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E-PAPER

# Supporting Democracy, Human Rights, and Civil Liberties in Turkey: The Case for the EU

**BY ÖZGE ZİHNİOĞLU**

published by Heinrich Böll Foundation, July 2021

# About the Author

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# Supporting Democracy, Human Rights, and Civil Liberties in Turkey: The Case for the EU

## Areas of cooperation and conflict in EU-Turkey relations

Democracy, human rights and civil liberties have long been among the most challenging issues in the relations between Turkey and the European Union. Despite Turkey's recent authoritarian turn, these challenges have been overshadowed by increased cooperation on a range of issues as well as rising tension in others. Various studies focus on these transactional ties between Turkey and the EU. This article shifts the attention back to the normative pillar of the relations. More specifically, it deliberates on the ways in which the EU could be more effective in supporting democracy, human rights and civil liberties in Turkey. To that end, the article starts with an overview of the areas of cooperation and potentials for clashes between Turkey and the EU, and probes the (dis)incentives for the EU to promote human rights in Turkey. It then elaborates on the EU's existing instruments and discusses how they can be improved to better support democracy, human rights and civil liberties in Turkey.

There are various areas of cooperation, and even integration between Turkey and the EU, going back many years. Cooperation in these fields, such as trade and energy, often progressed alongside the EU's accession framework. And even as EU membership has become increasingly unlikely for Turkey, the relations continued to evolve in these fields.

There are two areas where Turkey has clear expectations from the EU. The first one is the modernization of the EU-Turkey Customs Union. The principles and the stages for establishing a customs union covering industrial goods and processed agricultural products were set out in the Ankara Association Agreement of 1963 and the customs union was completed in 1996. The modernization of the EU-Turkey customs union was initially raised following the World Bank's 2014 assessment of its positive and negative effects for

both sides. For Turkey, in particular the asymmetric structure of the customs union<sup>1</sup> has become a key concern because the EU has signed or negotiated an increasing number of free trade agreements over the past two decades. Based on a mutual will between Turkey and the EU to modernize the customs union, and following the conclusion of bilateral technical discussions, the European Commission in 2016 asked the Council for a mandate to launch the negotiations. However, due to heightened tensions and concerns over Turkey's rule of law, the Council has blocked a mandate to the Commission. Secondly, the Turkish government expects the resolution of the long-standing visa liberalization issue with the EU. Turkey and the EU launched a visa liberalization dialogue in 2013 which set out the requirements that Turkey needs to meet before a visa-free regime can be established. Despite the importance attached to it by the Turkish government and early efforts to meet EU requirements, little progress has been made in the dialog in the past years.

In addition to trade and visa liberalisation, there are various fields of actual and potential cooperation that the EU could use to promote the relationship with Turkey, including energy and climate policies. Energy is one area of mutual strategic interest, with opportunities for further cooperation and integration. Since the early 2000s, Turkey has taken steps in restructuring its energy sector and in adopting the EU's relevant legal framework.<sup>2</sup> However, despite limited progress on the energy chapter in the EU accession talks, cooperation and integration in this policy area is possible through institutional engagement of Turkey's national energy institutions in the EU institutions. An example to this is the agreement signed between the Turkish Electricity Transmission Company and the European Network of Transmission System Operators for Electricity. Such steps are important not only for integrating Turkey into the EU electricity markets but also for enhancing Turkey's cross-border trade and energy cooperation with its EU neighbors.<sup>3</sup>

In addition to energy, EU action to tackle climate change opens up a potential field of cooperation with Turkey. Following the Commission's launch of the European Green Deal to transform the EU from a high to a low-carbon economy, Turkish organizations representing business sectors started to feel pressure, even if indirectly, to follow the direction of changes unfolding in the EU and to help Turkish business community prepare for them. In particular, the Turkish business community put the Green Deal on their agenda since its launch. Business organizations including the Union of Chambers and Commodity Exchanges of Turkey, the Turkish Industry and Business Association, the Turkish Exporters

- 1** The products of a third country that has signed a free trade agreement (FTA) with the EU can enter Turkey without facing tariffs there, while Turkish products do not enjoy the same rights, unless Turkey becomes a party to that FTA, or unless Turkey agrees on a separate agreement with the said country. See e.g. Sinan Ülgen and Yiannis Zahariadis, "The Future of Turkish–EU Trade Relations Deepening vs Widening," *Centre for European Policy Studies*, 2004, p. 8.
- 2** Sohbet Karbuz, "EU–Turkey Energy Cooperation: Challenges and Opportunities," *IAI Working Papers 14*, 2014, p. 8.
- 3** Meltem Müftüler-Baç, "Turkey's Future with the European Union: An Alternative Model of Differentiated Integration," *Turkish Studies*, 18(3), 2017, pp. 416–438, p. 430.

