

Overall Score:

68 - Weak

Legal Framework Score:

75 - Moderate

Actual Implementation Score:

57 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁷⁵Anti-Corruption Non-Governmental Organizations

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

100

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes | No

Comments:

This right is subject to the general principles governing the right to association and the law on associations, but not the law on foundations. Examples of advocacy, monitoring and reporting organizations of this type are the Association for Combatting Corruption, the Transparency Association and the Association for the Protection of Citizens' Taxes (VAVEK). There are some associations focused on good governance such as the Corporate Governance Association of Turkey and the Corporate Social Responsibility Association of Turkey. There are some research-oriented organizations such as Economic and Social Studies Foundation of Turkey (TESEV) and the Economic Policy Research Foundation of Turkey (TEPAV) whose areas of research also include corruption. According to the reports of the Department of Associations of the Ministry of the Interior Affairs and the observation of independent scholars, there is no legal pressure on such associations dealing with corruption-related matters although the Progress Reports of the European Union (EU) and/or the decisions of the European Convention on Human Rights (ECHR) might underline potential restrictions on the practice of the law.

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

These are general rules applicable to any association or foundation established in Turke However, permission of the relevant public authority (the head of civil administration, the governor) is required.

References:

Law No. 5253 on Associations, Articles 21 and 38, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5253&MevzuatIlski=0&sourceXmlSearch=dernekler%20kanunu>
Law No. 5737 on Foundations, Article 25. http://www.vgm.gov.tr/001_Menu/02_Mevzuat/01_Kanun/5737.cfm
Law No. 5072 Concerning the Relationship Between Associations and the Public Institutions and Agencies, Article 2, http://www.vgm.gov.tr/001_Menu/02_Mevzuat/01_Kanun/5072.cfm
Law 227 on the Establishment and Duties of the General Directorate of Foundations, Article 38.
Law No. 4721 Civil Code, Articles 107.

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

Comments:

These general provisions apply to all associations, and they are routinely, but randomly, supervised by the inspectors of the Department of Associations of the Ministry of Interior Affairs.

References:

Law No. 5253 on Associations, Articles 19 and 32, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5253&MevzuatIlski=0&sourceXmlSearch=dernekler%20kanunu>

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

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

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

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

Within the scope of these preliminary requirements in the Law No. 5235 on Association (Articles 3, 19 and 26) , the procedure and process of founding an association has been facilitated by the authorities, especially after the new law was adopted.

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, December 2010, Ankara.
Murat Seker, academician, Istanbul University, January 2011.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

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

Comments:

No visible progress has been made toward enabling CSOs to become involved in policymaking process in 2010. Anti-corruption/good governance NGOs such as TEPAV, TESEV, Transparency Society were asked to provide their opinion in developing anti-corruption action plan as stakeholder, however, did not have a chance to take part in policy making process actively.

References:

Emergency Action Plan of the 58th Government, <http://ekutup.dpt.gov.tr/plan/aep.pdf>
Strategy Document for Improving Transparency and Struggle Against Corruption, <http://www.teftis.gov.tr/ShowBroadNews.aspx?id=308b097f-b709-4f6a-ad75-f057e532562f>
Bülent Tarhan, Chief Inspector, Prime Ministry, December 2010, Ankara.
Murat Seker, academician, Istanbul University, January 2011.
Association for All Audit Officers(DENETDE), December 2010, Ankara.
Hande Ozhabes, project coordinator, Transparency Society, January 2011.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

Comments:

Compared to previous years when the head of DENETDE, Atilay Erguven was subject to administrative disciplinary action in mid-2008, no similar action was observed.

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, December 2010, Ankara.
Murat Seker, academician, Istanbul University, January 2011.

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

No: A NO score is earned if any NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

100

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes | No

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, December 2010, Ankara.
Murat Seker, academician, Istanbul University, January 2011.
Association for All Audit Officers(DENETDE), December 2010, Ankara.
Hande Ozhabes, project coordinator, Transparency Society, January 2011.

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | No

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, December 2010, Ankara.
Murat Seker, academician, Istanbul University, January 2011.
Association for All Audit Officers(DENETDE), December 2010, Ankara.
Hande Ozhabes, project coordinator, Transparency Society, January 2011.

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, December 2010, Ankara.
Murat Seker, academician, Istanbul University, January 2011.
Association for All Audit Officers(DENETDE), December 2010, Ankara.
Hande Ozhabes, project coordinator, Transparency Society, January 2011.

Yes: A YES score is earned if there were no documented cases of NGO 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?

25

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

However, in principle workers in the Ministry of National Defence, General Staff and judicial officials cannot form trade unions (Aksam, a daily newspaper, 16.03.2011, <http://www.aksam.com.tr/sendikal-yasaklar-kalkmali-24797h.html>)

References:

The 1982 Constitution, Article 51, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2821 on Trade Unions,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.2821&MevzuatIlski=0&sourceXmlSearch=sendikalar>
Law No. 2822 on Collective bargaining, Strike and Lockout,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.2822&MevzuatIlski=0&sourceXmlSearch=sendikalar>
Law No. 4688 on Trade Unions for Public Employees,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.4688&MevzuatIlski=0&sourceXmlSearch=sendikalar>
Law No. 4857 on Labour,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.4857&MevzuatIlski=0&sourceXmlSearch=sendikalar>

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

There has been a process of de-unionization in some public and private workplaces. Pro-government unionization has been encouraged. The legal framework to which the Constitution refers in view of regulating the rights to negotiate, to organise collective actions for workers, employees and civil servants remains restrictive and needs to be brought into line with EU standards and ILO Conventions.

References:

Radikal, a daily newspaper, Calisanlarin sendika uyeligini engellemek icin 41 farkli yontem var (There are 41 methods to obscure union membership of workers), <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalHaberDetayV3&CategoryID=101&ArticleID=920912>
 Mesut Gülmez, Anayasa paketindeki sendikal hakla (Union rights in the constitutional package), Radikal, 31.08.2010, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalHaberDetay&ArticleID=1016454&Date=31.08.2010&CategoryID=99>
 EU 2010 Progress Report on Turkey, ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf
 Freedom House, Turkey in Transit, Democratization in Turkey, 2008, <http://www.freedomhouse.org/uploads/turkeyinturkish.pdf>
 European Trade Union Confederation, Turkish Trade Unions and Industrial Relations, http://www.etuc.org/IMG/pdf_TURKISH_3.pdf
 CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Turkey (ratification: 1952) Published: 2011, <http://www.ilo.org/ilolex/cgi-lex/singleilc.pl?query=062011TUR098@ref&chspec=03&highlight=&querytype=bool>
 CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Turkey (ratification: 1993) Published: 2011, <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloilc&document=226&chapter=3&query=C087%40ref%2B%23YEAR%3D2011&highlight=&querytype=bool&context=0>
 Perihan Sari, Former Labour Inspector, December 2010.

100: Trade unions are common and are an important part of 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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

100

05a. In law, freedom of the media is guaranteed.

Yes | No

Comments:

Turkey has made progress in aligning the national legislation with the EU framework on electronic communications and information technologies. However, the primary law and the implementing regulations are not yet fully aligned with the acquis. Although Article 301 of Penal Code was amended in 2008 the number of cases committed in connection with other articles of Penal Code, Press Law and Anti-Terror Law are still high. (ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf)

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=1.5.5237&MevzuatIliski=0&sourceXmlSearch=Article 301 of the Turkish Penal Law:](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIliski=0&sourceXmlSearch=Article%20301%20of%20the%20Turkish%20Penal%20Law)
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&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.

05b. In law, freedom of speech is guaranteed.

Yes | No

Comments:

Turkish law does not sufficiently guarantee freedom of expression in line with the ECHR and the ECtHR case law. The high number of cases initiated against journalists and the frequent website bans are a cause for concern. Undue political pressures on the media and legal uncertainties affect the exercise of freedom of the press in practice. (ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf)
Reporters Without Borders World Press Freedom Index made for more uncomfortable Turkish reading. Turkey was placed in 138th position in a list of 175 countries, down from 99th position in 2002. (<http://en.rsf.org/press-freedom-index-2010,1034.html>)

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.Aspix?MevzuatKod=1.5.5187&MevzuatIlski=0&sourceXmlSearch=>
Article 301 of the Turkish Penal Law: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.5237&MevzuatIlski=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?

69

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

It is argued that there is vast political pressure on media ownership. In this respect, the court case on the tax fine ordered in 2009 against Dogan Media Group, critical of the government, continues. The press exercises self restraint when reporting following the initiation of this case.

References:

AIHM basın özgürlüğü davalarında Türkiye şampiyon (Turkey is champion of freedom of press trials), Hurriyet, 13.03.2011, <http://www.hurriyet.com.tr/pazar/17256380.asp>
Yerel Gazete Sahibi Gerger'in Yargilanmasına Baslandı(Local media owner Gerger is tried), http://www.tgs.org.tr/index.php?option=com_content&task=view&id=310&Itemid=8
2010 Yılı İlerleme Raporu ve Genişleme Stratejisi'ne Bakış (Overview on 2010 Progress Report and Enlargement Strategy) http://www.tepav.org.tr/upload/files/1289380168-6.2010_Yili_Ilerleme_Raporu_ve_Genisleme_Stratejisine_Bakis.pdf
EU 2010 Progress Report on Turkey, ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf
Ahmet Abakay, chairman of Contemporary Journalist, January 2011.

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

According to Article 7 of Law No. 5187 on the Press, in order to start printing a periodical (newspaper, journal etc.) the owner(s) of the media must submit a declaration to the local prosecutor of the Republic. The prosecutor examines the declaration with its annexes (identification of the owner(s), registry of company or foundation etc.) and asks the owner(s) to complete the insufficient or incomplete documents, if any, within two weeks time (Article 8). In case of failure of the owner to complete the documents within this said period, the prosecutor applies to the penal court to stop the printing. The court decides on this case within two weeks. In case of closure, the owner can appeal to an extraordinary exception. It is also required that the owner(s) must submit the change(s) in the submitted documents to the prosecutor by means of a new declaration within two weeks after the change(s) took place.

References:

Law No. 5187 on Press Articles 6, 7, 8, and 9: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.5187&MevzuatIlski=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.

06c. 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 office of the public prosecutor after the prosecutor's examination of the documents. Legally, it may take less than two months, but in practice it may be only a few days if there is no legal 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 than the application for media ownership. The regulation on Permission for Establishing Workplace applies, too.

References:

Oya Han and Serdar Ala, Structures of Companies and Stages of Establishing a Company (in Turkish), Ankara: Kosgeb, 2005.
Nusret Ilker Colak, Kitle İletisim Hukuku, İstanbul: Oniki Levha yayıncılık, 2010.
Regulation on Permission for Establishing Workplace,
http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=3.5.20059207&MevzuatIlski=0&sourceXmlSearch=i_yeri%20açma
Naci Alan, Chairman of the Board, Union of the Newspaper Owners from Ankara, İstanbul and Anadolu, December 2010.

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.

06d. 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 US\$1,500. This includes all bureaucratic costs. If an existing company opens a new print publication, the cost is quite low. In other words, the major costs come not from the licence for printing a periodical, but from actually registering a brand new company. The Law on Commerce requires a fifty thousand Turkish Liras (33,333 USD) minimum capital for establishing a joint-stock company. This minimum amount is ten thousand Turkish liras for a limited liability company. However, labour, facilities and printing cost should be added to this amount.

References:

How is a company established? <http://www.birdunyabilgi.net/sirket-nasil-kurulursirket-turleri-nelerdir-hakkinda-bilgi>
 Nevzat Ardag, Sirketler El Kitabı, İstanbul: Arıkan Basım-Dağıtım, 2006.
 Law No. 6102 on Commerce, <http://www.tbmm.gov.tr/kanunlar/k6102.html>

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?

63

07a. 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 needed. In addition to that, the National Security Certificate which is issued by the Prime Ministry is required. Then new Law No. 6112 Concerning the Establishment and Broadcast of Radio and Television amended the old RTUK Law. A real or legal foreign person may have shares in only two broadcast company. However there are still restrictions. The government may reject or postpone the issuance of this certificate for political reasons. Terrestrial frequency distribution for broadcast has not been completed since it began in 1994, and all broadcast media (radio and TV stations) function within the scope of Provisional Article 6 of the Law No. 3984. According to the new law (Article 27) Broadcasting licence is given for ten years. Currently, about 150 TV and 50 radio stations broadcast via Turksat. This can be considered as a structural barrier to forming a media broadcasting entity. It also is argued that indirect political influence on broadcast media has recently been increased.

As regards freedom of the press, concerns remain as regards political attacks against the press. The court case on the tax fine ordered in 2009 against Dogan Media Group, critical of the government, continues. The press exercises self restraint when reporting following the initiation of this case.

References:

EU 2010 Progress Report on Turkey, ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf

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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | No

Comments:

All actions and procedures of the administration is subject to judicial review.

References:

1982 Constitution, Articles 125 and 155, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law 2576 on the Establishment of Regional Administrative Courts, Administrative Courts and Tax Courts, Article 5, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2576&MevzuatIliski=0&sourceXmlSearch=>

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.

07c. 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:

The procedure for obtaining a broadcast (radio and TV) media license at the Supreme Board of Radio and Television may take about two months. Obtaining a security license may take longer. Currently, no terrestrial licenses are being offered. However, transferring an existing terrestrial 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:

Radyo ve Televizyon Lisans Başvurularına İlişkin İşlemler
(Application Procedures for Radio and Television Broadcast Licence) http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=17e4a071-abaa-4579-80ea-ab53c88fd3b3

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In the process of application for broadcast licence a joint-stock company must submit the substitutive documents concerning paid-in capital (40 million Turkish Liras for TV broadcast and 8 million Turkish Liras for radio broadcast. In addition to that an advance payment for licence is required during the application. It varies between 80 mil Turkish Liras for local radio and 400 billion Turkish Liras for national TV. As of the decision of the Supreme Board of radio and Television dated 9 December 2009, licence and permission fees for TVs vary between 20,861 Turkish Liras (13,907 USD) and 208,610 Turkish Liras where as fees for radio licences vary between 4,171 Turkish Liras and 41,718 Turkish Liras. For IPTV the amount of paid-in capital varies between 50,000 (for radio) and 200,000 Turkish Liras for TV) and annual fees vary between 1,000 (for radio) and 10,000 Turkish Liras (for TV).

According to provisional article 4 of Law No. 6112, procurement for digital television frequency shall be held within two months after the adoption of the law. Until that time all radio and television stations shall pay a fee for terrestrial broadcasting. It is argued that this will create a financial burden especially on local radio and TV stations. In other words, many local TV stations will shut down before the procurement process. It is also underlined that this new legislation will increase the number of foreign investors who can simultaneously have 50 percent shares of two media companies at maximum (Article 19 of Law No. 6112).

References:

Atik Agdag, Medyayı bekleyen tehlike için uyarıda bulundu (Atik Agdag warns for danger waiting for the media), Milli Gazete, 19 March 2011, www.milligazete.com.tr/.../medya-sektoru-icin-kara-bir-milat-194046.htm

Application Procedures for Radio and Television Broadcast Licence (in Turkish)) http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=17e4a071-abaa-4579-80ea-ab53c88fd3b3
Licence and Permission Fees and Minimum Amount of Paid-in Capital for 2010, http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=2a74da6d-8bdc-4ed0-a62c-5c09d2ea10ed
Regulation for IPTV Broadcast Licence and Permission (in Turkish), http://www.rtuk.org.tr/sayfalar/IcerikGoster.aspx?icerik_id=1a32458f-b584-4894-a782-c6eb4594fa12

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

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 described by the Penal Code, will be monitored and prevented by a judge or a court decision.

Experts say that it is highly difficult to prevent the users from accessing online content that is published in other countries – for example, what will be the status of search engines such as Google and Yahoo? Due to the fact that the relevant legislation was adopted after the Internet came into widespread use, there are significant problems in practice.

Supervision is necessary. Instead of banning these websites, filtering or monitoring may be more effective along with educational activities. Another problem that the experts underline is that the relevant courts ban the internet sites only through examining posted pictures and documents. According to engelliweb.com, some 8,170 Internet websites are currently inaccessible either as the result of a court decision or at the initiative of the TIB. In June 2010, the Organization for Security and Co-operation in Europe (OSCE) estimated that “over 5,000 sites” had been blocked in the last two years. In 2009, it had estimated 3,700, some for “arbitrary and political reasons.” According to the OSCE, over 80% of the blockings observed in May 2009 were the result of administrative orders. The majority of them were made on grounds of “obscenity” and “the sexual exploitation of children.” Although Youtube was rendered accessible again the relevant authorities suspended several websites that were publishing prohibited content online during the last year. In March 2011, Google-owned Blogger platform was rendered inaccessible in Turkey. A local court banned the entire service, used by some 600 000 Turkish bloggers, in response to a complaint by satellite TV firm Digitürk that streaming media feeds from local soccer games were appearing on multiple Blogger websites, violating copyrights.

European Court of Human Rights has asked Turkish authorities to explain their use of the country's law to ban websites, responding to applications by two complainants who say the bans violate their right to freedom of expression.

References:

NEONEBU, Yeter! İnternet'te Sansüre Hayır Kampanyası (Stop! No to Censorship on Internet),

9.06.2010, <http://www.neonebu.com/ShowBlog2.aspx?Web=yurtsan&Cid=159898>

AGİT: 'Türkiye'de yasaklı 3,700 internet sitesi var' (OSCE: There are 3,700 internet sites banned in Turkey), http://www.bbc.co.uk/turkce/haberler/2010/01/100119_osce_turkey.shtml

Digitürk-Blogspot: Suç Duyurusu ve İtiraz (Digitürk-Blogspot: Criminal Complaint), <http://www.inetd.org.tr/duyurular/digiturk-blogspot-suc-duyurusu-ve-itiraz/>, 7.03.2011.

Youtube Ban, <http://ecohr.wordpress.com/2010/02/23/youtube-ban/>

Internet censorship in Turkey (Google), <http://ecohr.wordpress.com/>

Mutlu Binark(ed.) Yeni Medya Çalışmaları, Dipnot yayınları, 2007.

Mustafa Akgul, Cyber Civil Society Platform, February 2011.

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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

Comments:

The experts argue that content online has been blocked by the relevant authorities in order to prevent potential harms to the society. Technically competent people can easily access the blocked content by using alternative ways. Therefore, instead of censoring internet it is more important to enlighten ordinary citizens how to use internet. It is advised that this may be minimized by means of "self regulation." There is a Board of the Internet, which was established ten years ago and is part of the Ministry of Transportation, but it is not effective. Basically, the department of cyber crimes of the General Directorate of Security monitors the online content practically. According to Article 8 of the Law No. 5651, the prosecutor may take the decision of blocking the access to internet content in emergency situations. In any case, the judge (in case of prosecution) and the court (in case of investigation) can make the final judgement against it the relevant parties may object.

References:

Digitürk-Blogspot: Suc Duyurusu ve İtiraz (Digitürk-Blogspot: Criminal Complaint), <http://www.inetd.org.tr/duyurular/digiturk-blogspot-suc-duyurusu-ve-itiraz/>, 7.03.2011.
Mutlu Binark(ed.) Yeni Medya Çalışmaları, Dipnot yayınları, 2007.
Murat Volkan Dülger and Yasin Beceni, Türkiye’de İnternet Sitelerinin Erişiminin Engellenmesi Konusunda Farklı Hukuk Disiplinleri Açısından Değerlendirmeler” Raporu Özet Bulgular, (An Interdisciplinary Evaluation of Ban on Internet Sites in Turkey, Summary Finding of the Report) http://www.tusiad.org/_rsc/shared/file/Internet-Sitelerine-Erisim-Yasaklari-Raporu-Ozet-Bulgular.pdf
Ruya SAMLI and Elif Server KONAK, “Tedbir mi, kısıtlama mı? : İnternet Sansuru Hakkında Bir Arastırma” (A Measure or Restriction? A Study on İnternet Censorship), February 2011, <http://ab.org.tr/ab11/bildiri/59.pdf>
Mustafa Akgül, Cyber Civil Society Platform, February 2011.

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?

42

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes | No

Comments:

There is no privacy act but there is a relevant chapter in the Penal Law (Articles 125, 132, 133 and 134) protecting not only "public" figures but all individuals from the negative consequences of violating the privacy of individual lives and individual honor. These provisions are especially important for "violating the confidentiality of investigation" (Penal Law Article 285) and "influencing the judicial process" (Penal Law Article 288). Penalties for such crimes committed by means of press may increase by half.

Recent media reports about persons involved in Ergenekon case, a court case dealing with an illegal organization that tried to mount a coup, plus the corrupted members of the government party, exposed the private lives of many "public" figures and possibly damaged their reputation. In fact, the Press Law states that it is illegal to report news that directly or potentially affects a court case. However, a ban of broadcast was issued for Lighthouse case in 2008. In September 2010, an internet site (<http://www.vimeo.com>) was banned upon the indictment of Akif Hamzaçebi, an opposition deputy, where some clips about his private life were posted. (<http://www.hukuki.net/showthread.php?79609-Vimeo-Yasakland%FD&p=385035>) The new law on the Establishment and Broadcast Services of Radio and Televisions states that (Article 7, broadcast in emergency situations) "the Prime Minister or a minister who is assigned by him can suspend broadcasting temporarily in cases where national security requires to ban of broadcast or break down of public order highly likely." When this report was completed a draft law on reregulating phone tapping has been reviewed by the parliamentary commission. According to this draft law, contrary to the current provisions, reporting audio or visual record which was acquired from illegal sources will not be a crime anymore. Considering the fact that many of the reportings in print or internet media are of audio surveillance, media representatives argue that this can create a big harm to individual privacy and freedom of communication.

References:

1982 Constitution, Article 28: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 5237 Penal Code, Chapter 8 and 9, Articles 125, 132, 133, 134 and 288: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=ceza%20kanunu>
Law No. 5187 on Press, Articles 14, 18, 19 and 21: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.5187&MevzuatIlski=0&sourceXmlSearch=>
Law No. 6112 on the Establishment and Broadcast Services of Radio and Televisions, http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.6112&MevzuatIlski=0&sourceXmlSearch=radio_ve_televizyon
Draft Law Concerning the Amendments to Some Provisions of the Penal Law, <http://www2.tbmm.gov.tr/d23/1/1-1013.pdf>.
Draft Bill Would Change Turkish Media Law For The Worse, Journalists Say, 18.03.2011, <http://www.turkishweekly.net/news/112854/draft-bill-would-change-turkish-media-law-for-the-worse-journalists-say.html>.

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

According to the writings of famous Turkish journalist, in some cases either the government pressures the media company to censor itself or the company practices self-censorship. This is, of course, not a routine action by the Turkish press but has been widely reported recently.

References:

Atilla Sertel, Chairman of the Federation of Journalist of Turkey, Basın otosansür ve ekonomik baskı altında (Press under self-restraint and economic pressure), http://www.milliyet.com.tr/basin-otosansur-ve-ekonomik-baski-altinda/egge/haberdetay/11_01_2011/1337540/default.htm
İsmet Berkan'dan oto-sansür itirafı (İsmet berkan confesses about auto-censor), 12.11.2010, <http://www.gazeteciler.com/medya-kosesi/ismet-berkandan-oto-sansur-itirafi-25496h.html>
Financial Times, Turkey must halt media intimidation, 8.03.2011, <http://www.ft.com/cms/s/0/247210a2-49bd-11e0-acf0-00144feab49a.html#axzz1HA93F6pD>
Bekir Coskun, Basın One Eğilmesin (Don't Hang Your Head), İstanbul: Bilgi Yayinevi, 2011.
EU 2010 Progress Report on Turkey, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf
Ahmet Abakay, Chairman of the Society for Contemporary Journalist, February 2011.

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There is no pre-publication censoring, but according to evidence mentioned in the sources, and by the interviewees, the government requested that editors or media owners stop publishing some corruption-related stories. It is argued that recent confrontation between the government and the Dogan media group resulted from the corruption related content about the party's close circles.

References:

Andrew Higgins, Turkish Mogul Butts Heads With Premier, The Wall Street Journal, 23.03.2009, <http://online.wsj.com/article/SB123534107237243861.html>
Atilla Sertel, Chairman of the Federation of Journalist of Turkey, Basın otosansür ve ekonomik baskı altında (Press under self-restraint and economic pressure), http://www.milliyet.com.tr/basin-otosansur-ve-ekonomik-baski-altinda/eg/haberdetay/11_01_2011/1337540/default.htm
İsmet Berkan'dan oto-sansür itirafı (İsmet berkan confesses about auto-censor), 12.11.2010, <http://www.gazeteciler.com/medya-kosesi/ismet-berkandan-oto-sansur-itirafi-25496h.html>
Financial Times, Turkey must halt media intimidation, 8.03.2011, <http://www.ft.com/cms/s/0/247210a2-49bd-11e0-acf0-00144feab49a.html#axzz1HA93F6pD>
Bekir Coskun, Basın One Eğilmesin (Don't Hang Your Head), İstanbul: Bilgi Yayınevi, 2011.
Tuncay Mollaveisoglu, Gorunmez Holding (Invisible Holding), İstanbul: Siyah-Bryaz, 2008).
EU 2010 Progress Report on Turkey, http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf
Ahmet Abakay, Chairman of the Society for Contemporary Journalist, February 2011.

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?

65

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

Yes | No

Comments:

In pursuant to the above-mentioned legal regulations, media (print or broadcast) owners (or share holders) have to register in the Commercial Registry Gazette publicly as a commercial company. They pay taxes and also submit a declaration of assets to the superior administrative authority where they live but these declarations are not public unless otherwise a criminal/administrative investigation is conducted..

References:

Law No. 5187 on Press, Articles 6, 7, 8 and 9: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?>

[MevzuatKod=1.5.5187&MevzuatIlski=0&sourceXmlSearch=Bas1n%20Kanunu](#)
Statute of Commercial Registry of Feb. 2, 1957 (amended on August 28, 1998) Article 11:
<http://www.tobb.org.tr/organizasyon/hukukmusavirligi/digeryonetmelikler/TICARET%20SICIL%20TUZUGU.doc>
Law 3628 on Declaration of Property and Struggle Against Bribery and Corruption, Articles 6/g and
8/p, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

Yes: A YES score is earned if print media companies are required by law to publicly 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 publicly disclosed.

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

Yes | No

Comments:

In pursuant to the above-mentioned legal regulations media (print or broadcast) owners (or share holders) have to register as a commercial company. According to the Regulation, those who hold at least one percent share in the company have to make these declarations. Registry in the Commercial Registry Gazette is public. However, the Regulation states that the Supreme Board of rdio and Television can express some or all of the required information from the owners in the Official gazette publicly. They pay taxes and also submit a declaration of assets to the superior administrative authority where they live but these declarations are not public unless otherwise a criminal/administrative investigation is conducted.

