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OPINION ON THE COMPATIBILITY OF AMENDMENTS TO THE TURKISH LAW ON ASSOCIATIONS WITH EUROPEAN STANDARDS

Prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe

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I. Introduction

1. This opinion examines the compatibility of the recently enacted amendments to the Law on Associations of the Republic of Turkey (Law No. 5253, "Official Gazette", No. 25649 dated 23.11.2004)[1] with European standards and best practices. In particular, it examines them with respect to the requirements in the European Convention on Human Rights (the ECHR), Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (Recommendation CM/Rec(2007)14) and the Joint Guidelines on Freedom of Association of the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (Joint Guidelines).

2. The amendments were included in an omnibus law, Law No. 7226[2], and concerned Articles 23 and 32. These provisions now require an association to notify the local administrative authority of any changes in its membership within thirty days or become liable to a penalty. In addition, Law No. 7226 introduced two articles into the final (transitory) provision of the Law on Associations, one of them, Article 1, dealing with notification of continued membership.[3]

3. The amendments were adopted against a background of general concern for the ability of non-governmental organisations (NGOs) to function, both during the state of emergency that ended in 2018 and since then[4], as well as of specific concerns raised by

[1] The Law on Associations has been amended several times since its enactment in 2004.
[2] "Official Gazette" No. 31080, first repetitive version, March 26, 2020.
[3] Article 2 which is inserted in the Law on Associations by virtue of the Law No.7226 deals with records of associations and is not subject of this opinion.
[4] See, among others, Resolution 2096(2016) and Recommendation 2086(2016) of the Parliamentary Assembly of the Council of Europe of 28 January 2016 and Resolution 2226(2018) of 27 June 2018; the Secretary General of the Council of Europe's *Report on the State of Democracy, Human Rights and the Rule of Law*, (2017): (p. pp. 59-60, 69, 71, 72), at https://edoc.coe.int/en/an-overview/7345-pdf-state-of-democracy-human-rights-and-the-rule-of-law.html; the Statement of the Council of Europe Commissioner of Human Rights on measures taken under the state of emergency in Turkey, at https://www.coe.int/en/web/commissioner/-/measures-taken-under-the-state-of-emergency-in-turkey?desktop=true; the Venice Commission's, *Opinion on Emergency Decree Laws Nos. 667-676 adopted following the Failed Coup of 15 July 2016*, Opinion No. 865/2016, CDL-AD(2016)037, Strasbourg, 12 December 2016 and *Opinion on the Amendments to the Constitution adopted by the rand National Assembly on 21 January 2017* and to be submitted to a National Referendum on 16 April 2017, CDL-AD(2016)007, March 18, 2016; and the Expert Council on NGO Law, *Opinion on the Impact of State of Emergency with Freedom of Association in Turkey*, CONF/EXP (2017)2 30 November 2017.

NGOs about the adverse impact these amendments would have on freedom of association in Turkey.[5]

4. The opinion was prepared by Mr Dragan Golubović, with the support of Mrs Simona Constantinescu.

II. Compatibility of the Law with European standards

5. Article 21 of Law No. 7226 amended Article 23 of the Law on Associations, which in translation now reads as follows:

> **General assembly meeting and notifications of elected organs and *members* to the administration**
>
> Associations have the obligation to notify the local administrative authority where their registered offices are located within thirty days of the members and substitute members who are elected to the executive board, the supervisory board and to the other organs of the association, *and of the names and surnames, the dates of birth and the identity numbers of those whose membership is admitted and terminated within forty-five days following the date of the admission or termination*. The same procedure shall apply to the changes made in organs of the association and its place of residence. The form and substance of the notifications of the conclusion report of the general assembly and *the notifications regarding membership*, and necessary documents relating to the notifications shall be regulated by the by-law.[6]

6. This membership notification requirement has already been in place since 2018, when the government promulgated the amendment to the By-laws on Associations. However, that amendment had been contested before the Council of State on the ground that any interference with freedom of association could only be introduced by a law adopted by Parliament, as set out in the Constitution.[7] The introduction of Article 21 of the Law can thus be seen as an attempt to address this formal shortcoming and ensure that the notification requirement is addressed by law, rather than by way of implementing regulation, in accordance with the Constitution.

