



TURKEY: WEAPONIZING COUNTERTERRORISM

TURKEY EXPLOITS TERRORISM FINANCING ASSESSMENT TO TARGET
CIVIL SOCIETY

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1. INTRODUCTION

The government of Turkey has exploited a 2019 Financial Action Task Force (FATF) assessment report to supplement its arsenal of counterterrorism laws, many of which are routinely used to target civil society organizations.¹ The FATF, of which Turkey has been a member since 1991, is an intergovernmental organization that seeks to combat money laundering and terrorism financing.² In response to the FATF's conclusion that Turkey was not in full compliance with the task force's recommendation on terrorism financing and potential risks associated with the not-for-profit sector, the parliament rushed through Law No. 7262 on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction (hereafter, Law No. 7262) in the final days of 2020 and without any consultation with civil society; it came into force on 31 December.³ The law goes far beyond what is required by the FATF, undermines the principle of legality with its overly broad and vague provisions, and threatens to further undermine the freedoms of association and expression, and a range of other human rights that are routinely violated by the state under existing laws in Turkey. Law No. 7262 contains several provisions that can and are likely to be used in the government's ongoing attacks on independent civil society actors and organizations, including Amnesty International.

The many ambiguities in Law No. 7262 leave it open to misapplication against non-profit organizations (NPOs) engaged in legitimate activities that are lawful under international human rights law and under the Turkish Constitution. The new law subjects all NPOs in Turkey to the same disproportionate risk mitigation measures, including those at little or no risk of vulnerability to involvement in terrorism financing. It imposes mandatory burdensome audits on all NPOs and includes provisions that would hinder the online fundraising activities of all NPOs without justification based on actual risk. More importantly, the law includes provisions that enable easier suspension of board members and employees as well as the dissolution of NPOs, without adequate and effective judicial safeguards. The main opposition Peoples Republican Party (CHP) applied to the Constitutional Court requesting that some provisions of Law No. 7262 are annulled. In March 2021, the Court ruled the application to be admissible. As of June 2021, the Court's decision was still pending.

The promulgation of Law No. 7262 is an "unintended consequence" of FATF policy and practice, which require a targeted risk-based approach and proportionate risk mitigation measures.⁴ Amnesty International calls on FATF and other relevant interlocutors to ensure that Turkey's responses to FATF assessments fully comply with FATF policy and more importantly, the country's international human rights obligations. If not immediately addressed by FATF, Turkey's blatant exploitation of the task force's stated narrow objectives will send a clear signal to other governments that terrorism financing laws and policies can be trained on civil society under cover of alleged FATF compliance "requirements".

This briefing paper highlights the numerous ways that the Turkish authorities historically have targeted civil society, including by harassment, investigation, prosecution and conviction on trumped up terrorism charges. Law No. 7262 is only the most recent tool in the Turkish government's toolbox of counterterrorism

¹ FATF, Anti-money laundering and counter-terrorist financing measures, Turkey Mutual Evaluation Report, December 2019 <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-turkey-2019.html>

² There is no internationally agreed definition of terrorism, leaving states to create their own – often overly broad and vague – definition. FATF develops and promotes policies and recommendations on financing of terrorism that are applicable to relevant UNSC Resolutions on the international cooperation in the fight against terrorism.

³ <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>

⁴ <https://fatfplatform.org/news/fatf-to-create-new-work-stream-on-unintended-consequences-of-poorly-implemented-amlcft-measures/>

measures that it has weaponized and wielded against political opponents, journalists, human rights defenders, and civil society organizations in the last half decade. The new law must not be allowed to further the government's project to undermine and erode protections for civil society actors and organizations. The law should be repealed or significantly amended to ensure that it complies both with FATF policy and best practice and Turkey's international human rights obligations. The not-for-profit sector must be consulted in the course of FATF-related processes and the authorities must ensure that the exercise of the rights to freedom of association and expression, which underpin their important work, are effectively protected.

2. BACKGROUND: FATF PROCESS AND ASSESSMENTS

The FATF is an intergovernmental body with 37 member states that is mandated to tackle global money laundering, terrorist financing and countering the financing of the proliferation of weapons of mass destruction.⁵ The FATF advances its work through a set of recommendations, comprised of 40 internationally endorsed global standards, to guide national authorities' implementation of "legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the financial system."⁶ FATF operates through a peer review system to mutually assess the full and effective implementation of these standards in its member states and in over 200 jurisdictions through its cooperation with international and regional bodies.⁷ In line with the mutual evaluation process, a country's compliance with FATF recommendations is examined by other FATF member states, resulting in the production of an in-depth report with targeted recommendations to address shortcomings.

FATF Recommendation 8 addresses the non-profit sector with the express goal of protecting those organizations and groups whose activities and characteristics might put them at risk of potential terrorism financing abuse.⁸ Recommendation 8 requires that laws and regulations to combat money laundering and terrorism financing target *only* those NPOs that a country has identified – through a careful, targeted "risk-based" analysis -- as vulnerable to terrorism financing abuse. Thus, Recommendation 8 does not apply to all NPOs in a country.⁹ Corrective measures must be focused and proportionate to avoid disrupting the legitimate activities of NPOs.¹⁰

In response to member states' historic, deliberate misapplication of Recommendation 8 to restrict the activities of NPOs, FATF revised Recommendation 8 in 2016 and paired the formal recommendation with an

⁵ Mandate was extended in 2001 and 2012 respectively.

⁶ FATF, *What We Do*. <http://www.fatf-gafi.org/about/whatwedo/>

⁷ FATF, *Members and Observers*, <https://www.fatf-gafi.org/about/membersandobservers/>

⁸ According to FATF, a terrorism financing **risk** "can be seen as a function of three factors: threat, vulnerability and consequence. It involves the risk that funds or other assets intended for a terrorist or terrorist organisation are being raised, moved, stored or used in or through a jurisdiction, in the form of legitimate or illegitimate funds or other assets;" a terrorism financing **threat** "is a person or group of people with the potential to cause harm by raising, moving, storing or using funds and other assets (whether from legitimate or illegitimate sources) for terrorist purposes;" and a terrorism financing **vulnerability** "comprises those things that can be exploited by the threat or that may support or facilitate its activities. Vulnerabilities may include features of a particular sector, a financial product or type of service that makes them attractive for TF." See FATF, *Terrorist Financing Risk Assessment Guide*, July 2019, pp. 7-8, <https://www.fatf-gafi.org/media/fatf/documents/reports/Terrorist-Financing-Risk-Assessment-Guidance.pdf>

⁹ According to FATF's Interpretive Note to Recommendation 8, NPO refers to "a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works'." Recommendation 8 *only* applies to NPOs, activities and characteristics of which put them at risk of terrorism financing abuse. FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations*, p.57, para.1. Updated October 2020, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

¹⁰ *Ibid*, p.13.

Interpretative Note to Recommendation 8¹¹ and a best practice guide.¹² Since 2016, best practice includes four main steps required for states to comply with the FATF’s recommendation pertaining to NPOs:

- (1) conduct a risk assessment of the non-profit sector to identify which subset of organizations are likely to be at risk of terrorism financing abuse;
- (2) review existing laws and regulations on NPOs to ascertain whether they already address the identified risks associated with terrorism financing;
- (3) take risk mitigation measures in the event that deficiencies are identified in a specific NPO that are focused and proportionate to said risks to avoid disrupting the legitimate activities of NPOs;
- (4) implement those measures in compliance with a state’s obligations under international human rights law.¹³

Turkey is currently in its fourth round of the mutual evaluation process. In the latest evaluation report of December 2019, Turkey was found to be only in “partial compliance” with Recommendation 8.¹⁴ The report concluded that “Turkey’s legal framework lacks specific procedures to periodically review NPO risk, to conduct outreach and guidance to NPOs, or to work with NPOs to develop best practices on preventing Terrorism Financing (TF) abuse.”¹⁵ The report recommended that, under its priority follow-up actions, Turkey should “address the gaps in its legal framework to fully meet its obligations concerning targeted financial sanctions related to terrorism” and “implement focused and proportionate measures to Non-Profit Organizations (NPOs) identified as at risk of TF abuse.” It is this required follow-up action that brought about Law No. 7262 and the problematic provisions described in more detail further below.