References:

Law No. 5187 on Press, Articles 6, 7, 8 and 9: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5187&MevzuatIlski=0&sourceXmlSearch=Bas1n%20Kanunu>
Statute of Commercial Registry of Feb. 2, 1957 (amended on August 28, 1998) Article 11:
<http://www.tobb.org.tr/organizasyon/hukukmusavirligi/digeryonetmelikler/TICARET%20SICIL%20TUZUGU.doc>
Law 3628 on Declaration of Property and Struggle Against Bribery and Corruption, Articles 6/g and
8/p, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>
Law No 6112 on the Establishment and Broadcast Services of Radio and Televisions, Article
19, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.6112&MevzuatIlski=0&sourceXmlSearch=>
Regulation on Administrative and Financial Requirements for Private Radio and Television Institutions, Articles 14, 22 and
24, http://www.rtuk.gov.tr/sayfalar/IcerikGoster.aspx?icerik_id=680b5afb-9403-41dd-a573-6e433a51f6b2

Yes: A YES score is earned if broadcast media companies are required by law to publicly 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 publicly disclosed.

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

100 | 75 | 50 | 25 | 0

Comments:

The fights between pro- and anti-government media groups escalated rapidly during the last couple of years. As a result, ethical standards for the press have been heavily undermined. The press has become a means of personal attack, bias, and favoritism. A free and independent press is vital for transparency and to combat corruption, but it seems that, in Turkey, the press itself has been extensively polluted and politically polarized. Both the legal and institutional mechanism such as Press Council are not effective and the number of court cases about insulting by means of media reporting have been increased.

References:

Bulent Capli and Hakan Tuncel, Televizyon Haberciliğinde Etik (Ethics in Television Reporting), 2009, <http://ilef.ankara.edu.tr/etik/icindekiler/>
Adaklı, Gülseren (2009). "The Process of Neoliberalisation and the Transformation of the Turkish Media Sector in the Context of the New Media Architecture." Mediating Europe: New Media, Mass Communications and the European Public Sphere. Jackie Harrison ve Bridgette Wessels (der.) içinde. Oxford: Berghahn Books. 286–318.
Code of Professional Ethics of the Press, http://www.basinkonsevi.org.tr/lang_eng/copeotp.asp
Televizyon Habercileri için Rehber (Guide for Television Reporters), <http://ilef.ankara.edu.tr/etik/rehber-ilkeler/>
Ahmet Abakay, Chairman of the Society for Contemporary Journalists, February 2011.

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

Comments:

Media provides more coverage of the government and the main opposition party while undermining the activities of political parties that have little chance of passing the electoral threshold. This leads to unfair and unequal competition between political parties.

References:

Eda Caglayan, Media, politics and slanted news coverage during the election periods- case study of news on AKP, MA Thesis, METU, Turkey, 2010.

Omer Genckaya, Public Funding of Political Parties: The Case of Turkey, Washington DC: IFES, 2009. <http://www.ifes.org/files/PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf>

Erol Tuncer, Chairman of the Foundation of Economic, Social Research Foundation, Ankara, Turkey, December 2010.

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:

The government party, or parties, get more exposure in the state-owned media. The relevant laws basically provide for inequitable air time for political parties. Candidates do not have access to free air time on the state-owned media outlets.

References:

Eda Caglayan, Media, politics and slanted news coverage during the election periods- case study of news on AKP, MA Thesis, METU, Turkey, 2010.

Omer Genckaya, Public Funding of Political Parties: The Case of Turkey, Washington DC: IFES, 2009. <http://www.ifes.org/files/PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf>

Erol Tuncer, Chairman of the Foundation of Economic, Social Research Foundation, Ankara, Turkey, December 2010.

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?

0

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

Yes | **No**

Comments:

The Committee to Protect Journalists is alarmed by the wave of journalist arrests in Turkey in connection with an alleged plot to overthrow the government known as "Ergenekon." At least 12 journalists have been detained in less than a month; and at least nine are currently in custody, according to international news reports. However, both the prosecutor and the government circles argued that these journalist were not put into custody and then imprisoned due to their journalistic activities.

References:

CPJ concerned about rash of journalist arrests in Turkey, <http://cpj.org/2011/03/cpj-concerned-about-rash-of-journalist-arrests-in.php>
EU 2010 ProgressReport on Turkey, ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf
Ahmet Abakay, Chairman of the Society for Contemporary Journalists, December 2010.

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 the assault to journalist covering corruption in Turkey in 2010. No such news was reported in the media.

References:

Committee for Protection of Journalists, Attacks on the Press 2010: Turkey, <http://www.cpj.org/2011/02/attacks-on-the-press-2010-turkey.php>
Reporters Without Borders, Journalists still harassed despite progress with democracy, 19. 04.2011, http://en.rsf.org/turquie-journalists-still-harassed-despite-19-04-2011_40047.htmlAhmet Abakay, Chairman of the Society for Contemporary Journalists, December 2010.

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:

Cihan Hayirsevener had reported on corruption charges involving the owners of İkh Haber, another major daily in Bandırma, the Hurriyet Daily News reported. Three principals in İkh Haber had been imprisoned on charges of accepting cash payouts from a former mayor, the paper said.

References:

Cihan Hayirsevener killed in december 2010, <http://cpj.org/killed/2009/cihan-hayirsevener.php>
A

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.

55
1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

100

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

Yes | No

Comments:

However, the Law describes several limitations to the right to access government information (Part 4 of Law No.4982), including state secret, privacy, commercial secret.

References:

Law 4982 on Access to Information, Article 4:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&MevzuatIlski=0&sourceXmlSearch=Regulation on the Principles and Procedures for the Implementation of Law on Access to Information Articles 27-39>:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.20047189&MevzuatIlski=0&sourceXmlSearch=BlIgj%20Edi>
nme

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

If the relevant authority rejects the application for a government record on the ground of the 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 (which is part of the Prime Ministry) 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 4982 on Access to Information, Article 13:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&MevzuatIlski=0&sourceXmlSearch=Regulation on the Principles and Procedures for the Implementation of Law on Access to Information Article 24:>
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.20047189&MevzuatIlski=0&sourceXmlSearch=Bilgi%20Edi>

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

Comments:

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.

References:

Law 4982 on Access to Information, Article 4,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4982&MevzuatIlski=0&sourceXmlSearch=Regulation on the Principles and Procedures for the Implementation of Law on Access to Information,>
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.20047189&MevzuatIlski=0&sourceXmlSearch=Bilgi%20Edi>

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 to information requests effective?

83

13a. In practice, citizens receive responses 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, it may take almost 30 days to obtain the requested information (Article 20). However, the annual reports on access to information and our observations at ministerial level public institutions indicate that it takes at least two months to obtain a piece of information.

References:

Bilgi Edinme Hakkı Vatandaş Kullanım İstatistikleri (2004-2007): Bir BilgiEdinmeHakkı.Org Değerlendirmesi, (Right to Access Information Usage Statistics, 2004-2007: An Evaluation of BilgiEdinmeHakkı.Org)
http://www.bilgi edinme hakkı.org/doc/BilgiEdinmeHakkı_Org_Rapor_2008.pdf

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 22 of the relevant Regulation, the public authorities determine an annual proportional fee for obtaining information, such as photocopying costs, etc. Some information can also be provided online at no cost. According to the Circular, the base fee for a black and white photocopy per page is 50 new kuru (2006 prices, US\$0.30 cents at current exchange rate) and 100 new kuru for a color photocopy. (One "new" kuru is equal to 1/100th of a Turkish lira.) These fees shall be determined annually in terms of the revaluation rate. Currently, the cost of a black and white photocopy is about 50 cents.

References:

General Circular on Fee for Access to Information and Document:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=9.5.9919&MevzuatIliski=0&sourceXmlSearch=bilgi%20edinme>
Hande Ozhabes, Transparency Society, January 2011.

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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no in depth study on the content of the information provided by the relevant state authorities, however, it may vary, and provide standard official records about the requested information.

References:

Bilgi Edinme Hakkı Vatandaş Kullanım İstatistikleri (2004-2007): Bir BilgiEdinmeHakki.Org Değerlendirmesi, (Right to Access Information Usage Statistics, 2004-2007: An Evaluation of BilgiEdinmeHakki.Org)http://www.bilgiedinnehakki.org/doc/BilgiEdinmeHakki_Org_Rapor_2008.pdf
2009 Annual General Report on Access to Information, http://www.tbmm.gov.tr/bilgiedinme/bed_genelrapor_2009.pdf
Hande Ozhabes, Transparency Society, January 2011.

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

Comments:

A random study on the decisions of the Evaluation Board for the first half of 2007 indicated that it takes about a month for final decision on the appeals to the Board.

References:

Bilgi Edinme Hakkı Vatandaş Kullanım İstatistikleri (2004-2007): Bir BilgiEdinmeHakki.Org Değerlendirmesi, (Right to Access Information Usage Statistics, 2004-2007: An Evaluation of BilgiEdinmeHakki.Org) http://www.bilgiedinnehakki.org/doc/BilgiEdinmeHakki_Org_Rapor_2008.pdf
2009 Annual General Report on Access to Information, http://www.tbmm.gov.tr/bilgiedinme/bed_genelrapor_2009.pdf
Decisions of the Right to Access Information Board, <http://www.bedk.gov.tr/KurulKarar.aspx>
Hande Ozhabes, Transparency Society, January 2011.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Appeal costs do not constitute a financial burden. Judicial fees are also affordable.

References:

Bilgi Edinme Hakkı Vatandaş Kullanım İstatistikleri (2004-2007): Bir BilgiEdinmeHakki.Org Değerlendirmesi, (Right to Access Information Usage Statistics, 2004-2007: An Evaluation of BilgiEdinmeHakki.Org) http://www.bilgiedinnehakki.org/doc/BilgiEdinmeHakki_Org_Rapor_2008.pdf
2009 Annual General Report on Access to Information, http://www.tbmm.gov.tr/bilgiedinme/bed_genelrapor_2009.pdf
Decisions of the Right to Access Information Board, <http://www.bedk.gov.tr/KurulKarar.aspx>
Fees for opening a suit, <http://www.istanbulbarosu.org.tr/Document.asp?sKonu=738&DocumentIndex=avhukuk/harclarkanunu2007.htm>
Hande Ozhabes, Transparency Society, January 2011.

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.

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

100 | 75 | 50 | 25 | 0

Comments:

In 2009, only 0,7 percent of 1,091,589 requests were rejected on the basis of business confidentiality or state secrets. In such cases, no other details are usually provided regarding the reasons for rejecting the requests. 745 applicants appealed to the courts.

References:

Bilgi Edinme Hakkı Vatandaş Kullanım İstatistikleri (2004-2007): Bir BilgiEdinmeHakki.Org Değerlendirmesi, (Right to Access Information Usage Statistics, 2004-2007: An Evaluation of BilgiEdinmeHakki.Org) http://www.bilgiedinnehakki.org/doc/BilgiEdinmeHakki_Org_Rapor_2008.pdf
2009 Annual General Report on Access to Information, http://www.tbmm.gov.tr/bilgiedinme/bed_genelrapor_2009.pdf
Decisions of the Right to Access Information Board, <http://www.bedk.gov.tr/KurulKarar.aspx>
Fees for opening a suit, <http://www.istanbulbarosu.org.tr/Document.asp?skonu=738&DocumentIndex=avhukuk/harclarkanunu2007.htm>
Hande Ozhabes, Transparency Society, January 2011.

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.

Category 2. Elections

2.1. ⁷²Voting and Party Formation

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:

All Turkish nationals who are over 18 years old can exercise the right to vote (Constitution Article 67). Despite the recent renewal of electoral registry based on address recording system there are still disputes on double registry or no-registry.

References:

1982 Constitution Article 67, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 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 (Law 5678) deputies elections shall be held every four years. In original text of the 1982 Constitution, Article 77 stated that "elections for the Turkish Grand National Assembly shall be held every five years." Local elections are held every five years. Although the constitutional amendment of 2007 approved by popular referendum in October 2007 requires the election of the President of the Republic by popular vote, the date for next presidential election was not determined by law yet. The draft law is at the sub-parliamentary commission during this report was prepared (January 2011).

References:

Law 5678, Concerning the Amendment of Some Articles of the 1982 Constitution Article 1 <http://www.tbmm.gov.tr/kanunlar/k5678.html>
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.mevzuat.adalet.gov.tr/html/1089.html>
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?

92

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

100 | 75 | 50 | 25 | 0

Comments:

Sometimes disabled citizens failed to vote because polling stations were located on the second floor of the building. Disabled persons were not provided with adequate facilities during the local elections and the Supreme Board of Elections (YSK) took two decisions which had negative repercussions on the exercise of voting rights by the disabled. Electoral registry lists are not complete although registration was updated due to registration errors resulted from the administrative or individual mistakes. According to Article 63, Law 2839 and Article 6 of the Law 3376, when a citizen who is registered in the electoral registry fails to vote in the referendum without a valid excuse, he/she shall be subject to a fine. Although voting seems to be compulsory in Turkey, voting turnover has been decreasing recently. The fines that are determined by these laws have not been applied, mainly due to the high costs of collecting them. Finally in 2008, Law No. 5749 amending Law No. 298 on Basic Principles of Elections and Electoral Registry concerning how Turkish nationals abroad will vote was partially annulled by the Constitutional Court. This is an issue not only for minor parties but also big parties too. However, this has been postponed for years simply because of election security reasons. Recently, the Supreme Board of Elections also rejected the government party's application

because of election security reasons. Recently, the Supreme Board of Elections also rejected the government party's application on the voting of Turkish nationals living abroad simply due to time limitation and logistical matters. Finally, due to change of address some citizens were unable to vote, simply because the fact that their address change were not updated by their mistakes or administrative incapacity.

References:

Decision of the Supreme Board of Election, 26.02.2011, <http://www.ysk.gov.tr/ysk/docs/Kararlar/2011Pdf/2011-120.pdf> Article 63, Law 2839 on Deputies Elections and Article 6, Law 3376 on Submitting Constitutional Amendments to Referendum: <http://www.mevzuat.adalet.gov.tr/html/1087.html>
EUTurkey 2009 Progress Report, http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf
Erol Tuncer, Chairman of Social and Economic Research Foundation of Turkey (TESAV), Ankara, December 2010.

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 tallying is public. Although there are random rumors about ballot insecurity, neither the international observers nor the boards of election take these rumors seriously.

References:

Kemal Gozler, Deputies' Elections, <http://www.anayasa.gen.tr/tbmm-secim.htm>
TEIM Election Watch Analysis, TURKEY/Local elections
29 March 2009, <http://www.setav.org/ups/dosya/13852.pdf>
Erol Tuncer, Chairman of Social and Economic Research Foundation of Turkey (TESAV), Ankara, December 2010.

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:

Since 1987 all parliamentary elections were held before the elapse of the regular constitutional course. It is the first time in 2011, the general elections shall be held only one month before the elapse of the regular course (the last general elections was held on July 22, 2007).

References:

Kemal Gozler, Deputies' Elections, <http://www.anayasa.gen.tr/tbmm-secim.htm>

Law 298: http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1_4_298&MevzuatIliski=0&sourceXmiSearch=1982 Constitution, Article 77/2.
TEIM Election Watch Analysis, TURKEY/Local elections
29 March 2009, <http://www.setav.org/ups/dosya/13852.pdf>
Erol Tuncer, Chairman of Social and Economic Research Foundation of Turkey (TESAV), Ankara, December 2010.

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?

85

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

Yes | No

Comments:

Despite the fact that the Constitution considers political parties to be "indispensable elements of democracy," a total of 27 political parties were banned by the Constitutional Court in Turkey. After a decade, the People's Democracy party was closed down by the Court in late 2009.

References:

1982 Constitution, Article 68: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law 2820 on Political Parties, Article 5, 11: <http://www.mevzuat.adalet.gov.tr/html/608.html>
Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>)

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:

There are restrictions on criminal and mentally disabled people and public officers running for office, but citizens under criminal investigation can also run in the elections. However, an anti-democratic, centralized and elitist nomination process and the cost of financing a campaign are major practical obstacles. Despite ten percent national threshold in parliamentary elections a total of 26 candidates were elected to parliament as a record of all times. In local elections, first past-the-post system is used for mayoral positions and a simple proportional system for local assemblies' (municipal assembly and provincial general assembly) elections.

References:

1982 Constitution, Article 76: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2839 on Deputies Elections, Article 11: <http://www.mevzuat.adalet.gov.tr/html/1089.html>
Law No. 2972 on Local Administration, Neighborhood Headmanship and Elder Council Elections, Article 9: <http://www.mevzuat.adalet.gov.tr/html/665.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 the Law No. 2820, formation of political parties is an easy process. At minimum, thirty Turkish citizens who are qualified to be candidates in parliamentary (deputy) elections can form a political party. Upon the submission of the required documents to the Ministry of Interior 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. The operational costs, campaigning and membership are major issues in forming a political party in Turkish politics. Currently, there are 60 political parties registered at the Office of the Chief Public Prosecutor as of July 15, 2008. Although there are 61 registered parties at the Office of Chief Public Prosecutor, only 27 of them shall enter the general elections in June 12, 2011. Considering the fact that political parties are formed to enter the election to compete for the governmental power, the original provision Article 105 of the Law No. 2820 required to close down a political party which failed to enter the three consecutive general elections. However, this provision was annulled by the Constitutional Court in 2003.

References:

Omer Faruk Gencckaya, Public Funding of Political Parties: The Case of Turkey, www.ifes.org/.../PublicFundingSolutionforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf). (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
TEIM Election Watch Analysis, TURKEY/Local elections 29 March 2009, <http://www.setav.org/lups/dosya/13852.pdf>
Erol Tuncer, Chairman of Social and Economic Research Foundation of Turkey (TESAV), Ankara, December 2010.

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:

There is no discrimination in terms of race, ethnicity, and region. Despite the fact that the number of female deputies and elected officers at the local level has been increasing, women are still underrepresented simply because of the quite centralized and anti-democratic nomination procedures. In the current parliament about nine percent of 550 representatives are women. At local level ratio drops to % 0,9.

The cost of elections is another obstacle for political nominees without regard to gender. In the last general elections of 2007, a total of 26 independent deputies, 20 of whom were from the pro-Kurdish People's Democracy Party, were elected to parliament. Recently, the Supreme Board of Election announced that an independent candidate must pay a fee of 7,734 Turkish Liras (5,156 USD) for nomination as required by Article 21 of Law No. 2839 on Deputies Election. However, especially women commentators and groups criticized this decision that during the last election the nomination fee for independent candidates was almost one tenth of this amount. This will automatically block women nominations as well as other independent candidates.

References:

Burcin Belge, Turkey Gains "0" Points on Gender Equality – Again, 8.03.2011, <http://bianet.org/english/gender/128412-turkey->

[gains-0-points-on-gender-equality--again](#)

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, [www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf](#)
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](#).
([http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern](#))
TEIM Election Watch Analysis, TURKEY/Local elections
29 March 2009, [http://www.setav.org/ups/dosya/13852.pdf](#)
Erol Tuncer, Chairman of Social and Economic Research Foundation of Turkey (TESAV), Ankara, December 2010.

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. A system of party lists may discourage or prevent independent 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:

Due to ten percent national threshold in parliamentary elections, the opposition parties do not have enough seats to influence the legislative process unless the government party agrees with the opposition's ideas. Currently, there are six opposition parties in the parliament. 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 without referring to referendum.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, [www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf](#)
Erol Tuncer, Chairman of Social and Economic Research Foundation of Turkey (TESAV), Ankara, December 2010.

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

According to Article 79 of the 1982 Constitution, the Supreme Election Council shall execute all the functions to ensure the fair and orderly conduct of elections from the beginning to the end of polling, carry out investigations and take final decisions on all irregularities, complaints and objections concerning the elections during and after the polling, and verify the election returns of the members of the Turkish Grand National Assembly and presidential election. No appeal shall be made to any authority against the decisions of the Supreme Election Council. In addition to this, some international delegations such as OSCE-ODIHR can monitor the conduct of the elections closely. However, this is not regulated by law.

References:

1982 Constitution Articles 67 and 79
Law No. 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 exists 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 members) and the Council of State (five members). The members of the provincial election boards are elected from among the most qualified 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. However, some of the decisions of the Board has been evaluated by different political parties as "political." For instance, last year the Board decided that campaign period for the constitutional referendum would be 120 days. The government party considered this a "political" decision taken by force.

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>

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:

The members of the Supreme Board of Election are elected from among the members of the Court of Cassation (six members) and the Council of State (five members) by absolute majority of the total number of members of these superior courts. The members of the Board serve for six years and can be reelected (Article 11 of the Law No. 298) Political parties that 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 No. 298, Articles 17 and 19).

References:

A. Seref Gozubuyuk, *Türkiye'nin Yönetim Yapısı*, Turhan Kitabevi, Ankara, 2006.
Duties and Powers of the Supreme Board of Election (in Turkish), <http://www.ysk.gov.tr/ysk/index.html>
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

References:

A. Seref Gozubuyuk, *Türkiye'nin Yönetim Yapısı*, Turhan Kitabevi, Ankara, 2006.
Duties and Powers of the Supreme Board of Election (in Turkish), <http://www.ysk.gov.tr/ysk/index.html>
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

Comments:

The new SECSIS (Voter Registration System, <http://www.ysk.gov.tr/ysk/SecsisProjesi/SecsisIndex.htm>) enabled the Supreme Board of Election to announce the recent general 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 No. 298, Article 13) and posted on the Board's website.

References:

A. Seref Gozubuyuk, *Türkiye'nin Yönetim Yapısı*, Turhan Kitabevi, Ankara, 2006.
 Duties and Powers of the Supreme Board of Election (in Turkish), <http://www.ysk.gov.tr/ysk/index.html>
 GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
 (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
 Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

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 (law amending the constitution), 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 about US\$16). There are also immunity files about several deputies who violated the electoral prohibitions but investigations of deputies are postponed to the end of the parliamentary period.

References:

A. Seref Gozubuyuk, *Türkiye'nin Yönetim Yapısı*, Turhan Kitabevi, Ankara, 2006.
 Duties and Powers of the Supreme Board of Election (in Turkish), <http://www.ysk.gov.tr/ysk/index.html>
 GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
 (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
 Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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 electoral registry is publicly posted on the table board of each neighborhood headmanship to enable citizens to check their names on the list and to appeal for corrections according to Articles 39 and 122 of the Law No. 298. Although "electoral registry system based on address" is an efficient one those who moves from one place to another may face with great bureaucratic difficulties unless their headmanship inform the township electoral registry office about these changes on time.

References:

Electoral Procedures, <http://www.ysk.gov.tr/ysk/index.html>
 EU Turkey 2009 Progress Report,
 ec.europa.eu/enlargement/pdf/key.../2009/tr_rapport_2009_en
 GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party
 funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
 (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkmsource=extern>
 Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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 No. 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.

Comments:

In a hierarchical way (from bottom-up), citizens can appeal to the boards for review of electoral violations. The Supreme Board of Election has the final "say" on disputes on the election results. In recent local elections of 2009 political parties appealed to the township board of elections for example, the government party appealed to the board of election for recounting of the votes in Buyukcekmece town of Istanbul. However, the opposition party candidate was the winning with an increasing number of difference in the second counting by the board.

References:

Buyukcekmece'de itiraz gerilimi, <http://www.ntvmsnbc.com/id/24952317/>
 GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
 (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>
 TEIM Election Watch Analysis, TURKEY/Local elections
 29 March 2009, <http://www.setav.org/ups/dosya/13852.pdf>
 Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

Comments:

Indoor electioneering activities, including in military barracks, military headquarters, military units, buildings and facilities are prohibited by law (Law 298, Article 51/final). During the last local elections of 2009, there was no clear sign of military circles concerning electoral competition.

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.), New York: Oceana Publications, 2005.
 TEIM Election Watch Analysis, TURKEY/Local elections
 29 March 2009, <http://www.setav.org/ups/dosya/13852.pdf>
 Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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:

According to Article 25 of Law 298, both candidates and political parties may assign an observer at the polling stations. There is a legal provision concerning the presence of international observers but several international observer groups also visited polling stations at different localities without any difficulty.

References:

GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf). (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
TEIM Election Watch Analysis, TURKEY/Local elections
29 March 2009, <http://www.setav.org/ups/dosya/13852.pdf>
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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:

Although there is no legal regulation on regarding election observers, with the permission of the Turkish government some independent observers and those from the Organization for Security and Cooperation in Europe (OSCE) and the Parliamentary Assembly of Council of Europe came to Turkey during different election periods. These delegations can visit the government officials, parties' representatives, experts, journalists and voting stations freely.

References:

GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf). (<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
TEIM Election Watch Analysis, TURKEY/Local elections
29 March 2009, <http://www.setav.org/ups/dosya/13852.pdf>
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

20a. In law, there are limits on individual donations to political parties.

Yes | No

Comments:

Private contributions to political parties may be in cash or in kind. Membership fees, deputy's fees, fees for nomination in the elections, and donations by real and legal persons, excluding public or semi-public entities, are major sources of private contributions and are made annually. According to Article 66, the upper limit for an individual donation to a political party was 2 billion Turkish liras (US\$3,200) when the law adopted in 1983. This upper limit is revalued each year. In 2010, it is 23.067 Turkish Liras (15,378 USD). Donations to candidates during the election campaigns are not regulated yet despite the requirement of the constitution (Article 69/final). Receipt of individual and corporate donations is required to be recorded, but, in practice, donations to political parties are not registered properly; this is one of the major loopholes of political financing.

References:

1982 Constitution, Article 69, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties, Article 66,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.2820&MevzuatIliski=0&sourceXmlSearch=>

Yes: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

Yes | No

Comments:

The annual upper limit to individual donations applies to corporate donations. Records of donations, particularly corporate donations, are not kept properly. It is assumed that corporations contribute to political parties by means of individuals or illegally (e.g., percentage of public bid) or in kind (campaign contribution). As mentioned earlier, contributions to individual candidates are not regulated by law, and constitutes another significant loophole in political funding. The primary loopholes are individual and corporate donations.

References:

Law 2820 on Political Parties, Article 66/2
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.2820&MevzuatIliski=0&sourceXmlSearch=>

Yes: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

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

Yes | No

Comments:

The law does not put a limit on total party expenditures but emphasizes that expenditures of political parties cannot be contrary to their objectives. Naturally, a logical proportionality between revenues and expenditures of political parties is taken into consideration when the Constitutional Court examines the parties' accounts.

References:

Law 2820 on Political Parties 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 in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

Yes | **No**

Comments:

Under the 1982 constitution (Article 69), political parties are theoretically obliged to disclose donations. Donations can be received by a political party in return for a receipt on which the identity of the donor or his/her representative is printed. However, in practice, there is little or no access to such records on the part of citizens. The Constitutional Court can examine the donation records in the process of controlling of the annual party accounts. There are no regulations for campaign financing of individual candidates and political parties.

References:

1982 Constitution, Article 69, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties, 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.

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

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 having the capacity to examine these accounts technically. Although it can get assistance from the Audit Court if needed, this auditing is procedural. Both candidates' and political parties' campaign finances are not regulated.

References:

1982 Constitution, Article 69: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law 2820 on Political Parties, Articles 74-77
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIlski=0&sourceXmlSearch=>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

Yes | No

Comments:

There is no legal regulation describing an organization that monitors parties' finances. 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.

The Constitutional Court only audits the parties' annual accounts. Individuals or legal persons may refer to the Office of the Chief Public Prosecutor when and if there is any violation of the laws, but the Constitutional Court is the only authorized agency to fulfill the function of supervision. Transparency International-Turkey Chapter is expected to monitor the financing of political parties, yet it does not. The Committee for Monitoring Deputies (MUMKOMs), which is a voluntary association and has no legal base, also monitors the financial affairs of the deputies and makes annual reports but in limited terms. There are some other anti-corruption associations, such as the Association for Combating Corruption, which also monitor money-politics relations, but on an irregular basis.