7. Article 22 of the Law amended Article 32(1) of the Law on Associations ('Penalty Clauses') by inserting a new subparagraph which reads as follows:

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[5] STGM (Civil Society Development Center): *Derneklerin Üye Bildirimine DairKanun Değişikliği*, Örgütlenme Özgürlüğü ve Katılım Hakkı Bilgi Notu 3l; at http://panel.stgm.org.tr/vera/app/var/files/b/i/bilgi-notu.pdf In addition, during parliamentary debate, members of major opposition parties (CHP and HDP) presented dissenting opinions on the compliance of the amendments with the Constitution and Personal Data Protection Law See TÜRKİYE BÜYÜK MİLLET MECLİSİ, 02.04. 2020, pp. 26-29, 31, 36.

[6] Amendments to the original text or Article 23 of the Law on Associations, are presented in the italic and underlined.

[7] At the time the amendments to the Law on Associations were enacted, the case was still pending before the Council of State.

s) Penalty in the amount of five hundred TRY shall be levied on the executives of an association who do not fulfil the notification obligation set forth in Article 23.[8]

8. Article 24 of the Law inserted a new article in the final provisions of the Law on Associations, Provisional Article 1, which reads as follows:

> **Notification of those whose membership continue**
>
> Associations shall notify the local administrative authority where their registered offices are located the names, surnames, dates of birth and identity numbers of current members within six months from the date this article enters into effect. The subparagraph (s) of the first paragraph of the Article 32 shall be applied against the executives of an association who do not fulfil the obligation herein.

9. The foregoing amendments give rise to a number of procedural and substantive issues, which are discussed below.

A. Lack of ex-ante impact assessment and public consultations

10. It is understood that no *ex-ante* impact assessment of the goals sought to be accomplished by the amendments was prepared, or at any rate submitted along with the draft amendments and the corresponding explanatory note.

11. While there are no specific European rules or standards governing the preparation of *ex-ante* impact assessments, this is considered best practice in policy development and is a part of basic principles underpinning the *European public administration space*.[9] The apparent absence of any *ex-ante* impact assessment of the amendments enacted seems to be consistent with the perceived trend of legislation in Turkey not following "an inclusive and evidence-based policy development process".[10]

12. In addition, there was a lack of proper public consultations regarding the draft amendments, notwithstanding that both Recommendation CM/Rec(2007)14[11] and the

[8] The new sub-paragraph reduced the monetary penalty for violation of Article 23 previously set at 1.586 TRY, according to revaluation rate in 2020.

[9] SIGMA, *The Principles of Public Administration*, OECD/EU, 2017 edition, pp. 32-34, http://www.sigmaweb.org/publications/Principles-of-Public-Administration-2017-edition-ENG.pdf European Commission, *Better Regulation Guidelines*, working document, Brussels, 7 July 2017, SWD (2017) 350; Chapter III: Guidelines on Impact Assessment, https://ec.europa.eu/info/sites/info/files/better-regulation-guidelines-better-regulation-commission.pdf

[10] European Commission, *Turkey 2018, Report*, pp. 16, 20, Strasbourg, 17 April 2018 SWD (2018) 153 final, p. 20.

[11] Paragraph 77. The Explanatory Memorandum to the *Recommendation 2007(14)* further clarifies that: "it is essential that NGOs not only be consulted about matters connected with their objectives but also on proposed changes to the law which have the potential to affect their ability to pursue those objectives. Such consultation is needed not only because such changes could directly affect their interests and the effectiveness of the important contribution that they are able to make to democratic societies but also because their operational experience is likely to give them useful insight into the feasibility of what is being proposed" (para. 139).

Joint Guidelines[12] underscore that any regulation interfering with freedom of association should be adopted through a democratic, participatory, and transparent process.

13. The lack of consultations precluded the opportunity for the government to address the concerns raised about the amendments considered in the following two sub-sections of the opinion, or to elaborate the necessity for their adoption. This is particularly problematic given the previous legal challenge to the substance of the amendments.[13]

B. Notification of a membership in an association to local public authorities

14. The European Court of Human Rights (the ECtHR) has ruled that NGOs should not be under a *general obligation* to disclose the names and addresses of their *members* since this would be incompatible with their right to *freedom of association* and the right to *respect for private life*. [14]

15. In light of the ECtHR's ruling, the Venice Commission has noted that a measure requiring NGOs and branches and representations of foreign NGOs to inform the Ministry of Justice about the number of their members, which in practice has often amounted to NGOs having to disclose their names and addresses, gives rise to the issue of *proportionality*.[15]