Risk-based approach

As its overarching approach, FATF recommends that “...countries should identify, assess and understand the money laundering and terrorist financing risks for the country, and should take action (...) aimed at ensuring the risks are mitigated effectively.”¹⁶ States are required to take a “risk-based approach” to organizations that fall within the scope of the FATF definition of a “non-profit organization.” According to Recommendation 8, states must review existing legislation and regulations on NPOs in relation to their vulnerability to terrorism financing, including the effectiveness of such laws, allowing for targeted counter measures where necessary, i.e. for the specific NPO or group of NPOs at risk of terrorism financing. General concern that the entire sector might be at risk **cannot** be the basis for counter measures. States are obliged to implement risk mitigation measures in a manner that respects fundamental rights and freedoms in compliance with their obligations under international human rights law.

Law No. 7262 is predicated on an overly broad interpretation of FATF’s definition of an NPO and does not limit counter-measures to mitigate risk only to those NPOs identified as being at risk of terrorism financing abuses. The law subjects all NPOs to the same measures allegedly to prevent terrorism financing, and thus has a disproportionate impact on organizations at little or no risk. The law requires burdensome audits for all NPOs; it also includes provisions that would hinder the online fundraising activities of all NPOs.

The Turkish authorities claim to have conducted a risk assessment of the NPO sector in 2018,¹⁷ but the methodology used, how NPOs participated, and whether the new law is even based on that risk assessment remain unclear. As FATF noted in its 2019 mutual evaluation report, “Turkey does not work with NPOs to

¹¹ FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, *Interpretive Note to Recommendation 8 (Not-Profit Organizations)*, Updated October 2020, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

¹² FATF, Best Practices Paper on Combating the Abuse of Non-Profit Organisations (Recommendation 8). <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>

¹³ FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, *Interpretive Note to Recommendation 8 (Not-Profit Organizations)*, Updated October 2020, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

¹⁴ FATF, *Mutual Evaluation report Turkey*, December 2019, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

¹⁵ According to the FATF evaluation, current requirements to produce financial statements and engage in internal audits are not specifically for the purpose of evaluating risk of terrorism financing. They are aimed primarily at preventing fraud and mismanagement. The current framework is ambiguous as to when audits will take place and the auditing that takes place routinely is not based on any assessment of TF risk. See FATF Mutual Evaluation Report Turkey, pp.181-182.

¹⁶ FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, p.11, Updated October 2020, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>

¹⁷ FATF, *Mutual Evaluation report Turkey*, December 2019, <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>, p.177.

develop and refine best practices to address TF risks and vulnerabilities.”¹⁸ According to the Third Sector Foundation (TUSEV), based in Istanbul, in practice, there are no mechanisms in place or anticipated for NPOs in Turkey to provide feedback or voice their concerns regarding FATF assessments.¹⁹

The new law has been introduced in stark contrast to FATF recommended best practice. It is not based on a narrowly targeted approach to implementing the measures called for in Recommendation 8 including oversight and regulatory mechanisms based on an understanding of the diversity of the NPO sector, but on a sweeping approach to the NPO sector.²⁰

Rights-based NPOs “not at risk”

According to the FATF, when subjecting human rights organizations to FATF-related legislation or standards, the authorities should demonstrate credible grounds to suspect their vulnerability to the financing of terrorism in order to ensure they are not interfering with their legitimate activities. In fact, neither the FATF nor the Turkish Financial Crimes Investigation Board (MASAK)²¹ have specifically identified human rights organizations as NPOs at high risk. In its 2019 Manual on Prevention of Non-Profit Organizations Against Abuses of Terrorist Financing, MASAK identified only some NPOs providing services for humanitarian purposes as highly vulnerable to risk of terrorist financing abuse. However, according to FATF best practice, financial institutions should not view NPOs as high risk simply because they operate in environments in need of great humanitarian aid.²² MASAK’s Guidance also states that “in the cases detected so far, no rights-based and advocacy focused organizations have been identified as having been targeted by terrorist elements.”²³ The fact that the Turkish government seeks to subject NPOs that are at low or no risk of terrorism financing abuses to alleged risk mitigation measures begs the question: why are the Turkish authorities targeting such groups? The answer to that question is clear to Amnesty International and other NPOs that have been consistently and routinely harassed and prosecuted for their legitimate work in the past, as the examples below well illustrate.

¹⁸ *Ibid*, p.179.

¹⁹ TUSEV, *An analysis of the application of financial action task force recommendations and its implication on civil society in Turkey*, Info Note, February 2021 https://www.tusev.org.tr/usfiles/images/MaliEylemGorevGucuSivilToplumEN_26022021.pdf

²⁰ FATF, *Combating the abuse of non-profit organisations* (recommendation 8), June 2015,

²¹ MASAK operates under the Ministry of Treasury and Finance to effectively combat laundering proceedings of crime and terrorist financing. It has duties among others to develop policies and implement strategies to prevent such crimes and conducting necessary financial research related to freezing of assets. See <https://en.hmb.gov.tr/fcib-duties-powers>; It has direct access to databases on NPOs.

²² FATF, *Best Practices Paper on Combating the Abuse of Non-Profit Organisations* (Recommendation 8). <https://www.fatf-gafi.org/media/fatf/documents/reports/BPP-combating-abuse-non-profit-organisations.pdf>, p. 28.

²³ MASAK, *Kar Amacı Gütmeyen Kuruluşların Terörün Finansmanı Amacıyla Suiistimalinin Önlenmesine Yönelik Rehber*, 2019, p. 18. https://cdn.vgm.gov.tr/genelicerik/genelicerik_1103_250619/terorun-finansmani-amaciyla-suiistimalinin-onlenmesine-yonelik-rehber-turkce.pdf

3. HUMAN RIGHTS CONCERNS

In countries where national security laws are routinely used to target human rights defenders, journalists, activists, or any person or organization that opposes government policy, a common unintended consequence of requirements to curb terrorism financing is the repression of civil society. It is this stark reality that gave rise to the FATF's recent project on mitigating the unintended consequences of FATF standards, which launched in February 2021.²⁴ In the context of the last half decade of a massive crackdown on civil society in general and human rights defenders in particular, the Turkish authorities appear to be deliberately and knowingly exploiting the FATF assessment/evaluation process to further repress civil society in the country. This section includes specific examples where the Turkish authorities have carried out precisely the kinds of unwarranted attacks on independent NPOs that FATF has expressly warned against in its guidelines.

International and regional human rights experts have already raised concerns about Law No. 7262. In a February 2021 letter to the Turkish government, a group of UN Special Rapporteurs stated that the government had misinterpreted the FATF's assessment and used it as a basis to promulgate the new law in order to broadly restrict civil society and to punish the work of human rights defenders under the banner of countering terrorism financing.²⁵ Similarly, the Council of Europe's Commissioner for Human Rights called on the Turkish authorities to "...refrain from further implementing the Law [...], stressing that some aspects of the Law threaten the very existence of human rights NGOs."²⁶ The Venice Commission is currently reviewing the law regarding its compatibility with international human rights standards and will issue an opinion in July 2021.²⁷

In their reply to the CoE Commissioner for Human Rights, the Turkish authorities defended Law No. 7262 as fulfilling FATF recommendations and rejected any criticism that the law failed to comply with international human rights standards, without providing a detailed and evidence-based rebuttal to the Commissioner's significant concerns.²⁸

²⁴ See FATF, <https://www.fatf-gafi.org/publications/financialinclusionandnpoissues/documents/unintended-consequences-project.html>

²⁵ Letter of the mandates of the Special Rapporteur on the promotion and protection of human rights while countering terrorism; the Special Rapporteur on the rights to freedom of assembly and association; the Special Rapporteur on the rights to freedom of peaceful assembly and association; and the Special Rapporteur on the situation of the human rights defenders, to Turkish government with regard to their serious concerns with Law No. 7262, 11 February 2021, [OL TUR 3/2021](https://www.ohchr.org/EN/HRBodies/HRA/CommDoc/2021/02/21.Letters%20to%20Turkey%20on%20Law%20No.%207262.pdf).

²⁶ Council of Europe Commissioner for Human Rights, Turkey: authorities should refrain from further restricting NGOs activities and freedom of association in the name of counterterrorism, 10 March 2021, <https://pace.coe.int/en/news/8147/rapporteurs-urge-turkish-parliament-not-to-adopt-new-restrictions-on-ngos->

²⁷ An opinion is expected for July 2021 https://www.venice.coe.int/WebForms/documents/by_opinion.aspx?v=ongoing

²⁸ Reply of the Minister of Interior to the letter of Council of Europe Human Rights Commissioner addressed to the Minister of Interior and Minister of Justice regarding the Law no. 7262, 4 March 2021.