References:

1982 Constitution, Article 69/4: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties, Part III: <http://www.tbmm.gov.tr/genser/kanun3.html>

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 the financing of political parties. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

Yes | No

Comments:

There is no regulation of political financing of individual candidates. This constitutes a major loophole in general and local elections laws, especially in big metropolitan districts. The GRECO also underlines the regulatio of campaign finance in Turkey properly (GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitorin g/greco/evaluations/round3/GrecoEva l3\(2009\)5_ Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitorin g/greco/evaluations/round3/GrecoEva l3(2009)5_ Turkey_Two_EN.pdf). (<http://cmiskp.echr.coe.int/tpk197/view.asp?action=html&document Id=837654&portal=hbkm&source=extern>)

References:

1982 Constitution, Article 69: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties, Article 66:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIisiki=0&sourceXmlSearch=>

Yes: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

Yes | No

Comments:

There is no regulation of political financing of individual candidates. This constitutes a major loophole in general and local election laws, especially in big metropolitan districts. The GRECO also underlines the regulatio of campaign finance in Turkey properly (GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)

References:

1982 Constitution, Article 69: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties, Article 66:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIliski=0&sourceXmlSearch=>

Yes: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

Yes | **No**

Comments:

There is no regulation of political financing of individual candidates. This constitutes a major loophole in general and local election laws, especially in big metropolitan districts. The GRECO also underlines the regulation of campaign finance in Turkey properly (GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)

References:

1982 Constitution, Article 69: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIliski=0&sourceXmlSearch=>

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

No: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | **No**

Comments:

There is no regulation of political financing of individual candidates. This constitutes a major loophole in general and local election laws, especially in big metropolitan districts. However, provisions of the Penal Code may apply appropriately to the situations where an illegal transaction appears between individual. Additionally, according to Article 152 of the Law No. 298 vote buying is prohibited and subject to punishment by prison terms from one year to three years. This provision shall apply even if such benefits promised or provided consists of the travel, food and beverage expenses of voters. A voter who has accepted the above-described benefits or promises thereof shall be punishable by the same penalties. Penalties shall be doubled for those who have committed these offences by using violence, threat or coercion.
The GRECO also underlines the regulation of campaign finance in Turkey properly (GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)

References:

1982 Constitution, Article 69: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 2820 on Political Parties:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2820&MevzuatIliski=0&sourceXmlSearch=>
Law No. 298 on the Fundamental principles of Elections and Electoral Registry Article 152, <http://www.mevzuat.adalet.gov.tr/html/357.html>

Yes: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

Yes | **No**

Comments:

There is no regulation of political financing of individual candidates. This constitutes a major loophole in general and local election laws, especially in big metropolitan districts. Transparency International-Turkey Chapter is expected to monitor the financing of political parties, yet it does not. The Committee for Monitoring Deputies (MUMIKOMs), which is a voluntary association and has no legal base, also monitors the financial affairs of the deputies and makes annual reports but in limited terms. There are some other anti-corruption associations, such as the Association for Combating Corruption, which also monitor money-politics relations, but on an irregular basis.

References:

1982 Constitution, Article 69: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>

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 the financing of individual political candidates' campaigns. 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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

22. Are the regulations governing the political financing of parties effective?

42

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

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

Comments:

Limits are sufficient for ordinary citizens yet very low for those who can influence the electoral process. Therefore, most of individual and corporate donations are unregistered. It is argued that in cash and in kind contributions from individuals and corporations to political parties are provided by means of tenders, contracts, concessions etc. Especially big political parties have their own business groups which in turn support them in the elections. Since there is no campaign finance law "soft money" is abundant.

References:

Tuncay Mollaveisoglu, Gorunmez Holding (Invisible Holding), Istanbul: Siyaz Beyaz yayinlari, 2008.
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

Comments:

Limits are sufficient for ordinary citizens yet very low for those who can influence the electoral process. Therefore, most of individual and corporate donations are unregistered. It is argued that in cash and in kind contributions from individuals and corporations to political parties are provided by means of tenders, contracts, concessions etc. Especially big political parties have their own business groups which in turn support them in the elections. Since there is no campaign finance law "soft money" is abundant.

References:

Tuncay Mollaveisoglu, Gorunmez Holding (Invisible Holding), Istanbul: Siyaz Beyaz yayinlari, 2008.
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. 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 is no legal limit on expenditures of political parties. It is assumed that there must be a proportionality between the revenues and expenditures of party accounts. Cartel parties mainly rely on state aid and spend a lot of money for construction of new party buildings, travel and campaigns, rather than education, grassroots and gender-related activities. Small parties have few financial resources to organize effective activities and can hardly afford the day-to-day expenses. Since campaign finance is not regulated and there are no records on campaign donations (revenues) to parties and candidates, it also is not known how much political parties, and especially individual candidates, spend in local and general elections. Therefore, the requirement of Article 69/final of the 1982 Constitution to regulate campaign finance is crucial in assessing a party's expenditures. The financial relations of political parties with entities outside the political realm (commercial, solidarity networks, etc.) is a major factor in explaining how some political parties finance their expenditures beyond the limits of their legal revenues.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party

funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

There is no an entity or agency for monitoring party financing. The Constitutional Court only audits (ex post facto) the parties' accounts in accordance with the Constitution and the Law No. 2820. 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, which is entitled to audit but not monitor the parties' accounts, only warns political parties if there is any undue financial transaction. It enforces fines and transfers any 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.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no agency that monitors the financing of political parties. The Constitutional Court only audits parties' accounts on documents provided by political parties and available data. 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.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties 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. Auditing parties' accounts are made according to available documents and whatever other information political parties have provided. Contributions constitute the second largest source of party income for cartel parties especially. However, they are not kept properly or disclosed and parties' accounts do not reflect the real amount of contributions donated to political parties, either in cash or kind.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party 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.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

Comments:

The major loophole is unregulated campaign financing, as candidates are not subject to any campaign finance regulation. There is no legal and practical limit on donations to individual candidates.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Despite the requirement of the Constitution (Article 69/final) there is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections. The Committee for Monitoring Deputies (MUMIKOM) monitors individual deputies' activities but it is limited by the number of its staff. Individual candidates' electoral fraud (Article 152 of Law No. 298) and other illegal transactions can be subject to investigations by criminal complaint.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections. However, individual candidates' electoral fraud (Article 152 of Law No. 298) and other illegal transactions can be subject to investigations by criminal complaint.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns 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.

24. Can citizens access records related to the financing of political parties?

56

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Law 2820 (Articles 73 and 74) requires that every registered party must submit the last year's final accounts to the Constitutional Court and the Office of the Chief Public Prosecutor before the end of June. Delays may lead to a 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 are not subject to any regulation and auditing. Few political parties publish their accounts online before their final accounts are audited by the Court. However, some parties for example the Justice and Development Party posts the updated general accounts on its web page regularly.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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

75:

50: Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties 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 after the final report is approved by the Court's board. It may take six months to a few years. Few political parties publish their accounts online before their final accounts are audited by the Court. However, citizens can access only the itemized accounts, not the details, of parties' accounts.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

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 after the final report is approved by the Court's board. It may take six months to a few years. Citizens can access only the itemized accounts, not the details, of parties' accounts. Political parties publish their accounts online before their final accounts are audited by the Court. Citizens may access the financial records of political parties within the scope of the right to access to information. Few political parties publish their accounts online before their final accounts are audited by the Court. However, citizens can access only the itemized accounts, not the details, of parties' accounts.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbk&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Political parties publish their accounts online before their final accounts are audited by the Court. Citizens may access the financial records of political parties within the scope of the right to access to information. However, neither the Constitutional Court's reports nor the special information provided by the party include detailed items on party accounts.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

0

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections. However, few candidates have publicized their campaign budgets in the past.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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

75:

50: Individual 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: Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections. However, few candidates have publicized their campaign budget in the past.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections. However, few candidates have publicized their campaign budget in the past.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEvaI3(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no regulation of political financing of individual candidates. This is one of the major loopholes in political funding in Turkey, causing unfair and unequal competition in the elections. However, few candidates have publicized their campaign budget in the past.

References:

Omer Faruk Genckaya, Public Funding of Political Parties: The Case of Turkey, 2009, www.ifes.org/.../PublicFundingSolutionsforPoliticalPartiesinMuslim-MajoritySocieties.pdf
GRECO Third Evaluation Round Evaluation Report on Turkey on Transparency of party funding [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13\(2009\)5_Turkey_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEva13(2009)5_Turkey_Two_EN.pdf).
(<http://cmiskp.echr.coe.int/t/kp197/view.asp?action=html&documentId=837654&portal=hbkm&source=extern>)
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

3.1. ⁴⁹Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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

100

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes | No

Comments:

As of September 2010, 16,093 cases were pending before the ECtHR regarding Turkey which has abided by the majority of

ECtHR rulings, including payment of compensation totalling €6.1 million in 2009. Amendments to the Law on enforcement of judgments address shortcomings in the judicial process that were identified in several ECtHR rulings against Turkey. However, some rulings have not been followed up by Turkey for several years.

References:

1982 Constitution, Article 19/last, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 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.

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

88

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution, the prime minister (PM) is politically responsible person for the governmental activities. However, each minister, and the cabinet as a whole, is also responsible. Although systems have become more transparent, both the PM and the ministers do not always give explanations for their policies. There is a spokesman for the Council of Ministers who makes the public declarations on behalf of the council. However, it was evident that some of the important ministers make contradictory private public statements to the other members of the government. A spokesman office was also established for the Prime Minister which caused further complication for the coordination of one voice communication in the government. Many of the appointments, promotions and dismissals in public administration are carried out without giving any reason. The Council of State (Danistay) may decide to stay a decision or annul those governmental actions that are made without a reason. Even after a long period of time, the government's arbitrary decisions may remain in force. In other cases, the relevant ministry may carry out a decision anyway through other mechanisms such as issuing a new regulation. Recently, it was argued that the omnibus bill that was adopted by the parliament in March 2010, introduced a final step towards no judicial review against privatization process by using the phrases such as "irrevocability," "probability of incurring more public loss," and "reliability for privatization practices among national and international circles." In other words, sometimes reason of statements and explanations for governmental acts and procedures are too vague to be reasonable.

References:

Ozellestirmede patronlara kiyak (A great favour for bosses in privatization process), 7.12.2010, <http://haber.sol.org.tr/devlet-ve-siyaset/ozellestirmede-patronlara-buyuk-kiyak-haberi-36573>
A. Seref Gozubuyuk and Turgut Tan, *Idare Hukuku*, Cilt 1 Genel Esaslar, Guncellestirilmis 5. Basi, Ankara: Turhan Kitabevi, 2007.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.

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.

27b. In law, the judiciary can review the actions of the executive.

Yes | No

Comments:

All actions and procedures of the executive are subject to judicial review. 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/content.aspx?s=icotrot>
Law 2575 on Council of State, Articles 23-38:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?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.Aspix?MevzuatKod=1.5.2576&MevzuatIliski=0&sourceXmlSearch=>
Law No. 2577 on Administrative Trial Article 2:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

Administrative judicial review, despite political influence, is very effective as a checks and balance mechanism, but the administration does not implement the judicial decisions effectively. On the other hand, constitutional/legal and administrative changes or possible changes in the judicial system cause some slowing down actions. In the case of Fevzi Budak, former director of national education in Erzurum province, who have been appointed to 11 different positions by the Ministry of National Education, yet returned to his original position by the judicial decisions, was appointed to Kars finally.

References:

Fevzi Budak'a Yapılanlar, Yargı Kararlarının Tanınmadığını Gösteriyor (What has been done to Fevzi Budak proves that the judicial decisions are not recognized), 25.2.2011, http://www.turkegitimsen.org.tr/haber_goster.php?haber_id=13403
TÜDEF, Basbakan Erdogan ve Bakanlar Kurulu uyelerine tazminat davası açtı (Federation of Customer Associations opens a suit for damage against Prime Minister Erdogan and the Council of Ministers), 21.02.2011, http://www.samanyoluhaber.com/h_496902_tudef.-basbakan-erdogan-ve-bakanlar-kurulu-uyelerine-tazminat-davasi-acti.html
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.

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 rely 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.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

Comments:

The current government rarely refers to the executive order (decree having the force of law) simply due to the fact that it controls sufficient number of seats in the parliament. However, in late March, before the general elections to be held in June 2011, the government submitted an authorization decree to reorganize the ministerial structure in the executive. This caused a great opposition (Opposition criticizes government for seeking special authority, 29.03.2011, <http://www.hurriyetdailynews.com/n.php?n=government-seeks-authority-during-parliamentary-break-2011-03-29>).

References:

Final Status of the Decrees Having the Force of Law, http://www.tbmm.gov.tr/develop/owa/khk_sd_sorgu_sonuc?taksim_no=1&kullanici_id=8677987&sonuc_sira=20&bulunan_kayit=237&metin_arama=&icerik_arama=
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.

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.

28. Is the executive leadership subject to criminal proceedings?

0

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

Yes | **No**

Comments:

The head of state (President of the Republic) is immune from prosecution, except for acts regarding high treason, a charge that is almost impossible to identify in practical terms. However, the prime minister can be prosecuted on the vote of the majority of the parliament. They can then refer the case to the Supreme Court or lift his or her immunity from prosecution.

References:

1982 Constitution, Articles 83, 99, 100 and 105, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>

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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

Yes | **No**

Comments:

Like the prime minister, ministers also have parliamentary immunity. Articles 99 and 100 of the 1982 Constitution also apply to them.

References:

1982 Constitution Article 83, 99 and 100, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>

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.

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

41

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

Yes | No

Comments:

The head of the state (president) does not declare assets but the prime minister, as the head of the government, makes regular asset declaration according to the Constitution and the law. However, these declarations are not made public unless there is a criminal investigation. Asset disclosure of politicians, especially of the leaders, is the subject of a major debate in Turkey.

References:

1982 Constitution, Article 71, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 3628 on Asset Declaration, Struggle Against Bribe and Corruption, Article 2:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&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.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

Yes | No

Comments:

However, the asset disclosures are confidential unless the official becomes the subject of a criminal investigation.

References:

1982 Constitution, Article 71, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 3628 on Asset Declaration, Struggle Against Bribe and Corruption, Article 2:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

Yes | No

Comments:

However, gift-giving and hospitality are a cultural component of Turkish society. Therefore, rules on banning or restricting gifts given to or by those in public service are generally bypassed or violated.

References:

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

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

Regulation Concerning Principles of Ethics for Public Officials and Procedure and Principles of Application, Article 15:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=7.5.8044&MevzuatIlski=0&sourceXmlSearch=etik>

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

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIlski=0&sourceXmlSearch=>

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.

29d. 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

Comments:

The head of the state is exempted from auditing of asset disclosure forms. The prime minister and ministers have to make asset declarations every five years at the beginning and the middle of every decade (i.e., 2005 and 2010), or at any time there is a significant change in their assets. However, there is no auditing mechanism to carry these out. Declarations are kept confidential unless the executive member becomes the subject of a criminal investigation.

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9,

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

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.

29e. 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.

References:

Law No. 2531 on Restrictions for Post Government Service, Article 2: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2531&MevzuatIiski=0&sourceXmlSearch=>

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.

29f. 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 restricting post-government private sector employment for heads of state and government and ministers. However, it is rare that heads of state or members of the Council of Ministers enter the private sector after government service. Some executive members did join the executive boards of private companies after their government service.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Omer Faruk Genckaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials,2009. <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

Gifts and hospitality are part of Turkish culture at large. However, the scope and extent of gifts and hospitality is the major consideration.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Omer Faruk Genckaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials,2009. <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law does not require an auditing mechanism. A few ministers have made their assets public in the past in response to heavy public pressure.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Omer Faruk Genckaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

Comments:

However, sometimes individual officials publicly declare their assets when they first take office or in response to public pressure.

References:

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 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.

30b. 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:

The head of the state is exempted from making asset disclosure records public. The prime minister's declarations are kept confidential unless there is a criminal investigation.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Omer Faruk Genckaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials,2009. <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

30c. 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:

The head of the state is exempted from making asset disclosure records public. The prime minister's declarations are kept confidential.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Omer Faruk Genckaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials,2009. <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

The head of the state is exempted from making asset disclosure records public. The prime minister's declarations are kept confidential. In fact these are simple forms including items related to estate and asset.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayınevi, 2010.
Omer Faruk Genckaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

50

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Government party considers the legal prohibitions during electoral period more closely. However, public officials were invited to attend the party's meetings. Public vehicles are used rarely but regularly especially when the prime minister or ministers visit some localities as a part of their scheduled official program.

References:

Vali Coş'dan Ak Parti mitingine resmi izin açıklaması (Governor Cos explains the official permission for AK PArti meeting), <http://www.memurlar.net/haber/173719/>
Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayınevi, 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

58

32a. In law, the judiciary can review laws passed by the legislature.

Yes | No

Comments:

The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency, martial law or in time of war.

References:

1982 Constitution Articles 150 and 152, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>

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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

The President of the Republic, parliamentary groups of the party in power and of the main opposition party and a minimum of one-fifth of the total number of members of the Turkish Grand National Assembly shall have the right to apply for annulment action to the Constitutional Court, based on the assertion of the unconstitutionality of laws in form and in substance, of decrees having the force of law, of Rules of Procedure of the Turkish Grand National Assembly or of specific articles or provisions thereof. In addition to that If a court which is trying a case, finds that the law or the decree having the force of law to be applied is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it shall postpone the consideration of the case until the Constitutional Court decides on the issue. Annulment action may take time.

After the recent constitutional amendments it is argued that the structure of the constitutional court is not anymore bi-partisan and impartial.

References:

Kemal Gözler, Turk Anayasa Hukuku, Bursa: Ekin Kitabevi Yayinlari, 2000, <http://www.anayasa.gen.tr/anayasa-yargisi.htm>
Ergun Özbudun, Professor of Constitutional Law, Bilkent University, December 2010.

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.

32c. In law, are members of the national legislature subject to criminal proceedings?

Yes | No

Comments:

A member of the national legislature 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/content.aspx?s=tcotrot>

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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes | No

Comments:

However, asset disclosure forms are kept confidential unless a member of the national legislature becomes the subject of a criminal investigation.

References:

1982 Constitution Article 71, <http://www.byegm.gov.tr/content.aspx?s=tcotrotLaw> 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 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.

33b. 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 No. 2531 applies to former public officers only. Law No. 3069 describes the jobs which are incompatible with deputyship. Law 3628 regulates prohibitions in office. There are some members of the national legislature who went into the private sector after completing their government service.

References:

Law No. 2531 on Concerning the Jobs That Cannot Be Conducted by Former Public Officers:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2531&MevzuatIliski=0&sourceXmlSearch=>
Law No. 3069 on Incompatible Jobs with Deputyship:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3069&MevzuatIliski=0&sourceXmlSearch=>
Law No. 3628 on Asset Declaration, Struggle against Bribe and Corruption Article 9,
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metin.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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

Yes | No

Comments:

However, gift-giving and hospitality are cultural components of Turkish society. Therefore, rules on banning or restricting gifts received or given by those in public service are generally bypassed or violated.

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 3,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIliski=0&sourceXmlSearch=>

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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

Yes | **No**

Comments:

There is no random or regular auditing of asset declarations, as stated, in the law, including the members of the parliament. They can be examined if there is a criminal investigation.

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIliski=0&sourceXmlSearch=>

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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no legal restriction on post-government private sector employment for national legislators. Therefore, they can serve at private sector after their parliamentary service.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Gifts and hospitality are a big part of Turkish culture. Restrictions are easily bypassed and violated. The members do not declare the list of gifts they received.

References:

Obama Erdogan'a hediye verdi mi öğrenmek imkansız (It is impossible to learn what Obama offered as a gift to Erdogan) 17.9.2009, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=954877&Date=17.09.2009&CategoryID=77>
Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law does not require an auditing mechanism. A few deputies have made their assets public in the past in the face of heavy public pressure.

References:

Gonul ve Selvi de Mal Beyanı Acıkladı (Gonul and Selvi declare their assets) , 24.8.2007, <http://www.ozgurkocaeli.com.tr/yazi/gonul-ve-selvi-de-mal-beyani-acikladi-23646.htm>
Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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: 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.

34. Can citizens access the asset disclosure records of members of the national legislature?

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes | No

Comments:

Asset declarations are kept confidential unless a deputy becomes subject to a criminal investigation.

References:

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 members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, non-governmental 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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no public access to asset declarations made by members of the parliament.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayınevi, 2010.

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Hande Ozhabes, Transparency Society, January 2011.

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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no public access to asset declarations made by members of the parliament.

References:

Cuneyt Yuksel, Siyasette Etik, Istanbul: Bogazici Universitesi Yayınevi, 2010.

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Hande Ozhabes, Transparency Society, January 2011.

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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

There is no public access to asset declarations made by members of the parliament. Therefore it is unclear whether they are filled by proper or minimal information. It is essentially an official form for all persons who have to submit asset declaration regularly. It includes both moveable and nonmoveable assets.

References:

Cuneyt Yuksel, *Siyasette Etik*, Istanbul: Bogazici Universitesi Yayinevi, 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

100

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

Comments:

Minutes of the general assembly discussions are available online. All committees keep records but not of the full proceedings. The Plan and Budget Committee keeps verbatim reports. Meclis TV transmits live broadcasts from the general assembly.

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 are exemptions to the general right that are not clearly defined by formal rules.

35b. 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. 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-present). Legislative minutes and committee documents relating to lawmaking and supervision are published online and printed regularly at www.tbmm.gov.tr. Other parliamentary documents can be obtained within the scope of right to access to information.

References:

Seref Iba, *Parlamento Hukuku*, Ankara: Is Bankasi Yayinlari, 2010.
Rules of Procedure, Articles 71, 155: <http://www.tbmm.gov.tr/ictuzuk/ictuzuk.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, TGNA, December 2010.
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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.

35c. 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 five legislative periods are available online. As soon as the project on electronic archiving of all parliamentary documents is complete, all historical minutes will be available online by the end of this year. All electronic archives are now available at parliamentary buildings. However, printed copies of the minutes are only available at major libraries. The Library of the Parliament also offers photocopying services by mail order at a minimum cost.

References:

Seref Iba, Parlamento Hukuku, Ankara: Is Bankasi Yayinlari, 2010.
Rules of Procedure, Articles 71, 155: <http://www.tbmm.gov.tr/ictuzuk/ictuzuk.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, TGNA, December 2010.
Erol Tuncer, Chairman of the Economic, Social Research Foundation of Turkey, Ankara, December 2010.

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 NGOs. 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 NGOs trying to access this information.

47
**3.3. Conflicts of Interest Safeguards & Checks and Balances:
Judicial Branch**

36. Are judges appointed fairly?

17

36a. In law, there is a transparent procedure for selecting national-level judges.

Yes | No

Comments:

The High Council for Judges and Prosecutors is entitled to appoint and assign the judges and prosecutors. According to the recent constitutional amendments of September 12, 2010, the Council is composed of twenty two full and twelve reserve

members. Twenty of them are elected directly by the President of the Republics (4), the by the General Assembly of the Court of Cassation (3+3), by the General Assembly of the Council of State (2+2), by the Justice Academy of Turkey (1+1), by the first class judges and prosecutors from the judicial justice (7+4) and by the judges and prosecutors of the administrative justice (3+2). In addition to those elected members, the Minister of Justice is the chair person of the Council and the Undersecretary of the Ministry of Justice is an ex-officio member of the Council. The new law on the High Council of Judges and Prosecutors was adopted in December 12, 2010. (For English edition of the draft law see [www.venice.coe.int/docs/2010/CDL\(2010\)125-e.pdf](http://www.venice.coe.int/docs/2010/CDL(2010)125-e.pdf)) It was argued that Ministry-supported candidates won the Council elections which was held in October 2010. Although they are professional judges, the former bureaucrats of the ministry, including Justice Ministry Deputy Undersecretary, Justice Ministry Personnel Department Director and Justice Academy Training Center Director, were elected as the new members of the new Council.

(<http://www.hurriyetdailynews.com/n.php?n=judges-prosecutors-elect-new-hsyk-members-2010-10-18>)

Although the procedure for the selection of national level judges and prosecutors are constitutionally and legally defined, there is no public oversight or confirmation stage.

References:

1982 Constitution, Article 140 and 159, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>,
Law No. 6087 on High Council for Judges and Prosecutors, <http://www.hsyk.gov.tr/Mevzuat/Kanunlar/Hsyk.html>
Law No. 2802 on Judges and Prosecutors,
<http://mevzuat.basbakanlik.gov.tr/Metin.aspx?MevzuatKod=1.5.2802&MevzuatIiski=0&sourceXmlSearch=>

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.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law No. 2802, Article 8, candidates must have a B.A. degree in law (for the civil and the administrative judiciary) or in political science, administrative science, economics and finance (for the administrative judiciary, but not in excess of 20 percent of total recruitment). Candidates must pass general aptitude and professional tests, both in written and oral. Lawyer candidates must have completed at least five years in the profession. However, it is widely agreed that the High Council of Judges and Prosecutors, which is a unit of the Ministry of Justice, influences the appointment process, especially at the stage of oral examination. The Transparency International Global Corruption Report 2007 emphasizes that Turkey falls into the category of countries where judicial appointments are made on the basis of clientelist ties, not legal qualifications. In Judicial Corruption Report of the Council of Europe parliamentary Assembly it was stressed that in Turkey, "the High Council of Judges "cannot initiate the prosecution of a judge or prosecutor without the consent of the Minister of Justice." This presents the risk that where political interests are at issue, no prosecution will be initiated.

References:

Judicial appointments deadlock in Turkey, 20 August 2010, <http://www.haberturk.com/general/haber/543998-judicial-appointments-deadlock-in-turkey>,
110 Turkish judges and prosecutors reassigned, 19.01.2011, <http://www.hurriyetdailynews.com/n.php?n=duty-location-of-110-judges-and-prosecutors-changed-2011-01-19>
Levent Gonenc, Yarginin Bagimsizligi ve Tarafsizligi, Ankara: TEPAV,2011, http://www.tepav.org.tr/upload/files/1299851562-0_Yarginin_Bagimsizligi_ve_Tarafsizligi.pdf
Judicial Corruption Report, 6 November 2009, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12058.htm>
Transparency International, "Corruption and Judicial Systems," Global Corruption Report 2007, http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2007
Bulent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atilla Sav, member of Ankara Bar, Ankara, December 2010.

