



Strasbourg, 20 April 2021

CDL-REF(2021)037

Opinion No.1028 / 2021

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TURKEY

LAW N°5253¹

ASSOCIATIONS LAW

¹ ***Non-official translation***

ASSOCIATIONS LAW

Law No. : 5253

~~Date of Passage: 4/11/2004~~

~~Date and Issue of Official Gazette: 23/11/2004 No: 25649~~

~~Rule Release: Serial No: 5, Volume No: 44~~

Objective and Scope

Article 1- The objective of the Law is to regulate prohibited activities and the activities subject to permission, liabilities, auditing, punishments and **other issues** of associations, representations and branches of associations, federations, confederations, **associations and foundations** whose headquarters are at abroad and branches and representations of other non-profit organizations in Turkey.

Right to Found an Association

Article 3- Real and legal entities with capacity to act shall have the right to found an association without prior authorization.

However, some limitations shall be reserved concerning members of armed forces, law enforcement officers and officials working in public institutions and organizations.

Persons convicted of the offences within the scope of the offences specified in the Law No.6415 on Prevention of the Financing of Terrorism dated 07.02.2013 and of the offences of manufacturing and trafficking narcotic drugs and psychotropic substances or of the offences of laundering assets derived from crimes cannot be assigned in the organs of the associations apart from the plenaries, even if the periods stated in article 53 of Turkish Criminal Law No.5237 dated 26.09.2004 have passed or are remitted. Assignments of those who are convicted of the aforementioned offences after they are elected to the organs of the association shall be terminated. The provisions of this paragraph shall not be applied if the decision of reinstatement of forbidden rights has been taken.

Minors over 15 having the necessary sensibility may either found child associations or become a member in order to enhance their psychological, mental and moral capabilities, to preserve their rights of sport, education and training, social and cultural existence, structure of their families and their private lives with a written permission given by their legal representatives.

Minors over 12 years old may become members of child associations however, they cannot be commissioned in executive and auditing boards.

Adults over 18 cannot become members of child associations.

Duty to submit declaration and auditing

Article 19- Associations are responsible for submitting a declaration regulating the income-expense outputs and their activities to the local administrative authority by the end of April every year. The basis and procedures on regulation of declaration are arranged by regulation.

If appropriate, the Interior Minister or local administrative authority may order the audit of associations **by the assigned public officials** regarding if the associations conduct their activities in parallel with the objectives stated in their statutes and whether records and books of associations are kept in pursuant of the legislation. **The audits shall be carried out every year provided that it is completed within maximum three years in accordance with the risk**

assessment. The auditing conducted by Ministry of Interior and local administrative authority shall be done during office hours. The associations shall be notified the auditing before at least twenty four hours. Law enforcement officials shall not be assigned in the auditing. **The amount of payment for public officials to be assigned in audits, excluding civil inspectors and auditors of associations of the Ministry of Interior, shall be determined by the Ministry of Interior and the Ministry of Treasury and Finance together, and the payment shall be made through the allocation made in the budget of the Ministry of Interior. Procedures and principles regarding the officers to be assigned in these audits shall be determined with a regulation.**

Any information, document or record required by commissioned officers shall be shown and their request of entering the extensions and enterprises shall be met by the association officials during auditing.

Assigned auditors shall be authorized to request relevant information and documents limited to the auditing scope from public institutions and organizations, and natural and legal persons, including banks. Requested parties cannot refrain from submitting information and documents on the ground of written in provisions in the special laws.

Associations and any premises, entities and the partner institutions of the associations shall be audited by relevant ministry and institutions limited to the scope of their duty fields if the Ministry of Interior or local authorities make request for auditing, provided that the regulations in their special laws are reserved.

Experts may be assigned in auditing process in necessary circumstances requiring expertise or technical capacity by the Ministry of Interior, governorships and district governorships. Procedure and principles of assignment of experts shall be determined in a regulation. Amount of payment for the expert shall be determined by the Ministry of Interior and the Ministry of Treasury and Finance together, and the payment shall be made through the allocation made in the budget of the Ministry of Interior.

If any act instituting a crime is detected during auditing, local administrative authority shall inform Public Prosecutor's Office and the association of the situation immediately.