16. In addition, insofar as there is any requirement for NGOs to keep a record of their members, the ECtHR has indicated that there should be clarity as to the conditions under

[12] Principle 9 See also Principle 8 and the Explanatory Note to the Joint Guidelines, para. 33., which provides that any legislation impacting on NGOs needs to be developed in a manner that is timely, free of political influence and transparent. The Joint Guidelines further clarifies that NGOs should be consulted in the process of introducing and implementing any regulations or practices that concern their operations (para. 106.). See also Venice Commission, *Opinion on the Law on nongovernmental organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, CDL-AD (2014)043), 15 December 2014, para. 42.

[13] See para. 6 above.

[14] *National Association of Teachers in Further and Higher Education v. United Kingdom*, judgment of 16 April 1998. The former European Commission of Human Rights "accepted that there might be specific circumstances in which a legal requirement of an association to reveal the names of its members to a third party could give rise to an unjustified interference with the rights under Article 11 or other provisions of the Convention" (p 71). However, it was found not to exist in this case – which had to do with an obligation of a union to disclose the names of members who would be involved in industrial action. Such an obligation was considered not likely to impair the union's ability to protect its members, given that the employer was in any event aware of the names of most members through payroll deduction of membership fees and there was nothing inherently secret about membership of a union. See also Expert Council, *Opinion on the NGO Law of the Republic of Azerbaijan in the Light of Amendments Made in 2009 and 2013 and Their Application*s, note 102.

[15] Venice Commission, *Opinion on the Law on nongovernmental organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan*, paras. 70-71.

which such a record can be accessed by public authorities as well as the permissible scope of information which is kept in the registry.[16]

17. The ECtHR case-law thus suggests that there may be instances in which a membership notification requirement *targeting certain categories of NGOs* would be compliant with international standards.[17] However, this cannot serve as a pretext for the imposition of sweeping or generalised notification and disclosure obligations.[18]

18. The ECtHR case law further holds that the duty of an association to report or otherwise disclose private data of its members is subject to double scrutiny, since it is protected by both freedom of association and right to privacy.[19]

19. With respect to the latter, the Expert Council has noted:

> The right to privacy is guaranteed to NGOs and their members. This means that oversight and supervision must be proportionate to the legitimate aims NGOs pursue, should not be invasive, nor should they be more exacting than those applicable to private businesses. It should always be carried out based on the presumption of lawfulness of the NGO and of their activities.[20]

20. In the light of the foregoing considerations, the amendment to Article 23 of the Law on Associations can be seen to give rise to problems in complying with the requirements of *legitimacy*, *transparency* and *proportionality.*

21. Firstly, with the conceivable exception of the protection of membership rights from the possible abuse by associations, the grounds stipulated in the explanatory note give rise to the issue of *legitimacy* with respect to Articles 8 and 11 of the ECHR. [21]

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[16] Expert Council on NGO Law *Opinion on the NGO Law of the Republic of Azerbaijan in the Light of Amendments Made in 2009 and 2013 and Their Application*s, paras. 89-91; *International Standards Relating to Reporting and Disclosure Requirements for NGOs*, CONF/EXP (2018)3, 27 April 2018, paras. 105-107.

[17] See also *"Accept" and Others v. Romania***,** No. 48301/08, judgment of 24 May 2016. Expert Council on NGO Law, *Non-Governmental Organisatons: Review of Developments in Standards, Mechanisms and Case Law 2015-2017*, CONF/EXP(2020)1, February 2020, paras. 169-172.

[18] See also Expert Council on NGO Law, *The International Governance on NGOs* (second annual report), OING Conf/Exp (2010) 1, June 2010, para. 82: "admission to and expulsion from a membership-based NGO is generally a matter for the organisation itself ", and para. 84: "There is, however, a legitimate interest in a State undertaking some regulation of NGOs to ensure respect for the rights of third parties (whether donors, employees, members or the public) and to ensure the proper use of public resources and respect for the law… However, such a power should not be misused and its exercise should itself be subject to challenge by the NGO concerned in an independent and impartial court with full jurisdiction".

[19] The same pertains to other persons affiliated with an association: volunteers, members of the board, donors, etc., see Expert Council on NGO Law, *International Standards Relating to Reporting and Disclosure Requirements for NGOs*, CONF/EXP (2018)3, 27 April 2018, paras. 100 and 108-113.