Assembly, the Economic Development Foundation as well as several universities organized meetings to discuss the changes in EU policy, product standards and Turkey's access to the EU market.

Some scholars suggest the use of "transactional conditionality"<sup>4</sup> by the EU, setting out rewards and punishments to incentivize cooperation in specific fields alongside the accession process that has effectively come to a standstill. Given the plentitude of fields of mutual interest between the EU and Turkey, this may prove to be an effective mechanism in promoting cooperation in the short run. However, mutual distrust has prevailed in the relationship between Turkey and the EU in the past years. For instance, Turkey has taken no action on the remaining visa liberalization benchmarks, while the EU has introduced new criteria to start negotiations over the modernization of the customs union. Therefore, transactional conditionality still has to prove its effectiveness. That said, some of these fields, especially where there is mutual interest in cooperation are still valuable for their potential to bringing back mutual trust in the relations.

## **Moving forward in EU support to democracy, human rights and civil liberties**

The EU has been supporting Turkey's democracy, human rights and civil liberties for a long time through different policies, instruments and programs. While these were fine-tuned over the years, there are several ways in which the EU could improve these tools to reflect the current circumstances in Turkey and to better promote democracy and other freedoms.

### **The characteristics of EU funding in Turkey**

Its extensive funding mechanism is among the core EU instruments to support the promotion of democracy and human rights in Turkey. Some of the EU instruments are specifically geared towards achieving or maintaining these values, including the European Instrument for Democracy and Human Rights (EIDHR), which had been launched prior to Turkey's EU membership candidacy, and the more recently established European

**4** Wulf Reiners and Ebru Turhan, "Current Trends and Future Prospects for EU–Turkey Relations: Conditions for a Cooperative Relationship" in Reiners, W. and Turhan, E. (eds.), *EU-Turkey Relations: Theories, Institutions and Policies*, Palgrave Macmillan, 2021.

Endowment for Democracy. Other instruments, such as the pre-accession assistance, are broader in scope. As these instruments have diversified and expanded over the years, they have become an important resource for a variety of groups in Turkish civil society.

Turkish civil society expects the continued flow of EU funds. At the same time, however, the nationalist and anti-Western discourse adopted by Turkey's ruling bloc have led to suspicious attitudes towards foreign funding in recent years. Government officials, pro-government media outlets, and nationalist non-state actors point the finger at NGOs that receive funds from international donors as a target and attempt to distort their image in the eyes of the public.<sup>5</sup> For instance, a nationalist organization questioned the intentions of an environmental NGO and claimed that the NGO was not patriotic as it was receiving funds from the EU.<sup>6</sup> Also in other cases, NGOs were stigmatized for receiving foreign funds.<sup>7</sup> As a result, the stigmatization of foreign funding has become a growing concern for many civil society organizations that work with international donors. Many organizations have started to shy away from or think twice before seeking foreign funds.

Against this backdrop and in response to rising authoritarianism in the aftermath of the failed coup attempt in 2016, the EU introduced two major changes to its pre-accession assistance to Turkey. First, the EU centralized the management of the pre-accession funds. In principal, the European Commission has the management responsibility of the EU's Instrument for Pre-accession Assistance (IPA), but until recently, some Turkish public institutions were entrusted with the responsibility to undertake the planning, implementation, monitoring and auditing of these funds, as well as the tendering, contracting, payments, accounting and financial reporting of IPA projects.<sup>8</sup> The Commission decided to change this decentralized approach due to the "changing operating environment for the [civil society organizations] following the coup attempt of 15 July 2016"<sup>9</sup> and take over the management of IPA funds, either through the Commission in Brussels or the EU Delegation in Ankara. Only a few programs, such as those opened under the Civil Society Dialogue, remain under the management of the Turkish authorities.

