time in the state-owned media outlets.

References:

O.F. Genckaya, Turkey," Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes, T.D. Grant (Eds.), pp. 513-530, Oceana Publications, New York (2005);

Atilla Sav, member of Ankara Bar Association, July 2007;

Association of Contemporary Journalists, September 2007;

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

Ahmet Abakay, Chairman of the Association of Contemporary Journalists, September 2007.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

There is no available official or unofficial data on this. However, no such news was reported in the media.

References:

Ahmet Abakay, Chairman of the Association of Contemporary Journalists, September 2007.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

There is no available official or unofficial data on this. However, no such news was reported in the media.

References:

Ahmet Abakay, Chairman of the Association of Contemporary Journalists, September 2007.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79

I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Restrictions vary between 'state confidential' to 'commercial secret and privacy'.

References:

Law 4982 on Access to Information, Article 4:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&MevzuatIliski=0&sourceXmlSearch=>

Circular on the Right to Access to

Information: <http://www.bilgiedinmehakki.org/doc/Prime%20Ministry%20Circular%20on%20Right%20to%20Information.pdf>

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

If the relevant authority rejects the application on the ground of restrictions stated in Article 16 (state confidential) and Article 17 (economic interest of the country) the applicant can appeal to the Evaluation Board of Access to Information within 15 days following the submission of the relevant authority's decision. The Board makes its final decision on the application within 30 days. Then the applicant has the right to appeal to the Administrative Court.

References:

Law No. 4982, Article 13:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&MevzuatIliski=0&sourceXmlSearch=>

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

References:

Access to Information Units are established in every public office with sufficient personnel. The application procedure is described by the Regulation on the Principles and Procedure Relating to the Application of the Law on Access to Information. http://www.alomaliye.com/bilgi_edinme_yonetmelik.htm

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

75

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

There is no scholarly research on the practices of access to information in public offices in Turkey. According to the Regulation (http://www.tbmm.gov.tr/bilgiedinme/bilgi_edinme_yonetmelik.htm) it may take almost 30 days to obtain the requested information (Article 20). However, the annual reports on access to information and my personal experience in ministerial level public institutions indicate that it takes at least two months to obtain a piece of information.

References:

<http://turk.internet.com/haber/yazigoster.php3?yaziid=11965>;
http://www.tbmm.gov.tr/bilgiedinme/bilgi_edinme_yonetmelik.htm;
<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 22 of the relevant Regulation (http://www.tbmm.gov.tr/bilgiedinme/bilgi_edinme_yonetmelik.htm,) the public authorities determine an annual proportional fee for obtaining information, such as photocopying costs, etc. According to Annual

Reports (<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>) and from my own experience, costs are not a burden on the applicant.

References:

<http://turk.internet.com/haber/yazigoster.php3?yaziid=11965>;
http://www.tbmm.gov.tr/bilgiedinme/bilgi_edinme_yonetmelik.htm;
<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

According to the 2006 annual reports on access to information (<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>) 1,164 appeals out of 864,616 application were received by the Board and all were finalized by April 2007. 539 out of 1,164 applicants appealed to court.

References:

<http://turk.internet.com/haber/yazigoster.php3?yaziid=11965>;
<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Appeal costs do not constitute any burden. Judicial fees are also affordable. <http://www.istanbulbarosu.org.tr/Document.asp?Konu=738&DocumentIndex=avhukuk/harclarkanunu2007.htm>

References:

[http://turk.internet.com/haber/yazigoster.php3?yaziid=11965;](http://turk.internet.com/haber/yazigoster.php3?yaziid=11965)
<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

In 2006, only 1.1 percent of 864,616 requests was rejected on the basis of business confidentiality or state secret. In such cases, no other details are usually provided as to the rationale for rejecting the requests.

References:

[http://turk.internet.com/haber/yazigoster.php3?yaziid=11965;](http://turk.internet.com/haber/yazigoster.php3?yaziid=11965)
[http://www.tbmm.gov.tr/bilgiedinme/2006_raporu_baskanlik_aciklamasi.htm;](http://www.tbmm.gov.tr/bilgiedinme/2006_raporu_baskanlik_aciklamasi.htm)
<http://www.tbmm.gov.tr/bilgiedinme/bilgiedinme-index.htm>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. ⁷⁸Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Although the electoral registry has been renewed recently, it is not reliable. Some citizens failed to vote due to registering problems.

References:

1982 Constitution, Article 67,
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 298 on the Fundamental Principles of Elections and Electoral Registry, Articles 33 and 34, <http://www.mevzuat.adalet.gov.tr/html/357.html>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

According to the recent constitutional referendum deputies elections shall be held every four year (Law 5678, Article 1 <http://www.tbmm.gov.tr/kanunlar/k5678.html>). In its original text, Article 77 stated that elections for the Turkish Grand National Assembly shall be held every five years.”

References:

1982 Constitution, Articles 77 and 127
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 2839 on Deputies Election, Article 6
<http://www.anayasa.gen.tr/2839sk.htm>;

Law No. 2972 on Local Administrations, Neighborhood Headmen and Elder Council Elections, Article 8
<http://www.mevzuat.adalet.gov.tr/html/665.html>.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 63 of the Law 2839 on Deputies Elections and Article 6 of the Law 3376 on Submitting Constitutional Amendments to Referendum (<http://www.mevzuat.adalet.gov.tr/html/1087.html>), when a citizen who is registered in the electoral registry fails to vote in the referendum without legal or physical excuse he/she shall be subject to pay a fine. Although voting seems to be compulsory in Turkey, voting turnover has been decreasing recently. The fines which are determined by these laws have not been applied, mainly due to the high costs of collecting fines.

References:

Disabled citizens failed to vote because polling stations were located on the second floor. <http://www.ntvmsnbc.com/news/414979.asp>;

Citizens, who voted in the same district in the last election, failed to vote because their names were not printed on the list: <http://www.yenisafak.com.tr/politika/?t=22.07.2007&c=2&i=57199>

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Legally, voting is secret and counting is public. Although there are rumors about ballot security, neither the international observers nor the Board of Elections confirmed these rumors.

References:

Ballot station boards were not formed:

<http://www.ntvmsnbc.com/news/423653.asp>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Although the original text of Article 77 of the 1982 Constitution stated that elections shall be held every five years, the Grand National Assembly did not complete its full course and six early elections were held until now due to unstable political conditions. Calling early elections is taken by the majority of the Grand National Assembly of Turkey (Article 77/2) and early elections are held in accordance with law 298.

References:

Omer Faruk Genckaya,

Turkey",

Konrad-Adenauer Stiftung (ed.), Parties and Democracy The KAS Democracy Report 2007,

Bonn: Bouvier Verlag, 2007, 333-352.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

95

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Restrictions for membership in political parties are regulated by the 1982 Constitution, Article 68, and by Law 2820, Article 11.

References:

1982 Constitution, Article 68

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 2820 on Political Parties, Article 5

<http://www.mevzuat.adalet.gov.tr/html/608.html>

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

Citizens under criminal investigation can run in elections.

References:

1982 Constitution, Article 76

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 2839 on Deputies Elections, Article 11

<http://www.mevzuat.adalet.gov.tr/html/1089.html>;

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

According to Law 2820, Article 8, the formation of political parties is relatively easy. (<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?mevzuatKod=1.5.2820&MevzuatIiski=0&sourceXmlSearch=>). A minimum of 30 Turkish citizens who are qualified to run for Parliament can form a political party. Upon the submission of the required documents to the Ministry of Internal Affairs, a political party obtains legal status. However, in order for a political party to run for parliamentary elections it has to organize itself at least in half of the towns of one third of the provinces in Turkey.

References:

Omer Faruk Genckaya, "Turkey", Konrad-Adenauer Stiftung (ed.), Parties and Democracy The KAS Democracy Report 2007, Bonn: Bouvier Verlag, 2007, 333-352.

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

Political parties use quite centralized and anti-democratic nomination procedures. The cost of elections is another obstacle for political nominees. However, a total of 26 independent deputies, 20 of whom were from the pro-Kurdish People's Democracy Party, were elected in the last parliamentary election.

References:

Omer Faruk Genckaya,
Turkey”,
Konrad-Adenauer Stiftung (ed.), Parties and Democracy The KAS Democracy Report 2007,
Bonn: Bouvier Verlag, 2007, 333-352.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

After almost two decades following the Motherland Party's dominant position in Parliament in the late 1980s, the 10 percent threshold created a strong majority of the Justice and Development Party in the 2002 and 2007 elections. The opposition parties do not have sufficient seats to influence the legislative process unless the government party shares the opposition's ideas. The effective number of political parties in the current parliament is 1.4. However, the government party needs the support of other parties to pass a constitutional amendment.

References:

Omer Faruk Genckaya,
Turkey”,
Konrad-Adenauer Stiftung (ed.), Parties and Democracy The KAS Democracy Report 2007,
Bonn: Bouvier Verlag, 2007, 333-352.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

Some external independent monitoring agencies or groups have been visiting Turkey in recent elections too. However, these are not legally regulated, but allowed by the government's decision.

References:

Supreme Board of Election, Provincial Boards of Election and district (township) boards of election;

Law 298 on the Fundamental Principles of Elections and Electoral Registry, Articles 10-20 <http://www.mevzuat.adalet.gov.tr/html/357.html>

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

100

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The 11 members of the Supreme Board of Election are elected from the Court of Cassation (six) and the Council of State (five). The members of the provincial election boards are elected from among the highest degree judges of that province. Political

parties' representatives do not have the right to vote at the board. The chairman of the district election board is also a judge, and two members are public civil servants from the same district. Four members are elected from political parties. Although the Supreme Board of Election, whose decisions are final, is free from any political influence, in principle some of its recent decisions, e.g. the renewal of deputies election in Siirt province in the 2002 elections, might have been made with political considerations.

References:

1982 Constitution, Article 79

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 298 on the Fundamental Principles of Elections and Electoral Registry, Articles 11 through

20 <http://www.mevzuat.adalet.gov.tr/html/357.html>;

Supreme Board of Election

<http://www.ysk.gov.tr/ysk/index.html>

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Political parties which have at least one seat in the Grand National Assembly of Turkey are represented in provincial election boards. Parties' representatives (one representative from each eligible party) do not have right to vote on the issues to be decided by the provincial boards. In proportion to the votes received in the last general election in that electoral district, four political parties are represented (one representative from each) in district election boards. See Law 298, Articles 17 and 19.

References:

Yukse Secim Kurulu

<http://www.anayasa.gen.tr/ysk.htm>;

O.F. Genckaya,
Turkey,"

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530, Oceana Publications, New York (2005);

T.C. Devlet Teskilati Rehberi,
TODAIE,
Ankara, 1998.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Board of Election has a permanent organization and staff in Ankara. The two major units of the board are the Department of Administrative and Financial Affairs and the General Directorate of Electoral Registry. Electoral Registry Bureaus are established at township level. A permanent director and sufficient number of temporary personnel from the local units of the Ministry of Justice work at these bureaus. Both the provincial and district (township) election boards are formed for two years and convene every two years in the last week of January. Naturally they are formed and are in office during the election periods. They do not have a permanent staff.