[20] Expert Council on NGO Law, *Opinion on the Hungarian draft Act on the Transparency of Organisations Supported from Abroad*, CONF/EXP(2017)1, April 24, 2017, para. 72.

[21] According to the explanatory note, the notification requirement was deemed necessary in order to: 1) address the practice of persons being listed as members of an association without their knowledge or consent as well as the practice of persons being listed as members in the records of the organisation after their membership has ceased: the amendment to Article 23 of the Law on Associations would thus allow citizens to easily verify if they are listed as members of a particular organisation; 2) "involve CSOs in decision-making

22. The grounds for imposing restrictions on the rights in these provisions set out in their second paragraphs are exhaustive, i.e., *numerus clausus* and therefore derogation (interference) may not legitimately serve any other goals. Although the ECtHR has acknowledged that a High Contacting Party does have some margin of appreciation with respect to the manner and scope by which a restriction is applied, it will still be subject to rigorous supervision. The interpretation of those grounds for imposing restrictions must be "necessarily restrictive".[22] Given that most of the grounds provided for justification of the amendment are broadly defined—and given the lack of logically coherent connections between them—they can hardly be regarded as complying with the approach required under Articles 8(2) and 11(2) of the ECHR.

23. In addition, the sweeping notification requirement does not comply with European best practices,[23] and disregards the fact that an association is defined by law as a person in private, rather than public law.[24] Thus, in conducting their internal affairs, NGOs should not be generally subject to the level of scrutiny which is required for public institutions— nor should they be generally subject to disclosure requirements pertaining to the shareholders of a company for twofold reasons: 1) companies do not enjoy direct protection of Article 11 of the ECHR and thus the government interference with their internal affairs is not subject to the stringent scrutiny otherwise required for interference with freedom of association; 2) the nature of underlying activities companies are involved in (commercial transactions) might justify a greater level of scrutiny as

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process in compliance with participatory democracy, public institutions may require information swiftly on associations that are active in their fields (health, environment, women-children-youth, disabled, sport etc.), so that they can include the representatives of the relevant association having the largest number of members in their respective boards that are established in accordance with the law"; 3) facilitate the Ministry of Interior's determination of the current number of members of an association, in order for it to be able to assess if the organisation qualifies for the public benefit status, which allows it to raise donations for charitable purposes without prior permission, and in order for the Ministry to "evaluate the requests" for using the words in the name of the organisation which require the Ministry's prior permission; and 4) facilitate the determination pursuant to Article 15(1) of the Law on Associations which stipulates that the remaining assets of an association which has voluntarily ceased to operate will be transferred to another organisation having the same or corresponding purpose and having the largest number of members, if such a decision has not been made by the general assembly or if it could not be convened. See also the press statement of the General Directorate for Relations with Civil Society, dated April 1, 2020, at https://siviltoplum.gov.tr/basin-aciklamasi-1-04-2020. Despite the cited grounds for justification, the language of Article 21 of the Law makes it clear, however, that the notification requirement pertains to *all associations*, irrespective of whether they are granted the public benefit status.

[22] *Sidiropulos and Others v. Greece*, judgment of 10 July 1998, § 38-39. See also *Handyside v. United Kingdom*, §4 8-49; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, judgment of 2 October 2001; *Gorzelik and Others v. Poland* [GC], judgment of 17 February 2004; *Emin and Others v. Greece***,** judgment of 27 March 2008; *Tourkiki Enosi Xanthis and Others v. Greece*, judgment of 27 March 2008.

[23] There are few states in Europe which have introduced similar membership notification requirement. One notable example is Romania, whereas the Registry of Associations and Foundations, held by the Ministry of Justice, contains the names of all members of the organisation. An NGO is obliged to report to any changes in the membership status through a lengthy judicial procedure. No fines are levied for failure to report changes in the membership status. See a table outlining European practices in this respect in STGM, *Derneklerin Üye Bildirimine DairKanun Değişikliği*, Örgütlenme Özgürlüğü ve Katılım Hakkı Bilgi Notu 3, pp. 8-10.

[24] See Article 2, para. 1, item a), Law on Associations.

compared to associations, in order to protect economic interests of third parties and ensure transparent environment to conduct business.