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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

Yes | No

Comments:

There is no confirmation process conducted by an independent body, but 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 Council of Judges and Prosecutors. (Article 13 of Law 2802 and Article 4 of Law 2461). 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. The involvement of the Ministry in the Council and in the exam processes were criticized by the EU Commission in 2008, yet in the 2010 Progress Report the recent judicial reforms limited to the organization of High Council of Judges and Prosecutors were found satisfactory by the Commission (ec.europa.eu/enlargement/pdf/key.../2010/package/tr_rapport_2010_en.pdf). On the other hand, the Constitutional Court did not find it unconstitutional according to the separation of powers principle upon the appeal to the Court in 2005 (http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2474&content=)

References:

Law No. 6087 on High Council for Judges and Prosecutors, Article 4, <http://www.hsyk.gov.tr/Mevzuat/Kanunlar/Hsyk.html>
Law No. 2802 on Judges and Prosecutors, Article 9, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2802&MevzuatIlski=0&sourceXmlSearch=>
Law No. 4954 on Justice Academy of Turkey, Articles 26-29, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4954&MevzuatIlski=0&sourceXmlSearch=>

Yes: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

75

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes | No

Comments:

In addition to the constitutional and legal requirements for a statement of reason for a judicial decision, a court decision that does not provide a reason can be overturned by the Court of Cassation (appeal court). Higher courts, including the Constitutional Court, gives reasons for their abrogation decisions. However, sometimes the Constitutional Court issues the reasons after the decision was made.

References:

1982 Constitution Article 141: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 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=>
Law No. 5271 on Penal Trial, Articles 34, 63, 64, 66, 67, 101, 102, 173, 182, 224, 229, 230-232, 273, 275, 282, 289, 293, 294, and 295, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=sa>

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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

However, these reasons given for decisions may not be in pursuant to trial procedures. Court decisions are subject to review by the Court of Cassation as the final national appeal mechanism. Turkish nationals can also appeal to the European Court of Human Rights for the final judicial decision.

References:

Levent Gonenc, Yarginin Bagimsizligi ve Tarafsizligi, Ankara: TEPAV,2011, http://www.tepav.org.tr/upload/files/1299851562-0.Yarginin_Bagimsizligi_ve_Tarafsizligi.pdf
Adalet Gozet (ed.) Yargi Sistemi Uzerine Bir Inceleme, Istanbul: Bilgi Universitesi Yayinlari, 2009.
Türkiye' de Yargi Bagimsizligi ve Yargida Örgütlenme (Judicial Independence and Judicial Organization in Turkey), Ankara: Yarsav Yayinlari, 2008, <http://www.yarsav.org.tr/Dosyalar/kitap.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

Yes | No

Comments:

Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post. Exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill-health, and those determined as unsuitable to remain in the profession, are reserved.

Supervision of judges and public prosecutors with regard to the performance of their duties in accordance with laws, regulations, by-laws and circulars (administrative circulars, in the case of judges), investigation into whether they have committed offences in connection with, or in the course of their duties, whether their behaviour and attitude are in conformity with their status and duties and if necessary, inquiry and investigations concerning them shall be made by judiciary inspectors with the permission of the Ministry of Justice. The Minister of Justice may request the investigation or inquiry to be conducted by a judge or public prosecutor who is senior to the judge or public prosecutor to be investigated.

The Minister of Justice is empowered to appoint judges and public prosecutors to be employed in temporary or permanent functions in the central organization of the Ministry of Justice, its annexes or subsidiaries and the judicial inspectors and internal auditors who are from the judicial profession with their consent.

References:

1982 Constitution, Article 139, 144 and 159, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 6087 on High Council for Judges and Prosecutors, <http://www.hsyk.gov.tr/Mevzuat/Kanunlar/Hsyk.html>
Law No. 2802 on Judges and Prosecutors, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2802&MevzuatIlski=0&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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

Yes | No

Comments:

The powers of the Ministry of Justice in the functioning of the disciplinary body (the High Council of Judges and Prosecutors) is the major cause for political influence.

References:

1982 Constitution Articles, 138, 139, 140, 144 and 159, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 6087 on High Council for Judges and Prosecutors, <http://www.hsyk.gov.tr/Mevzuat/Kanunlar/Hsyk.html>
Law No. 2802 on Judges and Prosecutors,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2802&MevzuatIliski=0&sourceXmlSearch=>

Yes: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative 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 executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Both the disciplinary investigations and the final decisions on the investigations may not be fair and impartial. The Turkish judicial system is enclosed and controlled by the executive and this, in turn, harms judicial independence. The recent reforms partially contributed to the judicial independence. However, the discussions on politicization of judiciary did not end.

References:

Levent Gonenc, Yarginin Bagimsizligi ve Tarafsizligi, Ankara: TEPAV,2011, http://www.tepav.org.tr/upload/files/1299851562-0.Yarginin_Bagimsizligi_ve_Tarafsizligi.pdf
Adalet Gozet (ed.) Yargi Sistemi Uzerine Bir Inceleme, Istanbul: Bilgi Universitesi Yayinlari, 2009.
Türkiye’de Yargi Bagimsizligi ve Yargida Orgutlenme (Judicial Independence and Judicial Organization in Turkey), Ankara: Yarsav Yayinlari, 2008, <http://www.yarsav.org.tr/Dosyalar/kitap.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

These penalties imposed by the judicial disciplinary agency may not be fair, impartial and timely.

References:

HSYK, disiplin soruşturması geçiren iki hakimin görev yerini değiştirdi (The High Council of Judges and Prosecutors Changes the places of duty of two judges who faced disciplinary proceeding)

14.12.2010, <http://www.memurlar.net/haber/183709/>

Levent Gonenc, Yargının Bağımsızlığı ve Tarafsızlığı, Ankara: TEPAV, 2011, http://www.tepav.org.tr/upload/files/1299851562-0.Yarginin_Bagimsizligi_ve_Tarafsizligi.pdf

Adalet Gözet (ed.) Yargı Sistemi Üzerine Bir İnceleme, İstanbul: Bilgi Üniversitesi Yayınları, 2009.

Türkiye’de Yargı Bağımsızlığı ve Yargıda Örgütlenme (Judicial Independence and Judicial Organization in Turkey), Ankara:

Yarsav Yayınları, 2008, <http://www.yarsav.org.tr/Dosyalar/kitap.pdf>

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Atilla Sav, member of Ankara Bar Association, December 2010.

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.

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

57

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | No

Comments:

However, the asset disclosure forms are kept confidential unless the judiciary member becomes subject to an investigation.

References:

1982 Constitution Article 71, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>

Law No. 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 2/d:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIliski=0&sourceXmlSearch=>

Regulation No. 90/748, Article 3/d:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.90748&MevzuatIliski=0&sourceXmlSearch=mal> bildiriminde.

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.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

Yes | No

Comments:

Gift-giving and hospitality are cultural components of Turkish society. Therefore, rules on banning or restricting gifts received or given by public officials are generally bypassed or violated.

The judges of the Council of State’s 8th Department returned the watches gifted by the Head of the Higher Education Council following the approval of the coefficient unit for the graduates of vocational schools at the university entrance exam (Saatler iade) (Watches were returned, Hurriyet, 22.05.2010, <http://hursiv.hurriyet.com.tr/goster/haber.aspx?id=14801478&tarih=2010-05-22>). However, the Council of Ethics for Public Officials rejected the application regarding this gift giving as unethical recently (İşleme gerek yok (No need for take action), Hurriyet, 3.01.2011, <http://www.hurriyet.com.tr/gundem/16667976.asp?gid=373>).

References:

Law No. 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 3.

Law No. 2803 on Judges and Prosecutors, Article 68: <http://www.mevzuat.adalet.gov.tr/html/602.html>
Regulation 90/748, Articles 13 and 14,

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=3.5.90748&MevzuatIlski=0&sourceXmlSearch=mal> bildiriminde.

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.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

Yes | No

Comments:

Asset disclosure forms are kept confidential unless a member of the national level-judiciary becomes the subject of a criminal investigation. Otherwise, no monitoring or auditing is required.

References:

Law No. 3628 on Asset Declaration, Struggle against Bribery and Corruption, Article 9 and 20:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

Regulation 90/748, Articles 15 and 18:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=3.5.90748&MevzuatIlski=0&sourceXmlSearch=mal> bildiriminde.

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.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

Yes | No

Comments:

According to Article 2 of the Law No. 2531, all public servants are not allowed to work at any position, to take any obligation, to act as a broker or representative of any enterprise which is directly or indirectly related to the activities of their former institution for three years following the date of retirement. In addition to that, the original text of the first paragraph of Article 14 of the Law No. 1136 also prohibited judges and prosecutors 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.

On January 23, 2008, Article 327 of the Law No. 5728, reformulated this provision, which was annulled by the Court. It was rewritten and was adopted by the GNA of Turkey. According to the new provision (Article 14 of the Law No. 1136) the prohibition period is limited to two years after leaving the judicial district(s) where the judges and prosecutors served during the last five years of their public service. This two-year employment restriction also applies to the judges, prosecutors and rapporteurs of the higher courts and regional courts in relation to the courts and departments where they served during the last five years of their public service.

References:

Law No. 2531 concerning the works that cannot be done by those who resigned from public service, Article 2:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.2531&MevzuatIlski=0&sourceXmlSearch=>

Law No. 1136 on Lawyership, Article 14:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.1136&MevzuatIlski=0&sourceXmlSearch=>

Annulment of Law No 1136, Article 14, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IP TALITIRAZ/K2002/K2002-91.htm>

Law No. 5728 Concerning the Amendment of Some Laws in Harmonizing with the Basic Penal Codes, Article 327: <http://www.tbmm.gov.tr/kanunlar/k5728.html>

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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is commonly agreed that members of the national-level judiciary comply with the legal requirements on postgovernment private sector employment and that there are only a few violations of this rule.

References:

Sumru Cortoglu et al., The Status of Administrative Judges in Turkey, IXth Congress of IASAJ Bangkok Thailand, 2007. www.iasaj.org/download/sites/default/files/...docs/EReportTurkey.pdf
Judicial Corruption Report, 6 November 2009, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12058.htm>
Transparency International, "Corruption and Judicial Systems," Global Corruption Report 2007, http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2007
Aydin Gulan, Professor of Law, Istanbul University, January 2011.
Atilla Sav, member of Ankara Bar, December 2010.

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

Gifts and hospitality are Turkish cultural elements. Restrictions are easily bypassed and violated. The scope and amount of gifts and hospitality offered to members of the judiciary cannot be estimated. Organized Crime Unit of the Security Department takes severe action against illegal transactions of the public employees. The government also applies a zero tolerance against bribery. However, there are allegation for the involvement of the members of the judiciary in corrupt activities.

References:

14 released after detention over claims of bribery in higher judiciary, Today's Zaman, 25.10.2010, <http://www.todayszaman.com/news-225346-14-released-after-detention-over-claims-of-bribery-in-higher-judiciary.html>
Judicial Corruption Report, 6 November 2009, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12058.htm>
Transparency International, "Corruption and Judicial Systems," Global Corruption Report 2007, http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2007
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. 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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law does not require an auditing mechanism for national-level judiciary asset disclosures. When an administrative or criminal investigation requires then asset forms can be opened and examined. Although the judges follow the post-employment restrictions they may indirectly lobby by using their former titles and relations with the peer groups.

References:

14 released after detention over claims of bribery in higher judiciary, Today's Zaman, 25.10.2010, <http://www.todayszaman.com/news-225346-14-released-after-detention-over-claims-of-bribery-in-higher-judiciary.html>
Omer Faruk Genckeya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Judicial Corruption Report, 6 November 2009, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12058.htm>
Transparency International, "Corruption and Judicial Systems," Global Corruption Report 2007, http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2007
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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: 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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

Comments:

Asset declarations are kept confidential unless a member of the national-level judiciary becomes subject of a criminal investigation.

References:

Law 3628 on Asset Declaration, Struggle against Bribery and Corruption, Articles 9 and 20:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

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.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law No. 3628, there is no public access to the asset declarations of members of the national-level judiciary.

References:

Omer Faruk Genckaya, Conflict of Interest , Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Atila Sav, member of Ankara Bar Association, December 2010.

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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law No. 3628, there is no public access to asset declarations made by members of the national-level judiciary.

References:

Omer Faruk Genckaya, Conflict of Interest , Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>

Omer Faruk Genckaya, Conflict of Interest , Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>

Judicial Corruption Report, 6 November 2009, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC12058.htm>

Transparency International, "Corruption and Judicial Systems," Global Corruption Report 2007, http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2007

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Atila Sav, member of Ankara Bar Association, December 2010.

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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

According to the Law No. 3628, there is no public access to asset declarations made by members of the national-level judiciary. In fact these are simple forms including items related to estate and asset. They can be public when and if there is an allegation.

References:

Omer Faruk Genckaya, Conflict of Interest , Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Atilla Sav, member of Ankara Bar Association, December 2010.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

Yes | No

Comments:

The Council of Ministers shall submit the draft of general and subsidiary budgets and the report containing the national budgetary estimates to the Turkish Grand National Assembly at least seventy-five days before the beginning of the fiscal year. The draft budgets and the reports shall be considered by the Budget Committee, composed of forty members proportionally from political party groups and independent members in the Assembly. Draft budget shall be discussed by the Plenary Session during which members of the Turkish Grand National Assembly shall not make proposals which entail an increase in expenditure or a decrease in revenue.

In 2010, Turkey's OBI 2010 score is 57 out of 100, which is the same as the average score for all surveyed countries in Central & Eastern Europe. Turkey's score indicates that the government provides the public with only some information on the central government's budget and financial activities during the course of the budget year. This makes it challenging for citizens to hold the government accountable for its management of the public's money.

References:

1982 Constitution Article 162 and 163: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 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.

40b. 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 without discussing exactly where the money will be used. As expressed in the Open Budget Index Turkey Report, Executive's Budget Proposal, Year-End Report and Audit Report are not comprehensive to enable the representatives of people to make proper decision on the budget proposal. In the meantime, public can hardly be knowledgeable about the details of the budget items from the published reports.

References:

Ahmet Kesik, Türkiye'de Yeni Butceleme Sureci (New Budgetary Process in Turkey), <http://www.sayder.org.tr/e-dergi-turkiyede-yeni-butceleme-sureci-1-4.pdf>
Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
Open Budget Index 2010 Turkey, <http://www.internationalbudget.org/files/OBI2010-Turkey.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2010.

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.

40c. 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 some capacity to monitor the budget process. The World Bank initiated a capacity development project for the Committee's staff. Even the legislators who are members of the Committee suffer from the inadequate information provided by the governmental sources. They can hardly develop any policy discussion out of the draft budget reports.

References:

Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
Open Budget Index 2010 Turkey, <http://www.internationalbudget.org/files/OBI2010-Turkey.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Interviews with several members of the Plan and Budget Committee members by Omer Genckaya, February-March 2010, within the scope of a special project on the need assessment analysis for the Committee.
Murat Seker, Professor of Finance, Istanbul University, January 2011.

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.

41. Can citizens access the national budgetary process?

50

41a. 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:

TEPAV Report underlines that during the recent years the executive exceeded spending power authorized by the Grand National Assembly of Turkey. Article 161 of the 1982 Constitution says that the budget law includes only budgetary provisions. However, the government added an article titled "provisions not to be enforced partially or fully" to the Budget Law. 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. This procedure is also unconstitutional: The Constitutional Court annulled it and decided on a stay of execution of many of these "filter articles" upon the appeal of eligible actors (1982 Constitution, Article 148).

References:

Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
TEPAV 2009 Bütçe Sonuçlarını Değerlendirdi: Mali Saydamlık Açısından Daha Ayrıntılı Açıklama Yapılmalı (TEPAV Evaluates the Results of 2009 Budget: A Detailed Explanation is Needed for Financial Transparency), 25.02.2010, <http://www.tepav.org.tr/tr/haberler/s/1555>
Murat Seker, Professor of Finance, Istanbul University, January 2011. Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Interviews with several members of the Plan and Budget Committee members by Omer Genckaya, February-March 2010, within the scope of a special project on the need assessment analysis for the Committee.
Murat Seker, Professor of Finance, Istanbul University, January 2011.

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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Although civil society groups are regularly invited to the Plan and Budget Committee during the budgetary process, it is not a formal setting to influence the process. Additionally, some think-tanks such as TEPAV (Economic Policy Research Foundation of Turkey) provides scholarly analyses for budgetary practices. The power of the members of the Committee and the other deputies

are limited to change the general structure of the draft budget which was prepared by the financial experts in the central administration. The Plan and Budget Commission meets the representatives of NGOs more frequently in recent years however, they do not have any direct influence in drafting budget.

References:

Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
TEPAV 2009 Bütçe Sonuçlarını Değerlendirdi: Mali Saydamlık Açısından Daha Ayrıntılı Açıklama Yapılmalı (TEPAV Evaluates the Results of 2009 Budget: A Detailed Explanation is Needed for Financial Transparency), 25.02.2010, <http://www.tepav.org.tr/tr/haberler/s/1555>
Open Budget Index 2010 Turkey, <http://www.internationalbudget.org/files/OBI2010-Turkey.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Interviews with several members of the Plan and Budget Committee members by Omer Genckaya, February-March 2010, within the scope of a special project on the need assessment analysis for the Committee.
Murat Seker, Professor of Finance, Istanbul University, January 2011.

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

According to the analytical budget approach, all budget items must be public and transparent. This is especially true for the investment budget. Current expenditures are allocated as general items. The information provided is not satisfactory for public as well as the members of the Plan and Budget Committee. Open Budget Index 2010 Turkey Report also underlines the insufficient reportings for the Executive's Budget Proposal, Year-End Report and Audit Report.

References:

Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
Open Budget Index 2010 Turkey, <http://www.internationalbudget.org/files/OBI2010-Turkey.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Interviews with several members of the Plan and Budget Committee members by Omer Genckaya, February-March 2010, within the scope of a special project on the need assessment analysis for the Committee.
Murat Seker, Professor of Finance, Istanbul University, January 2011.

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

Comments:

The Plan and Budget Committee provides a certain degree of oversight over public expenditures as well. Public funds are subject to control by the Audit Court on behalf of the Grand National Assembly. According to the Law No. 6085, the Audit Court audits the financial activities, decisions and procedures of the public entities and informs the findings and submits the general compliance document to the Grand National Assembly of Turkey. Article 165 of the 1982 Constitution, there is a legislative committee on State Economic Enterprises which controls the accounts of state economic enterprises only.

References:

1982 Constitution Articles 164 and 165: <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No. 6085 on Audit Court, Article 5, www.sayistay.gov.tr/mevzuat/6085/6085.pdf

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

33

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Each department head in the central government is legally required to submit regular reports. However, these reports are not consistent and lack of details. The World Bank conducts a project with the Plan and Budget Committee to improve its capacity including financial transparency and accountability.

References:

Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
Open Budget Index 2010 Turkey, <http://www.internationalbudget.org/files/OBI2010-Turkey.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010. Interviews with several members of the Plan and Budget Committee members by Omer Genckaya, February-March 2010, within the scope of a special project on the need assessment analysis for the Committee.
Murat Seker, Professor of Finance, Istanbul University, January 2011.

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.

43b. 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

Comments:

According to Article 21 of the Rules of Procedure of the Grand National Assembly, political parties are represented in the committees in proportion to the number of seats they control in the general assembly. By definition, the distribution of seats in the committees leads to a partisan setting and the majority of the government party(or parties) dominates in the committees. Although many of them have good command of professional career in the field and developed a committee identity in discussing the matters, in the final decision the majority dominates. In other words, the committee does not have an autonomy against the government party.

References:

Dirk-Jan Kraan, Daniel Bergvall and Ian Hawkesworth, Budgeting in Turkey, OECD Journal of Budgeting, 7 (2), 2007, 7-58, <http://www.oecd.org/dataoecd/57/49/40961278.pdf>
Open Budget Index 2010 Turkey, <http://www.internationalbudget.org/files/OBI2010-Turkey.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Interviews with several members of the Plan and Budget Committee members by Omer Gencckaya, February-March 2010, within the scope of a special project on the need assessment analysis for the Committee.
Murat Seker, Professor of Finance, Istanbul University, January 2011.

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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

The Parliamentary Plan and Budget Committee does not have any direct investigative powers in accordance with the Rules of Procedure of the Grand National Assembly of Turkey. However, it may request documentation from the relevant ministry to clarify matters regarding financial irregularities. Otherwise, any irregularity discovered by the committee may be further investigated by an "inquiry committee," especially if the case is significant enough or might cause a significant harm to the state and society. The general assembly of the GNA decides whether to form an inquiry committee.

References:

Ercan Celiker, Plan ve Butce Komisyonu: Gelisimi ve Yasama Surecindeki Islevi, Yasama Dergisi, Sayı 2, 2006, http://www.yasadergisi.org/web/yasama_dergisi/2006/sayi2/plan_ve_butce_komisyonu.pdf
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

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.

4.1. 67 Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

Although both the Constitution and the relevant legislation underline the principles of impartiality and equality in public service, ethical principles were first introduced in 2005 after the establishment of the Council of Ethics for Public Officials in 2004. Since then ethical awareness in public service has been enforced by means of publications, training and research activities.

References:

1982 Constitution, Articles 10, 31, 70 and 133: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 657 on Public Servants, Article 7:
[http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1_5_657&MevzuatIlski=0&sourceXmlSearch=Regulation Concerning Code of Conduct for Public Employees and Procedure and Principles for Application:](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1_5_657&MevzuatIlski=0&sourceXmlSearch=Regulation%20Concerning%20Code%20of%20Conduct%20for%20Public%20Employees%20and%20Procedure%20and%20Principles%20for%20Application)
<http://www.mevzuat.adalet.gov.tr/html/23127.html>
Regulation Concerning Activity Report To Be Prepared by Public Administrations, Article 5: <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.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

Yes | No

Comments:

All principles and procedures concerning public employees are stated in the Law No. 657 and other relevant regulations. Practicing a "fair competition" among candidates in entering public service is the first and foremost didactic experience on how to comply with ethical norms and values at work. Recruitment of the civil servants in Turkey is carried out through a general aptitude examination (Public Personnel Selection Exam, KPSS) run by the Student Selection and Placement Center (ÖSYM) annually. Public institutions require a minimum score received from this examination in addition to general requirements for being a civil servant. They either organize both a written exam covering professional requirements and interview or only interview for final selection of the candidates. However, especially "the interview stage, do not guarantee objectivity and impartiality in the recruitment process. Besides, discretionary (and discriminatory) decisions of the superiors and politicians override the rules on promotion, motivation, and accountability in public service. There is no correlation between the performance of civil servants and their promotion and pay and "politicians tend to negatively influence decision-making mechanisms and manipulate bureaucratic decisions excessively for obtaining their own narrowly defined interests." (Omer Faruk Genckaya, Conflict of Interest , Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>)

References:

Law No. 657 on Public Servants, especially Article 32 f./ff.,
[http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1_5_657&MevzuatIlski=0&sourceXmlSearch=Law No. 5237 Penal Law, Articles 38, 66, 80, 86, 102, 103, 105 109, 119, 227, 250, 251, 255, 259, 277 and 288:](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1_5_657&MevzuatIlski=0&sourceXmlSearch=Law%20No.%205237%20Penal%20Law%20Articles%2038%2C%2066%2C%2080%2C%2086%2C%20102%2C%20103%2C%20105%2C%20109%2C%20119%2C%20227%2C%20250%2C%20251%2C%20255%2C%20259%2C%20277%20and%20288)
http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1_5_5237&MevzuatIlski=0&sourceXmlSearch=

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.

44c. In law, there is an independent redress mechanism for the civil service.

Yes | **No**

Comments:

Both the civil servants and the citizens who deal with civil servants at any public institution have the right to seek redress for any grievance. They both may first appeal to the relevant administration. For the civil servant, this means making a complaint or appeal to his or her immediate superior. Therefore, it is highly unlikely they will get redress. In that case, if they are not satisfied they may appeal to the court. The administrative judicial process is also long and not very effective and the trial may take longer. Sometimes, the administration, based on political considerations, may pay compensation from the state treasury for damage caused by the civil servant. In 2006, the Council of State decided that the civil servant who caused the harm may pay the compensation or the state can pay it then recourse it to the relevant civil servant. Recently, the Law No. 6110 (Article 12) regulated that compensation suit concerning the procedure, action and decision incurred from the investigation and / or prosecution or law suit conducted by a judge or prosecutor can be opened against the State (<http://www.tbmm.gov.tr/kanunlar/k6110.html>).

References:

Law No. 657 on Civil Servants, Articles 12, 13 and 21:

[http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIlski=0&sourceXmlSearch=Regulation Concerning Complaints and Appeals of Civil Servants:](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIlski=0&sourceXmlSearch=Regulation%20Concerning%20Complaints%20and%20Appeals%20of%20Civil%20Servants)

[http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.85743&MevzuatIlski=0&sourceXmlSearch=%5Eikayet;](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.85743&MevzuatIlski=0&sourceXmlSearch=%5Eikayet)

Regulation Concerning the Determination, Monitoring of the Types and Amount of Damage to the State and Individuals Made By Civil Servants and the Responsibilities of the Superiors and Other Procedures,

<http://www.diyaset.gov.tr/turkish/mevzuaticerik.asp?id=2156>

Law No. 2577 on Administrative Trial Procedure:

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

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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

No: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes | **No**

Comments:

According to Article 53 of Law 5237, a 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 No. 5237, Article 5).

However, the provisional Article 1 of Law No. 5252 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. 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 was in effect (C. Ergen, Türk Ceza Hukukunda Belli Haklari Kullanmaktan Yoksun Birakilma, <http://dergi.teskomb.org.tr/281/index2.asp?dp=s28>)).

References:

Law No. 5237 on Penal Law, Article 53:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>

Law No. 5252 on Enforcement and Application Procedure of Penal Law, provisional Article 1:

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.5252&sourceXmlSearch=>

Law No. 657 on Civil Servants, Article 48/5:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIlski=0&sourceXmlSearch=>

Law No. 5352 on Judicial Registry, Article 9:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5352&MevzuatIlski=0&sourceXmlSearch=>

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

Articles 15 and 16:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&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 or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

61

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Setting up partisan cadres in public offices as a part of patron-client relations in Turkish society has been widely used by the respective political parties in government or opposition. Despite the fact that minimizing state has been a major motto in public administration reform public offices are still considered as benefice. Although the provisions of the Constitution and the relevant laws assume that no political influence will be exercised, politicization of public service has been a long-lasting phenomenon in Turkey. Bottom-up "partisanship" has been used in public service, especially in appointments and promotions. Nepotism, cronyism and patronage are also very dominant in public service. Three newspaper headlines refers to political influence in hiring public officers. Two of them are related to the allegations on hiring pro-government persons or relatives of the opposition parties' leading figures to Turkish Radio and Television Institution. Third news clip is about employment of higher officers without credibility yet with high compensation in the Ministry of Energy. Finally, in the case of Fevzi Budak, former director of National Education in Erzurum province it is a good example of bureaucratic hurdle. Despite the fact that the administrative court did not find the assignment of Fevzi Budak to another position by the Ministry "proper" eleven times the Ministry assigned him to Kars in February 2011 eventually.

References:

Trt'de Besli Koalisyon!.. Iste Carpık Kadrolasma! (Quintette Coalition at TRT!.. Here is the Controversial Partisan Cadres!), 2.04.2010, http://www.habervitrini.com/trtde_besli_koalisyon_iste_carpik_kadrolasma-454390.html
Kadrolasma iddiaları doğru değil (Setting up partisan cadres is not true), 25.02.2010, <http://www.gazete5.com/haber/kadrolasma-iddialari-dogrue-degil-6928.htm>
Enerjide kadrolasma iddiaları (Allegations on artisan cadres in energy sector, 1.02.2011, www.emo.org.tr/ekler/ea4629a882960ed_ek.pdf?dergi=636
Fevzi Budak'a Yapılanlar, Yargı Kararlarının Tanınmadığını Gösteriyor (What has been done to Fevzi Budak proves that the judicial decisions are not recognized), 25.2.2011, http://www.turkegitimsen.org.tr/haber_goster.php?haber_id=13403
Muhittin Acar and Ugur Emek, Building a clean government in Turkey: pillars, perils, and prospects, Crime, Law and Social Change, Volume 49, Number 3, 185-203.
Mustafa Gazalci, AKP Döneminde Kadrolasma Kiskacında Eğitim, Ankara: Bilgi Yayinevi, 2011.
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bulent Tarhan, Chief Inspector, Prime Ministry, December 2010
Hande Ozhabes, Transparency Society, January 2011.