References:

A. Seref Gozubuyuk, Türkiye'nin Yonetim Yapisi, Turhan Kitabevi, Ankara, 2006;

T.C. Devlet Teskilati Rehberi, Türkiye ve Orta Dogu Amme Idaresi Enstitusu, Ankara, 1998;

Organization Chart of the Supreme Board of Election

<http://www.ysk.gov.tr/ysk/index.html>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The new SECSIS (Voter Registration System) enabled the Supreme Board of Election to announce the final election results earlier than in the former elections. Election results and the final decisions of the Board on the objections are published in the Official Gazette (Law 298, Article 13) and posted on the Board's Web Site.

References:

YSK KESİN SONUÇLARI AÇIKLADI,
<http://www.samanyoluhaber.com/haber-62383.html>;

Turan Ates, Demokrasi Siyasi Partiler ve Secim, Beta Basim Yayim, Ankara, 2007.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Electoral offenses and penalties are regulated by Law 298, Articles 95-110, including offenses against election boards, double registry, as well as offenses relating to private radio and television broadcasting. Interestingly, according to Law 3361, Article 6, "no voting" is also an offense in Turkey and the chairman of the district election board may ask a registered voter who failed to vote in the election to pay a fine (currently it is about US\$16).

References:

YSK televizyonlara ceza yagdirdi (Supreme Board of Election Hurls Warnings)
<http://www.habervitrini.com/haber.asp?id=285300>;

Turan Ates, Demokrasi Siyasi Partiler ve Secim, Beta Basim Yayim, Ankara, 2007.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

The new electronic system of voter registration caused some bureaucratic procedures for those who moved to another district after the 2002 general elections. That is why some voters failed to vote in the last general elections.

References:

Skandal; nüfusumuz artıyor, ama seçmen sayısı azalıyor... 2002 seçimlerinde 'tam kanunsuzluk', <http://arama.hurriyet.com.tr/arsivnews.aspx?id=6488506>

Turan Ates, Demokrasi Siyasi Partiler ve Secim, Beta Basimb Yayim, Ankara, 2007.

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost* voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Citizen who are eligible to vote, political parties or their chairpersons or deputy chairpersons at district level, observers, candidates and deputies (members of the national Parliament) have the right to contest the tentative election results at a superior board (e.g. against ballot box board to district (town) election board). The decisions of the Supreme Board of Election are final.

References:

1982 Constitution, Article 79,
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 298, Articles 128-132
<http://www.mevzuat.adalet.gov.tr/html/357.html>

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Board of Election has the final say” on disputes on the election results. The court acts as a final court.

References:

Genel seçimlere itiraz, http://www.tgrthaber.com.tr/news_view.aspx?guid=0a87af52-406a-4095-a938-fec6c4bb52f0

O.F. Genckaya,
Turkey,”

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005)

Prof. Dr. Hikmet Sami Turk, Law School, Bilkent University, Turkey.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

Indoor electioneering activities, including military barracks, military headquarters, military units, buildings and facilities are prohibited by law (Law 298, Article 51/final). However, especially before the last election period, the attitude of the Turkish Armed Forces towards the government party caused some confusions about the neutrality of the military.

References:

AKP'ye seçimi e-muhtira kazandı"ya cevap,
<http://www.hurriyet.com.tr/gundem/6944752.asp?m=1;>

O.F. Genckaya,

"Turkey,"

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530,

Oceana Publications, New York (2005);

Turan Ates, Demokrasi Siyasi Partiler ve Secim, Beta Basim Yayim, Ankara, 2007;

Atilla Sav, member of Ankara Bar.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES

NO

Comments:

Since there is no legal regulation, with the permission of the Turkish Government some independent observers and the observers from the OSCE and the Parliamentary Assembly of Council of Europe came to Turkey in different election periods.

References:

O.F. Genckaya,

Turkey,"

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530,

Oceana Publications, New York (2005)

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 25 of Law 298, both candidates and political parties may assign an observer at the polling stations. This does not apply to international observers but until today they also visited polling stations at different localities without any difficulty.

References:

Avrupa seçim denetlemeye geliyor,
<http://www.ntvmsnbc.com/news/413807.asp?cp1=1;>

Sandık hilelerine geçit yok!
<http://www.haberx.com/n/1033198/sandik-hilelerine-gecit-yok.htm;>

AVRUPA KONSEYİ'NDEN TÜRKİYE'YE SEÇİM HEYETİ.. , <http://www.abgs.gov.tr/index.php?p=22116&l=1>

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

99
II-3. Political Financing

20. Are there regulations governing political financing?

71

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Law 2820, Article 66 <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

Comments:

According to Article 66, a natural or a legal person can donate to a political party up to 2,000 New Turkish Liras (US\$1,694). The total amount parties can receive in donations is revalued each year. In 2007, it was 19.550,99 New Turkish Liras (US\$16,567). Donations to candidates are not regulated yet despite the requirement of the constitution (Article 69/final).

References:

Law 2820, Article 66/2

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

According to Article 66, a natural or a legal person can donate to a political party up to 2,000 New Turkish Liras (US\$1,694). The total amount parties can receive in donations is revalued each year. In 2007, it was 19.550,99 New Turkish Liras (US\$16,567). Donations to candidates are not regulated yet despite the requirement of the constitution (Article 69/final).

References:

Law 2820, Article 66/2:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | **NO**

Comments:

The law does not put any limit on total party expenditures but emphasizes that expenditures of political parties cannot be contrary to their objectives.

References:

Law 2820, Article 70:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

Under the constitution (1982 Constitution, Article 69) political parties are theoretically obliged to disclose donations. Donations can be received by a political party in return of a receipt on which the identity of the donor or his/her representative is printed. However, in practice there is little to no access to such records on the part of citizens.

References:

Law 2820, Article 66/2:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

The Constitutional Court audits the parties' accounts annually. However, this audit is conducted according to the available documents and whatever else political parties submitted. The Constitutional Court can hardly fulfill this function simply because it does not have sufficient personnel. Although it can get assistance from the Audit Court if needed, this auditing is procedural. Candidates' campaign finances are not regulated.

References:

1982 Constitution, Article 69;

Law 2820, Articles 74-77

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

Comments:

Transparency International –Turkey Chapter– is expected to fulfill this function, yet it is ineffective. The Committee for Monitoring Deputies, which is a voluntary association, also monitors the financial affairs of the deputies and makes annual reports. There are some other anti-corruption associations, such as the Association for Combating Corruption, which also monitor money-politics relations, but irregularly. The Constitutional Court only audits the parties' annual accounts. The Court only reviews material that is submitted by political parties themselves, and individual candidates' financing falls outside the scope of the Court's mandate. This is basically a procedural review that falls short of a true monitoring function, as called for in this indicator.

References:

There is no legal regulation.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

17

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

The major loophole is the unregulated campaign financing, as candidates are not subject to any campaign finance regulation. Limits are reasonable, but open to bypassing.

References:

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

The overall costs of running a campaign in the general elections reached a minimum of US100,000, therefore the upper limit for donations by legal persons seems to be low. However, it is a widespread practice that a company may donate to a political party more than the upper limit, indirectly or illegally (without registration). Cash or in-kind contributions of the legal persons to candidates are not regulated. Companies prefer not to be registered as a finance source of political parties but in fact they contribute to political parties indirectly.

References:

O.F. Genckaya,

Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party’s ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

Comments:

There are no legal limits on expenditures of political parties. Campaign financing and donations to candidates are not regulated yet, despite the requirement of the constitution (Article 69/final).

References:

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for
Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Following its auditing, the Constitutional Court informs the Office of the Chief Public Prosecutor to investigate violations of law, if there are any. The Constitutional Court only enforces fines and transfers the illegally gained money to the state treasury. The Chief Public Prosecutor's decision to initiate an investigation is completely separate from the Court's auditing functions, and in practice this arrangement has proven ineffective in providing effective oversight.

See also Law 2820 on Political Parties , <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIliski=0&sourceXmlSearch=>

References:

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for
Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
Turkey,"
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of
National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Following its auditing, the Constitutional Court informs the Office of the Chief Public Prosecutor to investigate violations of law, if there are any. The Constitutional Court only enforces fines and transfers the illegally gained money to the state treasury. The Court cannot force the Chief Public Prosecutor to initiate investigations or impose penalties, which in practice leads to a highly ineffective oversight mechanism.

Law 2820 on Political Parties , <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

References:

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
Turkey,"
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

Parties' accounts are annually audited by the Constitutional Court. However, campaign finances of political parties and candidates are not subject to any regulation and auditing.

References:

Omer Faruk Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

42

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

This is the requirement of Law 2820, Articles 73 and 74. Delays may cause criminal investigation, following which the persons who are violating the rules are sentenced and the party may be banned (Law 2820, Articles 102 and 104). However, campaign finances of political parties and candidates are not subject to any regulation and auditing.

References:

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The Constitutional Court's decisions including the audit of parties' accounts can be obtained online. They are immediately published in the Official Gazette too. However, no record is kept about candidates' campaign finances.

References:

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for
Democracy, [http://www.coe.int/t/e/legal_affairs/legal_co-
operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf)

O.F. Genckaya,
Turkey,"
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of
National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

Comments:

Financial records of political parties can be obtained online, and some political parties publish their current accounts on their Web Sites. The Constitutional Court also publishes its decisions/reviews of political finance accounts on the internet. However, no record is kept about candidates' campaign finances.

References:

Omer Faruk Genckaya,
 Political Finance, Conflict of Interest and Accountability in Turkey: Implications for
 Democracy, http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
 Turkey,”
 Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of
 National Regimes,
 T.D. Grant (Eds.), pp. 513-530,
 Oceana Publications, New York (2005);

TURKEY ELEMENTS OF THE PUBLIC INTEGRITY SYSTEM ASSESSMENT JUNE 2005,
www.sigmaweb.org/dataoecd/2/21/35848369.pdf

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁵⁶ Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

Law 5271 on Penal Trial, Articles 141-144

<http://www.mevzuat.adalet.gov.tr/html/1431.html>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

81

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

In addition to the Cabinet spokesman, the prime minister has an official spokesman. However, the Cabinet spokesman is the major contact person.

References:

Basbakanliga Beyaz Saray modeli getirildi,

<http://arsiv.sabah.com.tr/2005/06/03/siy108.html>;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, July 2007.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

However, the executive branch does not implement the judicial decisions properly.

References:

1982 Constitution, Recourse to Judicial Review, Article 125. <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 2575 on Council of State, Articles 23-38

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2575&MevzuatIliski=0&sourceXmlSearch=>

Law 2576 on the Establishment and Duties of Regional Administrative Courts, Administrative Courts and Tax Courts, Articles 5-6

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2576&MevzuatIliski=0&sourceXmlSearch=>

Law No. 2577 on Administrative Trial, Article 2

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2577&MevzuatIliski=0&sourceXmlSearch=>

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The administrative review begins upon citizens' appeal.

References:

Kemal Gozler, *Idare Hukuku Dersleri*, Bursa, Ekin Kitabevi, 2006;

Turgut Tan, Professor of Administrative Law, Bilkent University, July 2007;

Aydin Gulan, Assoc. Prof. of Administrative Law, Istanbul University, July 2007.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The executive preferred to decree authority less in recent years.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, July 2007;

Aydin Gulan, Assoc. Prof. of Administrative Law, Istanbul University, July 2007.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

0

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

The head of the state is immune, except in cases of high treason, which is almost impossible to identify in practical terms. However, the prime minister can be prosecuted if and when the majority of the Parliament find him/her responsible and refer him/her to Supreme Court or lift his/her immunity (Articles 83, 99 and 100 of the 1982 Constitution, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>).