3.1 EXISTING LEGISLATION GOVERNING THE FIGHT AGAINST “TERRORISM” AND TERRORISM FINANCING

Specific legislation on the Prevention of the Financing of Terrorism (Law No. 6415) has been in force in Turkey since 2013.²⁹ The law was adopted with the stated aim of combating terrorism and the financing of terrorism, incorporating the principles and procedures on implementing the International Convention for the Suppression of Financing of Terrorism³⁰ and relevant United Nations Security Council Resolutions. Law No. 6415 established the offence of “financing of terrorism” and provided for the freezing of assets with the aim of preventing such financing.³¹ According to this law, among others, it is forbidden to collect or provide funds for acts set forth as terrorist offences within the scope of Turkey’s Anti-Terrorism Law No. 3713 of 12 April 1991.

There is no agreed definition of “terrorism” under international law, which has meant that states have adopted their own, often vague and overly broad definitions. This lack of clarity in many counterterrorism laws has led, in turn, to a lack of certainty regarding what precisely constitutes an act of “terrorism.”³² The principle of legality, including legal certainty and predictability, requires states to respect and apply the laws that they have enacted in a foreseeable and consistent manner, and to ensure that laws are formulated with sufficient precision to enable individuals to regulate their conduct.³³ This recognizes that imprecise and overly broad definitions of crimes are often open to arbitrary application and abuse.³⁴

The constellation of counterterrorism laws currently in force in Turkey includes unacceptably broad definitions of “terrorism”³⁵ and “terrorist offender.”³⁶ As UN Special Rapporteurs noted in a 26 August 2020 communication to the government, Turkish law defines “terrorism” in terms of an organization’s political aims rather than by the specific conduct of an offender, i.e. encompassing specific intent to cause death or serious bodily harm.³⁷ Similarly, there is no requirement that a person must have committed a serious crime against the state that has caused specific, clearly enumerated harms, for an individual to be deemed a “terrorist offender” under Article 2 of the Anti-Terrorism Law (Law No. 3713.)

Articles 3 and 4 of Law No. 3713 list vague terrorist offences that are punishable under relevant articles of the Turkish Penal Code. Article 7/2, which criminalizes “making propaganda for a terrorist organization”, is also applicable to associations or foundations if they are found to be “making propaganda” for or assisting an armed organization within an association’s premises. The commission of the offence of propaganda-making can lead to the closure of an association or foundation. The provisions of the Turkish Penal Code criminalizing terrorism-related offences such as Article 314 (membership of a terrorist organization), 220/6 (committing a crime in the name of a terrorist organization without being its member) and 220/7 (assisting a

²⁹ Law No. 6415, entered into force on 16.02.2013.

³⁰ Adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999 and entered into force on 10 April 2002; Turkey ratified and became a state party on 28 June 2002.

³¹ Law No 6415, Article 1.

³² “Amnesty International, Europe: Dangerously Disproportionate: The Ever-Expanding National Security State in Europe, 17 January 2017, <https://www.amnesty.org/en/documents/eur01/5342/2017/en/>, p. 23.

³³ Venice Commission, Report on the Rule of Law, CDL-AD(2011)003rev, 2011, para. 44.

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2011\)003rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e);

³⁴ Human Rights Committee, General Comment No:34, Article 19 (Freedoms of Opinion and Expression), para. 46; Human Rights Committee, General Comment No:35, Article 9 (Liberty and Security of Person), para. 46.

³⁵ Article 1 of the Anti-Terror Law No. 3713: Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of using force and violence and by pressure, intimidation, oppression or threat methods.

³⁶ Article 2 of the Anti-Terror Law No. 3713: Any member of an organization, founded to attain the aims defined in Article 1, who commits a crime in line with these aims, individually or in concert with others, or any member of such an organization, **even if he does not commit such a crime**, shall be deemed to be a terrorist offender.

³⁷ Letter of the mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers to Turkish Government, [OL TUR 13/2020](https://www.unhcr.org/refugees/pdf/OL_TUR_13/2020), 26 August 2020. The former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism had also voiced concerns following a 2006 mission to Turkey, stating that the broad application of the term ‘terrorism’ “may put severe limitations on the legitimate expression of opinions critical of the Government or State institutions, on the forming of organizations for legitimate purposes, and on the freedom of peaceful assembly.” See paragraphs 11-18 *Mission to Turkey: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*.

Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/119/83/PDF/G0611983.pdf?OpenElement>

terrorist organization without being its member) are routinely used by the Turkish authorities to convict individuals without clear and convincing evidence that alleged criminal acts have been committed.³⁸ Prosecutors typically fail to apply clear criteria indicating what specific acts of alleged “assistance” to an armed group constitute criminal offences, including clearly indicating when such assistance is, in and of itself, a recognizable criminal offence or when it must be directly linked to the planning or commission of a recognizable criminal offence.³⁹ In most cases, prosecutors do not provide evidence demonstrating any link to a terrorist organization, nor do they attempt to prove that the accused has committed a criminal offence constituting assistance to a terrorist organization. In the last five years, and as the examples below well reflect, it has become a routine judicial practice to prosecute and convict people for broad and undefined terrorism-related offences without credible and sufficient evidence and on the sole basis of their real or perceived political opinions.

3.2 IMPLICATIONS OF LAW NO. 7262 ON THE RIGHT TO FREEDOM OF ASSOCIATION

The right to freedom of association is protected by numerous international treaties, including both the International Covenant on Civil and Political Rights (Article 22) and the European Convention on Human Rights (Article 11). Restrictions can only be placed on the right where they are “prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.”⁴⁰ In addition, all restrictions must be proportionate.⁴¹ In practice this means that restrictions must be clearly set out in law with sufficient clarity, must be the least rights restrictive means of achieving their purpose, and must not do more harm than good.

Law No.7262 has not been drafted with sufficient clarity and precision. As a result, it can be used by the Turkish authorities as a pretext to restrict the ability of NPOs to carry out their legitimate activities. It exceeds the pursued aim of fighting terrorism financing and represents a serious risk to interference with the exercise of the right to freedom of association by NPOs in general and human rights organizations in particular.

3.2.1 SUSPENSION FROM OFFICE AND TEMPORARY SUSPENSION OF ACTIVITIES AND APPOINTMENT OF TRUSTEES IN NPOS

Law No. 7262 enables the Minister of Interior to suspend relevant employees as a temporary measure, or individuals and particular organs in the structure of an association in which they are working if a prosecution is launched against those individuals or employees for terrorism-financing related offences allegedly related to the association’s activities.⁴² The law does not require prior judicial authorization before the Minister of Interior is able to temporarily suspend an individual from their office. The law makes it possible to replace that individual or the membership of particular organs in the structure of that association with government-appointed trustees by then applying the articles of the Law on Associations and provisions of the Turkish Civil Code.

³⁸ The problem of misuse of the criminal law to stifle the freedom of expression of journalists and others with critical opinions has been underlined in several judgments of the ECtHR, which have been pending before the Council of Europe’s Committee of Ministers for years. See *Öner and Türk group* (Application No. 51962/12), *Nedim Şener group* (Application No. 38270/11) and *Altuğ Taner Akçam group* (Application No. 27520/07) v. Turkey; [CM/Del/Dec\(2020\)1369/H46-33](#), 5 March 2020.

³⁹ Amnesty International, Turkey: Decriminalize Dissent, Time to Deliver on the Right to Freedom of Expression, 27 March 2013, <https://www.amnesty.org/en/documents/EUR44/001/2013/en/>, p. 25.

⁴⁰ Article 11, European Convention on Human Rights.

⁴¹ See, for example, European Court of Human Rights *Adana TAYAD v. Turkey*, 2020, § 36; *Association Rhino and Others*, 2011, § 65; *Magyar Keresztény Mennonita Egyház and Others*, 2014, § 96.

⁴² Article 15 of the Law on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction amending Article 30 of the Law on Associations No. 5253.

Replacements of NPO staff or officers with government-appointed trustees are an example of the way that the new law aligns with existing laws to ensure that associations conform with government-approved policies and practices. The objective of forcing associations to adhere to government policy by unlawfully stacking an association or foundation with government supporters is a violation of the right to freedom of association and can never be considered a necessary and proportionate restriction on that right.