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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

According to the OECD-SIGMA 2008 Report, "a trend towards politicization in recruitment seems to be steadily taking hold unevenly with regard to the appointment of upper-level positions in the administration... Temporary appointments, based on articles 68 and 86 of the Civil Service Law, have been amply used for filling the echelons of the administration, thereby causing a proliferation of "acting managers." Patronage and favouritism are still problems, especially concerning the results of oral examinations, and even more markedly in local self-governments, where in addition politicians put pressure on staff to seek affiliation with a particular trade union that is ideologically closer to the current government, to the detriment of another trade union. The merit system in recruitment and promotion should be more clearly respected and firmly supported as a policy by whichever government is in place if the professionalism of the civil service is to be strengthened. The cheating allegations focus on the KPSS10, the exam according to which teachers are selected and placed throughout Turkey. Later, the head of the OSYM (Student Selection and Placement Centre) explained that they closed down the administrative investigation due to no relevant evidence. However, prosecutor did not finish the preliminary investigation on these allegations since August 2010.

References:

Testing scandal may leave Turkish schools without teachers, <http://www.hurriyetdailynews.com/n.php?n=kpss-scandal-will-teachers-be-appointed-2010-08-26>
KPSS'den sonra bir skandal da "Engelli"de (After KPSS another scandal in "Disabled Exams," <http://www.cnnturk.com/2010/turkiye/12/06/kpssden-sonra-bir-skandal-da-engellide/598574.0/index.html>)
Enerji kadrolasma iddiaları (Allegations on artisan cadres in energy sector, 1.02.2011, www.emo.org.tr/ekler/ea4629a882960ed_ek.pdf?dergi=636)
Nihat Kayar, Kamu Personel Yönetimi, Bursa: Ekin Basım Yayın, 2010.
SIGMA, Turkey Public Service Assessment, 2008, <http://www.sigmaxweb.org/dataoecd/37/56/41639364.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

45c. 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:

Despite the fact that ethical considerations and institutionalization increased since 2002 these chronic aspects of Turkish public administration continue. According to a news clip, there is a family size employment system at the Prime Ministry in pursuant to Articles 60 and 61 of the Law No. 657 on Public Servants which defines the cadres related to advisors, press and public relations advisors and private secretary (privileged cadres) without having a KPSS exam score. The news underlines that the Presidency of Religious Affairs, Housing Development Administration of Turkey, and the Grand National Assembly of Turkey are other examples of institutions where nepotism is widespread.

References:

Milletvekili ve Bakan Yakınlarına Kpps'siz Memuriyet (Relatives of Deputies and Ministers Become Public Officer Without KPSS Exam), <http://www.personelmeb.net/haber/54/milletvekili-ve-bakan-yakinlarina-kpps-siz-memuriyet-haberi.html>
Fevzi Budak'a Yapılanlar, Yargı Kararlarının Tanınmadığını Gösteriyor (What has been done to Fevzi Budak proves that the judicial decisions are not recognized), 25.2.2011, http://www.turkegitimsen.org.tr/haber_goster.php?haber_id=13403
Enerji kadrolasma iddiaları (Allegations on artisan cadres in energy sector, 1.02.2011, www.emo.org.tr/ekler/ea4629a882960ed_ek.pdf?dergi=636)
Muhittin Acar and Ugur Emek, Building a clean government in Turkey: pillars, perils, and prospects, Crime, Law and Social Change, Volume 49, Number 3, 185-203.
Mustafa Gazalci, AKP Döneminde Kadrolasma Kiskacında Eğitim, Ankara: Bilgi Yayınevi, 2011.
Nihat Kayar, Kamu Personel Yönetimi, Bursa: Ekin Basım Yayın, 2010.
SIGMA, Turkey Public Service Assessment, 2008, <http://www.sigmaxweb.org/dataoecd/37/56/41639364.pdf>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

According to 9th Development Plan (2007-2013), there is no clear description on promotion, rewarding, and the lack of equity in salaries cause negative consequences in public service. In addition to that permanent staff system is not implemented effectively in public administration. The number of personnel is unevenly distributed among the public offices. Briefly, job descriptions are too vague and general, expertise and seniority are ignored and compensations do not fit to equal work to equal pay principle.

References:

Nihat Kayar, Kamu Personel Yönetimi, Bursa: Ekin Basım Yayın, 2010.
Kemal Özsemerci, Turk Kamu Yönetiminde Yolsuzluk ve Yozlaşmanın Kültürel Altyapısı, Sayıstay Dergisi, Sayı: 58, Temmuz-Eylül 2005, 3-20.
Dokuzuncu Kalkınma Planı (2007-2013) <http://www.sp.gov.tr/documents/KP2007-2013.pdf>
SIGMA, Turkey Public Service Assessment, 2008, <http://www.sigmaweb.org/dataoecd/37/56/41639364.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Özhabes, Transparency Society, January 2011.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

Comments:

According to the report prepared by Kamusen (Trade Union of Public Servants) payment gap increases up to five thousand Turkish Liras(3,225 USD) in some jobs. Although some public servants have same educational background, title, seniority and job description they earn different wages.

References:

KAMUSEN, Kurumlar Arası Ücret Adaletsizliği'nin Bilancosu Yıllık 5 Bin Lirayı Gecti , 25.11.2010, <http://www.kamusen.org.tr/haberler/turkiye-kamu-senden/2970-kurumlar-arasi-ucrer-adaletsizliginin-bilancosu-yillik-5-bin-lirayi-gecti->
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

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.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

Almost all vacant positions in public service are advertised in at least two national dailies and the official gazette. In addition to these, personnel ads are posted on ISKUR's web page (Labour Institution of Turkey) <http://www.iskur.gov.tr/Default.aspx>.

References:

Nihat Kayar, Kamu Personel Yönetimi, Bursa: Ekin Yayınevi, 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

According to the Regulation Concerning the Determination of Kind and Amount the Harm Done By the Public Officials to the State and Persons, Its Evaluation, the Responsibilities of the Superiors, and Other Procedures to be Taken dated 27.06.1983 (<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.836510&MevzuatIliski=0&sourceXmlSearch=5176>), a special commission is formed to evaluate on the harm the state and estimate the amount of harm in accordance with the current prices. On the other hand, harms to persons can be decided by the courts upon the appeal of the person who was harmed. However, the state can recourse the amount of redress to the relevant public official. In 2010, The Council of State also decided that the redress must be paid by the public official who did the harm. In February 2011, a new article (Article 93/A) was added to Law No. 2802 on Judges and Prosecutors. This article states that a redress suit for damages can be open only against the state due to procedure followed by judges and prosecutors during an investigation, prosecution or trial or any action or decision they took. (<http://www.tbmm.gov.tr/kanunlar/k6110.html>)

References:

Nihat Kayar, Kamu Personel Yönetimi, Bursa: Ekin Yayınevi, 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

The government did not have any cash problem to pay civil servants' salaries for a long period.

References:

<http://www.bumko.gov.tr/TR/Genel/BelgeGoster.aspx?F6E10F8892433CFFAAAF6AA849816B2EFC0EE6DC0FA7196C>

Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

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.

45i. 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, someone with a corruption-related conviction is disqualified from entering public service. However, the new Penal Law limits the period of disqualification to the period of conviction only. This means that, according to the Penal Law, those who have committed crimes such as bribery, embezzlement, etc. can, after the execution of the punishment, regain the qualification to be a public servant.

This change also covers the crimes listed in Article 48 of the Law No. 657. Thus, this includes those who were convicted for crimes such as simple bribery or abuse of office without being subject to the periods stated in Law No. 5352 on Judicial Records. This has made the situation more ambiguous and complicated.

Among other examples of the decisions, in 2004, the Council of State (High Administrative Court) also decided that the public authority in question has discretion in this respect within the terms of "restitution of forfeited rights" (<http://www.hukuki.net/showthread.php?46845-Memnu-Haklar%FDn-%DDadesi-%DDle-Alakal%FD-%C7e%FEitli-Dani%FEtay-Kararlar%FD>).

Finally, those who were convicted of the crimes listed in Article 48/A-5 cannot be qualified to be a public servant even though they are subject to a general or individual pardon.

References:

Mehmet Karaarslan, Suc ve Cezaların Memuriyete Etkisi, dergiler.ankara.edu.tr/dergiler/38/1500/16558.pdf

Omer Faruk Genckaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, Ankara, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.

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. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

56

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

Comments:

All civil servants are required to file an asset declaration every five years at the beginning and the middle of every decade (i.e., 2005 and 2010), or at any time there is a significant change in their assets. However, there is no auditing mechanism to carry these out. Declarations are kept confidential unless the relevant public servant is the subject of a criminal investigation.

References:

1982 Constitution, Article 71: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 3628 on Asset Declaration, Struggle Against Bribe and Corruption, Article 2:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

Yes: A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

Yes | No

Comments:

According to the Regulation dated 1982, public servants cannot participate in the decision process which is related to their personal or their relatives' interest. Moreover, there are similar provisions for the top officials of the Capital Markets Board of Turkey, Banking Regulation and Supervision Agency, Savings Deposit Insurance Fund, Public Procurement Institution and Supreme Board of Radio and Television stated in their private laws. Furthermore, the Law No. 5393 underlines that "Any mayor may not directly or indirectly, enter into contract with, or engage in brokerage or become a representative of the municipality or its subsidiaries during his term of office and two years after the termination of his office. These prohibitions are applied to the members of the council during their term in office and one year after the termination of their office." The regulation concerning the principles of ethical behavior requires civil servants to conduct their duties in accordance with this principle.

References:

Regulation Concerning Disciplinary Committees and Discipline Chief, 17.09.1982-8/5336, Article 6,
mevzuat.meb.gov.tr/html/17848_0.html
Regulation Concerning the Principles of Ethical Behavior for Public Employees and Procedure and Principles for Application, Article 13,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=7.5.8044&MevzuatIlski=0&sourceXmlSearch=etik>
Law No. 2499 on Capital Markets, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2499&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5411 on Banking, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5411&MevzuatIlski=0&sourceXmlSearch=>
Law No. 4734 on Savings Deposit Insurance Fund
Law No. 6112 on the Establishment and Broadcasting Services of Radio and Television Companies, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.6112&MevzuatIlski=0&sourceXmlSearch=radio>
Law No. 5393 on Municipalities, Article 27,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5393&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5271 on Penal Trial, Article 22,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>

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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

Yes | No

Comments:

For three years after leaving government service, a public officer, who resigned from any public institution included in Article 1 (public institutions and agencies included in the general budget and municipalities), cannot be assigned to a position or take in charge of any business, make any undertaking, brokerage or representation directly or indirectly in relation to his/her duties and activities held in his/her former office, against the office, department, institution and agency where s/he worked within 2 year before s/he left government service. Provisions of special laws are reserved.

References:

Law No. 2531 Concerning the Jobs That Cannot Be Conducted by Former Public Officers, Article 2:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2531&MevzuatIlski=0&sourceXmlSearch=>
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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

Yes | No

Comments:

However, gift-giving and hospitality are cultural components of Turkish society. Therefore, rules on banning or restricting gift received or given by public officials are generally bypassed or violated.

References:

Law 3628 on Asset Disclosure, Struggle against Bribery and Corruption, Article 3, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>
Law No. 657 on Public Servants, Article 29:
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metin.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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

Yes | No

Comments:

Declarations are basically kept confidential unless the relevant public servant is the subject of a criminal investigation.

References:

Law 3628 on Asset Declaration, Struggle against Bribe and Corruption, Article 9,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

Yes: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations restricting post-government employment are enforced inconsistently. In addition, there is no restriction on senior public officers who worked in the private sector before joining public service. Moreover, the government is planning to hire managers from private sector to public institutions. What will be the "cooling" period for these officers is also ambiguous.

References:

Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi Yayınevi, 2010.
Ömer Faruk Gençkaya, Conflict of Interest , Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009, <http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/projects/tyec/1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

The Council of Ethics for Public Officials examines the applications concerning the behavior and attitudes of the public officials including gift-giving or gift-receiving. This has made the compliance to the relevant provisions. However, these rules are usually bypassed or investigations are conducted upon complaints. Before new year eve, the Head of the Council stated that they let the public servants' conscience be their guidance about gift receiving.

References:

Hediyeye vicdan kriteri (Conscience is a criterion for a gift) Takvim, 28.12.2010, http://www.takvim.com.tr/Guncel/2010/12/28/hediyeye_vicdan_kriteri
Isparta Valisine Hediye Edilen Silah Etik Bulunmadı (It was not considered to be ethical to gift a gun to Isparta Governor), <http://www.haber7.com/haber/20100820/Isparta-Valisine-hediye-silah-etik-bulunmadi.php>
Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi yayınevi, 2010.
Ömer Faruk Gençkaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. www.coe.int/.../1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is rare for civil servants to recuse themselves from taking action in which they have a personal interest. Usually they influence the decision-making process indirectly (if not directly) by showing up in front of the commission in charge of making the decision whether or not they have the right to vote; or they individually make decisions on matters relevant to them or their relatives' personal advantage. In a recent case, the mayor of Adana was suspended from office in due allegations including his influence the decision of the municipal assembly concerning urban planning in favour of his relatives.

References:

Adana mayor suspended from office over corruption row, 28.03.2010, <http://www.hurriyetdailynews.com/n.php?n=adana-mayor-suspended-from-office-2010-03-28>
Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi yayınevi, 2010.
Ömer Faruk Gençkaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. www.coe.int/.../1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The law does not require an auditing mechanism for civil service asset disclosures. Unless there is a criminal investigation asset disclosure files are never audited.

References:

Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi yayınevi, 2010.
Ömer Faruk Gençkaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. www.coe.int/.../1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service 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: Civil service 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.

47. Can citizens access the asset disclosure records of senior civil servants?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

Comments:

While senior civil servants file asset disclosure forms, these forms are not available to the public.

References:

Law 3628, Article 9,

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIiski=0&sourceXmlSearch=>

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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

Comments:

Asset disclosure records of senior civil servants are not available to the public.

References:

Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi yayınevi, 2010.

Ömer Faruk Gençkaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. www.coe.int/.../1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Hande Ozhabes, Transparency Society, January 2011.

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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records of senior civil servants are not available to the public.

References:

Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi yayınevi, 2010.
Ömer Faruk Gençkaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. www.coe.int/.../1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

Comments:

Asset disclosure records of senior civil servants are not available to the public.

References:

Cüneyt Yüksel, Devlette Etik, İstanbul: Boğaziçi Üniversitesi yayınevi, 2010.
Ömer Faruk Gençkaya, Conflict of Interest, Ankara: Council of Europe, European Union and Council of Ethics for Public Officials, 2009. www.coe.int/.../1062-TYEC%20Research%20-%20Conflict%20of%20Interest.pdf
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

48a. 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:

The status of whistle-blowing has been defined by several laws in Turkey, e.g. Law No. 1905 on Reporting Tax Evasion adopted in 1931.

Earlier, Articles 5 and 7 of Law No. 4422 on Organized Crime regulated the protection of eye-witnesses and whistleblowers, however this law was repealed on March 31, 2005, by Law 5320.

According to Article 18 of Law No. 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. Internal Circular no 1990/1 also regulates confidentiality of the identity of whistle-blowers.

Recently Law No. 5726 on the Protection of Eye-Witnesses, which covers only those who shall testify at the Penal Court, was adopted. Under the Witness Protection Law, those who testify as witnesses in trials for crimes that call for a sentence from 10 years to life and trials involving organized crime or crimes of terrorism can benefit from protective measures. Public prosecutors have the power to decide who is eligible for witness protection. In some cases security forces may also have the power to decide who can testify as a "secret witness."

A measure in the law covers the issuance of critical documents — ID cards, social security information, passports, tax registration information, criminal records and university diplomas — under a new name and maintaining the secrecy of the new identities. Financial help, relocation assistance and the changing of education or workplaces as well as altering physical appearance with or without plastic surgery are also included in the law. People under witness protection even have the right to move to another country.

The UN Convention Against Corruption and Criminal Law Convention on Corruption to which Turkey is a signatory, clearly stress that whistle-blowers should be protected.

According to the Regulation Concerning Complaints and Application (Article 14/2), the working conditions of a civil servant who is a whistle-blower can not be assigned to a heavier position or another place. The Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials (Article 12) underlines that Supervisors of institutions and organizations should keep the identity of the public officials who notifies and take necessary steps in order to avoid any harm. In other words, those who report any corruption-related cases do not have concrete legal protection against recrimination or other consequences. It should be bear in mind that whistle-blowing is not a looked on favorably in Turkish culture. The laws are general and apply to all citizens in the public and private sectors. However, the new Strategy Plan Against Corruption include a mechanism to protect whistle-blowers who report corruption cases.

References:

Law No. 1905 on Reporting Tax Evasion adopted in 1931: <http://ikramiyeci.googlepages.com/1905>.

Law No. 4422, Articles 5 and 7: <http://www.tbmm.gov.tr/kanunlar/k4422.html>

Law No. 5726 on Protection of Eye-Witness, <http://www.tbmm.gov.tr/kanunlar/k5726.html>

Law No. 4800 on Transnational Organized Crime Article 24 (Protection of Eye Witness) and 25 (protection of aggrieved persons): <http://www.tbmm.gov.tr/kanunlar/k4800.html>

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

18, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

Regulation Concerning Complaints and Application of Civil Servants, Article 14/2, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.85743&MevzuatIlski=0&sourceXmlSearch=>

Internal Circular No. 1990/1, Nov. 22, 1990, on Whistle-Blowing.

Law No. 5726 on the Protection of Eye-Witnesses, <http://www.tbmm.gov.tr/kanunlar/k5726.html>

Regulation on the Principles of Ethical Behavior of the Public Officials and Application Procedures and Essentials, <http://www.etik.gov.tr/mevzuat/yonetmeliking.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.

48b. 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 a widespread practice, nor is it kept confidential. Cultural factors and social control, as well as lack of legal protection for whistle-blowers, are major obstacles. Whistle-blowers may face with several negative consequences including relocation to another position.

References:

Yolsuzluğu İhbar Etti, Sürgün Edildi (He reported a corruption then was exiled),

21.04.2010, <http://www.egitimbirsen.org.tr/detay.php?cid=29&id=137259>

Sen Misin Yolsuzluğu İhbar Eden! (Did you report a corruption?), 2.07.2101, <http://www.egitimhaberim.com/haber/2047-sen->

[misin-yolsuzlugu-ihbar-eden.html](#)

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Murat Şeker, Professor of Finance, Istanbul University, December 2010.

Hande Ozhabes, Transparency Society, January 2011.

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.

48c. 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:

The status of whistle-blowing has been defined by several laws in Turkey, e.g. Law No. 1905 on Reporting Tax Evasion adopted in 1931.

Earlier, Articles 5 and 7 of Law No. 4422 on Organized Crime regulated the protection of eye-witnesses and whistleblowers, however, this law was repealed on March 31, 2005, by Law 5320.

Recently Law No. 5726 on the Protection of Eye-Witnesses, which covers only those who shall testify at the Penal Court, was adopted.

In other words, those who report any corruption-related cases do not have any legal protection against recrimination or other consequences. It should be bear in mind that whistle-blowing is not a looked on favorably in Turkish culture. The laws are general and apply to all citizens in the public and private sectors.

References:

Law No. 1905 on Reporting Tax Evasion adopted in 1931: <http://ikramiyeci.googlepages.com/1905>.

Law No. 4422 on Organized Crime, Articles 5 and 7: <http://www.tbmm.gov.tr/kanunlar/k4422.html>

Law No. 5726 on Protection of Eye-Witness, <http://www.tbmm.gov.tr/kanunlar/k5726.html>

Law No. 4800 on Transnational Organized Crime Article 24 (Protection of Eye Witness) and 25 (protection of aggrieved persons): <http://www.tbmm.gov.tr/kanunlar/k4800.html>

Law No. 4857 on Labor, Article 93,

<http://mevzuat.basbakanlik.gov.tr/Metin.Asp?MevzuatKod=1.5.4857&sourceXmiSearch=sendikalar&MevzuatIlski=0>

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.

48d. 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:

Reporting corruption is not widespread nor is it kept confidential. Cultural factors and social control, as well as lack of legal protections for whistle-blowers, are major obstacles.

References:

Yolsuzluğu ihbar etti, işinden oldu (He reported a corruption and then lost his job), <http://www.kenthaber.com/eg/manisa/soma/Haber/Genel/Normal/yolsuzlugu-ihbar-etti.-isinden-oldu/a6de2284-7df6-4e36-b259-a911e0488524>

Yolsuzluğun Bildirilmesine İlişkin Kılavuz İlkeler (Guide For Reporting Corruption), www.dpb.gov.tr/.../GRECO%20MEMURLAR%20KILAVUZ%20ILKE-%20YOLSUZLUK%20BILDIRIMI-%20GRECO-27-10
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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:

There is an official reporting mechanism open to all citizens/foreigners who can submit allegations by evidence. These are related to anti-money laundering and financing of terrorism and organized under the Financial Crime Administration (MASAK). Turkish National Police Administration has also a general online reporting mechanism open to all public. However, every public institution also has an internal discipline and inspection mechanism. Either the discipline chief, discipline committee or the inspectors from the relevant ministry or Prime Ministry conduct the investigation upon the request of the relevant authority or by order of the superior authority. Civil servants generally report such cases to their superiors in a hierarchical manner. According to Law No. 5018 on Public Financial Management and Control, internal auditors can also collect such reports. However, there is no special mechanism to which only corruption cases are reported. Three years ago, the government announced the establishment of combat corruption units in every public office, but there was no follow-through. The establishment of a supreme board of anti-corruption was also postponed.

References:

Law No. 657 on Public Servants, Article 21, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIlski=0&sourceXmlSearch=>
Law No. 4483 Concerning Trial of Civil Servants and Other Public Servants, Article 4, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4483&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5271 on Penal Trial, Article 158, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>
Law 5237 on Penal Code, Article 279, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5549 on Prevention of Laundering Proceeds Of Crime Law, Articles 4 and 10, <http://www.masak.gov.tr/eng/default.htm>:
Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating the Financing of Terrorism, 29.06.2010, http://www.masak.gov.tr/en/Legislation/LaunderingProceedsofCrime/national_legislation.htm
Regulation on Measures Regarding Prevention of Laundering Proceeds of Crime and Financing of Terrorism, 2.01.2010, http://www.masak.gov.tr/en/Legislation/LaunderingProceedsofCrime/national_legislation.htm
Regulation 2006/10654 Concerning the Working Procedure and Principles of Internal Auditors, Articles 50 and 52, http://portal1.sgb.gov.tr/includes/tebligler_klasoru/kaynakAktor.asp?id=134&mode=kaydet&tur=dosya
Law No. 4483 Concerning Trial of Civil Servants and Other Public Servants, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4483&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5018 on Public Financial Management and Control Article 64/g, http://www.sgb.gov.tr/kincli%20Mevzuat/1_5018_kamu_mali_yonetim.pdf

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The current reporting mechanisms, either MASAK or national police, are open to all public. The MASAK personnel look sufficient but do function many things at the same time. The internal reporting mechanisms are institutional inspection boards and internal audit offices. There is no available information about the number of arriving reports at these units, yet the experts argue that the current organization of reporting mechanisms for corruption related cases are not sufficient.

References:

Bülent Tarhan, "Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları" (Turkish Experience in Combating Corruption and Search for Institutional Structure), http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf
 MASAK Faaliyet Raporu 2009, http://www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
 Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
 Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
 Murat Şeker, Professor of Finance, Istanbul University, December 2010.
 Hande Ozhabes, Transparency Society, January 2011.

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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The MASAK, national police and other internal units are parts of the central government and receive regular funding from the central budget. However, it is not definite how much money allocated for such activities altogether.

References:

Bülent Tarhan, "Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları" (Turkish Experience in Combating Corruption and Search for Institutional Structure), http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf
 MASAK Faaliyet Raporu 2009, http://www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
 Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
 Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
 Murat Şeker, Professor of Finance, Istanbul University, December 2010.
 Hande Ozhabes, Transparency Society, January 2011.

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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The number of complaints arriving at the MASAK has ben decreasing. However, it is unclear whether they are completed or not. There is no available data about the complaints arriving at internal disciplinary and/or internal audit units.

References:

Bülent Tarhan, "Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları" (Turkish Experience in Combating Corruption and Search for Institutional Structure), http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf
MASAK Faaliyet Raporu 2009, http://www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Kemal Özsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Murat Şeker, Professor of Finance, Istanbul University, December 2010.
Hande Özhabes, Transparency Society, January 2011.

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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

These have no authority to investigate but only to report the undue conduct to the investigation authorities (basically the prosecutors). 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. Inspection reports may be shelved by the superior.

References:

Bülent Tarhan, "Yolsuzlukla Mücadele Alanında Türkiye Deneyimi ve Kurumsal Yapı Arayışları" (Turkish Experience in Combating Corruption and Search for Institutional Structure), http://www.tepav.org.tr/eng/admin/dosyabul/upload/2_TOBBYolsuzluk.pdf
MASAK Faaliyet Raporu 2009, http://www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Kemal Özsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Murat Şeker, Professor of Finance, Istanbul University, December 2010.
Hande Özhabes, Transparency Society, January 2011.

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.

48

4.3. Government Procurement: Transparency, Fairness, and Conflicts of Interest Safeguards

51. Is the public procurement process effective?

88

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes | No

Comments:

These provisions are related to recusal from participating in decision making process, outside employment and confidential information.

References:

La No. 4734 on Public procurement, Articles 11, 53/e and g, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.4734&MevzuatIlski=0&sourceXmlSearch=> Regulation on the Organization of the Public Procurement Institution, Financial and Social Rights of Its Personnel and the Working Procedures and Principles, 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.

51b. In law, there is mandatory professional training for public procurement officials.

Yes | No

Comments:

These regulations strongly requires compulsory regular internal service training for all experts. The PPA's professional staff must also fulfil certain requirements and pass special examinations to be promoted to the position of public procurement expert or assistant expert. PPA staff are subject to the Law No. 657 on Civil Servants. At the end of 2008 the PPA had 232 staff (compared to 213 at the end of 2007), including 69 public procurement experts and 28 assistant public procurement experts. (Sigma Assessment Turkey 2010 Public Procurement, <http://www.sigmaweb.org/dataoecd/53/50/43910746.pdf> and TC Kamu İhale Kurumu 2009 Yılı Faaliyet Raporu (Activity Report of Public Procurement Authority of Republic of Turkey, 2009), http://www.ihale.gov.tr/Istatistikler_Raporlar/faaliyet_raporlari.htm)

References:

Law 4734 on Public Procurement, Article 53/h, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.4734&MevzuatIlski=0&sourceXmlSearch=> Regulation Concerning the Organization of Public Procurement Authority and Working Procedure and Principles of Its Employees, http://www.ihale.gov.tr/kurum_hakkinda/kurum_mevzuat.htm Regulation Concerning Human Resources of Public Procurement Authority, http://www.ihale.gov.tr/kurum_hakkinda/kurum_mevzuat.htm Regulation on Promotion of Employees of Public Procurement Authority and Title Change, http://www.ihale.gov.tr/kurum_hakkinda/kurum_mevzuat.htm

Yes: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

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.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

Comments:

Although the officials of the Public Procurement Authority either declare a conflict of interest or recuse themselves there are various violations of conflict of interest provisions at lower level officials who are the member of bidding institution. The OECD-Sigma 2009 Assessment undines that professionalism of contracting entities' procurement functions can be enhanced by strengthening organisational and staff capacity, streamlining decision-making structures, relying more on line organisations rather than on tender committees to achieve professionalism and accountability, and eliminating the formal approach that governs the management of procurement processes today.