24. Secondly, insofar as the amendment might be said to serve the *transparency* of NGOs, it is noteworthy that the Venice Commission has noted that this: "would by itself not appear to be a legitimate aim as described in the above international instruments; rather, transparency may be a means to achieve one of the above-mentioned aims set out in Article 11 (2) ECHR".[25]

25. Thirdly, the notification requirement gives rise to the issue of *proportionality* with respect to both Article 11 and Article 8 of the ECHR.

26. Certainly, the absence of any *ex-ante* impact assessment suggests that the government did not consider other, less intrusive measures to attain desired goals.

27. In order for this measure to meet the proportionality test, the government would have had to present evidence that: 1) there was a significant number of cases reporting the alleged abuse of the membership status by associations; 2) there was no efficient remedy to address the alleged abuses, and 3) the membership notification was the *least intrusive* interference serving the legitimate goal, as compared to other options considered (including amendments to the Law on Associations and the By-laws[26], which would expand the mandatory content of the statute, in order to provide further clarity as to the content and manner of keeping the registry of members by an association).

28. Therefore, as a general rule**,** issues related to the membership status should be left to associations and their members to sort out, as they are eminently internal governance issues.[27] It is primarily the obligation of an executive board to ensure that provisions of law and the statute governing membership status are duly observed by an association and that a record of its members is kept up to date. Any interference with these issues of would need to meet the stringent conditions discussed above.

C. Penalty

29. A penalty in the amount of 500 TRY (approximately. 70 EUR) will be imposed on the executives of an association who violate the notification requirement, i.e., fail to notify changes in the membership status within the 45-day deadline.

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[25] Venice Commission, OSCE/ODHIR, *Joint Opinion on Draft Law No. 140/2017 of Romania on Amending Governmental Ordinance No. 26/2000 on Associations and Foundations*, CDL-AD(2018)004, 16, March 2018, para. 64; see also paras. 12-14; *Opinion on Federal Law N. 121-FY on Non-Commercial Organisations* (*'Law on Foreign Agents'*) *and on Federal Law N. 10—FZ on Making Amendments to the Criminal Code*, (*"Law on Treason"*) *of the Russia Federation*, CDL-AD(2014), June 27, 2014, paras. 57-59

[26] See Art. 4, Law on Associations and Art 32 of the By-laws.

[27] See Article 4, para. 1, of the Law on Associations which stipulates that the statute of an association must *inter alia* contain "criteria and conditions for admission to and dismissal from membership of the association" (item c).

30. The guiding principles enshrined in Recommendation CM/Rec(2007)14 with respect to sanctions against NGOs is that, in most instances, the appropriate sanction against NGOs for breach of the legal requirements should merely be the requirement to rectify their affairs. Insofar as administrative, civil or criminal penalties are imposed on NGOs and/or any individuals directly responsible, they should be based on the law in force that is otherwise applicable to legal entities and observe the principle of proportionality.[28]

31. Similarly, the *Joint Guidelines* provide that sanctions levied on NGOs should observe the principle of proportionality. This entails that the least intrusive option shall always be chosen, a restriction shall always be narrowly construed and applied and shall never completely extinguish the right nor encroach on NGOs essence. In addition, restrictions must be based on the particular circumstances of the case and no blanket restrictions shall be applied.[29]

32. In elaboration of the foregoing principles the Expert Council has noted that:

> Consideration should always first be given to whether a legitimate matter of concern to the authorities can be adequately handled through the issue of some form of directions, whether to desist from certain activity or to take specific action. Generally it should only be the subsequent non-compliance with such directions that should lead to the imposition of sanctions and there should be no immediate resort to the institution of administrative or criminal proceedings against the NGO concerned.
>
> As all sanctions must observe the principle of proportionality, those of a financial nature ought to take account both of the seriousness of the particular infraction giving rise to it and the impact that the penalty would have on the NGO concerned. In particular a financial penalty that would entail the bankruptcy of the NGO concerned.[30]

33. Given the foregoing, the penalty provisions are problematic both in terms of *legality* as understand by European standards and *proportionality*.