- 5 International Federation for Human Rights Western Europe Desk; FIDH/OMCT's Observatory for the Protection of Human Rights Defenders, "Turkey's Civil Society on the Line: A Shrinking Space for Freedom of Association: Turkey Part II", 2021, [https://www.fidh.org/IMG/pdf/obs\\_turkey.pdf](https://www.fidh.org/IMG/pdf/obs_turkey.pdf).
- 6 Turkish Youth Union, "Kaz Dağları'nda At Gözlüğüyle Dolaşanlar," August 2019, <https://tgb.gen.tr/serbest-kursu/kazdaglari-nda-at-gozluguyle-dolasanlar-28870>.
- 7 International Federation for Human Rights Western Europe Desk; FIDH/OMCT's Observatory for the Protection of Human Rights Defenders, "Turkey's Civil Society on the Line: A Shrinking Space for Freedom of Association: Turkey Part II." 2021, pp. 38-40, [https://www.fidh.org/IMG/pdf/obs\\_turkey.pdf](https://www.fidh.org/IMG/pdf/obs_turkey.pdf).
- 8 European Court of Auditors, "EU Pre-Accession Assistance to Turkey: Only Limited Results So Far", Special Report No 7, 2018, points 7, 8, [www.eca.europa.eu/Lists/ECADocuments/SR18\\_07/SR\\_TURKEY\\_EN.pdf](http://www.eca.europa.eu/Lists/ECADocuments/SR18_07/SR_TURKEY_EN.pdf).
- 9 European Commission, "Commission Implementing Decision of 30 November 2017 Amending Commission Implementing Decision C(2016) 4889 final of 20 July 2016 Adopting a Civil Society Facility and Media Programme for the Years 2016–2017 under IPA II," 2017.

Centralizing the management of the IPA funds might help overcome some of the current problems such as significant delays in project programming and implementation. However, including Turkish authorities in the management and/or implementation of projects is important in many respects. Firstly, this provides an important legitimacy to EU funding in the eyes of many who stigmatize foreign funding. Indeed, when received through Turkish authorities, Turkish civil society perceived EU funds as “our money” and therefore had less reservations in using them.<sup>10</sup> In addition, Turkish authorities have extensive experience in working with Turkish civil society and in managing sensitivities relating to this sector. In return, bringing back the Turkish authorities to the project management could help alleviate the growing suspicion and stigmatization of these funds. On the other hand, if funds are managed directly by the EU, a growing number of Turkish NGOs are likely to abstain from EU funds.

The legal framework of the new IPA III program for the period 2021-2027 is not yet finalized and accordingly, the new outlook of its management and implementation structure is still not clear. At this stage, it is unlikely for the EU to entrust Turkish authorities with the full responsibility to undertake the management and implementation of the pre-accession assistance. However, the EU could include Turkish authorities in the implementation, for instance, by keeping the Central Finance and Contracts Unit, a Turkish public institution, as the contracting authority, or by designating the Directorate for EU Affairs in the Ministry of Foreign Affairs as the lead organization or the coordinator of different programs. Turkish authorities would likely welcome this move and this could revive the dialogue between Turkish and EU officials.

The second major change in EU funds to Turkey are the recent cuts in the allocation of pre-accession assistance in response to the large-scale purge after the failed coup attempt in 2016. The EU initially reduced the pre-accession assistance allocated to Turkey by 254 million Euros in 2018, and continued cuts by 400 million Euros in 2019 and 483 million Euros in 2020 as democratic recession in Turkey deepened.<sup>11</sup> These cuts have excluded the funds allocated to civil society programs and civil society groups. However, the cuts moved EU assistance from a technocratic instrument to a political tool deployed for leverage, which in turn have politicized the funds. Also, while it is laudable that the cuts exclude those allocated to civil society, funds should also prioritize programs that focus on rule of law and administration of justice in Turkey. This could include the training of public officials such as prosecutors, judges and law enforcement officers. While the EU has conducted similar projects under previous pre-accession assistance programs, large numbers of officials in the judiciary have been displaced since 2016, and the new officials will be key actors to implement any future reform process.

**10** Author’s interviews with Turkish NGOs in 2016-17.

**11** Richard Youngs and Özge Zihnioğlu, “EU Aid Policy in the Middle East and North Africa: Politicization and its Limits,” *Journal of Common Market Studies*, 59 (1), 2021, pp. 126-142, p. 135.



EU funds are highly relevant for NGOs working in the field of democracy, human rights and civil liberties. That said the EU should go beyond being only a donor organization and help expand in areas where civil society can be effective, for example in policy- and decision-making. As documented elsewhere,<sup>12</sup> Turkish civil society has been under mounting pressure in parallel to democratic backsliding. The deteriorating legal framework seriously undermined civil society activism, causing many NGOs and human rights defenders to avoid engaging in sensitive issues and impose self-censorship. At the same time, Turkish civic space has been shrinking in terms of where civil society can participate and be effective in democratic decision-making.