References:

Et ve Balık Kurumu ihalesinde komisyon görevlisinin görevi kötüye kullanması(The commission member abuses of power at Meat and Fish Institution bid), 3.09.2010, <http://www.ihalekurumu.com/haberdetay.asp?ID=33>
Muzaffer Akdoğan, Avrupa Birliği Uyum Sürecinde Türk İhale Rejiminin Şeffaflık Açısından Değerlendirilmesi, İstanbul: Legal Kitap Evi, 2010.
OECD-Sigma Assessment Turkey 2009, <http://www.sigmaweb.org/dataoecd/53/50/43910746.pdf>.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2011.
Hande Ozhabes, Transparency Society, January 2011.
Adnan Zengin, former deputy Head of Public Procurement Authority, December 2011.

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.

51d. 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 for monitoring the assets, incomes and spending habits of public procurement officials; however, these officials are required to declare their assets annually. However, if a criminal investigation is opened about an official upon the complaint or so then all asset records can also be reviewed.

References:

Regulation on the Organization of the Public Procurement Institution, Financial and Social Rights of Its Personnel and the Working Procedures and Principles, Articles 33 and 37:
<http://www.kik.gov.tr/kurum/yonetmelikler/teskilat.htm>;
Law No. 3628 on Property Declaration, Struggle Against Bribery and Corruption, Article 3,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3628&MevzuatIlski=0&sourceXmlSearch=>

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.

51e. In law, major procurements require competitive bidding.

Yes | No

Comments:

Market functionality and competitiveness seem basically to be satisfactory in most sectors, judging by the participation rates of tenderers in tender proceedings. However, an the automatic cancellation of tender proceedings in certain cases is advised by the OECD-Sigma 2009 Assessment if fewer than three tenders have been received.

References:

Law No. 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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

Yes | No

Comments:

According to Article 22 of the Law No. 4732 sole sourcing or direct procurement is limited in terms of several criteria such as the nature of supplier (monopoly), nature of the goods (immovable) and services (medical, legal etc.), the cost of sourcing (30,595 Turkish Liras for the metropolitan municipalities and 10,195 Turkish Liras for other administrations) and representation expenses. In case of violations of these provisions, fines and penalties are stated in Articles 58 and 59 of this law.

References:

Law No. 4734 on Public Procurement, Articles 22, 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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

Yes | No

Comments:

The Law establishes a three-tier system for reviewing complaints lodged by disappointed suppliers: (1) in the first stage, a complaint is submitted and reviewed by the contracting entity itself; (2) a complainant who is dissatisfied with the decision of the contracting authority may, as a second step, appeal this decision to the Public Procurement Authority (PPA), and the decision on this appeal is made by the Public Procurement Board (PPB); (3) the final decision on the appeal made by the PPB is then subject to the jurisdiction of the regular courts.

Candidates, tenderers or potential tenderers who claim that they have suffered a loss of right or damage or likely to suffer a loss of right or damage due to unlawful procedures or actions within the process of the tender may file a complaint and appeal in line with the procedures and the principles of this law (Article 54). According to Article 55, the complaint to the contracting authority shall be made to the contracting entity within the application period which is five days regarding the procurements held according to subparagraphs (b) and (c) of the article 21 and ten days for other cases from the date which the proceeding or action, which is subject matter of the complaint, have been realized or should be realized, and before contract signing.

Furthermore, Article 56 states that the candidates, the tenderers or potential tenderers who have submitted a complaint application to the contracting entity or those who have found the decision of the entity inappropriate may file an appeal to the Authority before the signing of the contract under the conditions and within the period stipulated by the fourth paragraph of Article 55.

The review system is not aligned with the EU acquis and is a cumbersome activity for the PPA, occupying a lot of its resources. It needs to be changed in the future.

References:

Law No. 4734 on Public Procurement Articles 54, 55 and 56, <http://www.ihale.gov.tr/english/english47341.htm>

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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

Yes | No

Comments:

The Law establishes a three-tier system for reviewing complaints lodged by disappointed suppliers: (1) in the first stage, a complaint is submitted and reviewed by the contracting entity itself; (2) a complainant who is dissatisfied with the decision of the contracting authority may, as a second step, appeal this decision to the Public Procurement Authority (PPA), and the decision on this appeal is made by the Public Procurement Board (PPB); (3) the final decision on the appeal made by the PPB is then subject to the jurisdiction of the regular courts.

PPB decisions on appeals, as administrative decisions are subject to judicial supervision by the courts. Any dispute that arises after the conclusion of the contract must be brought directly before a court.

References:

Law No. 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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Yes | No

Comments:

Those who are established to be involved in acts and conducts set forth in Article 17, shall be prohibited from participation in any tender carried out by all public institutions and entities including the those specified in the 2nd article and the those listed in 3rd article of this Law, for at least one year and up to two years depending on the nature of the said acts and conducts; and those who do not sign a contract in accordance with the procedures, except for force majeure, although the tender has been awarded to them, shall be prohibited likewise from participation in any tender for at least six months and up to one year. Prohibition decisions shall be taken by the Ministry implementing the contract or by the Ministry which the contracting entity is subordinate to or associated with, by contracting officers of contracting entities which are not considered as subordinate to or associated with any Ministry, and by the Ministry of Internal Affairs in special provincial administrations and in municipalities and in their affiliated associations, institutions and undertakings.

The prohibition decisions shall be made within at most forty-five days following the date which the conducts or acts requiring prohibition has been established. The prohibition decision shall be sent for publication in the Official Gazette within at most fifteen days, and shall become effective on the date of its publication. The decisions shall be followed up by the Public Procurement Authority and those who are prohibited from participation in public procurements shall be recorded (Article 58).

Penal Liability of Tenderers is also regulated (Article 59)

References:

Law No. 4734 on Public Procurement Articles, 11, 17, 58 and 59: <http://www.ihale.gov.tr/english/english47341.htm>

Law No. 5237 Penal Law Article 252:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=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, designed to prevent convicted companies from doing business with the government.

No: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

Comments:

A formal blacklist (<http://vatandas.ihale.gov.tr/>) including the names of those companies about whom a public suit was filed at the court is posted on the institution's website 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 of the time.

References:

Muzaffer Akdoğan, Avrupa Birliği Uyum Sürecinde Türk İhale Rejiminin Şeffaflık Açısından Değerlendirilmesi, İstanbul: Legal Kitap Evi, 2010.
Public Sourcing Platform, <http://vatandas.ihale.gov.tr/>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Adnan Zengin, former deputy Head of Public Procurement Authority, December 2011.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2011.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2011.

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.

52. Can citizens access the public procurement process?

100

52a. In law, citizens can access public procurement regulations.

Yes | No

Comments:

Like all other laws and regulations scheduled to take effect, public procurement regulations are publicly published in the Official Gazette in Turkey, and available online both in Turkish and English at the PPA's web page.

References:

Law No. 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.

52b. In law, the government is required to publicly announce the results of procurement decisions.

Yes | No

Comments:

According to Article 47 of the Law except those sent according to Article 42, the results of the procurement of goods, services and works made by contracting entities covered by this Law, are notified to the Authority in fifteen days at most. Among these results, those relating to procurements covered by the Law are published in the Public Procurement Bulletin by the Authority. The information to be included in the notification of results and which of the results regarding the goods, services and works contracts

awarded according to the Law by the contracting entities operating in the areas of defence, security and intelligence to be published shall be decided by the Authority after considering the opinion of the concerned contracting entity.

References:

Law No. 4734 on Public Procurement Articles, 7, 13, 47, and 53, <http://www.ihale.gov.tr/english/english47341.htm>
Law No. 4982 on the Right to Access to Information: 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.

52c. 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:

Muzaffer Akdoğan, Avrupa Birliği Uyum Sürecinde Türk İhale Rejiminin Şeffaflık Açısından Değerlendirilmesi, İstanbul: Legal Kitap Evi, 2010.
Public Sourcing Platform, <http://vatandas.ihale.gov.tr/>
OECD-Sigma, Turkey Public Procurement Assessment 2009, <http://www.sigmaweb.org/dataoecd/53/50/43910746.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Adnan Zengin, former deputy Head of Public Procurement Authority, December 2011.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2011.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2011.

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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All laws and regulations governing the procurement process are available online without any extra charge.

References:

Muzaffer Akdoğan, Avrupa Birliği Uyum Sürecinde Türk İhale Rejiminin Şeffaflık Açısından Değerlendirilmesi, İstanbul: Legal Kitap Evi, 2010.
Public Sourcing Platform, <http://vatandas.ihale.gov.tr/>
OECD-Sigma, Turkey Public Procurement Assessment 2009, <http://www.sigmaweb.org/dataoecd/53/50/43910746.pdf>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Adnan Zengin, former deputy Head of Public Procurement Authority, December 2011.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2011.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2011.

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 NGOs. 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 NGOs trying to access this information.

52e. 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 according to Law 4734.

All public entities can advertise their bids on a particular website (<http://www.ihale.gov.tr/ssl/ksp/>). However, it is argued that small bids, especially those organized by municipalities or their enterprises, are not advertised effectively.

References:

Muzaffer Akdoğan, Avrupa Birliği Uyum Sürecinde Türk İhale Rejiminin Şeffaflık Açısından Değerlendirilmesi, İstanbul: Legal Kitap Evi, 2010.

Public Sourcing Platform, <http://vatandas.ihale.gov.tr/>

OECD-Sigma, Turkey Public Procurement Assessment 2009, <http://www.sigmaweb.org/dataoecd/53/50/43910746.pdf>

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Adnan Zengin, former deputy Head of Public Procurement Authority, December 2011.

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2011.

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2011.

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.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

Law No. 4734, Article 47, requires that results of the tenders with contract values exceeding at least one trillion Turkish liras (an amount revalued each year and which is currently 4,238,665 Turkish Liras, (US\$ 2.825 million) shall be published in the Bulletin of Public Procurement within a maximum of fifteen days following the date of registration of the contract by the Court of Accounts. The contracting entity is then notified (<http://www.ihale.gov.tr/english/english47341.htm>).

References:

Muzaffer Akdoğan, Avrupa Birliği Uyum Sürecinde Türk İhale Rejiminin Şeffaflık Açısından Değerlendirilmesi, İstanbul: Legal Kitap Evi, 2010.

Public Sourcing Platform, <http://vatandas.ihale.gov.tr/>

OECD-Sigma, Turkey Public Procurement Assessment 2009, <http://www.sigmaweb.org/dataoecd/53/50/43910746.pdf>

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Adnan Zengin, former deputy Head of Public Procurement Authority, December 2011.

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

83

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

As a result of the privatization process in accordance with the provisions of this Law and with regards to the protection of the health and security as well as the economic benefits for consumers in accordance with the operation of the goods and services markets, economic necessities and public benefits, including monopolies within the boundaries of the Republic of Turkey, all measures are taken (Article 16) and several tender methods can be used (Article 18).

References:

Law No. 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://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4046&MevzuatIlski=0&sourceXmlSearch=>

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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

Yes

No

Comments:

Article 7 of Law No. 4046 Concerning Arrangements for the Implementation of Privatization and Amending Certain Laws and Decrees with the Force of Law, As for organizations in the privatization program which are subject to the provisions of the Capital Market Law and whose stocks are traded on the stock exchange, the Chairman and members of the Board of Directors, the internal auditors and other personnel, the personnel of the Administration, the President and members of the Council may not disclose any nonpublic information or dates they learn during their function on accounts, operations, and enterprises of their organizations.

References:

Law 4046 on Concerning Arrangements for The Implementation of Privatization and Amending Certain Laws and Decrees With The Force of Law, Articles 7,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4046&MevzuatIlski=0&sourceXmlSearch=>

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.

53c. 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 the ports were privatized properly. The privatization of airports was indirectly subject to fraud. The Council of State did not prove the Petkim (oil refinery) privatization due to a conflict of interest.

References:

OGER'den menfaat haberlerine yalanlama (OGER declines conflict of interest allegations) <http://www.stargazete.com/guncel/ogerden-menfaat-haberlerine-yanlanlama-146229.htm>
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2010.

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.

54. Can citizens access the terms and conditions of privatization bids?

85

54a. In law, citizens can access privatization regulations.

Yes | No

References:

1982 Constitution, Article 89, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 4046 Concerning Arrangements for The Implementation of Privatization and Amending Certain Laws and Decrees With The Force of Law, Article 37/b:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4046&MevzuatIlski=0&sourceXmlSearch=>

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.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

All regulations are available on the Privatization Administration's website and other government legal portals. Purchasing of the Terms and Conditions is expensive.

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2010.

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.

54c. In law, the government is required to publicly announce the results of privatization decisions.

Yes | No

References:

Law No. 4046 Concerning Arrangements for The Implementation of Privatization and Amending Certain Laws and Decrees With The Force of Law, Article 17/F:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4046&MevzuatIlski=0&sourceXmlSearch=>

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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2010.

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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

All regulations are available on the Public Procurement Institution's website and other government legal portals. Purchasing the Terms and Conditions for specific privatization implementation is expensive. For example,

References:

Privatization Administration Tender Announcement For Privatization Of Hamitabat Elektrik Üretim ve Tic. A.Ş.

, http://www.oib.gov.tr/2011/ilan/2011-03-21_Hamitabat.htm

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.

Atalay Ergüven, Chairman, Association for the State Supervision Personnel (DENETDE), Ankara, December 2010.

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 NGOs. 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 NGOs trying to access this information.

Category 5. Government Oversight and Controls

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

0

55a. 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 No. 5548 entitles the Office of Public Controller (Ombudsman) 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. 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. Later, the Constitutional Court annulled the law establishing the Ombudsman in 2009. However, the recent constitutional amendments of September 12, 2010 included the ombudsman as a constitutional institution by rewriting Article 74 and adding new paragraphs to this article. A draft law on Ombudsman has been reviewed at the relevant parliamentary commission when this report was completed.

References:

Law No. 5548 on Public Controller, <http://www.tbmm.gov.tr/kanunlar/k5548.html>
Annulment Case, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>
Annulment Decision of the Constitutional Court, 4.04.2009, [http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2681&content=Kamu denetçi](http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2681&content=Kamu%20denetci).
Constitutional Amendment of September 12, 2010, <http://www.tbmm.gov.tr/kanunlar/k5982.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.

56. Is the national ombudsman effective?

0

56a. In law, the ombudsman is protected from political interference.

Yes | No

Comments:

The ombudsman institution does not exist. According to the recent constitutional amendment the ombudsman can be elected by the absolute majority of those who are present in the General Assembly of the Grand National Assembly at the third round. This may erode the prestige of the ombudsman in the eyes of people. On the other hand, the deputy ombudsmen can also be elected by the General Assembly of the Grand National Assembly of Turkey. In other words, the deputies' election shall be influenced by the political spectrum, bargaining, equilibrium. This may harm the public reliability of the institution and its effectiveness. Therefore, new constitutional debates should take these deficiencies of the constitutional provisions regulating the election of the ombudsman and the deputy-ombudsmen into account.

References:

Law No. 5548 on Public Controller, <http://www.tbmm.gov.tr/kanunlar/k5548.html>
Annulment Case, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>
Annulment Decision of the Constitutional Court, 4.04.2009, [http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2681&content=Kamu denetçi](http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2681&content=Kamu%20denetci).
Constitutional Amendment of September 12, 2010, <http://www.tbmm.gov.tr/kanunlar/k5982.html>.
Draft Law on Ombudsman, <http://www2.tbmm.gov.tr/d23/1/1-0991.pdf>

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.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778

Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778

Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. Critiques on the draft law's provisions related to the election methods are stated in question 56a.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. Critiques on the draft law's provisions related to the election methods are stated in question 56a. The Ombudsman shall be affiliated with the Grand National Assembly of Turkey.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>

Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. Critiques on the draft law's provisions related to the election methods are stated in question 56a. According to the draft law, the Ombudsman shall be affiliated with the Grand National Assembly of Turkey and its annual report shall be published by the Official Gazette.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament,
27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman),
Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. Critiques on the draft law's provisions related to the election methods are stated in question 56a. According to the draft law, the Ombudsman shall be affiliated with the Grand National Assembly of Turkey and its annual report shall be published by the Official Gazette. The Ombudsman can make inquiry and review on the application but not investigation.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament,

27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman),
Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. Critiques on the draft law's provisions related to the election methods are stated in question 56a. According to the draft law, the Ombudsman shall be affiliated with the Grand National Assembly of Turkey and its annual report shall be published by the Official Gazette. The Ombudsman can make inquiry and review on the application but not investigation and cannot impose any penalty.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament,
27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman),
Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament, 27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman), Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-deneticiligi-hakkinda-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

57. Can citizens access the reports of the ombudsman?

0

57a. In law, citizens can access reports of the ombudsman(s).

Yes | No

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the

relevant parliamentary commission when this report was completed. However, the draft law states that reports of the ombudsman shall be public and published in the Official Gazette.

References:

Law No. 5548 on Public Controller, <http://www.tbmm.gov.tr/kanunlar/k5548.html>
Annulment Case, <http://www.anayasa.gov.tr/eskisite/KARARLAR/IPTALITIRAZ/YD/YDK0633.htm>
Annulment Decision of the Constitutional Court, 4.04.2009, [http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2681&content=Kamu denetçi.](http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=2681&content=Kamu%20denetci)
Constitutional Amendment of September 12, 2010, <http://www.tbmm.gov.tr/kanunlar/k5982.html>.
Draft Law on Ombudsman, <http://www2.tbmm.gov.tr/d23/1/1-0991.pdf>

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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. However, the draft law states that the Ombudsman shall complete its inquiry and review on the application within six months..

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament,
27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman),
Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-denetçiliği-hakkında-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Hande Özhabes, Transparency Society, January 2011.

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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Although it is a constitutional institution the Ombudsman does not exist in Turkey. The draft law has been reviewed by the relevant parliamentary commission when this report was completed. However, the draft law states that reports of the ombudsman shall be public and published in the Official Gazette.

References:

Turkey looks for its Ombudsman as relevant bill makes it to Parliament,
27.02.2011, http://www.todayszaman.com/newsDetail_getNewsById.action?load=detay&newsId=236778&link=236778
Ergun Özbudun, Kamu denetçiliği hakkında bildiklerimiz bilmediklerimiz (What we know and do not know about ombudsman),
Star, 28.02.2011, <http://www.stargazete.com/acikgorus/kamu-denetçiliği-hakkında-bildiklerimiz-bilmediklerimiz-haber-333913.htm>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The Court of Accounts is the supreme authority covering the whole public bodies. In addition to that, the Supreme Supervision Council of the Presidential Office of the Republic prepares reports on societal issues upon the request of the President. The High Supervision Board of the Prime Ministry was merged with the Court of Accounts by the Law No. 6085 (Provisional Article 4). In December 2010, a new law on Court of Accounts was adopted by the parliament. It now states that the Court of Accounts no longer has the authority to conduct inspections and limit public institutions' power of discretion. Under the changes, the court will not be able to carry out performance audits of public institutions or the TSK.

References:

1982 Constitution, Article 160, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No.6085 on the Court of Accounts,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.6085&MevzuatIliski=0&sourceXmlSearch=>
Government reports: <http://www.ydk.gov.tr/>

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.

59. Is the supreme audit institution effective?

81

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

Although the Law on Court of Accounts stresses the institutional independence in review, audit and decisions, the Head and members of the Court are elected by the Grand National Assembly of Turkey in accordance with the prescribed rules and principles for nomination.

References:

1982 Constitution, Article 160, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No.6085 on the Court of Accounts, Articles 3, 13-16,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.6085&MevzuatIlski=0&sourceXmlSearch=>

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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

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 have also protection.

References:

Sayıştay Kanunu ne getiriyor? (What the Law on Court of Accounts Brings?) http://www.ydk.gov.tr/sayistay_ydk.htm
OECD-Sigma, Turkey External Audit Assessment May 2008, <http://www.sigmaweb.org/dataoecd/49/45/41637985.pdf>
Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Although the experts underlined the need for sufficient staff the 2009 Activity Report of the Court of Accounts does not list any need for personnel.

References:

TC Sayıştay Başkanlığı, 2009 Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
OECD-Sigma, Turkey External Audit Assessment May 2008, <http://www.sigmaweb.org/dataoecd/49/45/41637985.pdf>

Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010. Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.
OECD-Sigma, Turkey External Audit Assessment May 2008, <http://www.sigmaweb.org/dataoecd/49/45/41637985.pdf>
Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010. Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

There are allegations concerning clientelism and nepotism in oral examinations. Therefore, the Council of State urged to use of video-taping in oral examinations for reliability.

References:

Danıştay, Sayıştay denetçi yardımcılığının sözlü bölümünün yürürlüğünü durdurdu (Council of State stays of execution of the examination for deputy auditor of the Court of Accounts), 14.09.2009, <http://www.memurlar.net/haber/148825/>
Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010. Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Audit Court prepares its own budget and receives its allocation from the annual general budget.

References:

TC Sayıştay Başkanlığı, 2009 Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
OECD-Sigma, Turkey External Audit Assessment May 2008, <http://www.sigmaweb.org/dataoecd/49/45/41637985.pdf>
Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010. Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

In General Accountability Report, External Audit General Evaluation Report, General Conformity Statement, 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 and public. Earlier the Court was not required to publicly show the accounts that have not been covered with annual compliance audit reports or writs. In addition, such reports are not presented to the Grand National Assembly of Turkey as they are within the competence of the judicial branch of Court, which carries out its tasks independently, i.e. without any involvement from the parliament. According to the new law, the Court shall prepare general evaluation report of external audit, general activity reports, financial statistical evaluation reports and submit them to the parliament (Law No. 6085 Articles, 38-42). These reports shall be publicly available within fifteen days following their submissions to the parliament. Since the law was adopted in December 2010 it is unclear how these provisions will be implemented.

References:

TC Sayıştay Başkanlığı, 2009 Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
SIGMA, Turkey Public Service Assessment, 2008, <http://www.sigmaweb.org/dataoecd/37/56/41639364.pdf>
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

It argued that the Law No. 6085 does not require the Court to make evaluation, in accordance with the INTOSAI standards. It is widely argued that many of the audit reports are kept under the desk pads of the executives.

References:

İşte Hükümeti korkutan rapor (Here is the report that fears the government),
29.10.2010, <http://www.patronlardunyasi.com/haber/iste-hukumeti-korkutan-rapor/93392>
M. Akif Hamzaçebi, Minutes of the Grand National Assembly on the draft law on the Court of Accounts,
20.10.2010, http://www.akifhamzacebi.org/index.php?option=com_content&view=article&id=326:sayistay-2md-onerge&catid=49:genel-kurul-konumalari-23-doenem&Itemid=103
OECD-Sigma, Turkey External Audit Assessment May 2008, <http://www.sigmaweb.org/dataoecd/49/45/41637985.pdf>
Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010. Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara,

December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency is able to initiate its own investigations only in terms of financial and performance audit and the Treasury transactions. The Audit Court issues the judicial decisions and informs the relevant authority regarding disciplinary investigations and the prosecutor for criminal investigations, if necessary.

References:

Erdal Kuluçlu, 5018 Sayılı Kamu Mali Yönetimi ve Kontrol Kanunu Işığında Sayıştay Yargısı (Judicial Authority of the Court of Accounts in Light of the Law No. 5018 on Public Financial management and Control), SayDer, July-August-September 2010, <http://www.sayder.org.tr/e-dergi-5018-sayili-kamu-mali-yonetimi-ve-kontrol-kanunu-isinginda-sayistay-yargisi-1-7.pdf>
TC Sayıştay Başkanlığı, 2009 Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
OECD-Sigma, Turkey External Audit Assessment May 2008, <http://www.sigmaweb.org/dataoecd/49/45/41637985.pdf>
Kemal Ozsemerci, Chief Auditor, Court of Accounts, December 2010. Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

60. Can citizens access reports of the supreme audit institution?

67

60a. In law, citizens can access reports of the audit agency.

Yes | No

Comments:

In General Accountability Report, External Audit General Evaluation Report, General Conformity Statement, 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 and public. Earlier the Court was not required to publicly show the accounts that have not been covered with annual compliance audit reports or writs. In addition, such reports are not presented to the Grand National Assembly of Turkey as they are within the competence of the judicial branch of Court, which carries out its tasks independently, i.e. without any involvement from the parliament. According to the new law, the Court shall prepare general evaluation report of external audit, general activity reports, and financial statistical evaluation reports and submit

them to the parliament (Law No. 6085 Articles, 38-42). These reports shall be publicly available within fifteen days following their submissions to the parliament. Since the law was adopted in December 2010 it is unclear how these provisions will be implemented (Law No. 605 Article 44). However, the publicity of the security and intelligence reports and the audit reports on the public goods held by the public agencies shall be prescribed by a regulation prepared by the Court of Accounts and issued by the Council of Ministers.

References:

1982 Constitution, Article 160, <http://www.byegm.gov.tr/mevzuat/anayasa/anayasa-ing.htm>
Law No.6085 on the Court of Accounts, Article 44,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.6085&MevzuatIisiki=0&sourceXmlSearch=>

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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In General Accountability Report, External Audit General Evaluation Report, General Conformity Statement, 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 and public. Earlier the Court was not required to publicly show the accounts that have not been covered with annual compliance audit reports or writs. In addition, such reports are not presented to the Grand National Assembly of Turkey as they are within the competence of the judicial branch of Court, which carries out its tasks independently, i.e. without any involvement from the parliament. According to the new law, the Court shall prepare general evaluation report of external audit, general activity reports, and financial statistical evaluation reports and submit them to the parliament (Law No. 6085 Articles, 38-42). These reports shall be publicly available within fifteen days following their submissions to the parliament. Since the law was adopted in December 2010 it is unclear how these provisions will be implemented (Law No. 605 Article 44). However, the publicity of the security and intelligence reports and the audit reports on the public goods held by the public agencies shall be prescribed by a regulation prepared by the Court of Accounts and issued by the Council of Ministers.

References:

TC Sayıştay Başkanlığı, 2009 Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
SIGMA, Turkey Public Service Assessment, 2008, <http://www.sigmaweb.org/dataoecd/37/56/41639364.pdf>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Only general conformity reports, performance reports and general purpose reports are publicly available either via online or printed in the parliamentary records. These are not detailed financial accounts of the public institutions. How shall the new provisions concerning the publicity of the reports to be prepared and submitted to the Grand National Assembly of Turkey be implemented is open to question.