References:

1982 Constitution, Articles 83 and 105
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

1982 Constitution, Article 83,
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

They have parliamentary immunity. Articles 99 and 100 of the 1982 Constitution also apply to them.

References:

1982 Constitution, Article 83

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

44

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

However, they are not public.

References:

1982 Constitution, Article 71,

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law No. 3628 on Asset Declaration, Struggle Against Bribe and Corruption, Article

2 <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628&sourceXmlSearch=>

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

However, they are not public.

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 2.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 3:
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>;

Regulation Concerning Principles of Ethics for Public Officials and Procedure and Principles of Application, Article 15
<http://www.mevzuat.adalet.gov.tr/html/23127.html>;

For public servants, Law 657 on Public Servants, Article 29.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | **NO**

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

Restrictions for post-government service of heads of state and government and ministers are not regulated. This is a fundamental deficiency of the legal system.

The provisions of Law 2531 apply to public servants at every level. This law enforces a three year restriction for those who resign from their former public duties to take any office or work, obligation, brokerage or representativeness against the office, department, institution or entity in which they served during the last two years before their resignation. Although this provision refers to all public employees who receive salary from the state, the head of the state and the members of the Council of Ministers are not mentioned. <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.2531&MevzuatIliski=0&sourceXmlSearch=>

References:

Law 2531 on Restrictions for Post Government Service, Article 2 <http://www.mevzuat.adalet.gov.tr/html/563.html>

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation. However, it is rare that heads of state or members of the Council of Ministers enter a private sector after government service. There are some executive members who joined the executive boards of private holdings after their government service.

References:

Bir özelleştirme VURGUNU,
<http://www.aksam.com.tr/arsiv/> aksam/ 2003/10/16/ yazidizi/ yazidizi2.html

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Octopus Interface Conference, Corruption and Democracy, Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya, Turkey," Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes, T.D. Grant (Eds.), pp. 513-530, Oceana Publications, New York (2005);

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya, Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Octopus Interface Conference, Corruption and Democracy, Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

However, sometimes they individually declare their assets to the public when they take office or when there is public pressure.

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

They are confidential. See law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9.

References:

O.F. Genckaya, Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Octopus Interface Conference, Corruption and Democracy, Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya, Turkey," Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes, T.D. Grant (Eds.), pp. 513-530, Oceana Publications, New York (2005);

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are confidential. See law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9.

References:

O.F. Genckaya, Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Octopus Interface Conference, Corruption and Democracy, Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya, Turkey," Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes, T.D. Grant (Eds.), pp. 513-530, Oceana Publications, New York (2005);

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Especially during the campaigning period, both the vehicles and personnel have been mobilized to indirectly help the governing party's activities.

References:

O.F. Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Octopus Interface Conference, Corruption and Democracy,
Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

O.F. Genckaya,
Turkey,"
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

1982 Constitution, Articles 148-153,

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

References:

I.O. Kaboglu, *Anayasa Yargisi (Constitutional Review)*, Ankara: Imge Kitabevi, 2007.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

A deputy who is alleged to have committed an offense before or after elections, shall not be arrested, interrogated, detained or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in the act of committing a crime punishable by a heavy penalty and in cases subject to Article 14 of the constitution if an investigation has

been initiated before the elections. However, in such situations the competent authority shall notify the Turkish Grand National Assembly immediately and directly upon the appeal of the eligible persons/institution to the Constitutional Court.

References:

1982 Constitution, Article 83

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

36

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

1982 Constitution, Article 71,

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article

2 <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628&sourceXmlSearch=>

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

There is no post-legislative service restriction for legislators. Law 2531 applies to public servants only. Law 3069 describes the posts which are incompatible with deputyship. Law 3628 regulates prohibitions in office. There are some legislators who went into the private sector after their government service.

References:

Law 2531

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?MevzuatKod=1.5.2531>;

Law No. 3069, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3069&sourceXmlSearch=>;

Law No. 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article

9, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 3.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article

9, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

Law 253;
Law 3628

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of
National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for
Democracy, [http://www.coe.int/t/e/legal_affairs/legal_co-
operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf)

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no access to asset declarations.

References:

O.F. Genckaya,
Turkey,”
Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,
T.D. Grant (Eds.), pp. 513-530,
Oceana Publications, New York (2005);

Omer Faruk Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no access to asset declarations.

References:

O.F. Genckaya,
Turkey,”

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530,

Oceana Publications, New York (2005);

Omer Faruk Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for

Democracy, http://www.coe.int/t/e/legal_affairs/legal_co-

[operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf)

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

100

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

All committees keep records but not of full proceedings. The Plan and Budget Committee keeps verbatim reports. Floor debates are kept verbatim.

References:

Rules of Procedure of the Grand National Assembly, Articles 155, 168 and 169

<http://www.tbmm.gov.tr/ictuzuk/ictuzuk.htm>.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The minutes of the parliamentary debates are published verbatim in the Journal of Minutes of the Grand National Assembly of Turkey, which includes the agenda, decisions of the Office of the Speaker, daily floor debates, the reports of the committees and their annexes, open votings, etc. However, the publication of minutes of secret sessions is reserved for ten years (Article 71 of the Rules of Procedure). Printed minutes are available at the Library of the Grand National Assembly and major libraries; Parliamentary debates are available online for the last four legislative periods (1999- to date). Legislative minutes and committee documents relating to lawmaking and supervision are published online and printed regularly at www.tbmm.gov.tr

References:

Rules of Procedure, Article 155:

<http://www.tbmm.gov.tr/ictuzuk/ictuzuk.htm>.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Parliamentary minutes of the last four legislative periods are available online. As soon as the project on electronic archiving of all

parliamentary documents finishes, all historical minutes will be available online. However, printed copies of the minutes are available in major libraries only. The library of the parliament offers photocopying services by mail order at a minimum cost, too.

References:

Rules of Procedure, Article 155:

<http://www.tbmm.gov.tr/ictuzuk/ictuzuk.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49
III-3. Judicial Accountability

33. Are judges appointed fairly?

58

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Although the procedures for the selection of national level judges and prosecutors are constitutionally and legally defined, there is no public oversight or confirmation stage. Every year, the Ministry of Justice, in consultation with the opinion of the Justice Academy of Turkey, announces the number of judges and prosecutors to be recruited. Eligible candidates take a professional written and an oral exam and are ranked according to their performances. They are appointed by the Ministry of Justice in proportion to the needs of the judiciary. Those candidates who hold a doctoral degree in the field take an oral exam only. The conditions on requirements, application and exams are advertised in one of the five biggest newspapers, at least 15 days before the application deadline. Those who are not appointed have no right to claim anything.

References:

1982 Constitution, Article 140:

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 2802 on Judges and Prosecutors, Articles 7-14, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Candidates must have a B.A. degree in law (for civil and administrative judiciary) or in political sciences, administrative sciences, economics and finance (for administrative judiciary, without exceeding 20 percent of total recruitment). Candidates must be successful in general aptitude and professional tests (written and oral exams). Lawyer candidates must have completed at least five years in the profession.

See law 2802, Article 8, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2802&sourceXmlSearch=>

However, it is widely agreed that the High Board of Judges and Prosecutors, which is a unit of the Ministry of Justice, influences the appointment process, especially at the stage of oral examination.

References:

Savci kendisi yazmaliydi,
<http://www.milliyet.com.tr/2006/04/03/siyaset/asiy.html>;

Ibrahim Okur, Türkiye'de Yargisal Etik,
<http://www.abgm.adalet.gov.tr/iokur.pdf>;

Turgut Tan, Professor of Law, Bilkent University, Ankara, November 2007;

Atilla Sav, member of Ankara Bar Association, August 2007

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Following the written and oral entrance exams, successful candidates are subject to training at the Justice Academy of Turkey for two years. (Article 28 of Law 4954) Those who pass the written exams at the end of the training period are appointed by the High Board of Judges and Prosecutors. (Article 13 of Law 2802 and Article 4 of Law 2461 [http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2461&sourceXmlSearch=Hakimler ve Savcilar](http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2461&sourceXmlSearch=Hakimler+ve+Savcilar)). This Board is composed of three principal and three substitute members from the Court of Cassation (High Court of Appeals), two principal and two substitute members from the Council of State (High Administrative Court) and the undersecretary of the Ministry of Justice under the chairmanship of the minister of Justice. Three candidates for each Judicial membership are nominated by the general assembly of the relevant higher courts and the president of the Republic appoints the members. (Article 6 of Law 2461).

References:

Law 2802 on Judges and Prosecutors, Article 9 and 9A:
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2802&sourceXmlSearch=>

Law 4954 on Justice Academy of Turkey, Articles 26-29:
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.4954&sourceXmlSearch=>

Law 2461, Article 4, [http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2461&sourceXmlSearch=Hakimler ve Savcilar](http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2461&sourceXmlSearch=Hakimler+ve+Savcilar)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

92

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

1982 Constitution, Article 141:
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 1086 on Lawsuit Trial, Articles 149, 281, 388, 426 T, 436, 437, 489, <http://mevzuat.basbakanlik.gov.tr/Metin.aspx?MevzuatKod=1.3.1086&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

However, these reasons may not be correct. Court decisions are subject to review by the Court of Cassation.

References:

Atilla Sav, member of Ankara Bar Association, September 2007.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The High Board of Judges and Prosecutors is the sole authority in disciplinary actions. However, there is also an Inspection Board which belongs to the Ministry of Justice and is composed of one chairman, one deputy chairman and a sufficient number of justice inspectors (Law 2802, Article 99 <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2802&sourceXmlSearch=>)

References:

It is the High Board of Judges and Prosecutors

Law 2461, Article 4, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2461&sourceXmlSearch=Hakimler%20ve%20Savc1lar>

Law 2802 on Judges and Prosecutors, Article 62. <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2802&sourceXmlSearch=>

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

1982 Constitution, Articles 138, 139 and 140, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

These disciplinary investigations or the final decisions on the investigations may not be fair and impartial.

References:

Turkey: No impunity for state officials who violate human rights.

Briefing on the Semdinli bombing investigation and trial, <http://www.amnesty.org/en/report/info/EUR44/006/2006>;

Atilla Sav, member of Ankara Bar, September 2007.

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

These penalties may not be fair and impartial.

References:

Turkey: No impunity for state officials who violate human rights.

Briefing on the Semdinli bombing investigation and trial, <http://www.amnesty.org/en/report/info/EUR44/006/2006>;

Atilla Sav, member of Ankara Bar, September 2007.