In the past, NGOs have been active in influencing the decision-making process in the Turkish Parliament. They lobbied and sometimes worked with the MPs, political parties, commissions, and committees in the parliament. However, the transition from parliamentary to presidential system in 2017 overcentralized the decision-making structure in Turkey. The parliament fell outside of the decision-making process, as members of the government are not selected from the parliament. The political parties and the MPs are no longer able to follow and monitor, never mind influence, the decision-making with their presence in the parliament. In return, civil society's dialogue with decision-makers was significantly interrupted. As the new decision-making structure is not open to establishing new channels of dialogue with civic actors, civil society in general lost its ability to influence decision-making.

Civil society organizations, in particular the rights-based groups, essentially want to raise their issues, ideas and concerns to policy- and decision-makers. However, due to lack of opportunities to communicate their work and influence policies, in addition to strong legal pressures, civil society is increasingly losing its motivation and potential to sustain their work. Against this, the EU can help establish new channels for dialogue between civil society and public institutions. One way the EU can achieve this is through instrumentalizing its funds. Public institutions in Turkey are still highly interested in the EU's pre-accession assistance. The EU could use the projects that will be funded through the IPA III program as a platform for civil society's democratic participation in policy- and decision-making in public institutions. Similar practices exist at the local level through the city councils that regularly bring together civil society actors with local government officials. The EU could stipulate a broad-based inclusion of civil society actors as a key component for each project that is EU-funded. While some public institutions have open doors for some civil society organizations, partnerships with civil society are not a well-established tradition for public institutions in Turkey. Therefore, such initiatives should go beyond sharing information and generate a genuine discussion if they are not going to be yet another show-piece. Civil society's inclusion should be designed as a partnership clearly stating how they will be a part of that project and how they will see the impact of their input. Equally

**12** Özge Zihnioğlu, *EU-Turkey Relations: Civil Society and Depoliticization*, London and New York: Routledge, 2020, pp. 93-102.

important, these partnerships should include not only civil society organizations ideologically close to the governing bloc, but those representing wider sectors of society. Civil society's participation in EU-funded public projects is important for it may also mitigate the targeting and stigmatizing of civil society organizations for their use of EU funds.

All that said, liberal sectors of Turkish civil society prefer to see the EU as much as a *partner* as a *donor*. Many groups have long regarded the EU as an anchor for Turkey's democratization and acknowledge that the EU could potentially still be a transformative actor. However, some of these groups also feel abandoned by the EU and are disillusioned with the EU's treatment of Turkey as a third-country, putting forward cooperation based on mutual interest than integration based on values. For instance, to seal the refugee deal with Turkey in 2016, the EU leaders agreed to re-energise the accession process and open a new chapter in accession talks despite the democratic backsliding.<sup>13</sup> These groups expect the EU to more strongly embrace and prioritize democratic norms and values in its relations with Turkey.

## The EU's role in improving resilience in Turkish civil society

Civil society actors are among the groups the most affected from Turkey's democratic backsliding. While civil society is not a homogenous sphere but a complex arena where diverse values and interests co-exist, closing civic space in the last decade adversely affected various civic actors. That said, both the EU and civil society, above all, should be convinced that this authoritarian period is a temporary one in Turkey and that it is unlikely to sustain this system for a long time, given also the public's growing discontent with the current system. What needs to be done during this period is to increase the resilience of Turkish civil society and in particular those organizations that work on democracy, human rights and civil liberties. The EU could contribute to these efforts in several complementary ways.

The first important way to increase the resilience is to invest in human resources. It took many years to train people to manage a rights-based agenda in Turkish civil society. However, the legal environment deteriorated for rights-based activism in recent years. A presidential decree in 2018 expanded the president's authority over civic groups through the State Supervisory Board.<sup>14</sup> More recently, a controversial bill that came into force in late 2020 (Law no 7262) grants broad powers to the authorities that could restrict or hamper civil society activities. These, in return, lead to a mass exodus from the sector. Trained staff can hang on to their jobs only by taking major risks. At the same time, the entry of

**13** European Council, "EU-Turkey Statement, 18 March 2016," <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/>.

**14** Republic of Turkey Official Gazette, "Presidential Decree on State Supervisory Board, no 5," 2018, [www.resmigazete.gov.tr/eskiler/2018/07/20180715-2.pdf](http://www.resmigazete.gov.tr/eskiler/2018/07/20180715-2.pdf).

new people to this field came to a halt. The loss of these trained staff is not something the organizations could easily recover by replacing one for the other. When the trained staff leave the organization or the civil society sector, they take with them not only the learned behaviour patterns and practices developed in a long time in cultural and organizational contexts but also organizational memory. Maintaining this skilled work force is among the basic needs of Turkish civil society during this period. This requires an external support mechanism.