References:

TC Sayıştay Başkanlığı, 2009 Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
SIGMA, Turkey Public Service Assessment, 2008, <http://www.sigmaxweb.org/dataoecd/37/56/41639364.pdf>
Seref İba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly, December 2010.
Kemal Özsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Özhabes, Transparency Society, January 2011.
Atalay Ergüven, Chairman of the Association for State Supervision Personnel, December 2010.

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 NGOs. 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 NGOs trying to access this information.

83
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

Comments:

The Law no 5345, adopted in 2005 and the Presidency of Revenue Administration (Turkish Revenue Administration) was established as affiliated with the Ministry of Finance. In addition to the TRA, there is DG Revenue Policies and a Tax Council. (For further information see ec.europa.eu/.../screening.../screening_report_16_tr_internet_en.pdf)

References:

Law No. 5345 on the Establishment and Duties of the Presidency of Revenue Administration: <http://www.tbmm.gov.tr/kanunlar/k5345.html>
Law No. 213 on Tax Procedure, Article 4, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.4.213&MevzuatIlski=0&sourceXmiSearch=>
Decree Law No.178 on Tasks and Organizations of the Ministry of Finance, Additional Art. 33/A, <http://www.maliye.gov.tr/maliye/khk178a.htm>
Law No. No. 5452 on Establishment and Duties of the Ministry of Finance, amended the Decree-Law numbered 178 (OG No.26073, dated 07.02.2006), <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=4.5.178&sourceXmiSearch=&MevzuatIlski=0>

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.

62. Is the tax collection agency effective?

88

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As of the end of 2009, the total number of revenue controllers and experts in the central organization was 485 and 1796 auditors were employed at the local organizations of the TRA. The professional qualifications of accounting experts in public service is unquestionable. However, both the salary and promotion system are discouraging the new experts and they leave the institution as soon as possible. .

References:

Vergi Denetimi Güçlendirileceğine, Zayıflatılmaktadır (Tax Auditing Weakened instead of Being Strengthened), http://www.ydd.org.tr/index.php?view=article&id=290%3Akamuoyuna&option=com_content&Itemid=26
Gelir İdaresi Yetiştirildiği Personelini Kurumda Tutamıyor (TRA can't keep the Trained Personnel at the Service), http://www.guder.org.tr/index.php?option=com_content&view=article&id=203:gelir-idaresi-yetistirdigi-personelini-kurumda-tutamiyor&catid=61:haber
Gelir İdaresi Başkanlığı, 2009 Faaliyet Raporu, Ankara 2010, <http://www.gjb.gov.tr/index.php?id=107>
Screening Report Turkey: Chapter 16: Taxation, ec.europa.eu/.../screening.../screening_report_16_tr_internet_en.pdf
Murat Şeker, Professor of Finance, Istanbul University, December 2010.

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 tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

TRA is a part of the Ministry of Finance and has a regular funding from the central administration budget.

References:

Gelir İdaresi Başkanlığı, 2009 Faaliyet Raporu, Ankara 2010, <http://www.gjb.gov.tr/index.php?id=107>
Screening Report Turkey: Chapter 16: Taxation, ec.europa.eu/.../screening.../screening_report_16_tr_internet_en.pdf
Murat Şeker, Professor of Finance, Istanbul University, December 2010.

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 tax laws enforced uniformly and without discrimination?

25

63a. In practice, are tax laws enforced uniformly and without discrimination?

Comments:

Tax evasion is widespread despite incentives. Unfair taxation or current tax collection strategies (indirect taxation) also undermines the implementation of the social-state concept in Turkey. Moreover, tax amnesty policy causes further unfair treatment between and among the taxpayers. There is no positive discrimination for taxpayers who pay the taxes on time. Tax rules are not discriminatory but are sometimes used arbitrarily. In a recent case, tax fine levied by the government of Turkey against the Doğan Media Group, a sum of \$2.5 billion that comes on top of a \$500 million levied in February. The Council of State, the superior administrative court, canceled a demand for backtaxes of 444.3 million Turkish Liras.

References:

Turkish gov't introduces sweeping tax amnesty, 15.11.2010, <http://www.hurriyetdailynews.com/n.php?n=turkish-gov8217t-introduces-sweeping-tax-amnesty-2010-11-15>
 Türkiye vergi kaçakçılığı cenneti haline geldi (Turkey became a heaven for tax evasion), 7.03.2010, <http://yenisafak.com.tr/Ekonomi/?i=245380>
 Doğan Media Group wins another court case, 18.02.2011, <http://www.hurriyetdailynews.com/n.php?n=dogan-media-group-wins-another-court-case-2011-02-18>
 Güneş Çetin, Vergi Aflarının Vergi Mükelleflerinin Tutum ve Davranışları Üzerindeki Etkisi (Impact of Tax Amnesty on the Attitudes and Behavior of Tax payers), Celal Bayar Üniversitesi, İİBF Yönetim ve Ekonomi, 2007, 14
 (2) <http://www2.bayar.edu.tr/yonetimekonomi/dergi/pdf/C14S22007/GC.pdf> Hakan Üzeltürk , 2011 Bütçesi ve Vergi Adaleti (2011 Budget and Tax Equity), <http://www.muhasbeciyizbiz.com/2011-butcesi-ve-vergi-adaleti.html>
 Murat Şeker, Professor of Finance, Istanbul University, December 2010.

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.

64. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes | No

Comments:

Custom organization is one of the oldest public administrative unit and was first established in 1861 during the Ottoman era and then reorganized in 1931 after the establishment of the Republic.

References:

Law No. 4458 on Customs, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4458&MevzuatIlski=0&sourceXmiSearch=>
 Decree Law No. 485 on the Organization and Duties of the Undersecretariat of Customs, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=4.5.485&MevzuatIlski=0&sourceXmiSearch=>

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.

65. Is the customs and excise agency effective?

88

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

According to the 2009 Activity Report of the Undersecretariat, a total of 8979 full time and 252 contractual personnel were employed in the whole organization. In the same year, 89 employees were transferred to other institutions, 83 employees resigned, 24 employees were dismissed. Finally, a total of 108 inspectors, 134 controller and 267 experts (custom, financial services and EU) were employed in the whole organization. According to the public announcements, the Undersecretariat will employ 2000 new personnel in 2011.

It is argued that, job insecurity, unclear job definition, ineffective human resources management, lack of facilities, conflict between the departments, etc. were major weaknesses of the customs administration in Turkey. In addition to that the current administrative and supervision policy, less democratic and non-participatory decision making process which are dominant among the inspectors, controllers and superior administrators are the basic problem areas.

References:

Büyümin Özgür, Gümrük Teşkilatının Sorunları ve Yeniden Yapılandırılması (Problems of Custom Organization and Reorganization), Gümrük Dünyası, 2010 (65), 5-24. <http://www.gumrukkontrolor.org.tr/Yayinlar/Dergiler/64/3.pdf>
TC Başbakanlık Gümrük Müsteşarlığı 2009 Yılı Faaliyet Raporu, <http://www.gumruk.gov.tr/tr-TR/anasayfa/mustFaaliyet/Faaliyetler/2009YiliFaaliyetRaporuSon.pdf>

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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Undersecretariat of the Custom is a central government organizations and receives regular fund from the central administration budget each year. In addition to that it has a revolving fund and receives EU funds for training etc.

References:

TC Başbakanlık Gümrük Müsteşarlığı 2009 Yılı Faaliyet Raporu, <http://www.gumruk.gov.tr/tr-TR/anasayfa/mustFaaliyet/Faaliyetler/2009YiliFaaliyetRaporuSon.pdf>
TC Başbakanlık Gümrük Müsteşarlığı Stratejik Planı 2010-2014, www.gumruk.gov.tr/tr-TR/anasayfa/Documents/SP_2010_2014.pdf

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Although the actual number of reported custom controls increased and the treasury loss decreased in recent years, there are still complaints that customs and excise laws are not enforced uniformly without discrimination. It is argued that smuggling or tax evasion happens outside the custom zone. Especially after the increase of oil prices, gasoline smuggling increased.

References:

Satıcı Gümrük dışında kaçakçılık teşvik ediliyor(Satıcı: Smuggling is encouraged outside the custom zone), <http://www.haberpan.com/satici-gumruk-disinda-kaçakçılık-tesvik-ediliyor-haberi/>
 Mehmet Çardak, Gümrük denetimi nasıl ve denetçisi kim olmalıdır? (2) Dünya Newspaper, 19.12.2009, <http://www.dunya.com/haber.asp?id=72055>
 TC Başbakanlık Gümrük Müsteşarlığı 2009 Yılı Faaliyet Raporu, <http://www.gumruk.gov.tr/tr-TR/anasayfa/mustFaaliyet/Faaliyetler/2009YiliFaaliyetRaporuSon.pdf>
 TC Başbakanlık Gümrük Müsteşarlığı Stratejik Planı 2010-2014, www.gumruk.gov.tr/tr-TR/anasayfa/Documents/SP_2010_2014.pdf

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

Following the amendment to Article 160 of the 1982 Constitution and the adoption of Law No. 5018, financial control of the social security institutions, special budget institutions and regulatory and supervisory institutions is under the supervision of the Court of Accounts.

Earlier the High Supervision Board (YDK), which belongs to the Prime Ministry, prepares the reports on the state economic enterprises, and submits them to the approval of the parliamentary committee (State Economic Enterprises Committee of the Grand National Assembly).

However, after the adoption of the Law No. on Court of Accounts, this Board became a part of the Court.

References:

1982 Constitution Articles 160 and 165, <http://www.byegm.gov.tr/content.aspx?s=tcotrol>
 Law No. 3346 Concerning the Regulation of the Oversight of the State Economic Enterprises and Funds by the Grand National

Assembly: [http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3346&sourceXmlSearch=Law No. 5018 on Public Financial Management and Control](http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.3346&sourceXmlSearch=Law%20No.%205018%20on%20Public%20Financial%20Management%20and%20Control), [http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.5018&MevzuatIlski=0&sourceXmlSearch=Law No. 6085 on Court of Accounts](http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.5018&MevzuatIlski=0&sourceXmlSearch=Law%20No.%206085%20on%20Court%20of%20Accounts), [http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.6085&MevzuatIlski=0&sourceXmlSearch=Sayıştay](http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.6085&MevzuatIlski=0&sourceXmlSearch=Sayislay).

Yes: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. 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, or if some state-owned companies are free from government oversight.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

100

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | No

Comments:

Although the members and the Head of the Courts of Accounts are elected by the Grand National Assembly, it has functional and institutional independence from other institutions.

References:

Law No. 6085 on Court of Accounts, Article 3, [http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.6085&MevzuatIlski=0&sourceXmlSearch=Sayıştay](http://mevzuat.basbakanlik.gov.tr/Metin.Aspix?MevzuatKod=1.5.6085&MevzuatIlski=0&sourceXmlSearch=Sayislay).

Yes: A YES score is earned only if the agency, series of agencies, 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

As of 2009, 787 out of 1302 personnel working at the Court of Accounts are professional staff (331 expert auditor, 96 chief controller, 176 controller and 116 deputy-controller levels).

References:

TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

It is a part of the central government and receives regular fund from the annual central administration budget.

References:

TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

100: The agency, series of agencies, 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 agency, series of agencies, 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 33 of the Law No. 6085, the Chief Prosecutor of the Court of Accounts monitors the responsible persons and other relevant persons and take action according to the provisions of the law.

References:

TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

According to Articles 48-57, the Court of Accounts may impose a penalty about the responsible person(s).

References:

TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

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

69. Can citizens access the financial records of state-owned companies?

90

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

Comments:

Final accounts of the state economic enterprises that are reviewed by the parliamentary committee shall be published in the Official Gazette. However, these are not detailed financial accounts.

References:

1982 Constitution, Article 160, <http://www.byeqm.gov.tr/content.aspx?s=tcotrot>
Law No. 6085 on Court of Accounts, Law No. 6085 on Court of Accounts, Article 3, <http://mevzuat.basbakanlik.gov.tr/Metin.aspx?MevzuatKod=1.5.6085&MevzuatIlski=0&sourceXmlSearch=Sayistay>
Law No. 3346 Concerning the Regulation of the Oversight of the State Economic Enterprises by the Grand National Assembly, Article 10: <http://mevzuat.basbakanlik.gov.tr>
/Metin.aspx?MevzuatKod=1.5.3346&MevzuatIlski=0&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.

69b. 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 the provisions of the Law 5018 on Public Financial Administration and Control.

References:

TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

100: State-owned companies always publicly 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, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

Although the Law No. 6085 and or relevant regulations require the universal standards to be implemented fully, the Sayder Report argues that the Court of Accounts should improve the capacity in using these universal auditing standards, including mainly the training for audit personnel.

References:

Sayder, Report on the Audit Standart in Turkey and the World, March 2011, www.sayder.org.tr/d/f/denetim-standartlari.pdf
TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

Comments:

The reports are available in the internet and published in the Official Gazette.

References:

Sayder, Report on the Audit Standart in Turkey and the World, Mrch 2011, www.sayder.org.tr/d/f/denetim-standartlari.pdf
 TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
 Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
 Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
 Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
 Murat Seker, Professor of Finance, Istanbul University, January 2011.
 Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

Comments:

The reports are available in the internet and published by the Official Gazette.

References:

Sayder, Report on the Audit Standart in Turkey and the World, Mrch 2011, www.sayder.org.tr/d/f/denetim-standartlari.pdf
 TC Sayıştay Başkanlığı 2009 Yılı Faaliyet Raporu, April 2010, <http://www.sayistay.gov.tr/tc/faaliyet/faaliyet2009.pdf>
 Kemal Ozsemerci, Chief Auditor, Audit Court, December 2010.
 Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
 Seref Iba, Deputy Director, Department of Rules and Resolutions, Turkish Grand National Assembly (TGNA), December 2010.
 Murat Seker, Professor of Finance, Istanbul University, January 2011.
 Atalay Erguven, Chairman of the Association for State Supervision Personnel, December 2010.

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 NGOs. 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 NGOs trying to access this information.

70a. In law, anyone may apply for a business license.

Yes | No

Comments:

An official license is required for a) tradesmen and artisan who are subject of the tax, b) self-employed, c) Corporate taxpayer, d) Unlimited liability company, ordinary company and limited company shareholders and e) trade registrars. However, there is no discrimination or exclusion from applying for a business license.

References:

Law No. 3572 on License for Opening a Workplace and Business: [http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3572&MevzuatIlski=0&sourceXmlSearch=Regulation 2005/9207 on License for Opening a Workplace and Business:](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3572&MevzuatIlski=0&sourceXmlSearch=Regulation%2005/9207%20on%20License%20for%20Opening%20a%20Workplace%20and%20Business)
http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.20059207&MevzuatIlski=0&sourceXmlSearch=i_yer
 Law No. 5216 on Metropolitan Municipalities: <http://www.tbmm.gov.tr/kanunlar/k5216.html>
 Law No. 5393 on Municipalities: <http://www.mevzuat.adalet.gov.tr/html/1525.html>
 Law No. 5442 on Provincial Special Administration: <http://www.mevzuat.adalet.gov.tr/html/938.html>
 Law No. 1593 on Public Sanitation: www.nvi.gov.tr/Files/File/Mevzuat/Nufus_Mevzuati/Kanun/pdf/umumi_hif_kanunu.pdf
 Law No. 2559 on Duties and Responsibilities of Police: <http://www.mevzuat.adalet.gov.tr/html/569.html>
 Law No. 4562 Organized Industrial Zones: <http://www.tbmm.gov.tr/kanunlar/k4562.html>
 Law No. 213 on Tax Procedure, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.4.213&MevzuatIlski=0&sourceXmlSearch=>

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.

70b. In law, a complaint mechanism exists if a business license request is denied.

Yes | No

Comments:

According to Article 125 of the 1982 Constitution "recourse to judicial review shall be available against all actions and acts of administration."

References:

1982 Constitution, Article 125, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
 Law No. 3572 on License for Opening a Workplace and Work, [http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3572&MevzuatIlski=0&sourceXmlSearch=Regulation 2005/9207 on License for Opening a Workplace and Work,](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3572&MevzuatIlski=0&sourceXmlSearch=Regulation%2005/9207%20on%20License%20for%20Opening%20a%20Workplace%20and%20Work)
http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=3.5.20059207&MevzuatIlski=0&sourceXmlSearch=i_yer

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.

70c. 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:

According to WB Doing Business Ranking Turkey stands in the second quarter of the included countries. In terms of five year

measure, only 0.1 percent change in doing business has happened in Turkey. It depends on the scope of activity of the business. A license for business can be obtained in ten days to one month period if the requirements are met.

References:

Mustafa Tamer, İşyeri Açma ve Ruhsatları, Ankara: Seçkin Yayınevi, 2006.
World Bank's Doing Business Survey, <http://www.doingbusiness.org/reforms/~media/FPDKM/Doing%20Business/Images/Features/5-years.gif>
Perihan Sari, former Business Inspector, Ministry of Labor and Social Security, former Secretary General of Federation of Revolutionary Labor Union, December 2010.

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.

70d. 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. License fees are determined by municipal governments. According to Article 84 of the Law No. 2464 on Revenues of Municipalities minimum and maximum amount of business licence per square meter varies 0,1 and 1 Turkish Liras (0,66 or 66 cents). Recently Muğla Municipality has increased the first grade business license fee to 5.000 Turkish Liras, second grade business licence fee to 3.000 Turkish Liras and third grade business license fee to 1.000 Turkish Liras.

References:

Muğla'da 3. sınıf işyeri açma harcı yüzde 500 zamlandı (Third grade business license fee increased 500 times in Muğla) , 9.03.2011, <http://www.muqlanethaber.com/muqla-da-3-sinif-isyeri-acma-harci-yuzde-500-zamlandi-h155.html>
WB Doing Business Rankings 2010, <http://www.doingbusiness.org/rankings>
Perihan Sari, former Business Inspector, Ministry of Labor and Social Security, Secretary General of Federation of Revolutionary Labor Union, December 2010.

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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

Yes | No

Comments:

There are several other standards required for public health concerns (see TC Ulusal Is Sagligi ve Guvenligi Politika Belgesi (2006-2008), 20 Ocak 2006, Ankara).

References:

Law No. 4857 on Labour Articles 77-83: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4857&MevzuatIlski=0&sourceXmlsource=is%20kanunu>
Law No. 818 on Liabilities Article 332: <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.818&sourceXmlSearch=Borclar>
Law No. 5393 on Municipalities Article 53: <http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?sourceXmlSearch=sa%F0%FDk&MevzuatKod=1.5.5393>
Law No. 5510 on Social Security and General Health Insurance: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5510&MevzuatIlski=0&sourceXmlSearch=>
Law No. 1593 on Public Sanitation: www.nvi.gov.tr/Files/File/Mevzuat/Nufus_Mevzuati/Kanun/pdf/umumi_hif_kanunu.pdf
Statute No. 777583 on Labour Health and Security: http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=2.5.77583&sourceXmlSearch=i_çi_sa_l1_1
TC Ulusal Is Sagligi ve Guvenligi Politika Belgesi (2006-2008), 20 Ocak 2006, Ankara, <http://www.issgm.gov.tr>

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.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

Yes | No

Comments:

In terms of health, Turkey ranks in 87th position among a total of 169 countries surveyed in a research project by the Turkish Medical Association (TTB). "The income level is one of the most important factors that affect the health level of any country. Other factors on the health level are the inequality of income distribution, education and social security resources for instance. (Bianet, 27.10.2010, <http://bianet.org/english/health/125689-health-standards-in-turkey-lose-in-international-comparison>)

References:

1982 Constitution Article 56, <http://www.byegm.gov.tr/content.aspx?s=icotrot>
Law 2872 on the Environment: <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2872&MevzuatIlski=0&sourceXmlSearch=>

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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

Yes | No

Comments:

Occupational health and safety standards are not applicable to all business enterprises in Turkey where most of business are categorized as SMEs in which less than 50 workers are employed.

References:

Law No. 5179 on Food Production, Consumption and Control, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5179&MevzuatIlski=0&sourceXmlSearch=>
Law No. 3359 on Health Services, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3359&MevzuatIlski=0&sourceXmlSearch=>

Decree No. 181 on the Establishment and Duties of the Ministry of Health,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=4.5.181&MevzuatIisiki=0&sourceXmlSearch=>
Law No. 1539 on Public Health,
<http://www.saglik.gov.tr/TR/MevzuatGoster.aspx?F6E10F8892433CFFAAF6AA849816B2EF1F4F78A76FC513C4>;
Law No. 6197 on Pharmacists and Pharmacies,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.6197&MevzuatIisiki=0&sourceXmlSearch=>
Law No. 1219 on Medicine and Medical Science,
<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.3.1219&sourceXmlSearch=>
Law No. 992 on Public Bacteriology and Chemical Laboratories,
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.992&MevzuatIisiki=0&sourceXmlSearch=>
Other regulations and statutes:
<http://www.saglik.gov.tr/TR/MevzuatGoster.aspx?F6E10F8892433CFFAAF6AA849816B2EF4EC2F94D94121ECE>

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.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

According to government and non-governmental sources, there are severe problems concerning occupational health and safety standards in various workplaces. About 98 percent of business firms are SMEs where less than 50 workers are employed and no medical employee is present. Especially recently in mining sector serious accidents occurred and many workers were killed. The legislation regarding public health standards is not effectively enforced by the some of the relevant authorities. According to the business inspection reports, several undue practices were observed and administrative fines were applied. These reports called for the local authorities, as well as prosecutors, to take legal actions.

References:

Disk/ Sosyal-İş Sendikası, Türkiye'de İşçi Sağlığı Ve İş Güvenliği Raporu -Madenilik Sektörüne İlişkin Temel Veriler-, 25.02.2010,

http://www.sosyal-is.org/dosyalar/maden_rapor.pdf

Cengiz Demir, Nazmiye Altıntaş, Ali Osman Karababa, and Nesrin Demir, Occupational Health and Safety in Turkey: Problems And Solutions, International Journal of Contemporary Economics and Administrative Sciences , 2011, 1(1), 17-24.

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.

72b. 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

Comments:

According to the Chamber of Electrical Engineers, the Ministry of Labour and Social Security keeps the statistics on workplace accidents secret since 2006. The legislation is not effectively enforced by the some of the relevant authorities. According to the

business inspection reports, several undue practices were observed and administrative fines were applied. These reports called on the local authorities as well as prosecutors to take legal actions.

References:

45 Saniyede 1 İş Kazası Oluyor (One Workce Accident Per 45 seconds), 16.05.2009, <http://www.isveguvenlik.com/haber/45-saniyede-1-is-kazasi-oluyor-3.html>

Hatay'da işyerinde patlama: 3 kişi öldü, 4 kişi yaralandı (Explosion at Workplace in hatay: 3 killed, 4 injured)

3.10.2010, <http://www.milliyet.com.tr/hatay-da-isyerinde-patlama-3-kisi-oldu-4-kisi-yaralandi/turkiye/sondakikaarsiv/03.10.2010/1296755/default.htm>

Disk/ Sosyal-İş Sendikası, Türkiye'de İşçi Sağlığı Ve İş Güvenliği Raporu -Madencilik Sektörüne İlişkin Temel Veriler (Workers Health and Occupational Safety in Turkey – Basic Data on Mining Sector) – , 25.02.2010, http://www.sosyal-is.org/dosyalar/maden_rapor.pdf

Cengiz Demir, Nazmiye Altıntaş, Ali Osman Karababa, and Nesrin Demir, Occupational Health and Safety in Turkey: Problems And Solutions, International Journal of Contemporary Economics and Administrative Sciences , 2011, 1(1), 17-24.

Perihan Sari, former Business Inspector, Ministry of Labor and Social Security, Former Secretary General of the Federation of Revolutionary Labor Union, cember 2010.

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.

72c. 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:

According to the Chamber of Electrical Engineers, the Ministry of Labour and Social Security keeps the statistics on workplace accidents secret since 2006. The legislation is not effectively enforced by the some of the relevant authorities. According to the business inspection reports, several undue practices were observed and administrative fines were applied. These reports called on the local authorities as well as prosecutors to take legal actions.

References:

45 Saniyede 1 İş Kazası Oluyor (One Workce Accident Per 45 seconds), 16.05.2009, <http://www.isveguvenlik.com/haber/45-saniyede-1-is-kazasi-oluyor-3.html>

Hatay'da işyerinde patlama: 3 kişi öldü, 4 kişi yaralandı (Explosion at Workplace in hatay: 3 killed, 4 injured)

3.10.2010, <http://www.milliyet.com.tr/hatay-da-isyerinde-patlama-3-kisi-oldu-4-kisi-yaralandi/turkiye/sondakikaarsiv/03.10.2010/1296755/default.htm>

Disk/ Sosyal-İş Sendikası, Türkiye'de İşçi Sağlığı Ve İş Güvenliği Raporu -Madencilik Sektörüne İlişkin Temel Veriler (Workers Health and Occupational Safety in Turkey – Basic Data on Mining Sector) – , 25.02.2010, http://www.sosyal-is.org/dosyalar/maden_rapor.pdf

Cengiz Demir, Nazmiye Altıntaş, Ali Osman Karababa, and Nesrin Demir, Occupational Health and Safety in Turkey: Problems And Solutions, International Journal of Contemporary Economics and Administrative Sciences , 2011, 1(1), 17-24.

Perihan Sari, former Business Inspector, Ministry of Labor and Social Security, Former Secretary General of the Federation of Revolutionary Labor Union, cember 2010.

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.

6.1. ⁷⁵Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes | No

References:

Law No. 5237 on Penal Code, Articles 76-80, 155, 157, 158, 161, 188, 197, 220, 235, 236, 247, 250, <http://www.tbmm.gov.tr/kanunlar/k5237.html>
Law No. 5271 on Penal Trial, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5549 on Laundering Proceeds of Crime, <http://www.masak.gov.tr/en/Legislation/Laws/5549.htm>
Law No. 5411 on Banking Article 22, www.tbb.org.tr/english/5411.doc
Law No. 5607 on Struggle Against Smuggling, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5607&MevzuatIlski=0&sourceXmlSearch=>
Law No. 2863 on Protection of Cultural and Natural Resources, Articles 68 and 74, <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=1.5.5549&MevzuatIlski=0&sourceXmlSearch=>
Law No. 3628 on Property Declaration, Struggle against Bribery and Corruption, Article 17: <http://www.tbmm.gov.tr/genser/kanun13.html>
Law No. 4734 on Public Procurement, Article 17: <http://www.ihale.gov.tr/english/english47341.htm>
Law No. 4735 on Public Procurement Contracts Article 25: <http://www.ihale.gov.tr/english/english47351.htm>
Law No. 5506 Concerning Ratification of UN Convention Against Corruption, Article 23 and 27: <http://www.tbmm.gov.tr/kanunlar/k5506.html>
Law No. 4800 Concerning Ratification of UN Convention Against Transboundary Organized Crime, Article 5: <http://www.tbmm.gov.tr/kanunlar/k4800.html>

Yes: A YES score is earned if corruption laws include attempted acts.