34. The penalty provision gives rise to the issue of compatibility with the *prescribed by law* requirement in Article 11 of the ECHR, which mandates *inter alia* that any interference with freedom of association is formulated with *sufficient precision* so that a common person, if need be, with appropriate advice, can reasonably foresee the consequence of a particular action.[31] Certainly, it is not clear if liability to pay the penalty concerned will be automatically triggered every time an association fails to notify the local authority of any change in the membership of an organisation—which could result in accumulative

[28] Paragraph 72. See also the Explanatory Memorandum, para. 128.
[29] Principle 10.
[30] Expert Council on NGO Law, *Sanctions and Liability with Respect to NGOs*, OING Conf/Exp (2011) 1, Strasbourg, January 2011, paras. 36-37. See *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, judgment of, 8 October 2009, § 63; *Vona v. Hungary*, judgment of 9 July 2013, §. 57; and *Christian Democratic People's Party v. Moldova*, judgment of 14 February 2006.
[31] *Maestri v. Italy* [GC], judgment of 17 February 2004, § 30. *Koretskyy and others v. Ukraine*, judgment of 3 April 2008, § 47. *Refah Partisi and Others v. Turkey* [GC], § 57. Sunday *Times v. the United Kingdom* (no. 1), judgment of 26 April 1979, § 49. *Hasan and Chaush v. Bulgaria* [GC], judgment of 26 October 2000, § 84.

fines being retroactively issued to the president of the executive board of the organisation—or if the amendment envisages a single penalty being issued by the supervisory authority upon notification irregularities being established in the period under inspection, with appropriate observance of due process.

35. In addition, the amount of the penalty prescribed gives rise to the issue of *proportionality*. The fixed amount does not allow the competent authority to take into an account circumstances of a particular case deemed important for the penalty deliberation, such as the gravity and frequency of the breach of notification requirement, the size of the association concerned, whether it is being managed by paid staff or volunteers, the financial well-being of the executive, etc.

36. The foregoing observation takes into an account the ECtHR's case law which suggests that the gravity of sanctions would not necessarily be a decisive factor in its determination as to whether a particular reporting or disclosure measure (or for that matter other interference with NGOs) meets international standards. Rather, depending on circumstances, the ECtHR might even deem lighter sanctions levied on NGO as an interference failing the *proportionality* test. Thus, in *Karaçay v. Turkey* the Court ruled that the sanction imposed on the applicant, although light (warning), did not meet the proportionality test. In this particular instance, the ECtHR found a violation of the right to freedom of peaceful assembly. However, the principles underpinning the ECtHR's analysis are equally applicable to the right to freedom of association and the other related rights.[32]

III. Conclusion

37. The amendments to the Law on Associations are problematic on both procedural and substantive accounts.

38. As for the former, the lack of *ex-ante* impact assessment and proper public discussion undercuts their legitimacy and runs afoul of the requirement for inclusive, participatory and evidence-based policy development underpinning European best practices and public administration space.[33]

39. In addition, the sweeping membership notification requirement gives rise to problems of compliance with the rights in Articles 8 and 11of the ECHR because of a lack of legitimacy and *proportionality*.

40. Similarly, the penalty that can be imposed for breaching the notification requirement fails to meet the *legality* and *proportionality* requirements under Article 11 of the ECHR.

[32] *Karaçay v. Turkey, judgment of* 27 March 2007, § 37.

[33] See, for example, the *Serbian Law on Planning System* ('Officiala Gazette, No. 30/2018) which provides that NGOs and public at large should be consulted in all stages of public policy and legislative development, including the preparation of othewise mandatory *ex ante* impact assessment analyses (Art. 3. Para. 1, point 11).

41. Overall, it is likely that the amendments to the Law on Associations will have a *chilling effect* on civil society—in particular on human rights and other NGOs whose otherwise legitimate views do not necessarily conform to those of the government. Given the current political climate, the government's unrestricted access to private data of members could well give rise to a fear of potential retribution and thus serve as a powerful deterrent from becoming or remaining members of those NGOs.

42. According to official data, the total membership in associations has decreased precipitously from 11,239,693 members in 2017 to 7,374,281 members in 2019.[34] While there might be various contributing reasons to explain this decline, the introduction of membership notification requirement in 2018 has probably made some contribution to this decline. There is a legitimate concern, therefore, that the amendments will further contribute to the otherwise steadily shrinking space for civil society in Turkey.

43. The provisions that have been amended should thus be substantially revised so that any notification requirement and any penalty imposed for non-compliance with it are consistent with European standards. Furthermore, in revising the amended provisions, it would also be consistent with those standards to consult NGOs prior to making any changes to them.

[34] General Directorate for Relations with Civil Society, https://siviltoplum.gov.tr/derneklerin-yillara-gore-uye-sayilari)