Turkey's anti-terrorism legislation is frequently misused against civil society actors and human rights defenders, and this is often followed by baseless prosecutions. Although the new law describes the suspension measures as "temporary", terrorism prosecutions often last for many years. The suspension of individuals from their civil society work for lengthy periods in and of itself could turn into a punitive measure against people not found guilty of any alleged criminal offence. Indeed, as the examples below illustrate, many people prosecuted for such offences are subjected to flagrantly unlawful trials with little or no credible evidence of wrongdoing. There is every reason to fear that the Turkish authorities will add the new Law No. 7262 to the already vast network of laws at its disposal to unlawfully target, harass, and prosecute NPO actors and organizations.

ABUSIVE PROSECUTIONS UNDER ANTI-TERRORISM LAWS: THE BÜYÜKADA TRIAL

In 2017, Amnesty International's section in Turkey felt the full weight of the government's willingness to deliberately misapply counterterrorism laws to the legitimate activities of civil society organizations. The section's then director İdil Eser and chair (now the organization's honorary chair) Taner Kılıç were among 11 human rights defenders targeted and charged on trumped up allegations of terrorism. This direct attack on Amnesty International Turkey reflected the fact that the Turkish authorities were willing to use counter terrorism laws to undermine the legitimate operations of human rights organizations.

Taner Kılıç was apprehended in June 2017 and remanded in pretrial detention, where he was held for over 14 months, allegedly for "membership of the Fethullah Gülen terrorist organization."⁴³ A month later in July 2017, 10 human rights defenders, including İdil Eser, several members of Amnesty Turkey, and other individuals active in women's rights activism or serving as equality advocates were detained while attending a human rights workshop on the island of Büyükada, Istanbul. In October 2017, Taner Kılıç's prosecution was joined with that of the 10 human rights defenders in the case known as the "Büyükada" trial.⁴⁴ Eight of the 10 human rights defenders who had been remanded in pretrial detention in July allegedly for "committing crime in the name of a terrorist organization without being a member" were released from prison after just over three months at the first court hearing in the case.

The prosecution's case against Taner Kılıç rested on the allegation that in August 2014 he had downloaded ByLock on his phone. ByLock is a secure mobile messaging application that the authorities claim was used by the Fethullah Gülen Terrorist Organization (FETÖ) for members to communicate with each other.⁴⁵

Despite the fact that the authorities submitted no evidence to support this claim and that two independent forensic examinations of his phone, as well as two cybercrimes police reports, revealed no trace of ByLock ever having been downloaded on his phone, Taner Kılıç was convicted in the first instance court in July 2020 for membership of a terrorist organization and was sentenced to six years and three months in prison. The judgment also focused on his human rights activism and work, citing public documents and reports as part of the evidence against him.⁴⁶ None of this information indicated any link to a terrorist organization or to unlawful conduct.

Three of the 10 other human rights defenders, Günel Kurşun, İdil Eser and Özlem Dalkıran also were convicted and sentenced to one year and 13 months allegedly for "assisting a terrorist organization", although the prosecution did not present any evidence of criminal activity⁴⁷ for any of the four defenders and despite the fact that allegations against these defendants repeatedly had been disproven, including by the state's own evidence.⁴⁸ Their unfair and unfounded convictions are currently pending on appeal at the Court of Cassation. If the top appeals court upholds the convictions, all four will be imprisoned to serve the remainder of their sentences.

Under Law No. 7262, if the suspension of individuals or the functioning of particular organs in the structure of organizations is not deemed sufficient, the Minister of Interior may also temporarily suspend all the activities of the association. Upon such suspension, the Ministry must immediately apply to a court to have the measure either confirmed or rejected. The court must issue a decision on the temporary suspension of activities within 48 hours. If the suspension measure is upheld by the court, the procedure shall continue in accordance with Article 89 of the Turkish Civil Code, which might eventually result in the closure of the

⁴³ Turkish government accuses the US-based cleric Fethullah Gülen and his movement of having carried out the attempted coup on 15 July 2016.

⁴⁴ Amnesty International, Briefing: The Taner Kılıç Prosecution, 13 September 2017, https://www.amnesty.be/IMG/pdf/briefing_taner_kilic_prosecution_final.pdf

⁴⁵ Amnesty International, Briefing: The Taner Kılıç Prosecution, 13 September 2017, https://www.amnesty.be/IMG/pdf/briefing_taner_kilic_prosecution_final.pdf; Amnesty International, Turkey: Prosecution of 11 Human Rights Defenders, 20 October 2017, <https://www.amnesty.org/en/documents/eur44/7329/2017/en/>

⁴⁶ <https://www.amnesty.org/en/press-releases/2013/06/turkish-prime-minister-s-words-will-only-exacerbate-violence/>;

<https://www.amnesty.org/en/latest/news/2016/07/turkey-human-rights-in-grave-danger-following-coup-attempt-and-subsequent-crackdown/>

⁴⁷ <https://www.amnesty.org/en/latest/news/2020/07/turkey-court-deals-crushing-blow-for-human-rights-and-for-justice-as-four-activists-convicted/>

⁴⁸ In June 2018, two separate reports by the Cyber Crimes Unit of the Istanbul Security Directorate were submitted to the Istanbul Heavy Penal Court No. 35 where the trial of 11 human rights defenders including Taner Kılıç was held. They concluded that ByLock was not present in Taner Kılıç's phone and was not among deleted applications. These reports confirm the conclusions of the two independent expert reports commissioned by the defence.

association.⁴⁹ Although an association can appeal a court decision to approve closure, in practice, in almost all politically motivated cases, appeals are rejected by the courts (see section below on the independence of the judiciary).

The dissolution of an association represents one of the most severe restrictions on the exercise of the right to freedom of association. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasized that the dissolution of an association is permissible only when there is a clear and imminent danger resulting in flagrant violation of national law, and such dissolution must be in accordance with human rights law.⁵⁰

MASSIVE CRACKDOWN ON HUMAN RIGHTS DEFENDERS AND ON THE LEGITIMATE WORK OF NPOS

The human rights situation in Turkey has seriously deteriorated over the last five years. Counter-terrorism laws and security measures have been intentionally abused and misapplied against civil society actors and human rights defenders to criminalize them as “terrorists” and to characterize their legitimate work as “separatist actions” or “threats to national security.”

Criminal prosecutions against human rights defenders and activists have created a climate of fear and have had a chilling effect on the legitimate work of civil society organizations in Turkey. Such flagrantly unfair prosecutions include the 11 human rights defenders in the Büyükada case noted above and the prosecutions of 16 other activists beginning in 2019, including civil society leader Osman Kavala in what is known as the Gezi trial. Law No.7262 will only add to that climate of fear and further shrinking of space for meaningful work by civil society actors.

Arbitrary detention: Case of Osman Kavala

Over the last three decades, prominent civil society leader and human rights defender Osman Kavala has provided support to many independent human rights organizations and helped establish a number of civil society organizations such as the Helsinki Citizens’ Assembly (now the Citizens’ Assembly), and Anadolu Kültür, of which Osman Kavala is the founder and the chair. He has been arbitrarily remanded in pretrial detention since 1 November 2017.

Osman Kavala was initially placed in pretrial detention on charges of “attempting to overthrow the government” in relation to allegations that he directed and financed the overwhelmingly peaceful 2013 Gezi Park protests and for “attempting to overthrow the constitutional order” in relation to the July 2016 attempted coup. On 10 December 2019, the European Court of Human Rights (ECtHR) released its ruling in the *Kavala v Turkey* case, concluding that the two charges had been brought without reasonable suspicion supported by tangible and verifiable facts or evidence that Kavala had committed the offences in question.⁵¹

In its judgment, the ECtHR ruled that Osman Kavala’s pretrial detention pursued “an ulterior purpose reducing him to silence in his capacity as a human-rights defender and an NGO activist, this, in turn, was likely to have a dissuasive effect on the work of human-rights defenders in Turkey.”⁵² The European Court called for his immediate release.

On 18 February 2020, the Istanbul Heavy Penal Court No. 30 acquitted Osman Kavala on the charge of “attempting to overthrow the government”, the only one of the two charges he had been detained under that had been levelled at him in the Gezi Park trial. Eight other civil society actors prosecuted in the trial were also acquitted that day. Instead of being released as per the court’s decision, Osman Kavala was further

⁴⁹ Article 89- If the aim of the association has become incompatible with the legislation and ethics, the court may give judgement for the dissolution of the association upon request of the Public Prosecutor or any other concerned authority. The court oversees all the necessary measures during the proceeding of the case, including suspension of activity.