No: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

Yes | No

References:

Law No. 5237 on Penal Code, Articles 157, 158, 250: <http://www.tbmm.gov.tr/kanunlar/k5237.html>
Law No. 3628 on Property Declaration, Struggle against Bribery and Corruption, Article 17: <http://www.tbmm.gov.tr/genser/kanun13.html>
Law No. 4734 on Public Procurement, Article 17: <http://www.ihale.gov.tr/english/english47341.htm>
Law No. 4735 on Public Procurement Contracts Article 25: <http://www.ihale.gov.tr/english/english47351.htm>

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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

Yes | No

References:

Law 5237 on Penal Code, Article 252, 254, and 257:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>

Law No. 5271 on Penal Trial, Article 128, 135, 140, and 248:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>

Law No. 3628 on Property Declaration, Struggle against Bribery and Corruption:

<http://www.tbmm.gov.tr/genser/kanun13.html>

Law No. 4734 on Public Procurement, Article 17: <http://www.ihale.gov.tr/english/english47341.htm>

Law No. 4735 on Public Procurement Contracts Article 25: <http://www.ihale.gov.tr/english/english47351.htm>

Law No. 5506 Concerning ratification of UN Convention Against Corruption, Article 23 and 27:

<http://www.tbmm.gov.tr/kanunlar/k5506.html>

Law No. 4518 on Combating of Bribe of Foreign Public Officials in International

Business Transactions (OECD Convention): <http://www.tbmm.gov.tr/kanunlar/k4518.html>

Yes: A YES score is earned if offering a bribe is illegal.

No: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

Yes | No

References:

Law 5237 on Penal Code, Article 252, 254, and 257:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>

Law No. 5271 on Penal Trial, Article 128, 135, 140, and 248:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>

Law No. 3628 on Property Declaration, Struggle against Bribery and Corruption:

<http://www.tbmm.gov.tr/genser/kanun13.html>

Law No. 4734 on Public Procurement, Article 17: <http://www.ihale.gov.tr/english/english47341.htm>

Law No. 4735 on Public Procurement Contracts Article 25: <http://www.ihale.gov.tr/english/english47351.htm>

Law No. 5506 Concerning ratification of UN Convention Against Corruption, Article 23 and 27:

<http://www.tbmm.gov.tr/kanunlar/k5506.html>

Law No. 4518 on Combating of Bribe of Foreign Public Officials in International

Business Transactions (OECD Convention): <http://www.tbmm.gov.tr/kanunlar/k4518.html>

Yes: A YES score is earned if receiving a bribe is illegal.

No: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

Yes | No

References:

Law No. 5237 on Penal Code, Article 252:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>

Law No. 4518 on Combating of Bribe of Foreign Public Officials in International

Business Transactions (OECD Convention): <http://www.tbmm.gov.tr/kanunlar/k4518.html>

Yes: A YES score is earned if bribing a foreign official is illegal.

No: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

Yes | No

References:

Law No. 657 on Civil Servants, Article 16, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIliski=0&sourceXmlSearch=>
Law No. 5237 Penal Code Article 266, <http://www.tbmm.gov.tr/kanunlar/k5237.html>

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.

73g. In law, using confidential state information for private gain is illegal.

Yes | No

References:

Law No. 657 on Civil Servants, Article 31, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIliski=0&sourceXmlSearch=devlet%20memurlari>
Law No. 2499 Capital Market Board, Article 25/a, <http://www.cmb.gov.tr/displayfile.aspx?action=displayfile&pageid=64&fn=64.pdf&submenuheader=null>
Law No. 4734 on Public Procurement, paragraph (e) of Article 53 and 61, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4734&MevzuatIliski=0&sourceXmlSearch=kamu%20ihale>
Law No. 5411 on Banking, Articles 86 and 116/last, <http://www.tb.org.tr/turkce/kanunlar/5411.htm>
Law No. 4054 on Protection of Competition, Article 25/last of , <http://www.rekabet.gov.tr/index.php?Sayfa=sayfaicerik&icld=165>
Law No. 4046 Concerning Arrangements for the Implementation of Privatization and Amending Certain Laws and Decrees with the Force of Law, Article 7, http://www.oib.gov.tr/baskanlik/yasa_eng.htm
Law No 5237 Penal Code Articles 239, <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.

73h. In law, money laundering is illegal.

Yes | No

Comments:

The Financial Crimes Investigation Board was established in 1997.

References:

Law No. 4208 on Prevention of Money Laundering. <http://www.masak.gov.tr/eng/default.htm>
Law No. 5549 on Prevention Of Laundering Proceeds Of Crime Law, <http://www.masak.gov.tr/eng/default.htm>;
Law No. 5237 Penal Law, Article 54, 55, 165, and 282, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIliski=0&sourceXmlSearch=>
Law No. 5271 on Penal Trial, Article 133, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIliski=0&sourceXmlSearch=>
Law No. 5506 Concerning Ratification of UN Convention Against Corruption, <http://www.tbmm.gov.tr/kanunlar/k5506.html>
Law No. 4518 on Combating of Bribe of Foreign Public Officials in International Business Transactions (OECD Convention), <http://www.tbmm.gov.tr/kanunlar/k4518.html>

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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

Yes | No

References:

Law No. 5237 Penal Law, Article 282:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5237&MevzuatIlski=0&sourceXmlSearch=>

Law No. 3713 on Anti-Terror:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3713&MevzuatIlski=0&sourceXmlSearch=>

Law No. 6136 on Firearms, Knives and Other Instruments of Crime:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.6136&MevzuatIlski=0&sourceXmlSearch=>

Law No. 4208 on Prevention of Money Laundering: [http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.6136&MevzuatIlski=0&sourceXmlSearch=)

[http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?](http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.6136&MevzuatIlski=0&sourceXmlSearch=)

Law No. 5506 Concerning Ratification of UN Convention Against Corruption: <http://www.tbmm.gov.tr/kanunlar/k5506.html>

Law No. 4518 on Combating of Bribe of Foreign Public Officials in International Business Transactions (OECD

Convention): <http://www.tbmm.gov.tr/kanunlar/k4518.html>

Law No. 5065 Concerning Ratification of Council of Europe Criminal Law Convention Against Corruption:

<http://www.tbmm.gov.tr/kanunlar/k5065.html>

Law No. 4800 Concerning Ratification of UN Convention Against Transboundary Organized Crime,

<http://www.tbmm.gov.tr/kanunlar/k4800.html>

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes | No

Comments:

Law No. 5549 repealed some of the articles of the Law No. 4208. Several agencies have an anti-corruption mandate including the Financial Crimes Investigation Board and the Coordination Board for Combating Financial Crimes. Within the scope of prevention of laundering proceeds of crime and according to Law 5549, the functions of the Financial Crimes Investigation Board (MASAK) may be classified into the following five main areas:

1: Developing and regulating policies; (2) coordination; (3) collecting, analyzing and evaluating data; (4) supervision of obligations; (5) Examination.

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, to draft regulations that 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.)

Experts say that the organization of MASAK under the Ministry of Finance is contrary to the international documents. It is equally emphasized that combating corruption requires the coordination of three functions: education, prevention and operation. In light

of international experiences, if these three function are not coordinated by one unit, combating corruption fails.

References:

Law No. 4208 on Prevention of Money Laundering:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4208&MevzuatIliski=0&sourceXmlSearch=>

Law No. 5549 on Prevention of Laundering Proceeds of Crime:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5549&MevzuatIliski=0&sourceXmlSearch=>
http://www.masak.gov.tr/en/Legislation/LaunderingProceedsofCrime/national_legislation.htm

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.

75. Is the anti-corruption agency effective?

53

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes | **No**

Comments:

The Financial Crimes Investigation Board (MASAK) is affiliated with the Ministry of Finance. Naturally, it is open to political influence, both directly and indirectly.

References:

Law No. 4208 on Prevention of Money Laundering,

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.4208&MevzuatIliski=0&sourceXmlSearch=>

Law No. 5549 on Prevention of laundering Proceeds of

Crime, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5549&MevzuatIliski=0&sourceXmlSearch=>

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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

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

Comments:

It is widely shared idea that the Financial Crimes Investigation Board (MASAK) provides routine paperwork to other governmental agencies. Its organizational structure, despite obstacles created to discourage problems, is open to political influence.

References:

Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.

Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.

Murat Seker, Professor of Finance, Istanbul University, January 2011.

Hande Ozhabes, Transparency Society, January 2011.

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.

75c. 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 the Financial Crimes Investigation Board (MASAK) benefit from a degree of political independence.

References:

Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Agencies included within the scope of anti-corruption mandate such as Financial Crimes Investigation Board, Primare Ministry Inspection Board and Council of Ethics for Public Officials, the Court of Accounts hire their personnel on strict professional qualifications.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

75e. 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 the Financial Crimes Investigation Board (MASAK) benefit from a degree of professional staffing.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

75f. 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, The Financial Crimes Investigation Board (MASAK) is part of the government's regular, medium-term, financial management framework arrangements. Disbursements are made according to budget and no evidence of arrears is in place.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

75g. 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 the Financial Crimes Investigation Board (MASAK) make regular public reports, including annual activity report. These reports provides a general but not detailed analyses of the complaints made to the agency.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

According to the 2009 Activity Report, the Financial Crimes Investigation Board (MASAK) budget increased in 2009. It makes a ex-ante evaluation on denunciations and suspicious operations and submits its reports to the relevant departments to take legal action. Inquiries regarding the cases is made by other officers from other governmental agencies such as account experts, custom inspectors, or banking experts. In other words, the MASAK's work is subordinated to other governmental agencies. It is obvious that it functions as a part of the Ministry of Finance and fulfills its function given by the law.

References:

Financial Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

A formal anti-corruption agency or series of agencies does not exist in Turkey. The Financial Crimes Investigation Board (MASAK), as a part of Ministry of Finance, reviews and examines the denunciations it receives. In legal terms, these can be considered as pre-investigation or preparation for investigation in legal terms. Although the number of suspected action notices increased, the number of opened files decreased and the number of denunciation is "0" in 2009. Investigations can be started at the initiative of a prosecutor with the support of security departments.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faairap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In light of the statistics available, the Financial Crimes Investigation Board (MASAK) works slowly on both its review of denunciations and its control of liabilities. This may be due to the nature of the cases. Anti-corruption activities should be evaluated from a wider perspective, including law enforcement authorities, too. Legal prosecution may take longer than MASAK's evaluations.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faairap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

There is a positive improvement by means of the government's anti-corruption strategy initiative though whistle blowers do not have a legal protection.

References:

Financial Crimes Investigation Board (MASAK), Activity Report 2009, www.masak.gov.tr/Kurulumuz/faaliyet_rapor/faalrap_2009.pdf
Bulent Tarhan, Chief-Inspector, Prime Ministry, Ankara, December 2010.
Kemal Ozsemerci, Chief Auditor, Audit Court, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

59

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

58

77a. In law, there is a general right of appeal.

Yes | No

Comments:

There are exceptions for judicial decisions which cannot be subject to appeal that are described by the relevant laws.

References:

1982 Constitution Articles 148/3 on individual application to the Constitutional Court, 154 on Court of Cassation, 156 on Military Court of Cassation and 158 on Jurisdictional Dispute Court: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 5271 on Penal Trial Article 260 on Legal Remedy, 267 on Objection, 272 on Appeal against the judgements of first degree courts, and 286 on Appeal:

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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Due to heavy workload, insufficient personnel, and the harmonization process through which new trial procedures and the UYAP (National Judiciary Network System) the Court of Cassation completes the appeals late. Recently 6 new departments were established in the Court of Cassation

References:

Yargıtay ve Danıştay'a yeni daireler kuruluyor ,
30.01.2011, http://www.cnnturk.com/2011/turkiye/01/30/yargitay_ve_danistaya_yeni_daireler_kuruluyor/605086.0/index.html
Court of Cassation, Statistics 2010, <http://www.yargitay.gov.tr/istatistikler/2010.pdf>
Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Some cases result in higher costs for the litigant, such as for expert witnesses and other charges. Charges will be revalued every year in accordance with the revaluation ratio. However, the major cost is the attorney fees.

References:

2011 Yılında uygulanacak maktu ve nisbi harç tutarlarına ait liste (Fixed and proportional fees to be effective in 2011), http://www.vergidegundem.com/files/2011_Harclar.pdf
Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

Although the judicial system is based on the principle of impartiality of the independent courts, it is argued that political, personal or institutional influences are wide spread in the judiciary.

References:

Sami Selçuk, *Batıl Demokratinin ve Hukukun Doğuşu Serüveninden Kesitler Adıyla Siyasallaşan Bir Dava: Ergenekon*, İstanbul, Truva Yayınları, 2009.

Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.

Atilla Sav, member of Ankara Bar Association, December 2010.

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.

79. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

It is widely believed that the government does not enforce many of the administrative judicial decisions for political or other reasons. The government especially does not enforce the decisions of the Council of State (the high administrative court) in relation to privatization, land planning, and restitution to the duty decisions, including stay of executions.

References:

Yaşar Güçlü, *İdari Yargı Kararlarının Uygulanması*, Ankara: Seçkin Yayınevi, 2010.

Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.

Atilla Sav, member of Ankara Bar Association, December 2010.

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.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

Yes | No

Comments:

Although it is legally defined the independence of the judiciary is still questioned after the recent reforms. The organization of the High Board of Judges and Prosecutors where the Minister of Justice is the head of the Board, constitutes the major obstacle for the judicial independence.

References:

1982 Constitution, Articles 138-142 and 159: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 6078 on the High Board of Judges and Prosecutors, Article 3, <http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.6087&MevzuatIliski=0&sourceXmlSearch=Hakimler> ve Savcilar

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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

It is argued that "The grouping and clustering within the senior members of the board and its members elected from the Supreme Court of Appeals and the Council of State based on ethnic background, religious orientation and ideological stance should not be able to influence election of judges and prosecutors who favor their worldviews or ideology. There were times where four members from eastern and southeast Anatolia held office at the Supreme Court of Appeals. Because nepotism is a primitive and unethical way of resolving matters, the HSYK members will hopefully avoid practices that may give rise to criticism over the emergence of a caste system in the appellate judiciary."

See Assessment 36a above : Although the procedure 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 oral examination and are ranked according to their performances and 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 the oral exam only. The conditions, requirements, application and exams are advertised in one of the five highest-circulation newspapers at least 15 days before the application deadline. Those candidates who are not appointed have no right to appeal the decision.

From III-3 36b: According to the Law No. 2802, Article 8, candidates must have a B.A. degree in law (for the civil and the administrative judiciary) or in political science, administrative science, economics and finance (for the administrative judiciary, but not in excess of 20 percent of total recruitment). Candidates must pass general aptitude and professional tests, both written and oral. Lawyer candidates must have completed at least five years in the profession. 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. The Transparency International Global Corruption Report 2007 emphasizes that Turkey falls into the category of countries where judicial appointments are made on the basis of clientelist ties, not legal qualifications.

References:

Hürriyet DailyNews, Crisis deepens over judicial appointments in Turkey, 19.08.2010.Turkishimes, New era at the Supreme Board of Judges and Prosecutors will be influenced by the reforms, 91.01.2011, http://www.turkishreview.org/tr/newsDetail_getNewsById.action.jsessionid=46D02F1161EFD4A3A72F375A21B1115?newsId=223016

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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

Yes | No

Comments:

According to the National Judiciary Network System (UYAP), cases have been distributed randomly 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

References:

1982 Constitution, Article 114: <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 1086 on Civil Trial Procedure:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.3.1086&MevzuatIlski=0&sourceXmlSearch=>
Law No. 5271 on Penal Trial:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5271&MevzuatIlski=0&sourceXmlSearch=>
Law No. 2577 on Administrative Trial:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2577&MevzuatIlski=0&sourceXmlSearch=>
Law No. 2247 on Disputes Tribunal:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2247&MevzuatIlski=0&sourceXmlSearch=>
AB Komisyonu, "Turkiye'de Yargi Sisteminin Isleyisi, 2003" (EU Commission, Operation of Judicial System in Turkey, 2003),
<http://www.taa.gov.tr/abhukuku/AB/rapor.pdf>
Special provisions of special laws in distributing cases to the judges, <http://www.uyap.gov.tr/english/index.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.

80d. In law, national-level judges are protected from removal without relevant justification.

Yes | No

References:

1982 Constitution Article 139, 1982 Constitution Article 139, <http://www.byegm.gov.tr/content.aspx?s=tcotrot>
Law No. 2802 on Judges and Prosecutors Articles 44, 53, and 69:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.2802&MevzuatIlski=0&sourceXmlSearch=>

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.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

Comments:

There are no reported cases of judges being physically harmed because of adjudicating corruption cases. However, there are no official statistics publicly available.

References:

Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

Yes | No

References:

Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Although Turkey does not accept any ethnic minority, except for Armenian, Greek and Jewish religious minorities in accordance with the Lausanne Treaty, it is set forth in its legislation that all forms of discrimination are prohibited by law. According to the Report of the European Commission against Racism and Intolerance (ECRI), which was published in 2005, Turkey has made progress in a number of the fields, including the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination. Additionally, several constitutional and legislative reforms have been introduced, aimed at

reinforcing fundamental rights and freedoms and combating racism and racial discrimination more effectively. Despite inconsistent treatment of various people — including the Roma, ethnic and religious groups, asylum seekers, refugees and victims of human trafficking, and other similar groups by law enforcement agencies, the court system does not adopt a racial stance in practice. However, some scholars criticize the inactivity of the judiciary against discrimination by saying that there has been no court decision against racism in Turkey.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

82b. In practice, women have full access to the judicial system.

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

Comments:

Social pressure and economic dependence are major obstacles for women seeking justice at the court.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

Yes | No

Comments:

Legal Council can be requested in accordance with Articles 465-472 of Law No. 1086 on Civil Procedure.

References:

Law No. 1136 on Lawyership Articles 176-181: http://www.barobirlik.org.tr/mevzuat/avukata_ozel/avukatlik_kanunu
Regulation of the Union of Turkish Bars Associations on Legal Council, www.barobirlik.org.tr/mevzuat/avukata_ozel/.../adli_yardim_yon.pdf

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.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Vague descriptions in the relevant law and regulations, insufficient financial compensation for lawyers and little public knowledge about this service make it ineffective.

References:

ADR Centre et al., Adli Yardım Komitesi Raporu, Ankara, 12 February 2009.
www.adrcenter.com/international/Legal_Aid_Committee_Report.pdf
Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The bringing of lawsuits related to consumer rights are free of charge. However, the cost of a lawsuit in the field of contracts and property is higher. Where the cost of legal services (lawyers) is concerned, it increases even more.

References:

2011 Yılında uygulanacak maktu ve nisbi harç tutarlarına ait liste (Fixed and proportional fees to be effective in 2011), http://www.vergidegundem.com/files/2011_Harclar.pdf
Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The bringing of lawsuits related to consumer rights are free of charge. However, the cost of a lawsuit in the field of contracts and property is higher. Where the cost of legal services (lawyers) is concerned, it increases even more.

References:

2011 Yılında uygulanacak maktu ve nisbi harç tutarlarına ait liste (Fixed and proportional fees to be effective in 2011), http://www.vergidegundem.com/files/2011_Harclar.pdf
Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

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. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

According to Law No. 5235 on the Establishment, Duties and Authorities of Courts of First Instance in Judiciary and Regional Judicial Courts, Civil Courts of First Instance, Civil Courts of Peace and Penal Courts are established every province in Turkey. (<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5235&MevzuatIliski=0&sourceXmlSearch=>) According to the volume of workload, they may be opened in towns too. However, some special courts such as juvenile court, press court etc. can be established in accordance with their own laws. (<http://www.mevzuat.adalet.gov.tr/html/1412.html>).

An equally important issue is how a citizen can gain access to the court system in terms of procedures and processes. This is as important as the easy availability of a court system for a citizen. Another consideration is that sometime cases are tried in another court that may be located quite far from where the citizen lives. Although there are court systems in many districts (towns), both lack of adequate facilities and insufficient personnel delay the timely distribution of justice.

References:

Turgut Tan, Professor of Law, Bilkent University, Ankara, December 2010.
Atilla Sav, member of Ankara Bar Association, December 2010.

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

67

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

According to the Regulation on the Appointment and Change of Place of Security Personnel which was adopted in June 2010 there are certain criteria for the appointment of police. Professional requirements including graduation from police college and police academy is essential. A general aptitude test must be taken in order to be eligible for public service. However, oral exams are open to (political) patronage/clientilism. It is argued by some reports that political affiliation or similar factors can be effective in the appointment to the law enforcement agency. A few books which have been published recently argued that there is a clientilist group affiliated with a religious community. However, these allegations are under investigation.

References:

The Regulation on the Appointment and Change of Place of Security Personnel, <http://www.tcpolis.com/turk-polisi/turk-polis-mevzuati/polislerin-atama-ve-yer-degistirme-yonetmeligi.html>
TESEV, "Kamu Personel Yönetimi Reformu (Sorunlar – Öneriler)" (Reform of Public Personnel Management), http://www.tesev.org.tr/projeler/proje_kamu_personel.php
İbrahim Cerrah, Professor, Police Academy, Ankara, December 2010.

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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

Compared to January -June 2009 period with January -June 2010 period the allocations for the DG of Security (police) increased 16,31 percent from 3,7 billion (2,5 billion USD) to 4,3 billion Turkish Liras (2,9 billion USD). As of 2009, the ratio of expenditures of the DG of Security (police) to GNP is 0.72.

References:

Nurhan Yentürk, Askeri ve İç Güvenlik Harcamalarını İzleme Kılavuzu, May 2009, <http://www.bilgi.edu.tr/docs/SAVrapor.pdf>
DG Budget and Financial Control 2009, Budget Expectation Report, <http://www.bumko.gov.tr/TR/Genel/BelgeGoster.aspx?F6E10F8892433CFFAAF6AA849816B2EFC0EE6DCF0FA7196C>
İbrahim Cerrah, Professor, Police Academy, Ankara, December 2010.

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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcement agencies basically consist of the police, the gendarmerie and the coast guard, all of which are affiliated with the Ministry of Interior Affairs. Although the professional criteria for education and appointments are clearly defined by the laws the Department of Security, namely police, may be open to political influence by means of appointments, promotions and assignments.

References:

A. Gani Yıldırım, Polis-Politikacı İlişkisi Üzerine Bir Arastırmanın Düşündürdükleri (Thoughts on a Research Concerning the Relationship Between Police and Politician), Cagin Polisi Dergisi, 1. <http://www.caginpolisi.com.tr/>
Kayhan Mutlu, "Problems of Nepotism and Favouritism in the Police Organization in Turkey," International Journal of Police Strategies & Management, 23 (3), 2000, 38-89.
Atilla Sav, member of Ankara Bar, December 2010..

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.

84. Can law enforcement officials be held accountable for their actions?

75

84a. In law, there is an independent mechanism for citizens to complain about police action.

Yes | No

Comments:

In addition to the institutional mechanisms at the DG of Security, there are several external bodies where a citizen can submit a complaint about the police actions. The Ombudsman is not established yet although the constitutional and legal framework were adopted by the parliament recently. The Ethics Council is the only mechanism for citizen complaints about police actions. It is affiliated with the Prime Ministry and has limited resources. According to law, it has investigative functions over the actions of superior civil servants but they are not carried out consistently. Parliamentary commissions can only make inquiries on the complaints and report them to the parliament. Therefore, I can say there is no truly effective and independent complaint mechanism. However, in addition to the Ethics Council, there exists a Petition Committee of the Grand National Assembly. Scholarly works and non-governmental organization reports emphasize that these mechanisms are not very effective

References:

Ethics Council for Public Service, Law No. 5176 on the Establishment of the Ethics Council for Public Service and Amendment to Some Laws:

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.5176&sourceXmlSearch=etik>

1982 Constitution, Article 74, and Law 3071 on the Right to Petition:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3071&MevzuatIliski=0&sourceXmlSearch>

Human Rights Committee of the Grand National Assembly, Law 3686:

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.3686&MevzuatIliski=0&sourceXmlSearch=>

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

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

These mechanism do respond slowly, and after reviewing the complaints, just refer the case to the relevant authority to take action.

References:

Turgut Tan, Professor of Administrative Law, Bilkent University, Ankara, December 2010.

Atilla Sav, member of Ankara Bar Association, December 2010.

Hande Ozhabes, Transparency Society, January 2011.

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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

Yes | No

Comments:

According to Law No. 657 and other special laws, public officers can be subject to the investigation and the discipline mechanisms of their agencies and prosecuted by public prosecutor with the permission of the relevant superior in cases of violation of corruption-related laws.

References:

Law No. 657 on Public Servants, Articles 124-145,

<http://mevzuat.basbakanlik.gov.tr/mevzuat/metinx.asp?mevzuatkod=1.5.657>

Law No. 2803 on the Organization, Duties and Responsibilities of the Gendermarie, Articles 15-17,

<http://www.mevzuat.adalet.gov.tr/html/603.html>

Law No. 5549 on Prevention of Laundering Proceeds of Crime Law, Article 19,

<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.5549&MevzuatIliski=0&sourceXmlSearch=>

Discipline Statute of Security Department (Police),

<http://www.egm.gov.tr/hukuk/EMNIYET%20TESKILATINDA%20GORULEN%20IDARI%20DAVA%20KONULARI%20ILE%20BUNLARA%20LISKIN%20>

Law 5237 on Penal Law, various articles, <http://www.tbmm.gov.tr/kanunlar/k5237.html>

Law No. 5065 Concerning Ratification of Council of Europe Criminal Law Convention Against Corruption:

<http://www.tbmm.gov.tr/kanunlar/k5065.html>

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.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

At the request of a superior or in response to complaints by citizens, disciplinary authorities, with the support of inspectors, conduct an investigation into allegations of corruption by law enforcement officials. An internal auditor prepares routine performance reports.

References:

Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Murat Seker, Professor of Finance, Istanbul University, January 2011.
Hande Ozhabes, Transparency Society, January 2011.

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.

84e. 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 with the permission of their superior authority. Provisions of the Law No. 5065 contradict those in Law No. 657.

References:

Law 657 on Public Servants, Articles 10-13:
<http://mevzuat.basbakanlik.gov.tr/Metin.Aspx?MevzuatKod=1.5.657&MevzuatIiski=0&sourceXmiSearch=>
Law 4483 on the Trial of Public Servants and Other Public Employees,
Article 3: <http://www.tbmm.gov.tr/kanunlar/k4438.html>
Law 5237 on Penal Law, various articles, <http://www.tbmm.gov.tr/kanunlar/k5237.html>
Law No. 5065 Concerning Ratification of Council of Europe Criminal Law Convention Against Corruption:
<http://www.tbmm.gov.tr/kanunlar/k5065.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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

Comments:

There is a positive improvement in terms of criminal proceeding held about law enforcement officials who committed corruption related offences in recent years. On the other hand, the court, on the case of Hrant Dink, editor-in-chief and founder of Agos newspaper, said, "not to protect the man who has that kind of circumstances is a tough service failure", moreover convicted "Istanbul law enforcement agency has a gross service neglect."

References:

Ministry of Domestic Affairs has a failure on Dink's assassination, Haberturk, 18.02.2011, <http://www.haberturk.com/general/haber/602394-ministry-of-domestic-affairs-has-a-failure-on-dinks-assassination>
Semdinli Report of the Human Rights Investigation Committee of the Grand National Assembly, http://www.tbmm.gov.tr/komisyon/insanhak/orta/kr_22HakkariSemdinli.pdf,
Bülent Tarhan, Chief Inspector, Prime Ministry, Ankara, December 2010.
Hande Ozhabes, Transparency Society, January 2011.

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.