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

61

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

1982 Constitution, Article 71,

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 2/d <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628>;

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 3: <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628;>

Regulation 90/748, Articles 13 and 14
<http://www.memurlar.net/haber/69119/>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Articles 9 and 20: <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628;>

Regulation No. 90/ 748, Articles 15 and 18
<http://www.memurlar.net/haber/69119/>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

According to Law 2531, all public servants are prohibited to work at any post, take any obligation, act as a broker or representative of any activity which is directly or indirectly related to the activities of their former institution for three years after the date of retirement. The original text of the first paragraph of Article 14 of Law 1136 also prohibited judges to act as lawyers for five years in a judicial district where they served before their retirement, but the Constitutional Court annulled it in 2003. <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/K2002/K2002-91.htm>

References:

Law 2531 concerning the works that cannot be done by those who resigned from public service, Article 2, <http://www.bumko.gov.tr/Mevzuat/PersonelM/Kanun/2531.htm>;

Law 1136 on Lawyership, Article 14

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.1136&sourceXmlSearch=>

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

Turgut Tan, Professor of Law, Bilkent University, November 2007;

Atilla Sav, member of Ankara Bar, September 2007.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | **50** | 25 | 0

References:

Hayrettin Okcesiz, Istanbul Barosu Cevresinde Adli Yargida Yolsuzluk Arastirmasi, Istanbul, 1999;

Rüşvet rüşvet tepelere yargi kurmasinlar,
[http://www.radikal.com.tr/haber.php?haberno=103151;](http://www.radikal.com.tr/haber.php?haberno=103151)

Atilla Sav, member of Ankara Bar, September 2007.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | **0**

References:

Atilla Sav, member of Ankara Bar, September 2007.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Articles 9 and 20.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

References:

O.F. Genckaya,
Turkey,"

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530,

Oceana Publications, New York (2005);

Omer Faruk Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

Atilla Sav, member of Ankara Bar, September 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya,
Turkey,”

Lobbying, Government Relations, and Campaign Finance Worldwide: Navigating the Laws, Regulations, and Practices of National Regimes,

T.D. Grant (Eds.), pp. 513-530,

Oceana Publications, New York (2005);

Omer Faruk Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for

Democracy, [http://www.coe.int/t/e/legal_affairs/legal_co-](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf)

[operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf)

Atilla Sav, member of Ankara Bar, September 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

37a. In law, the legislature can amend the budget.

YES | NO

References:

1982 Constitution, Article 162,
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law 5018 on Public Financial Management and Control, Article 19
http://www.sgb.gov.tr/kincil%20Mevzuat/1_5018_kamu_mali_yonetim.pdf

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

It is argued that the government refers to a hidden budget" from time to time. Article 24 of Law 5018 enables the government (prime minister) to use such resources for generally defined purposes.

References:

M. Kamil Mutluer, *Butce Hukuku*, Ostanbul: Ostanbul Bilgi Universitesi, 2005;

Husamettin Cindoruk, former Speaker of the Grand National Assembly (1991-1995), July 2007;

Ilyas Aktas, former Chairman of the Plan and Budget Commission (1991-1995), July 2007.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

The Plan and Budget Committee of the Grand National Assembly has a low capacity to monitor the budget process; however, during the debates, members of the Assembly can initiate changes in consultation with the government.

References:

M. Kamil Mutluer, *Butce Hukuku*, Ostanbul: Ostanbul Bilgi Universitesi, 2005;

Husamettin Cindoruk, former Speaker of the Grand National Assembly (1991-1995)

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

50

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Article 161 of the constitution describes that the budget law includes only budgetary provisions. However, the government added an article which is titled as provisions not to be enforced partially or fully.” By means of this filter article, the government is entitled to enforce or not to enforce some provisions of other laws within the scope of annual budget laws. Many of these general provisions are vague and unidentifiable. This violates the legal systematic order and causes disputes in practice. This procedure is also unconstitutional and the Constitutional Court annulled it and decided stay of execution of many of these “filter articles” upon the appeal of eligible actors (Article 148 of the 1982 Constitution, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>)

References:

M. Kamil Mutluer, *Butce Hukuku*, Ostanbul: Ostanbul Bilgi Universitesi, 2005;

Seref Iba, TBMM Butce Maratonu ve Rekorlar Uze1ne (On the TGNA Budget Marathon and Records), Yuvuz Sabuncu'ya Armagan, forthcoming;

TESEV, Mali Saydamlik Izleme Raporu II,
<http://www.tesev.org.tr/etkinlik/malisaydamlikrapor2son.pdf>;

Husamettin Cindoruk, former Speaker of the House (1991-1995);

Ilyas Aktas, former Chairman of the Plan and Budget Commission (1991-1995)

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

M. Kamil Mutluer, Butce Hukuku, Ostanbul: Ostanbul Bilgi Universitesi, 2005;

TESEV, Mali Saydamlik Izleme Raporu II,
<http://www.tesev.org.tr/etkinlik/malisaydamlikrapor2son.pdf>

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

Comments:

According to the analytical budget approach, all items must be public and transparent. This is especially true for the investment budget. Current expenditures are allocated as general items.

References:

M. Kamil Mutluer, Butce Hukuku, Ostanbul: Ostanbul Bilgi Universitesi, 2005;

TESEV, Mali Saydamlik Izleme Raporu II,
<http://www.tesev.org.tr/etkinlik/malisaydamlikrapor2son.pdf>;

Ilyas Aktas, former Chairman of the Plan and Budget Commission (1991-1995)

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

According to Article 165 of the 1982 Constitution, there is a legislative committee on State Economic Enterprises which controls the accounts of these enterprises only.

The Planning and Budget Committee provides a certain degree of oversight over public expenditures as well.

References:

Public funds are subject to control by the Audit Court on behalf of the Grand National Assembly.

Law 832 on Audit Court, Article 28/A:
<http://www.sayistay.gov.tr/mevzuat/kanun.htm>

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

69

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

References:

Law No. 5018 on Public Financial Control, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5018&MevzuatIliski=0&sourceXmlSearch=>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

References:

Nihat Edizdogan, Kamu Butcesi, Bursa: Ekin Yayinevi, 2007.
Kemal Ozsemerci, Chief Auditor, Audit Court, February 2008.
Bulent Tarhan, Chief Inspector, Prime Ministry, February 2008.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in

the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Ilyas Aktas, former Chairman of Plan and Budget Committee, February 2008.

Kemal Ozsemerci, Chief Auditor, Audit Court, February 2008.

Bulent Tarhan, Chief Inspector, Prime Ministry, February 2008.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

Ilyas Aktas, former Chairman of Plan and Budget Committee, February 2008.

Kemal Ozsemerci, Chief Auditor, Audit Court, February 2008.

Bulent Tarhan, Chief Inspector, Prime Ministry, February 2008.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

1982 Constitution, Articles 10, 31, 70 and 133;

Law 657 on Public Servants, Article 7

<http://mevzuat.meb.gov.tr/html/12056-657.html>;

Regulation Concerning Activity Report To Be Prepared by Public Administrations, Article 5,
Official Gazette,

<http://mevzuat.meb.gov.tr/html/12056-657.html>

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law 657 on Public Servants, Articles 7 and 29:
<http://mevzuat.meb.gov.tr/html/12056-657.html>;

Law 5237
Penal Law, Articles 38, 66, 80, 86, 102, 103, 105 109, 119, 227, 250, 251, 255, 259, 277 and 288,
<http://www.ceza-bb.adalet.gov.tr/mevzuat/5237.htm>

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

A civil servant complains or appeals to his/her immediate superior. Therefore, it is highly unlikely to get redress. The administrative judicial process is also long and not very effective.

References:

Law 657 on Civil Servants, Article 21. <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.657&sourceXmlSearch=>

Regulation Concerning Complaints and Appeals of Civil Servants, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=3.5.85743&sourceXmlSearch=devlet> memurlar1

Law 2577 on Administrative Trial Procedure,
http://www.danistay.gov.tr/idari_yargilama.htm

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES

NO

Comments:

According to Article 53 of Law 5237, a real person shall be disqualified from exercising any public right, including the right to enter the public service, during the period of conviction only. This general rule applies to special laws too (Law 5237, Article 5).

However, the provisional Article 1 of Law 5252 on Enforcement and Application Procedure of Penal Law adopts a transition period for the implementation of those provisions referring to special laws. In this context, application of Article 53 of Penal Law will be effective after Dec. 31, 2008. <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.5252&sourceXmlSearch=>

Until that time, other laws must be harmonized with the provisions of Penal Law.

On the other hand, Article 48/5 of Law 657 on Civil Servants disqualifies such a person to become a civil servant. Finally, despite the fact that Law 657 is a special law and Penal Law is a common law, until Jan 1, 2009, Article 48/5 of Law 657 will be effective.

See C. Ergen, TÜRK CEZA HUKUKUNDA BELLİ HAKLARI KULLANMAKTAN YOKSUN BIRAKILMA, <http://dergi.teskomb.org.tr/281/index2.asp?dp=s28>

References:

Law 5237 on Penal Law, Article 53

<http://www.tbmm.gov.tr/kanunlar/k5237.html>;

Law 657 on Civil Servants, Article 48/5;

Law 5352 on Judicial Registry, Article 9,

<http://www.mevzuat.adalet.gov.tr/html/1484.html>;

Law 657 on State Servants, Article 48/5;

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Articles 15 and

16. <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628&sourceXmlSearch=>

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

69

42a. In practice, civil servants are protected from political interference.

100

75

50

25

0

Comments:

Some times civil servants also ask for patronage from politicians.

References:

Bilal Eryilmaz, Bürokrasi ve Siyaset: Bürokratik Devletten Etkin Yönetime, İstanbul: Alfa Yayinlari, 2004;

General Statement of Reason for the Draft Law on Public Administration,
Ankara, October 2003,
<http://www.antimai.org/ys/kytkggerekce.htm>;

Turgut Tan, Professor of Administrative Law, Bilkent University, July 2007.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

There is a general aptitude test to be taken in order to be eligible for public service. However, oral exams are open to (political) patronage.

References:

Bilal Eryilmaz, Bürokrasi ve Siyaset: Bürokratik Devletten Etkin Yönetime, İstanbul: Alfa Yayinlari, 2004;

Bunyamin Ozgur, Kamuda Yönetici Cikmazi, <http://portal1.sgb.gov.tr/calismalar/yayinlar/md/md145/bunyaminmakale.pdf>;

General Statement of Reason for the Draft Law on Public Administration,
Ankara, October 2003,
<http://www.antimai.org/ys/kytkggerekce.htm>;

Turgut Tan, Professor of Administrative Law, Bilkent University, July 2007.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | **50** | 25 | 0

Comments:

Nepotism and patronage are still widespread in the public service.

References:

Bilal Eryilmaz, Bürokrasi ve Siyaset: Bürokratik Devletten Etkin Yönetime, İstanbul: Alfa Yayinlari, 2004;

Bunyamin Ozgur, Kamuda Yönetici Cıkmazi, <http://portal1.sgb.gov.tr/calismalar/yayinlar/md/md145/bunyaminmakale.pdf>;

General Statement of Reason for the Draft Law on Public Administration, Ankara, October 2003, <http://www.antimai.org/ys/kytkggerekce.htm>;

Turgut Tan, Professor of Administrative Law, Bilkent University, July 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | **75** | 50 | 25 | 0

References:

Bilal Eryilmaz, Bürokrasi ve Siyaset: Bürokratik Devletten Etkin Yönetime, İstanbul: Alfa Yayinlari, 2004;

Bunyamin Ozgur, Kamuda Yönetici Cıkmazi, <http://portal1.sgb.gov.tr/calismalar/yayinlar/md/md145/bunyaminmakale.pdf>;

General Statement of Reason for the Draft Law on Public Administration,
Ankara, October 2003,
<http://www.antimai.org/ys/kytkggerekce.htm>;

Turgut Tan, Professor of Administrative Law, Bilkent University, July 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Kamu Kesiminde Ucret Adaletsizligi ve Nedenleri, http://www.stratejikboyut.com/files/kamuda_ucret_adaletsizligi.pdf;

<http://www.antimai.org/ys/kytkggerekce.htm>

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

Comments:

Almost all vacant positions in public service are advertised in at least two national dailies and the Official Gazette.