⁵⁰ https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf, paras. 75 and 76.

⁵¹ Case of *Kavala v Turkey* (Application no. 28749/18), became final on 11 May 2020; see para 154-157 for the Court’s assessment on the reasonableness of the suspicions in respect of the attempted coup (Article 309 of the Turkish Penal Code) and para 139-153 in respect of Gezi Park events (Article 312 of TPC).

<https://hudoc.echr.coe.int/eng#{%22fulltext%22:%22CASE%20OF%20KAVALA%20v.%20TURKEY%22%22,%22documentcollectionid%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-199515%22}}>

⁵² *Kavala v Turkey*, (Application no. 28749/18), 11 May 2020.

remanded in pretrial detention the next day on the charge of “attempting to overthrow the constitutional order.”⁵³ Reacting to the decision, Council of Europe Commissioner for Human Rights Dunja Mijatovic described the arrest of Osman Kavala as “amounting to ill-treatment.”⁵⁴ The Council of Europe’s Committee of Ministers, responsible for monitoring the execution of the ECtHR judgments, has repeatedly called for Osman Kavala’s immediate release, given the “strong presumption” that his current detention is a continuation of violations against Kavala that the ECtHR had found were committed by the government of Turkey.⁵⁵

In a new indictment dated 9 October 2020, Osman Kavala faces a life sentence without the possibility of parole for “attempting to overthrow the constitutional order” and up to 20 additional years of imprisonment for “espionage.”⁵⁶

On 22 January 2021, the Istanbul Regional Court of Appeals overturned the February 2020 acquittals of Osman Kavala and eight other civil society figures in relation to the Gezi events, disregarding the ECtHR’s finding that Kavala’s arrest and pretrial detention took place in the absence of evidence to support any reasonable suspicion that he had committed an offence (violation of Article 5, paragraph 1 of the ECHR).

While a court hearing in Osman Kavala’s ongoing case was taking place on 5 February 2021, President Erdoğan publicly called Osman Kavala a representative of George Soros in Turkey and accused his wife, distinguished scholar Professor Ayşe Buğra, of being among those provoking the ongoing student protests at the Boğaziçi University where she teaches.⁵⁷ Since Mr. Kavala’s imprisonment in November 2017, President Erdoğan has made various public comments coinciding with key moments in the judicial proceedings against him. In finding a violation of Osman Kavala’s rights under Article 18 of the ECHR, the European Court referred to President Erdoğan’s two public speeches in November and December 2018.⁵⁸

In their relentless pursuit of Osman Kavala, the Turkish authorities have also targeted Anadolu Kültür, the cultural institution Osman Kavala founded in 2002, which has been implementing various art and cultural projects to create an awareness about cultural diversity and to help develop mutual understanding and dialogue between peoples and societies in Turkey and abroad.⁵⁹ Established as a company under Turkish Commerce Law (Law No. 6102) and carrying out its projects and activities for 19 years on a not-for-profit basis without any undue interference from the Turkish authorities, Anadolu Kültür now faces a civil lawsuit for its dissolution requested by the Ministry of Commerce on the grounds that it is “carrying out its activities without making a profit, like associations and foundations.”⁶⁰ Inspected and audited regularly for all its activities and operations since its establishment, the recent attempt to close down Anadolu Kültür appears to be closely related to the ongoing case against Osman Kavala, the cultural association’s founder and chair. In his submission to the Istanbul regional appeals court to overturn Osman Kavala’s acquittal in the Gezi prosecution, the state prosecutor accused Osman Kavala and Anadolu Kültür of carrying out cultural activities targeting different ethnic and cultural communities living in Turkey by using Anadolu Kültür as a cover for “separatist actions” and accused Anadolu Kültür of financing “separatist organizations” under the guise of promoting cultural events. While Turkey’s Commerce Law does not provide for not-for-profit companies, this is the first lawsuit against a company in Turkey for not seeking profit. The proceedings to close Anadolu Kültür after 19 years of operation as a not-for profit company have the hallmarks of being part of the targeting of its founder Osman Kavala.

⁵³ Osman Kavala’s pretrial detention under Article 309 of the TPC had been lifted on 11 October 2019, as the two-year limit for pre-trial detention in the absence of a prosecution was approaching.

⁵⁴ <https://www.coe.int/en/web/commissioner/-/the-reaction-of-the-council-of-europe-commissioner-for-human-rights-to-the-re-arrest-of-osman-kavala>

⁵⁵ CM/Del/Dec(2020)1377bis/H46-38, 3 September 2020; CM/Del/Dec(2020)1383/H46-22, 1 October 2020; Interim Resolution CM/ResDH (2020)361, 3 December 2020, [CM/Del/Dec\(2021\)1398/H46-33](https://www.coe.int/en/web/commissioner/-/cm-del-dec-2021-1398-h46-33), 11 March 2021.

⁵⁶ <https://www.amnesty.org/en/latest/news/2020/12/turkey-authorities-urged-do-the-right-thing-and-free-osman-kavala/>; <https://www.amnesty.eu/wp-content/uploads/2021/02/TIGOIOR3020211490AmnestyInternationalCoE-Kavala-vs-Turkey-CoEPR.pdf>

⁵⁷ <https://www.amnesty.org/en/latest/news/2020/10/turkey-istanbul-court-accepts-absurd-new-indictment-against-osman-kavala/>

⁵⁸ <https://www.bloomberg.com/news/articles/2021-02-05/erdogan-blames-jailed-philanthropist-s-wife-for-stirring-protest>

⁵⁹ *Kavala v Turkey*, (Application no. 28749/18), 11 May 2020, paragraph 229: “The Court cannot overlook the fact that when these two speeches were given, the applicant, who had been held in pretrial detention for more than a year, had still not been officially charged by the prosecutor’s office. In addition, it can only be noted that there is a correlation between, on the one hand, the accusations made openly against the applicant in these two public speeches and, on the other, the wording of the charges in the bill of indictment, filed about three months after the speeches in question.”

⁶⁰ <https://www.anadolukultur.org/EN/34-our-works/>

⁶¹ <https://www.anadolukultur.org/EN/35-announcements/1290-information-note-on-the-lawsuit-created-for-anadolu-kultur/>

DETAINING THOSE CALLING FOR ACCOUNTABILITY

Another recent example of the misuse of national security-related laws involved the detention of Öztürk Türkdoğan, a prominent human rights defender and chairperson of Turkey's Human Rights Association (IHD). On 19 March 2021, police detained Öztürk Türkdoğan in a raid at his home, on suspicion of "membership of a terrorist organization."⁶¹ He was released later that day with judicial control measures, including a foreign travel ban and requirement to report in person to the nearest police station twice a month.

On 16 February, the Minister of Interior specifically referred to IHD during an address to Parliament, accusing the association of having links with the armed Kurdistan Workers' Party (PKK).⁶² The Minister's accusation came in response to an IHD statement about the deaths of 13 security personnel that occurred during a military operation by the Turkish security forces. The 13 security personnel had been abducted and held by the PKK in northern Iraq for a number of years. The IHD statement had called for an effective investigation to be launched to examine the circumstances of the deaths of the captured persons during the operation.⁶³

3.2.2 PERMANENT DEPRIVATION OF THE RIGHT TO ASSOCIATION

Law No. 7262 also empowers the government to permanently prohibit a person from assuming any active position in an association if they have been convicted of certain crimes, including terrorism-related offences. This power to deprive a person of such participation in an association's activities can be wielded in a broad array of situations, for example, if an individual has completed their sentence, has been conditionally released, or had their sentence suspended.⁶⁴ Permanent deprivation of a person's right to exercise their freedom of association violates the principle of proportionality.