Aids To and From Abroad

Article 21- Associations may receive aid from persons, institutions and organizations abroad provided that they declare this to the local administrative authority beforehand. The way and content of declaration is arranged by regulation. It is obligatory to receive funds via banks.

The local administrative authority shall be informed by associations about the aid for abroad before it is sent. The format and content of the declaration and the procedures and principles of the aids for abroad shall be determined in a regulation.

Suspension from office and temporarily ceasing the activity

Article 30/A-

If a prosecution is initiated on the persons assigned in the organs of the associations apart from the plenaries or relevant persons on the ground of the offences within the scope of the offences specified in the Law No.6415, on Prevention of the Financing of Terrorism dated 07.02.2013, and of the offences of manufacturing and trafficking narcotic drugs and psychotropic substances or of the offences of laundering assets derived from crimes, the persons or the relevant organs may be suspended from office by the Minister of Interior as a temporary measure.

If the measure stated in paragraph (1) is not sufficient and it is inconvenient to delay the measure, the Minister of Interior may cease the activity of the association temporarily and make application to the court. The court makes decision on the temporary cease of activity within 48 hours and judicial proceeding continues in accordance with article 89 of Turkish Civil Law. Relevant persons may always request to repeal the decision on ceasing activity temporarily. The court makes decision on this request without delay.

Provisions of article 27 and related articles of Turkish Civil Law shall apply to assignment in place of the organs and the members of the organs suspended from office temporarily pursuant to paragraph (1) and sub-paragraph (f) of paragraph (1) of article 32.

Penal Provisions

Article 32-

Those acting contrary to this Law are subject to the following penalties:

a) An administrative fine, at the amount of five hundred Turkish lira, is imposed to those who establish associations although not entitled to do so; those who become a member of an association although his/her membership in associations is prohibited by the laws; the executives of the association who purposely admit persons to membership although his/her membership is prohibited by the laws or neglect to write off registration of such persons, or others who lost the credentials of a member.

b) The executives of the association, who are not hold the meetings of the general assembly on time, hold the meetings of the general assembly contrary to the laws and the Statute, or convene the meetings at a place other than the head office or any other place not indicated in the Statute shall be punished with an administrative fine of five hundred Turkish lira. Besides, the court may adjudicate cancellation of the general assembly meetings which are held contrary to the laws and the Statute.

c) An administrative fine corresponding to twenty five percent of the amount transferred from abroad is imposed to the executives of the association if the foreign fund in the form of aid is not received through the intermediary of the banks.

d) Executives of the association who do not keep the statutory books or records of the association or use uncertified statutory books shall be punished by a fine of three months to one year in prison or a judicial money fine. Executives of the association and persons who are responsible for keeping the books shall be imposed an administrative fine of five hundred Turkish liras in case of not keeping these statutory books or records of the association properly. Persons who fundraise without authorization document and executives of the association who admit the person(s) to fundraise without authorization document shall be imposed to an administrative fine of one thousand Turkish liras.

e) Unless the offenses do require heavier punishment, imprisonment from six months to two years or a punitive fine is imposed to the persons who involve in mischief during the elections and voting, counting and breakdown of votes in the general assemblies and other organs of the association; who falsify, destroy or hide the books or records.

f) A crime of misappropriation in Turkish Penal Code is imposed to the chairman and members of the board of directors, or auditors and other personnel of the association who use or produce or pledge or sell, conceal, destroy, deny, falsify or modify a cash or a paper, bill or other properties with monetary value for their own benefit or for the benefit of others. Also during the proceedings, the court may decide the temporary remove the defenses task which they take in association.

g) An administrative fine, at the amount of one thousand Turkish lira, is imposed to those who open or operate representations or branches of foreign associations and nonprofit organizations which the head office is domiciled in abroad in Turkey without the permission of the concerned authorities; those who establish cooperation with these associations or admit members to these associations. And the representations and branches which are opened illegally are closed.

h) An administrative fine, at the amount of five hundred Turkish lira, is imposed to the executives of the printing office who fail to fulfil the obligations stipulated in article 16.

i) An administrative fine, at the amount of one hundred Turkish lira, is imposed to those who do not meet the obligations set out in article 17.