References:

Kamuya 50 bin personel alınacak,
http://memurtr.com/Memur-Haber/50bin_memur_alinacak.html;

2008 Central Government Budget,
<http://www2.tbmm.gov.tr/d23/1/1-0426.pdf>;

Atalay Ergüven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

Comments:

There is no independent mechanism for redress. On the other hand, redress appeals to the Administrative Court take longer time than average in order to be resolved.

References:

Hamza Kaçar memuriyete dönüyor
<http://www.radikal.com.tr/haber.php?haberno=242581>;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman of the Association for State Supervision Personnel, November 2007;

Kemal Özsemerci, Chief Auditor, Audit Court, December 2007.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Performance of 2006 General Budget,
<http://www.muhasabat.gov.tr/mbulten/menu10.php>;

<http://www.antimai.org/ys/kytkggerekce.htm>

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 48/5 of Law 657 on Public Servants, such a conviction is a matter of disqualification from entering public service. However, the new Penal Law limits the disqualification to the period of conviction only. The Council of State (Danistay) also decided that the public authority in question has a discretion in this respect.

References:

Mahkumiyeti sebebiyle memuriyetine son verilen memur, memuriyete nasıl dönebilir?,
<http://sorucevap.memurlar.net/soru/1039/>;

3 yıl ağır hapis yatan kişi memur olabilir mi?,
[http://sorucevap.memurlar.net/soru/755/;](http://sorucevap.memurlar.net/soru/755/)

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

67

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES

NO

Comments:

There is no a general law regulating conflicts of interest for civil servants, but the regulation concerning the principles of ethical behavior requires civil servants to consider this principle.

References:

Regulation Concerning the principles of Ethical Behavior for Public Employees and Procedure and Principles for Application, April 13, 2005, Article 13. <http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2005/04/20050413.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2005/04/20050413.htm>

Law 5393 on Municipalities, Article 27, <http://www.icisleri.gov.tr/ Icisleri/Web/Gozlem2.aspx?sayfaNo=68e>

Law 5271 on Penal Trial, Article 22,
<http://www.mevzuat.adalet.gov.tr/html/1431.html>

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

This provision prohibits the appointment of a retired public servant to a position in the private sector related to his/her former position for three years after his/her retirement. However, there were some violations of this provisions in the recent past. See CHP`den Basbakan`a: Çalik Grubu kollaniyor mu?" <http://www.tumgazeteler.com/?a=2344850>

References:

Law 2531 Concerning the Works That Cannot Be Done By Those Who Resigned from Public Positions, Article 2, <http://www.bumko.gov.tr/Mevzuat/PersonelM/Kanun/2531.htm>;

Banking Regulation and Supervision Agency
http://www.bddk.org.tr/Default_EN.aspx

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law 3628 on Asset Disclosure, Struggle against Bribery and Corruption, Article 3, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3628&sourceXmlSearch=>;

Law 657 on Public Servants, Article 29, <http://mevzuat.metinx.asp?mevzuatkod=1.5.657&sourceXmlSearch=>

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

CHP'den Ba_bakan'a: Çalik Grubu Kollanıyor mu?" <http://www.haberler.com/chp-den-basbakan-a-calik-grubu-kollaniyor-mu-haberi/6.11.2007;>

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | **25** | 0

References:

O.F. Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Council of Europe Octopus Interface Conference Corruption and Democracy, Strasbourg Nov. 20-21, 2006.

http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_if-rep%20genckaya.pdf

Bakanlik milyarlik hediyeleri etik buldu, <http://www.saglikcalisanlari.net/son-haberler/bakanlik-milyarlik-hediyeleri-etikbuldu>

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

O.F. Genckaya,

Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Council of Europe Octopus Interface Conference Corruption and Democracy, Strasbourg, Nov. 20-21, 2006

http://www.coe.int/t/e/legal_affairs/legal_cooperation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%2020if-rep%20genckaya.pdf

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

They file asset disclosure forms, which, however, are not available to the public.

References:

Law 3628, Article 9.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

They are not available to the public.

References:

O.F. Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Council of Europe Octopus Interface Conference Corruption and Democracy, Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are not available to the public.

References:

O.F. Genckaya,
Political Finance, Conflict of Interest and Accountability in Turkey: Implications for Democracy, Council of Europe Octopus
Interface Conference Corruption and Democracy,
Strasbourg, Nov. 20-21, 2006. http://www.coe.int/t/e/legal_affairs/legal_co-operation/combating_economic_crime/3_technical_cooperation/octopus/2006/143%20_2006_-if-rep%20genckaya.pdf

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

75

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

Earlier, Articles 5 and 7 of Law 4422 on Organized Crime regulated the protection of eye-witnesses and whistle-blowers, but this law was repealed on March 31, 2005, by Law 5320. For the text of Law 4422 see <http://www.mevzuat.adalet.gov.tr/html/1095.html>

According to Article 18 of Law 3628, the identities of the whistle-blowers cannot be made public without their consent. However, when the denunciation is valid, the identity of the whistle-blower shall be made public upon the request of the prosecuted person.

Currently the government submitted a Draft Law on the Protection of Eye-Witnesses, which covers only those who shall testify at the Penal Court. See <http://www.kgm.adalet.gov.tr/tanikkorumakanunu.htm>

References:

U.N. Convention on Transnational Organized Crime was ratified by Parliament in January 2003;

Law 4800, Articles 24 (Protection of Eye Witness) and 25 (protection of aggrieved persons), <http://www.tbmm.gov.tr/kanunlar/k4800.html>;

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 18, http://www.alomaliye.com/mal_bildirimi_kanunu.htm

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

Reporting corruption is not widespread or kept confidential. However, there are no statistics available.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

There is no special regulation for private sector employees. General rules apply to them, including Article 32 of the UN Convention Against Organized Crime.

Earlier, Articles 5 and 7 of Law 4422 on Organized Crime regulated the protection of eye-witnesses and whistle-blowers, but this law was repealed on March 31, 2005, by Law 5320. For the text of Law 4422, see <http://www.mevzuat.adalet.gov.tr/html/1095.html>

Currently the government submitted a Draft Law on the Protection of Eye-Witnesses, which covers only those who shall testify at penal court. See <http://www.kgm.adalet.gov.tr/tanikkorumakanunu.htm>

References:

U.N. Convention on Transnational Organized Crime was ratified by parliament in January 2003;

Law 4800, Articles 24 (Protection of Eye Witness) and 25 (protection of aggrieved persons), <http://www.tbmm.gov.tr/kanunlar/k4800.html>

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 18, http://www.alomaliye.com/mal_bildirimi_kanunu.htm

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | **50** | 25 | 0

Comments:

There are no statistics available.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Erguven, Chairman of the Association for State Supervision Personnel, November 2007.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

Every public institution also has an internal discipline and inspection mechanism. Either the discipline chief, discipline committee or inspectors from the relevant ministry or Prime Ministry conduct the investigation upon the request of the relevant authority or the order of the superior authority. Civil servants generally report such cases to their superiors in a hierarchical manner. Internal auditors can also collect such reports. However, there is no special mechanism to which only corruption cases are reported. Bülent Tarhan Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları, http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf

Yolsuzlukla mücadele birimi` kuruluyor, <http://www.tumgazeteler.com/?a=973028>

References:

Internal Auditor, Regulation 2006/10654 Concerning the Working Procedure and Principles of Internal Auditors, Articles 50 and 52, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=3.5.200610654&sourceXmlSearch=iç> denetçilerin

Law 4483 Concerning Trial of Civil Servants and Other Public Servants, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.4483&sourceXmlSearch=Memurlar> ve Dier

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

56

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is no special mechanism for corruption reporting. Internal auditing is a new mechanism to cover corrupt practices too. Auditing and inspection mechanisms in the public sector have been in a state of transition and they lack sufficient staff.

References:

Bülent Tarhan Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları, http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf;

Turgut Tan, Professor of Administrative Law, Bilkent University, December 2007;

Atalay Ergüven, Chairman of the Association for State Supervision Personnel, November 2007;

Kemal Özsemerci, Chief Auditor, Audit Court, Ankara, December 2007.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Bülent Tarhan Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları, http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf;

Turgut Tan, Professor of Administrative Law, Bilkent University, December 2007;

Atalay Ergüven, Chairman of the Association for State Supervision Personnel, November 2007;

Kemal Özsemerci, Chief Auditor, Audit Court, Ankara, December 2007.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the superior authority, political circumstances and political will. There is no empirical study to test the effectiveness of the internal auditing, which is still in transition.

References:

Bülent Tarhan Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları, http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf;

Turgut Tan, Professor of Administrative Law, Bilkent University, December 2007;

Atalay Ergüven, Chairman of the Association for State Supervision Personnel, November 2007;

Kemal Özsemerci, Chief Auditor, Audit Court, Ankara, December 2007.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Internal auditors have no authority to investigate but only to report misconduct to their superiors. However, internal discipline mechanisms, including inspectors, may initiate investigations upon the request of the relevant authority or the order of the superior. Political circumstances and political will may be influential in this process.

References:

Bülent Tarhan Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları, http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf;

Turgut Tan, Professor of Administrative Law, Bilkent University, December 2007;

Atalay Ergüven, Chairman of the Association for State Supervision Personnel, November 2007;

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

77 IV-3. Procurement

48. Is the public procurement process effective?

75

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Regulation on the Organization of the Public Procurement Institution, Financial and Social Rights of Its Personnel and the Working Procedures and Principles,
Official Gazette No. 24821, July 20, 2002, Articles 33 and 37,
<http://www.kik.gov.tr/kurum/yonetmelikler/teskilat.htm>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Law 4734 on Public Procurement, Article 53/h
<http://www.ihale.gov.tr/english/english47341.htm>

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

From an institutional point of view, employees either declare the conflict of interest or recuse themselves.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

There is no such mechanism; however, these officials are required to declare their assets annually.

References:

Regulation on the Organization of the Public Procurement Institution, Financial and Social Rights of Its Personnel and the Working Procedures and Principles,

Official Gazette No. 24821, July 20, 2002, Article 34. <http://www.kik.gov.tr/kurum/yonetmelikler/teskilat.htm>

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 2 also applies to these officials:

<http://www.tbmm.gov.tr/genser/kanun13.html>

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

Law 4734 on Public Procurement, Article 5

<http://www.ihale.gov.tr/english/english47341.htm>

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Law 4734 on Public Procurement, Articles 58 and 59

<http://www.ihale.gov.tr/english/english47341.htm>

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | **NO**

Comments:

There is no provision enabling unsuccessful bidders to appeal for an administrative review. However, they may appeal to the Administrative Court if they find any violation of law.