Article 53 of the Turkish Penal Code already regulates periods for the *temporary* deprivation of the exercise of certain rights, including for serving as an administrator or auditor of an association or foundation.⁶⁵ The new law includes an exception to the Turkish Penal Code by depriving *permanently* those who have been convicted under anti-terrorism laws of the ability to exercise their right to freedom of association. Permanently depriving members of associations and civil society actors, often convicted in flagrantly unfair trials, from exercising their right to freedom of association is in direct contravention of Article 13 of the Turkish Constitution which stipulates that the essence of fundamental rights and freedoms can never be infringed upon and cannot be contrary to the principle of proportionality. **It also violates the principles of legality and proportionality under Article 11 of the European Convention on Human Rights and Article 22 of the International Covenant on Civil and Political Rights (ICCPR), all of which are binding on Turkey.**

3.2.3 IMPOSING DISPROPORTIONATELY BURDENSOME AUDITS ON NPOS

The Law on Associations No. 5253 regulates the functioning of NPOs and already requires associations to submit an annual activities and financial report to relevant supervisory authorities under the Ministry of Interior. Before it was amended by Law 7262, Article 19 of Law No. 5253 provided for government audits to be carried out "when deemed necessary." These audits were not primarily focused on terrorism financing, although auditors were obliged to report suspicious activities that may constitute an offence during their

⁶¹ <https://www.amnesty.org.uk/press-releases/turkey-outrageous-arrest-lawyer-makes-mockery-erdogans-human-rights-reforms>

⁶² <https://bianet.org/english/politics/239429-interior-minister-soylu-targets-hdp-and-ihd-over-killings-in-gare>

⁶³ <https://ihd.org.tr/en/ihd-statement-on-the-death-of-captive-soldiers-and-officers/>

⁶⁴ Article 12 of the Law on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction amending Article 3 of the Law on Associations No.5253.

⁶⁵ Other rights a person shall be prohibited from exercising until the completion of the term of their penalty of imprisonment include: becoming a member of the Turkish Grand National Assembly or undertaking employment as, or in the service of, an appointed or elected public officer within the administration of the state or a province; voting or being elected and exercising other political rights; acting as a guardian or being appointed in the role of guardianship and trustee; being the administrator or inspector of a legal entity namely, a foundation, association, labour union, company, cooperative or political party; conducting any profession or trade, which is subject to the permission of a professional organization (which is in the nature of a public institution or organization), under his own responsibility as a professional or a tradesman.

examination of financial records. Each local supervisory authority was required to annually audit at least 10% of the NPOs operating in their province or district to determine whether the NPOs operate in line with the objectives listed in their charters and keep their books and records in compliance with the legislation.⁶⁶ As no clear criteria exist for such audits, in practice, NPOs deemed “unfavourable” by the authorities, such as LGBTI+ organizations, have been particularly targeted with regular and detailed annual audits in the last couple of years, creating an administrative burden and intimidating them through the threat of large fines.⁶⁷

Law No. 7262 further widens the scope for financial auditing of NPOs. It enables supervisory authorities to audit NPOs annually (or no later than every three years) without specifying the audit’s scope or criteria for determining possible involvement in terrorism financing abuse.⁶⁸ The law enables the Ministry of Interior or the local supervisory authority to assign *any* public officer to conduct these audits. The law does not specify what qualifications are required for public officials who would conduct the audit, leaving open the possibility of the assignment of auditors with a range of skills -- or none at all -- to carry out a task critical to the operation and possibly the very existence of an association. As audits can sometimes take months to complete and require the extensive work of providing detailed information and a vast number of documents requested by auditing officers, annual audits can be disruptive of the functioning of civil society organizations and interfere with carrying out their legitimate activities. The new law especially raises concerns that the burdensome auditing process will specifically target those NPOs whose work is considered “unfavourable” by the authorities and tie-up those associations for months with unnecessary and burdensome demands from state auditors.

Under Law No. 7262, if requested by the Ministry of Interior or supervisory authorities under the Ministry, organizations with which the association has a partnership shall also be audited by the relevant ministries and public institutions within their purview. These audits will include those associations or consortia of associations that jointly run projects or grant programs to small NPOs -- a common practice that has been encouraged mostly by international donor institutions when granting funds for projects in Turkey. The law with its ambiguous scope does not establish a clear link between the auditing of such partners and the aim of combating money laundering and terrorism financing. As these wide-ranging and potentially burdensome audits allegedly address terrorism financing, they will have a negative impact on collaborative and joint legitimate actions of associations and thus undermine the vibrancy of civil society.

3.2.4 DISPROPORTIONATE SANCTIONS IMPOSED ON ASSOCIATIONS

Law No. 7262 increases from three months to one year the prison sentence for those who fail to provide information and documents or fail to allow a visit to administrative places, establishments and annexes of an association upon the request of the members of that association’s supervisory board or public auditors.⁶⁹ In some cases, a judicial fine will be imposed. Furthermore, in case an association becomes aware that the books and documents that have to be kept have become unreadable or have been lost due to reasons beyond their control, an association is required to apply to the court to obtain a “certificate of loss” within fifteen days. Those who fail to apply to the court or fail to present such a certificate during an audit, shall be sentenced to imprisonment from three months to one year or receive an assessed judicial fine.⁷⁰ Additionally, those organizations/associations that fail to notify the authorities about in-kind or financial aid received from foreign donors and/or fail to notify authorities about the aid they send abroad as well as the obligation to transfer the aid through a bank shall be assessed an administrative fine of between 5,000 TL to 100,000 TL (500 to 10,000 EUR).⁷¹

Many NPOs operate with limited budgets and staff; losing people to prison and money through disproportionate fines could lead to the closure of associations, many of which do important community and

⁶⁶ <https://www.siviltoplum.gov.tr/20191-savili-genelge---denetim>

⁶⁷ <https://kaosgl.org/en/single-news/turkey-violates-lgbti-s-human-rights-according-to-us-report>

⁶⁸ Article 13 of the Law on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction amending Article 19 of the Law on Associations No.5253.

⁶⁹ Article 16 of the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction amending Article 32(k) of the Law on Associations No.5253.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

social work that benefits society. Targeting such groups with incarceration and huge fines undermines the health and vibrancy of civil society.

3.3 RESTRICTIONS ON FUNDRAISING ACTIVITIES ONLINE AND FREEDOM OF EXPRESSION

The current Law on Aid Collection already requires individuals and institutions to obtain prior permission from the competent authorities for their public fundraising activities. Applying for such permission involves a lengthy authorization process. Moreover, the legal framework regulating the fundraising activities of NPOs imposes burdensome requirements that discourage such fundraising by civil society organizations. Although defined separately, the distinction between a "donation" and "aid collection" is not clear. While donations can be accepted by members of the board, or staff members authorized by the board of directors on the premises of the organization, including via its official website, and do not require prior permission from the authorities, the Law on Aid Collection tightly regulates public fundraising activities.

Fundraising events, charity runs, public announcements, advertising, social media appeals, or face to face/door to door fundraising are considered "aid collection" and it is necessary for an association or foundation to comply with the Law on Aid Collection, thus prior permission from the relevant authorities is required for each fundraising activity. The process is long and burdensome; moreover, organizations are not provided with objective criteria that would result in an application being approved. In fact, applications submitted by human rights organizations are frequently rejected. Only organizations which have received special permission from the President can collect aid without submitting an application prior to each fundraising activity, leading to the inevitable conclusion that the authorities favour some organizations over others.⁷² Currently, only 30 organizations out of thousands enjoy the privilege of collecting aid without seeking prior approval.⁷³ Existing legislation on aid collection activities of NPOs thus already contradicts international standards and restricts the exercise of the right to association as enshrined under Article 11 of the European Convention of Human Rights and Article 22 of the International Covenant on Civil and Political Rights.

Article 7 of the Law No. 7262 addresses "unauthorized aid collection" online and amends Article 6 of the Law on Aid Collection. The amendment empowers the Ministry of Interior or the relevant governorship to identify "unauthorized" fundraising activities online and to notify online providers that the alleged offending content must be removed within 24 hours. If the provider cannot be reached or fails to remove the content within 24-hours, the Ministry can apply to a judge and seek an order blocking online access to the content. The judge must issue a ruling within 24-hours on the Ministry's request to block the content, but the law expressly states that no hearing will be held, leaving no opportunity for an association to directly address the judge prior to the ruling being issued. The judge's ruling is to be sent directly to the Information Technologies and Communication Authority for undefined "necessary action." An objection can be made against this decision in accordance with the provisions of the Turkish Code of Criminal Procedure.