j) A punitive fine at the amount of at not less than 100 day is imposed to those who intentionally submit wrong information in the statement mentioned in article 19.

k) An imprisonment fine up to three months or a punitive fine is imposed to those who do not meet the obligation in subsection three of article 9 and article 19 and the persons who doesn't apply to get the document,(indicating that the records and documents obligated to keep become unreadable or lost provided to take necessary car,) from authorized court located in the place of centre of association within 15 days from the date of realization of this situation or present this document during the audit shall be punished with imprisonment from **three months to one year or judicial fine. An administrative fine from five thousand up to one hundred thousand Turkish Liras shall be imposed on those who violate the first and second paragraph of Article 21.**

l) An administrative fine, at the amount of five hundred Turkish lira, is imposed to the executives of the association and representatives stipulated in article 24 who fail to fulfill the obligations stipulated in articles 22, 23 and 24 and to submit a statement as per article 19 of this Law.

m) An administrative fine, at the amount of five hundred Turkish lira is imposed to the executives of the association who open the facilities mentioned in article 26 without permission, and the facilities which opened illegally are may closed with decision of the competent authority.

n) Unless the offenses do require heavier punishment, a punitive fine at the amount of not less than 100 day, is imposed to the executives of the associations who use the names in article 28 without permission and act contrary to the prohibitions stated in article 29, in spite of the warnings made in writing, and also decision is taken for the dissolution of the association.

o) A punitive fine, at the amount of not less than 50 day is imposed to the executives of the association who act contrary to the restrictions stipulated in paragraph (a) of article 30. Unless the offenses do require a heavier punishment, imprisonment from one year to three year is imposed for the executives of the association who execute acts contrary to paragraph (c) of the same article, and decision is taken for the shut-down of the facility.

p) Unless the offenses do require a heavier punishment, imprisonment from one year to three years and a punitive fine at the amount of not less than 50 day is imposed to the executive of associations who act contrary to paragraph (b) of article 30, and establish associations prohibited in the same paragraph, and also decision is taken for the dissolution of the association.

r) An administrative fine, at the amount of one thousand Turkish liras is imposed to those who do not meet the obligations stipulated in article 31.

s) (Annex:25/3/2020-7226/art.22) An administrative fine of five hundred Turkish lira shall be imposed to the executives of the association who fail to fulfil the reporting obligation specified in Article 23.

t) An administrative fine from five thousand Turkish Liras to twenty thousand Turkish Liras shall be imposed on those who violate the fourth paragraph of Article 19. However, in the event that this violation occurs within the body of a public institution, disciplinary action shall be taken under relevant legislation against those who work in the relevant public institution, regardless of their employment type, upon the notification to be made by the authority authorized pursuant to Paragraph 3 of Article 33, and the result shall be notified to the competent authority.

u) The executives of the associations who do not make any income, collection, expenditure and payments in excess of seven thousand Turkish Liras through banks and other financial institutions or the Post and Telegraph Organization shall be imposed to an administrative fine for each transaction up to 10% of the amount subject to the transaction. The monetary limit stipulated in this paragraph shall be applied, effective from the beginning of each calendar year, by increasing the revaluation rate determined and announced by the Ministry of Treasury and Finance in accordance with the provisions of the repeated Article 298 of the Tax Procedure Law No. 213 dated 4/1/1961 for that year. The fraction of one Turkish Lira shall not be taken into account in the calculation of the limits determined in this way.

(2) An administrative fine, at the amount of one thousand five hundred Turkish Liras, shall be imposed on those who work in the organs of the association violating the third paragraph of Article 3 of this Law and the directors of the association who do not knowingly terminate the duties of them within seven days despite written warning. In case of not terminating duties of these persons in relevant organs within thirty days despite the second written warning made by the local administrative authority, article 89 of Turkish Civil Code shall be applied.

Provisions to be applied

Article 36-

The provisions of this Law, including the penalty provisions, shall also be applicable for; **the branches of the associations, supreme institutions of associations and foundations, the branches or representative offices of associations, foundations and non-profit organisations of which the head offices are domiciled abroad and the permissions of them relating to operating and cooperating in Turkey.** Where there is no provision in this Law on this subject, the relevant provisions of the Turkish Civil Code No.4721 shall be applied.