References:

Law 4734 on Public Procurement, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.4734&sourceXmlSearch=>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law 4734 on Public Procurement, Article 57
<http://www.ihale.gov.tr/english/english47341.htm>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Law 4734 on Public Procurement Articles, 11, 17, 58 and 59
<http://www.ihale.gov.tr/english/english47341.htm>;

Law 5237 Penal Law, Article 252

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIliski=0&sourceXmlSearch=>

General Statute of Public Procurement, http://www.kik.gov.tr/mevzuat23062004/teb/25886_yeni_teb.htm

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

A formal blacklist including the names of those about whom a public suit was opened at the court is posted on the institution's Web Site and updated. However, a company may enter the competition as a different legal entity or transfer its shares to others. In any case, the experts say, this mechanism is effective almost 95 percent.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

100

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

All laws and regulations to take effect are published in the Official Gazette in Turkey. Therefore, public procurement regulations are open to the public.

References:

Law 4734 on Public Procurement, Article 5

<http://www.ihale.gov.tr/english/english47341.htm>

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Law 4734 on Public Procurement, Articles 7, 13, 47, and 53;

The Law on the Right to Access to Information also applies:

http://www.tbmm.gov.tr/bilgiedinme/bilgi_edinme_kanun.htm

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All laws and regulations governing the procurement process are available online.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Regulations are available online. The annual subscription fee for the advertisement bulletin is about 50 new Turkish Liras (US\$43).

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

All major bids above certain threshold costs must be advertised in the Official Gazette and/or local newspaper(s) or at the bulletin board of the institution or of the local municipality in question (Law 4734, Articles 13 and 8)
See <http://www.ihale.gov.tr/english/english47341.htm>

There is a Web platform (<https://www.ihale.gov.tr/ssl/ksp/>) where all public entities can advertise their bids too. However, it is argued that small bids, especially those organized by municipalities or their enterprises, are not advertised effectively.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Law 4734, Article 47 requires that results of the tenders whose contract value exceeds at least one trillion Turkish Liras (currently 3.8 million new Turkish Liras, US\$3.2 million) shall be published in the Bulletin of Public Procurement within maximum 15 days following the date when the registration of the contract by the Court of Accounts is notified to the contracting entity.
<http://www.ihale.gov.tr/english/english47341.htm>

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

83

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law 4046 on Concerning Arrangements for The Implementation of Privatization And Amending Certain Laws And Decrees With The Force of Law, Articles 16 and 18. http://www.oib.gov.tr/baskanlik/yasa_eng.htm

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

Law 4046 on Concerning Arrangements for The Implementation of Privatization And Amending Certain Laws And Decrees With

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | **50** | 25 | 0

Comments:

The binding provisions of the relevant laws are enforced seriously. However, fraud is always possible in this process. It is argued that Erdemir (Iron and Steel) and ports were privatized properly. The privatization of airports was indirectly subject to fraud. The Council of State did not prove Petkim (oil refinery) privatization due to a conflict of interest.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

85

51a. In law, citizens can access privatization regulations.

YES | NO

References:

1982 Constitution, Article 89. The President of the Republic promulgates the laws in the Official Gazette. Regulations and statutes are also published in the Official Gazette.

Law 4046 Concerning Arrangements for The Implementation of Privatization And Amending Certain Laws And Decrees With The Force of Law, Article 37/b,

http://www.oib.gov.tr/baskanlik/yasa_eng.htm

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

All regulations are available on the institution's Web Site and other governmental legal portals. Purchasing Terms of Conditions is expensive.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

Law 4046 Concerning Arrangements for The Implementation of Privatization And Amending Certain Laws And Decrees With The Force of Law, Article 17/F. http://www.oib.gov.tr/baskanlik/yasa_eng.htm

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All regulations are available on the institution's Web Site and other governmental legal portals.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Purchasing Terms of Conditions is expensive.

References:

Adnan Zengin, former Deputy Head of Public Procurement Institution, December 2007;

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2007;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷¹National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES

NO

Comments:

The law entitles the Office of Public Controller to examine and investigate the complaints of natural and legal persons about the working of the administration within the scope of characteristics described by the Constitution of Republic of Turkey and its acts, actions, attitudes and behavior with the idea of justice and in relation to respect for human rights and conformity with fairness and to recommend accordingly to the administration. (Article 1 of Law 5548)

The law has been under constitutional review and this institution does not exist. The Constitutional Court ordered stay of execution of this law on Oct. 27, 2006. <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>.

References:

Law 5548 on Public Controller,
<http://www.tbmm.gov.tr/kanunlar/k5548.html>

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

0

53a. In law, the ombudsman is protected from political interference.

YES | **NO**

Comments:

It is affiliated with the Grand National Assembly.

References:

Law 5548 on Public Controller, Article 3
<http://www.tbmm.gov.tr/kanunlar/k5548.html>

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | **0**

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

References:

It is not effective.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

33

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

However, the Constitutional Court ordered stay of execution for this law on ct. 27, 2006.
<http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

References:

Law 5548 on Public Controller, Article 22
<http://www.tbmm.gov.tr/kanunlar/k5548.html>

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is not effective.

References:

Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:
It is not effective.

References:
Order of stay of execution, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:
In addition to the Audit Court, the Supreme Supervision Council of the Presidential Office of the Republic prepares reports on societal issues upon the request of the president (http://www.cankaya.gov.tr/tr_html/ddk.htm), and the High Supervision Board of the Prime Ministry prepare reports on the accounts of the state economic enterprises (<http://www.ydk.gov.tr/>).

References:
1982 Constitution, Article 160
<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>;

Law 832 on the Audit Court
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.832>

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

81

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The head and the members of the Audit Court are elected by the Grand National Assembly of Turkey from among the candidates determined by the court's election board and general assembly. The head and the members cannot be dismissed from their office. The professional staff also have protection.

References:

Law 832 on the Audit Court, Articles 5, 6, 7 and 90. <http://mevzuat.basbakanlik.gov.tr/mevzuat/metin.asp?mevzuatkod=1.5.832>

INDEPENDENCE and TURKISH COURT of ACCOUNTS, http://www.sayistay.gov.tr/english_tca/comp/l.htm

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

In oral exams, nepotism, partisanship and similar influences are effective.

References:

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Court receives allocation from the annual general budget.

References:

Law 832 on the Audit Court, Article 89, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.832;>

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

In general, suitability reports and reports on treasury operations are annually published online. In addition, performance reports and other reports of the Audit Court are published irregularly. However, not all public financial audits are published.

References:

Law 832 on the Audit Court, Articles 28, 81-89, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.832;>

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

The government is expected to act in accordance with the audit findings.

References:

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

This is a financial supervision and investigation only. The Audit Court informs the relevant authority for disciplinary investigation and the prosecutor for criminal investigation, if necessary.

References:

Sayistaydan, yakit ihalesine sorusturma,
<http://www.milliyet.com/2007/10/16/ege/aeko.html>;

Law 832 on the Audit Court, Article 48, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.832>;

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

Only general suitability reports, performance reports and general purpose reports are publicly available, either online or printed in the parliamentary records. These are not detailed accounts of public institutions.

References:

Law 832 on the Audit Court, Articles 81-89
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.832>

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Only publicly available reports can be obtained after approval by the general assembly of the Audit Court. It may vary between five and nine months. For instance, the 2006 Central Government Budget was approved by the general assembly of the Audit Court in September 2007. <http://www.sayistay.gov.tr/rapor/rapor3.asp?id=74>

References:

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Reports are available for free online and in a limited number also in print.

References:

Atalay Erguven, Chairman of the Association for State Supervision Personnel (DENETDE), November 2007;

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2007.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

94
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

References:

Law 5345 on the Establishment and Duties of the Presidency of Revenue Administration,
<http://www.tbmm.gov.tr/kanunlar/k5345.html>

Tax Office, Law 213 on Tax Procedure Article 4,
<http://www.mevzuat.adalet.gov.tr/html/1045.html>

Customs Administration, Law 213 on Tax Procedure, Article 3,

Law No. 4458 on Customs,
<http://www.mevzuat.adalet.gov.tr/html/1103.html>

Decree Having the Force of Law No.02/07/1993 – 485 on the Establishment and Duties of the Undersecretariat of Customs,
<http://www.mevzuat.adalet.gov.tr/html/10047.html>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

88

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Kalkınma Planı (2007-2013) Özel İhtisas Komisyonu raporu, Ankara Temmuz 2006, http://plan9.dpt.gov.tr/oik09_vergi/vergi.pdf;

Aykut Gulec, Vergi Denetiminde Erozyon, Vergi Gündemi Bülteni, Ağustos-Eylül 2007. <http://vdd.org.tr/images/rsgallery/thumb/1.sayi.pdf>;

I.A. Acar and M.E. Merter, Türkiye'de 1990 Sonrası Dönemde Vergi Denetimi ve Vergi Denetiminde Etkinlik Sorunu, Maliye Dergisi, Eylül-Aralık 2004, Sayı 147, pp. 5-27.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Kalkınma Planı (2007-2013) Özel İhtisas Komisyonu raporu, Ankara Temmuz 2006, http://plan9.dpt.gov.tr/oik09_vergi/vergi.pdf;

2006 MALİ YILI BÜTÇESİ... ,
http://www.alomaliye.com/ekim_05/2006_mali_yili_butcesi.htm

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | **50** | 25 | 0

References:

Kalkınma Planı (2007-2013) Özel İhtisas Komisyonu raporu, Ankara Temmuz 2006, p. 26-31, http://plan9.dpt.gov.tr/oik09_vergi/vergi.pdf;

I.A. Acar and M.E. Merter, Türkiye de 1990 Sonras1 Dönemde Vergi Denetimi ve Vergi Denetiminde Etkinlik Sorunu, Maliye Dergisi, Eylül-Aralık 2004, Say1 147, pp. 5-27.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

Customs Administration,

Law 213 on Tax Procedure, Article 3,

Law 4458 on Customs,

<http://www.mevzuat.adalet.gov.tr/html/1103.html>

Decree Having the Force of Law No.02/07/1993 – 485 on the Establishment and Duties of the Undersecretariat of Customs,

<http://www.mevzuat.adalet.gov.tr/html/10047.html>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

88

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

S. Tatal, Uluslararası Ticarete Yolsuzluk Eğilimleri Karsısında Türk Gümrük İdaresinin Yapısal Sorunları ve Çözüm Önerileri, Gümrük Dünyası, Yaz 2007.

Undersecretariat of Customs of Prime Ministry of the Republic of Turkey, Strategic Plan Preparation Program 2006, www.gumruk.gov.tr/Gumruk/DosyaUpload/apk/hazirlikprogrami.doc

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Undersecretariat of Customs of Prime Ministry of the Republic of Turkey, Strategic Plan Preparation Program 2006, www.gumruk.gov.tr/Gumruk/DosyaUpload/apk/hazirlikprogrami.doc

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

50

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

References:

'Kaçak Mercedesler sümenaltı ediliyor' iddiası1, <http://www.aksam.com.tr/arsiv/aksam/2005/02/11/gundem/gundem2.html>;

M. Sahin, Denetim ve Denetim Elemanları Üzerine, GumYonDer, Sayı: 1, 2003. <http://gumyonder.gumruk.gov.tr/dergi/sayi1/denetim.htm>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

The High Supervision Board (YDK), which belongs to the Prime Ministry, prepares the reports on the state economic enterprises, and the parliamentary committee either approves or disapproves these reports.

References:

It is the State Economic Enterprises Committee of the Grand National Assembly.