The EU can help maintain this workforce in two ways. Firstly, the EU has already been providing support to rights-based activists and people who initiate, lead or volunteer in a rights-based endeavour through its *Sivil Düşün* ("Think Civil" / "Civil Dream") program. However, this program only provides funding to costs related to the organization and holding of events. Staff expenses are considered ineligible for this funding. This EU program could be expanded to cover staff salaries for rights-based groups and organizations. In addition, through the European Instrument for Democracy and Human Rights (EIDHR), the EU provides project-based funding specifically to support and promote democracy, human rights and fundamental freedoms in third countries. This tool could also be expanded in a similar way to cover non-project based staff salaries of activists. Second, the EU could more broadly revisit its funding approach. In general terms, the EU provides project-based funding in line with the aims and priorities of the given funding tool. Even the *Sivil Düşün* program that accepts applications from activists only provides funding related to the organization of events and other activities. This is because the EU places emphasis on measurable outputs resulting from its support, which could be achieved through project-based funding. The EU could shift a part of its funding with a democracy and human rights focus to core funding to cover the basic organizational and administrative costs of the NGOs, including non-project based staff costs.

Core funding is important for rights-based groups as project-based funding is not always a suitable funding approach for rights-based activism. Rights-based activism aims at bringing change not only in legal and institutional structures, but also in practices, behaviors and understanding. It is a process that often requires a long-term, if not a constant struggle. In that sense, short implementation span of project-based funding is not suited for rights-based activism. Core funding is especially important to sustain those organizations that have invaluable experience and expertise in rights-based activism but find it difficult to carry out their aims and objectives during this difficult period.

One other way to improve civil society's resilience is to help them develop cross linkages with other non-governmental actors. There are examples of broad collaborative efforts in Turkish civil society. Various environmental campaigns are a result of collaborative efforts among local and national organizations. A telling example is the Canal Istanbul Coordination, which brings together dozens of formal and informal organizations such as associations, political parties, community centers and neighborhood organizations from across Istanbul. The Coordination covers a wide array of groups working not only on environmental issues but also on education, women's issues, and university alumni organizations. Such collaborations provide a platform for different actors to discover and build on common

grounds. They do not only widen the movement's base and enable them to speak with a stronger voice. More importantly, they enable different civic actors to go beyond their turf and develop new muscles in the way they work. These, in return, contribute to increasing civil society's resilience. EU funds are often open and supportive of collaborative projects. However, the EU can improve its funding programs by requiring new partnerships established by organizations from different working areas.

More important are the cross-ideological linkages between civil society actors. While Turkish civil society reflects the divisions and polarization of Turkish politics and society, they may find common ground around certain issues. For instance, women's organizations from different ideological backgrounds strongly opposed the President's decision to withdraw from the Council of Europe's Istanbul Convention on preventing and combating violence against women. In a similar way, an enormous number of civil society initiatives has supported refugees over the years. There are strong overlaps in their aims, objectives and activities despite their diverse ideological backgrounds. EU funds could encourage such cross-ideological cooperation in areas of common interest. These efforts will in turn improve civil society's resilience.

# Conclusion

While the reinstatement of democracy and freedoms in Turkey requires first and foremost internal drivers, the EU could use its policies, instruments and programs to empower the pro-democracy domestic actors, such as civil society groups and media, and increase their resilience. At the same time, the EU could make necessary adjustments to alleviate the stigmatizing of those actors and organizations that it funds and works with. The EU's relations with Turkey extend beyond the accession process, with various fields of cooperation going back many years. While there are potentials to incentivize some of these fields of cooperation, such as economic and trade relations, the EU has mostly lost its leverage over Turkey. That said, these fields of cooperation are still valuable for establishing a platform for dialogue and potentially building mutual trust in the relations.

## Imprint

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Place of publication: <https://us.boell.org/>

Release date: July 2021

Layout: Saravanan Ponnaiyan, Chennai, India

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