The Turkish courts already accept and enforce frequent and numerous requests by the authorities to block online content, including access to websites and URLs. Most appeals against access blocking orders are denied.⁷⁴ As of October 2020, more than 450,000 websites had been blocked since 2006 and over 140,000 URLs had been blocked since 2014 by judicial and administrative decisions.⁷⁵

Article 10 of Law No. 7262 imposes disproportionate administrative fines for violations of the amended Law on Aid Collection, which are doubled for online fundraising activities that are deemed to violate the law.⁷⁶

⁷² <https://www.siviltoplum.gov.tr/izin-almadan-yardim-toplama>

⁷³ <https://www.siviltoplum.gov.tr/izin-almadan-yardim-toplama-hakkinda-sahip-kuruluslar>

⁷⁴ Yaman Akdeniz and Ozan Güven, Engelli Web: An Iceberg of Unseen Internet Censorship in Turkey, Freedom of Expression Association (İFÖD-İfade Özgürlüğü Derneği), 2019, https://ifade.org.tr/reports/EngelliWeb_2019_Eng.pdf

⁷⁵ <https://ifade.org.tr/en/publications/reports-books/>

⁷⁶ Fines can be imposed ranging from 5,000 to 100,000 TRY; doubled when the violation of the law involves online fundraising activities. Providers of Internet domain "complicit" in such activities are also subject to such fines.

The application of such heavy fines could result in the closure of civil society organizations, many of which operate on limited budgets.

The new law vests ultimate authority in the executive to determine the legality of online fundraising content. The lack of procedural safeguards prior to the removal or blockage of online fundraising content in the amendment to the Law on Aid Collection raises serious concerns regarding international fair trial standards, including the rights to prepare a defence, to a fair hearing before an independent judicial body, to access to counsel and to a meaningful right to appeal. Removal of online fundraising content entails a significant interference with freedom of expression -- and because fundraising is essential to many NPOs' survival, is also a threat to freedom of association. The principle of due process demands that the legality of online content be determined by a court or independent administrative body. Failure to provide such a process contravenes the principle of legality and so constitutes a violation of the right to an effective remedy.

In addition to undermining fair trial standards, the new law raises concerns regarding the role and capacities of online providers/hosts. If providers are primarily tasked with the removal of online fundraising content that is deemed "unauthorized" by the government, they may be forced to remove content that is protected under international freedom of expression norms, thus becoming complicit in the state's infringement on legitimate forms of expression. Moreover, the short time frame that the law imposes on providers to remove content strongly incentivizes them to delete certain content in a pre-emptive manner; that is, monitoring and filtering content out before the state even orders such removal. This enhances the power of private companies to determine what content remains online, opening the door for the removal of lawful content in violation of freedom of expression.

The role of providers and the tools they might use to remove content could have a significant "chilling effect" on individuals and organizations, who might refrain from online fundraising or use far less effective approaches to raising funds in order to avoid content removal.

3.4 INADEQUATE PROCEDURAL SAFEGUARDS, ABSENCE OF AN EFFECTIVE REMEDY AND LACK OF JUDICIAL INDEPENDENCE

An independent and impartial judiciary is fundamental for human rights to be legally enforceable and for access to effective remedies. In recent years, executive control and political influence over the judiciary in Turkey have drastically increased, leading courts to routinely accept unsubstantiated indictments and to prosecute and convict civil society actors solely because they have criticized government policies or are considered political opponents of the government. This "no evidence required" phenomenon has undermined the Turkish judiciary to the point where any notion of meaningful independence is illusory. Judges and prosecutors consistently face undue pressure as they risk transfer, dismissal, or disciplinary and criminal investigations if they make decisions considered to be in opposition to the government.⁷⁷

Turkey ranks second in the Council of Europe region for the number of violations in judgments issued by the European Court of Human Rights. In 85 of 97 judgments concerning Turkey in 2020, the European Court found at least one violation, with the bulk of violations related to Article 5 (right to liberty and security) in 16 judgments; Article 6 (right to a fair trial) in 23 judgments; Article 10 (freedom of expression) in 31 judgments; and Article 11 (freedom of assembly and association) in 11 judgments.⁷⁸ In March 2021, the Committee of Ministers of the Council of Europe in its examination of the implementation of the judgment in the case of Osman Kavala pointed out the pervasive problems regarding the independence and impartiality of the judiciary in Turkey and "invited the authorities to take adequate legislative and other measures to protect the judiciary and ensure that it is robust enough to resist any undue influence, including from the executive branch".⁷⁹ One of the starkest examples of such undue influence was in the emblematic Gezi trial,

⁷⁷ Rule 9.2 Submission by Amnesty International to the Committee of Ministers in the case of *Kavala v Turkey*, 19 May 2020, p.4.

⁷⁸ https://www.echr.coe.int/Documents/Stats_violation_2020_ENG.pdf

⁷⁹ CM/Del/Dec(2021)1398/H46-33, 11 March 2021.

where the Council of Judges and Prosecutors gave permission for the launch of a disciplinary investigation into the panel of three judges who acquitted the defendants on 18 February 2020, after the President publicly criticized the court's acquittal decision.⁸⁰ Retribution against judges who issue rulings in favour of certain defendants is an increasing concern in Turkey.

Following the 2016 attempted coup, a state of emergency was imposed during which procedural safeguards and access to effective domestic remedies in Turkey significantly deteriorated. As a result, the right to a fair trial according to international standards was woefully undermined. The principle of the presumption of innocence and right to an effective appeal were also routinely violated in criminal prosecutions and summary dismissals.⁸¹ Such fair trial violations continue to date since many of the emergency measures were subsequently embedded in the ordinary criminal law after the state of emergency ended in 2018.⁸²

During the 2016-2018 state of emergency more than 1,300 associations and foundations and over 180 media outlets were permanently closed down by executive decrees for unspecified links to "terrorist" organizations. Associations that were dissolved included Turkey's leading child rights NGO, *Gündem Çocuk*; 11 women's rights organizations; lawyers' organizations such as the Contemporary Lawyers' Association (ÇHD) and Lawyers for Freedom Association (ÖHD); and organizations providing humanitarian support to displaced people and refugees.⁸³ Such executive decrees were subjected only to perfunctory parliamentary or judicial scrutiny. The Turkish Constitutional Court rejected applications against such state overreach, claiming that it was not competent to review executive decrees issued under a state of emergency.⁸⁴ Almost 130,000 public sector workers including trade unionists and human rights academics were summarily dismissed and permanently banned from working in the public sector or even in their profession as a whole based on unsubstantiated claims by the relevant authorities that such workers "...had links to, were part of, were connected to, or in communication with..." proscribed groups.⁸⁵ Their dismissals did not include specific evidence or details of their alleged wrongdoing. Among these, over 4,000 judges and prosecutors, one third of the Turkish judiciary, were dismissed through simplified procedures established via executive decrees for having alleged links to "terrorist" organizations without any specific evidence or a fair process, which resulted in a wide range of human rights abuses including violations of the principle of presumption of innocence and the rights to a fair trial and to liberty and security of person, as well as the rights to work and freedom of movement among others.⁸⁶

Organizations that were closed down and dismissed public sector workers were denied the ability to effectively challenge (through administrative or legal channels) the decisions taken under emergency executive decrees.⁸⁷ In its opinion on the impact of the state of emergency and emergency decrees on freedom of association, the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe pointed out numerous examples of the Turkish authorities' flagrant abuses of power. The Expert Council also flagged the arbitrariness, legal uncertainty and lack of proportionality as well as non-governmental organizations' lack of access to effective legal remedies to challenge the negative impact of emergency

⁸⁰ According to the government's action plan presented to the CoE Committee of Ministers on 19 January 2021, 'the Council of Judges and Prosecutors (...) has given permission for a preliminary examination in order to determine if there is sufficient evidence to launch a disciplinary investigation against the judges of the assize court. The preliminary examination is still on-going.' [https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22DH-DD\(2020\)957E%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22DH-DD(2020)957E%22]}) Also see [Rule 9.2 Submission by Amnesty International to the Committee of Ministers in the case of Kavala v Turkey, 19 May 2020.](#)

⁸¹ The presumption of innocence is enshrined within article 6(2) of the European Convention on Human Rights and Article 14(2) of the ICCPR. The right to appeal is contained in article 14(5) of the ICCPR.