1982 Constitution, Article 165;

Law 3346 Concerning the Regulation of the Oversight of the State Economic Enterprises by the Grand National Assembly, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3346&sourceXmlSearch=>;

Decree 72 on the Establishment of the High Supervision Board, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=4.5.72&sourceXmlSearch=>

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

40

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

Comments:

The board is affiliated with the Prime Ministry and the head and the members of the board are appointed by the Council of Ministers.

References:

Decree 72, Articles 3 and 7

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The board, as a part of the Prime Ministry, has a regular annual allocation from the budget.

References:

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to the Decree 72, the High Supervision Board has no authority to initiate an investigation. The Board controls the accounts in paper and does not hold detailed search if not necessary.

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=4.5.72&sourceXmlSearch=>

The parliamentary Committee can approve (if there is no legal violation), conditionally approve (if there is violation or any investigation already started about the accounts) or disapprove (if there is a legal violation) the accounts of the state economic enterprises. The Committee has to inform the prosecutor if there is a legal violation on the accounts.

See Sevgi Korkut,

Parlamentar Denetim Kapsamında Kamu Ekonomik Teşebbüslerinin Denetlenmesi:TBMM KIT Komisyonunun Denetim Prosedürü ve KITlerin Denetiminde Geleceğe Dönük Öngörüler, Yasama Dergisi, Sayı 6 Temmuz-Agustos- Eylül 2007, www.yasader.org/web/yasama_dergisi/2007/sayi6/parlamentar_denetim_kapsaminda.pdf

In practice, the Committee basically performs the function of whitening." The committee informs the prosecutor about legal violations.

References:

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

According to Decree 72, the High Supervision Board has no authority to impose a penalty.

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=4.5.72&sourceXmlSearch=>

References:

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

100

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

Final accounts of the state economic enterprises with an acquittal or unacquittal decision of the parliamentary committee shall be published in the Official Gazette. However, these are not detailed financial accounts.

References:

Law 3346 Concerning the Regulation of the Oversight of the State Economic Enterprises by the Grand National Assembly, Article 10, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3346&sourceXmlSearch=>

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

This excludes those institutions which are subject to Law 5018 on Public Financial Administration and Control.

References:

Sevgi Korkut, Parlamento Denetim Kapsamında Kamu İktisadi Tesebbüslerinin Denetlenmesi:TBMM KIT Komisyonunun Denetim Prosedürü ve KITlerin Denetiminde Geleceğe Dönük Öngörüler, Yasama Dergisi, Sayı 6 Temmuz-Agustos- Eylül 2007, www.yasader.org/web/yasama_dergisi/2007/sayi6/parlamentar_denetim_kapsaminda.pdf;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

References:

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Citizens can only access the final accounts which are published in the Official Gazette and not the detailed financial records.

References:

Sevgi Korkut, Parlamentoer Denetim Kapsam1 nda Kamu İktisadi Tesebbüslerinin Denetlenmesi:TBMM KIT Komisyonunun Denetim Prosedürü ve KITlerin Denetiminde Gelecege Dönük Öngörüler, Yasama Dergisi, Sayı 6 Temmuz-Agustos- Eylül 2007, www.yasader.org/web/yasama_dergisi/2007/sayi6/parlamentar_denetim_kapsaminda.pdf;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Citizen can access the reports through the Official Gazette or the Internet.

References:

Sevgi Korkut, Parlamento Denetim Kapsamında Kamu Örtisadi Te_ebbüslerinin Denetlenmesi:TBMM KÖT Komisyonunun Denetim Prosedürü ve KÖTlerin Denetiminde Gelecece Dönük Öngörüler, Yasama Dergisi, Sayı 6 Temmuz-Agustos- Eylül 2007, www.yasader.org/web/yasama_dergisi/2007/sayi6/parlamentar_denetim_kapsaminda.pdf;

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, November 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

80
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

A license is required for all businesses.

References:

Law 3572 on License for Opening a Workplace and Work, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?MevzuatKod=1.5.3572>

Regulation 2005/9207 on License for Opening a Workplace and Work, <http://rega.basbakanlik.gov.tr/eskiler/2005/08/20050810-4.htm>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law 3572 on License for Opening a Workplace and Work, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?MevzuatKod=1.5.3572>

Regulation 2005/9207 on License for Opening a Workplace and Work, <http://rega.basbakanlik.gov.tr/eskiler/2005/08/20050810-4.htm>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the scope of activity of the business. The draft law amending Labor Law and other laws minimizes the procedural processes.

References:

Perihan Sari, former business inspector at the Ministry of Labor, Secretary General of the Federation of Revolutionary Labor Union, December 2007.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It depends on the scope of activity of the business. The draft law amending Labor Law and other laws minimizes the procedural processes.

References:

Perihan Sari, former business inspector at the Ministry of Labor, Secretary General of the Federation of Revolutionary Labor Union, December 2007.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

Comments:

In addition to those laws, there are several other laws, regulations and statutes governing public health standards for business. See T.C. Ulusal 0_ Sagligi ve Guvenligi Politika Belgesi (2006-2008), 20 Ocak 2006, Ankara. www.issgm.gov.tr

References:

Law 4857 on Labor, Articles 77-83,

<http://mevzuat.basbakanlik.gov.tr/Metin.Asp?MevzuatKod=1.5.4857&MevzuatIiski=0&sourceXmlsource=is%20kanunu>

Law 818 on Liabilities, Article 332, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.818&sourceXmlSearch=Borclar>

Law 5393 on Municipality, Article 53,

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?sourceXmlSearch=sa%F0!%FDk&MevzuatKod=1.5.5393>

Law 506 on Social Security

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.506&sourceXmlSearch=Sosyal> Sigorta

Regulation 7/7583 on Labor Health and Security

http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=2.5.77583&sourceXmlSearch=i_çi_sa_l1_1

Law 4857 on Labor ,

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.4857&sourceXmlSearch=>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Law 2872 on the Environment, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.2872&sourceXmlSearch=>

For a list of other regulations, see <http://www.cevreorman.gov.tr/yasa/yonetmelik.asp>

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

There are also several regulations and statutes. See <http://www.saglik.gov.tr/TR/MevzuatGoster.aspx?F6E10F8892433CFFAAF6AA849816B2EF4EC2F94D94121ECE>

References:

Law 5179 on Food Production, Consumption and Control, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.5179&sourceXmlSearch=>

Law 3359 on Health Services, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3359&sourceXmlSearch=>

Decree 181 on the Establishment and Duties of the Ministry of Health, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.1219&sourceXmlSearch=>

Law 1539 on Public Health, <http://www.saglik.gov.tr/TR/MevzuatGoster.aspx?F6E10F8892433CFFAAF6AA849816B2EF1F4F78A76FC513C4>

Law 6197 on Pharmacists and Pharmacies, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.6197&sourceXmlSearch=>

Law 1219 on Medicine and Medical Science, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.1219&sourceXmlSearch=>

Law 992 on Public Bacteriology and Chemical Laboratories, <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.992&sourceXmlSearch=>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

17

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Perihan Sari, former business inspector at the Ministry of Labor, Secretary General of the Federation of Revolutionary Labor Union, December 2007;

T.C. Calisma ve Sosyal Guvenlik Bakanligi 0s Teftis Kurulu Baskanligi, 0s Sagligi ve Guvenligi Proje Denetimi Raporlari, 2005.

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Perihan Sari, former business inspector at the Ministry of Labor, Secretary General of the Federation of Revolutionary Labor Union, December 2007

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The legislation is not enforced effectively.

References:

Perihan Sari, former business inspector at the Ministry of Labor, Secretary General of the Federation of Revolutionary Labor Union, December 2007

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁴Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

Law 5237 on Penal Code, Article 251/1
<http://www.tbmm.gov.tr/kanunlar/k5237.html>

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Law 3628 on Property Declaration, Struggle against Bribery and Corruption, Article 14
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIliski=0&sourceXmlSearch=>

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Law 5237 on Penal Code, Article 251/1
<http://www.tbmm.gov.tr/kanunlar/k5237.html>

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Law 5237 on Penal Code, Article 251/1
<http://www.tbmm.gov.tr/kanunlar/k5237.html>

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Law 5237 on Penal Code, Article 251/5
<http://www.tbmm.gov.tr/kanunlar/k5237.html>;

Law 4278 on Prevention of Bribing Foreign Public Officers in International Business Transactions (OECD Convention)

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Law 5237 on Penal Code, Article 266
<http://www.tbmm.gov.tr/kanunlar/k5237.html>;

Law 298, Articles 63-65

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Law 5237 on Penal Code, Article 258

<http://www.tbmm.gov.tr/kanunlar/k5237.html>

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

Comments:

The Financial Crimes Investigation Board was established in 1997. See <http://www.masak.gov.tr/>

References:

Law 4208 on Prevention of Money laundering

<http://www.masak.gov.tr/eng/default.htm>

Law 5549 PREVENTION OF LAUNDERING PROCEEDS OF CRIME LAW <http://www.masak.gov.tr/eng/default.htm>

Law 5237 on Penal Law, Articles 54, 55, 165, and 282, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>

Law 5271 on Penal Trial, Article 133, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Law 5237 on Penal Code;
Law 4422 on Struggle against Organized Crime
Law 3713 on Anti-Terror;
Law 6136 on Firearms, Knives and Other Instruments of Crime;
Law 4926 on Struggle against Smuggling;
Law 4208 on Prevention of Money Laundering
<http://www.abgm.adalet.gov.tr/ceydaslayt.pdf>

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

0

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | **NO**

Comments:

Within the scope of prevention of laundering proceeds of crime and according to Law 5549, the functions of MASAK may be classified into the following five main areas:

Developing and regulating policies
Coordination
Collecting, analyzing and evaluating data
Supervision of obligations
Examination

http://www.masak.gov.tr/eng/faal/2006_Activity_Report.doc

But it is difficult to say that MASAK is an anti-corruption unit/agency per se.

The Coordination Board for Combating Financial Crimes was created to evaluate the draft laws on prevention of laundering proceeds of crime and the draft regulations which will be issued by Council of Ministers, and to coordinate relevant institutions and organizations regarding implementation. The Coordination Board, under the chairmanship of undersecretary of the Ministry of Finance, is composed of the representatives from the relevant ministries and financial institutions. See Law 5549, Article 20 and Law 4208, Article 4.

References:

Several agencies have an anti-corruption mandate including the Financial Crimes Investigation Board and the Coordination Board for Combating Financial Crimes.

See: Law 4208,
<http://www.masak.gov.tr/eng/default.htm>

Law No. 5549,
<http://www.masak.gov.tr/eng/default.htm>

Interviews with:
Bulent Tarhan, Chief Inspector of the Prime Ministry, Ankara, February 2008
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, February 2008.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

36

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | **NO**

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.
Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

Despite the lack of a formal anti-corruption agency or series of agencies, MASAK, for example, is somewhat protected from political interference.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.
Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

Although no formal anti-corruption agency or collection of dedicated agencies exist, agencies such as MASAK benefit from a degree of political independence.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.
Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | **50** | 25 | 0

Comments:

Although a formal anti-corruption agency or series of agencies does not exist, agencies such as MASAK benefit from a degree of professional staffing.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.
Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Although a formal anti-corruption agency or series of agencies does not exist, agencies such as MASAK benefit from a degree of professional staffing.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.
Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Although a formal anti-corruption agency or series of agencies does not exist, agencies such as MASAK do not suffer from regular budget shortfalls.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.

Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Although a formal anti-corruption agency or series of agencies does not exist, agencies such as MASAK make regular public reports.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.

Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Turkey lacks a true anti-corruption agency (or series of agencies) with sufficient authorities to tackle corruption directly.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.

Kemal Ozsemerci, Chief Auditor, Audit Court, ANKara, February 2008.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Turkey lacks a true anti-corruption agency (or series of agencies) but agencies such as MASAK have limited investigatory powers.

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.

Kemal Ozsemerci, Chief Auditor, Audit Court, ANKara, February 2008.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

25

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Masak Faaliyet Raporu,
http://www.masak.gov.tr/tr/faal/FAALIYET_RAP_2006.pdf;

Kemal Ozsemerci, Chief-Auditor , Audit Court, Ankara, December 2007.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | **0**

References:

Bulent Tarhan, Chief-Inspector of the Prime Ministry, Ankara, February 2008.
Kemal Ozsemerci, Chief Auditor, Audit Court, ANkara, February 2008.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

20
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

75

74a. In law, there is a general right of appeal.

YES | NO

Comments:

There are exceptions for judgments which cannot be subject to appeal in the relevant laws.

References:

1982 Constitution, Articles 154 on Court of Cassation, 156 on Military Court of Cassation and 158 on Jurisdictional Dispute Court,

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law 5271 on Penal Trial, Articles 260 on Legal Remedy, 267 on Objection, 272 on Appeal against the judgments of first degree courts, and 286 on Appeal , <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIliski=0&sourceXmlSearch=>

Law 5237 on Penal Code, Article 18, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIliski=0&sourceXmlSearch=>

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

TÜRK HAKIMI DAVA DOSYALARI İLE CÜZDANI ARASINDA SIKISTI <http://www.atonet.org.tr/yeni/index.php?p=430&l=1>

Tesev, Türkiye'de Ceza Adalet Sisteminin (CAS) Etkinligi, http://www.tesev.org.tr/projeler/proje_ceza_ozet.php

Atilla Sav, member of Ankara Bar, September 2007.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Some cases require higher costs for the litigant, such as expert witness(es), views, and other charges.

References:

Hakkin Dava Yolu Ile Aranmasi, 4 February 2007, <http://ankarahukuk.wordpress.com/2007/02/04/hakkin-dava-yolu-ilearanmasi-1/> and 2

Atilla Sav, member of Ankara Bar, September 2007.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

75

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

AB Komisyonu, Türkiye'de Yargı Sisteminin İşleyişi, 2003,
<http://www.taa.gov.tr/abhukuku/AB/rapor.pdf>

Ailla Sav, member of Ankara Bar, September 2007.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

AİHM tazminatları siyasilere alınabilir,
<http://www.milliyet.com.tr/2006/04/05/siyaset/siy02.html>

Ailla Sav, member of Ankara Bar, September 2007.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

88

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

1982 Constitution, Articles 138-142;

Law 2802 on Judges and Prosecutors, Article 4,
<http://www.hukuki.net/kanun/2802.15.text.asp>

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | **50** | 25 | 0

References:

AB Komisyonu, Türkiye'de Yargı Sisteminin İşleyişi, 2003,
<http://www.taa.gov.tr/abhukuku/AB/rapor.pdf>

Atilla Sav, member of Ankara Bar, September 2007.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

According to the National Judiciary Information System (UYAP) cases are distributed automatically and electronically among the relevant courts and judges after the registration of cases since 2003. Special provisions of special laws apply in distributing cases to the judges too. <http://www.uyap.gov.tr/english/index.html>

See

AB Komisyonu, Türkiye'de Yargı Sistemini İnceleyiş, 2003, <http://www.taa.gov.tr/abhukuku/AB/rapor.pdf>

References:

1982 Constitution, Article 114

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law 1086 on Legal Trial procedure, <http://www.e-ticaret.adalet.gov.tr/HUKUK%20USULÜ%20MUHAKEMELER0%20KANUNU%20TÜMÜ.htm>

Law 5271 on Penal Trial,

<http://www.ceza-bb.adalet.gov.tr/mevzuat/5271.htm>

Law 2577 on Administrative Trial,

http://www.danistay.gov.tr/idari_yargilama.htm

Law No. 2247 on Disputes Tribunal,

<http://www.mevzuat.adalet.gov.tr/html/527.html>

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

1982 Constitution, Article 139,

<http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

Law 2802 on Judges and Prosecutors, Articles 44, 53, and 69, <http://www.hukuki.net/kanun/2802.15.text.asp>

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

No such case was reported.

References:

Atilla Sav, member of Ankara Bar, September 2007.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

Atilla Sav, member of Ankara Bar, September 2007.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

79

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

References:

AB Komisyonu, Türkiye'de Yargı Sisteminin İncelemesi, 2003,
<http://www.taa.gov.tr/abhukuku/AB/rapor.pdf>

Atilla Sav, member of Ankara Bar, September 2007.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Tennur Koyuncuoglu, Yargi cinsiyetsiz mi? http://www.radikal.com.tr/ek_haber.php?ek=r2&haberno=5827

Atilla Sav, member of Ankara Bar, September 2007.

Ulku Gedikli, Lawyer, Ankara, February 2008.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Law 1136 on Lawyering, Articles 176-181. http://www.barobirlik.org.tr/mevzuat/avukata_ozel/avukatlik_kanunu/

Tuncel Yazgan, Adli yard1mda baro tekeli k1r111yor mu?

http://www.leges.com.tr/site/index.php?option=com_content&task=view&id=44&Itemid=59

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

References:

Tuncel Yazgan, Adli yardimda baro tekeli kiriliyor mu?

http://www.leges.com.tr/site/index.php?option=com_content&task=view&id=44&Itemid=59

Atilla Sav, member of Ankara Bar, September 2007.

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Lawsuits related to consumer rights are free of charge. However the cost of a lawsuit in the field of contracts and property is higher. When the cost of legal services (lawyers) is concerned it increases even more.

References:

Hukuk Davalarında Yargılama Harc ve Giderleri ile Vekalet Ücreti, Ankara; Seckin Yayincilik, nd;

Atilla Sav, member of Ankara Bar, September 2007.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Atilla Sav, member of Ankara Bar, September 2007

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

AB Komisyonu, Türkiye’de Yargı Sisteminin İşleyisi, 2003,
<http://www.taa.gov.tr/abhukuku/AB/rapor.pdf>

Atilla Sav, member of Ankara Bar, September 2007.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Kayhan Mutlu,
Problems of Nepotism and Favoritism in The Police Organization in Turkey,
International Journal of Police Strategies&Management, 23 (3), 2000, 38-89.

Bürokratların atanma taktigi, Patronlar Dunyasi, http://www.patronlardunyasi.com/news_print.php?id=34529

Kamu Personeli Kanun Tasarisi Taslagi Ile Ilgili Degerlendirme,kayaum.politics.ankara.edu.tr/KAYAUMgorusu.doc
TESEV, Kamu Personel Yönetimi Reformu (Sorunlar – Öneriler), http://www.tesev.org.tr/projeler/proje_kamu_personel.php

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The total share of the expenditures of the law enforcement agencies (gendarmerie and police) to the 2007 total central government budget is 0.77 percent and to the GNP is 0. 21 percent. Modernization, training and working conditions of law enforcement agencies are negatively affected by budget cuts. Considering the fact that Turkey is a vast country, both geographically and demographically, this is not sufficient budget.

References:

Central Government Budgetary Expenditures, January-November 2007,
<http://www.bumko.gov.tr/>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

References:

A. Gani Yildirim, Polis-Politikaci İlişkisi Üzerine Bir Arastırmanın Düşündürdükleri, Cagin Polisi Dergisi, 1. <http://www.caginpolisi.com.tr/>

Kayhan Mutlu,
Problems of Nepotism and Favoritism in the Police Organization in Turkey,
International Journal of Police Strategies&Management, 23 (3), 2000, 38-89.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

67

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

The Ombudsman Law is not yet in effect. However, citizens can also appeal to the Petition Committee of the Grand National Assembly (See 1982 Constitution, Article 74, and Law 3071 on the Right to Petition:

<http://www.tbmm.gov.tr/komisyondilekcek/komisyonu/mevzuat.htm>) and the Human Rights Committee of the Grand National Assembly (Law 3686 <http://www.tbmm.gov.tr/komisyondilekcek/komisyonu/mevzuat.htm>).

NGO reports underline that these mechanisms are not so effective.

References:

Ethics Board of Public Servants,

See Law 5176 on the Establishment of the Board and Regulations,

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.5176&sourceXmlSearch=etik>

Fatih Karaosmanoglu, Güvenlik Güçlerinin Demokratik Hesap Verebilirliği ve Avrupa İnsan Hakları Mahkemesinin Satik v. Türkiye Kararı,

<http://www.geocities.com/fkaraosmanoglu/makaleler/mak2.htm>

Türkiye – Uluslararası Af Örgütü Genel Sekreteri Irene Khan başkanlığında bir heyetin Türkiye Ziyareti nedeniyle Türkiye Cumhuriyeti Başbakanına Bilgi Notu, Subat 2004,

<http://www.amnesty.org.tr/v1202200402.si>

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | **25** | 0

References:

Polisler de sanıklardan şikayetçi,

<http://www.ntvmsnbc.com/news/154554.asp>

Atilla Sav, member of Ankara Bar, September 2007.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES

NO

Comments:

There is no independent and specific institution to investigate the corrupt activities of the law enforcement officers. According to Law 657 and other special laws, a public officer can be subject to the investigation of discipline mechanisms of his/her agency and prosecuted by the public prosecutor upon the permission of the relevant superior in case of a violation of corruption-related laws.

References:

Law 657 on Public Servants, Articles 124-145,

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.657>

Law 2803 on the Organization, Duties and Responsibilities of the Gendermarie, Articles 15-17, <http://www.mevzuat.adalet.gov.tr/html/603.html>

Law 5549 on Prevention of Laundering Proceeds of Crime Law, Article 19

<http://www.masak.gov.tr/eng/Law-5549.htm>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100

75

50

25

0

Comments:

Upon the request of a superior or a complaint lodged by citizens, disciplinary authorities will conduct an investigation with the support of inspectors. The internal auditor prepares routine performance reports.

References:

A. Gani Yıldırım, Polis-Politikaci İlişkisi Üzerine Bir Arastırmanın Düşündürdükleri, Çağın Polisi Dergisi,

1. <http://www.caginpolsi.com.tr/>

Kayhan Mutlu,

Problems of Nepotism and Favoritism in The Police Organization in Turkey, International Journal of Police Strategies&Management, 23 (3), 2000, 38-89.

Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, February 2008.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

According to Law 657, public servants, including law enforcement officers, can be investigated upon the permission of their superior authority.

References:

Law 657 on Public Servants, Articles 10-13

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.657>

Law 4483 on the Trial of Public Servants and Other Public Employees, Article 3

<http://www.tbmm.gov.tr/kanunlar/k4483.html>

Law 5237 on Penal Law, various articles,

<http://www.tbmm.gov.tr/kanunlar/k5237.html>

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Semdinli Report of the Human Rights Investigation Committee of the Grand National Assembly, <http://www.tbmm.gov.tr/komisyon/insanhak/insanhaklari.htm>

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