⁸² Turkey: Deepening Backslide In Human Rights - Amnesty International Submission for the UN Universal Periodic Review, 35th Session of the UPR Working Group, January 2020 <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>

⁸³ Amnesty International, *Weathering the Storm: Defending Human Rights In Turkey's Climate of Fear*, 26 April 2018, <https://www.amnesty.org/en/documents/eur44/8200/2018/en/>

⁸⁴ <https://www.anayasa.gov.tr/icsayfalar/basin/kararlarailiskinbasinduyurulari/genelkurul/detay/21.html>

⁸⁵ Amnesty International, *Purge Beyond Return? No Remedy for Turkey's Dismissed Public Sector Workers*, EUR 44/9210/2018, October 2018, https://www.amnesty.org.tr/public/uploads/files/Purged%20Beyond%20Return_Report_EN.pdf

⁸⁶ See Amnesty International, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey*, 22 May 2017, <https://www.amnesty.org/download/Documents/EUR4462722017ENGLISH.PDF>

⁸⁷ Following considerable domestic and international pressure especially from the Council of Europe, in January 2017 the government set up a 'State of Emergency Inquiry Commission' to review the appeals of closed organizations and purged public sector workers. Amnesty International research, which involved a review of procedures and a sample of decisions taken by this Commission and as well as interviews with dismissed individuals and their families, revealed that the Commission – by its very design – was not set up to provide an effective remedy to the thousands of public sector workers dismissed from their jobs by emergency decrees. See Amnesty International, *Purge Beyond Return? No Remedy for Turkey's Dismissed Public Sector Workers*, EUR 44/9210/2018, October 2018, https://www.amnesty.org.tr/public/uploads/files/Purged%20Beyond%20Return_Report_EN.pdf.

measures before the administrative courts.⁸⁸ In its opinion on the emergency laws, the Venice Commission commented that “the Government interpreted its extraordinary powers too extensively and took measures that went beyond what is permitted by the Turkish Constitution and by international law”.⁸⁹ The use of emergency powers in the name of the fight against terrorism during the two-year state of emergency adversely affected the enjoyment of human rights and the functioning of the criminal justice system including through the imposition of restrictions on the rights to defence and to a fair trial via adopting abusive legal, administrative and security measures. As noted above, these measures remained in force after the end of the state of emergency following the introduction of Law No. 7145, which integrated them into the ordinary law. As a result, the Turkish authorities have “normalized” the use of exceptional measures granting to themselves a vastly expanded array of powers routinely used to target civil society actors and others, including judges and workers whom they consider opponents.⁹⁰

In 2017, amendments to the Turkish Constitution⁹¹ included changes to the composition of and procedure for appointing members of the Council of Judges and Prosecutors.⁹² These changes further eroded the independence and impartiality of the judiciary by enhancing the powers of the executive to exert political influence over the Council.⁹³

The lack of an independent judiciary leaves little recourse for NPOs that would want to challenge and seek an effective remedy for human rights violations arising from government action under Law No. 7262. The level of opposition to the new law from civil society is reflected in a joint statement signed by 700 organizations and groups expressing serious concerns about the potential negative impact of the new law, including many of the concerns articulated in this briefing.⁹⁴

⁸⁸ Expert Council on NGO Law, Opinion on the Impact of State of Emergency on Freedom of Association in Turkey, 30 November CONF/EXP(2017)2 2017, para 55, <https://rm.coe.int/expert-council-conf-exp-2017-2-opinion-impact-state-of-emergency-on-fr/168076cf14>.

⁸⁹ Venice Commission, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e); para. 226.

⁹⁰ <https://soe.tccb.gov.tr/>

⁹¹ With the amendments to Article 159 of the Constitution by the 2017 Constitutional referendum regarding the composition and procedures for appointing members of HSK, no member of the HSK is selected by their peers; four of the thirteen members are appointed by the President of the Republic, and the seven by the Parliament in which the President's governing party and its coalition partner hold the majority; appointments by the Parliament does not require a procedure guaranteeing involvement of all political parties and interests; remaining two members are the Minister of Justice who chairs the Council and his/her deputy who would also be appointed and dismissed by the President. The Venice Commission in its opinion on the Amendments to the Constitution in 2017 found the proposed composition and procedures for appointing members of the HSK extremely problematic, putting independence of the judiciary in serious jeopardy and recalled that “according to European standards, at least a substantive part of the members of a High Judicial Council should be judges elected by their peers.” See Opinion of Venice Commission on the Amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017, CDL-AD(2017)005, 13 March 2017.

⁹² The Council of Judges and Prosecutors (HSK) is the self-governing body in charge of the appointment promotion, transfer, discipline and dismissal of judges and prosecutors.

⁹³ See CoE Commissioner for Human Rights' Statement, 7 June 2017: Turkey: new Council of Judges and Prosecutors does not offer adequate safeguards for the independence of the judiciary; Opinion of Venice Commission on the Amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be Submitted to a National Referendum on 16 April 2017, CDL-AD(2017)005, 13 March 2017

⁹⁴ <https://siviltoplumsusturulamaz.org>

4. CONCLUSIONS

The adoption of Law No. 7262, justified under the guise of countering terrorism, is yet another attack on human rights and those who defend them. The authorities have failed to comply with FATF standards, guidelines and recommendations in the aftermath of Turkey's latest FATF assessment report. Not only was the process deeply flawed, but the law itself is not fit for purpose. By failing to adopt FATF's targeted "risk-based approach," Turkey has lumped all civil society organizations together and subjected the entire NPO sector to an overly broad and vague law that violates the principle of legality -- and threatens to violate the rights to freedom of association and expression. Organizations at low or no risk of involvement in terrorism financing are thus subject to the same processes, burdensome audits, disproportionate fines, and threats of prosecution that NPOs deemed by FATF to be truly at risk would endure; the law thus fails to meet the narrowly defined objective of halting terrorism financing through identifying risk and then applying appropriate, proportionate and human rights respecting risk mitigation measures to effectively address that risk.

The new law was promulgated and adopted without consultation with civil society and the NPO sector, and in an expedited manner allowing little to no meaningful discussion. It adds yet another tool to the Turkish government's toolbox of already numerous laws, policies and practices deliberately and routinely used to target civil society actors and NPOs that oppose and attempt to expose the government's abusive human rights practices. The many examples in this briefing paper of individuals and NPOs, including Amnesty International, subjected to these existing laws, and the violations they have suffered should give FATF members pause. In its attempt to help stem terrorism financing in Turkey, FATF can now see the unintended consequences of that effort in Law No. 7262, which will only put NPOs under more pressure from the authorities, criminalize NPOs' legitimate activities, and have a chilling effect on NPO actors fearful of running afoul of yet another repressive counterterrorism law.

As required by relevant UNSC Resolutions and FATF recommendations, states are obliged to ensure that all measures taken to counter terrorism, including those taken to combat terrorism financing, comply with their obligations under international human rights law, including respect for fundamental rights such as freedom of expression and freedom of association. The aim of combating terrorism financing and money laundering should not be weaponized by states to broadly restrict the ability of NPOs to carry out their important legitimate work or to punish the work of human rights defenders. The example of how Turkey exploited the FATF process should not only prompt a moment of reflection but provide FATF with an opportunity to engage meaningfully with the Turkish authorities to ensure that any FATF-prompted laws, policies and practices fully comply with FATF processes and with Turkey's international human rights obligations.

RECOMMENDATIONS TO FATF

Amnesty International urges the Member States, Secretariat and Chair of FATF to:

- Ensure that the Government of Turkey fully complies with FATF Recommendations 8 and 1 in order to avoid subjecting the NPO sector to ill-targeted and disproportionate measures that would violate Turkey's international human rights obligations.
- Engage in a dialogue with the Turkish authorities to identify and address the provisions of Law No. 7262 that violate Turkey's international human rights obligations, including the rights to freedom of association and expression and the right to fair trial.
- Demand that the Turkish authorities amend the relevant provisions of the new law that would unlawfully restrict freedoms of association and expression, including limitations on the online fundraising activities of NPOs, in line with its obligations under international human rights law and in meaningful consultation with NPOs in Turkey, including human rights organizations;
- Urge the Government of Turkey to bring its anti-terrorism legislation in line with international human rights law and standards to ensure that NPOs, including human rights organizations and human rights defenders, are not harassed and arbitrarily prosecuted and convicted on fabricated terrorism-related charges in retaliation for their human rights work;
- Urge the Turkish authorities to take all necessary measures to restore and secure the independence of the judiciary, including by halting political pressure and undue influence by the executive on judges and prosecutors, which is essential to ensure that NPOs can challenge in an independent and impartial tribunal any terrorism-related laws that unlawfully restrict their ability to carry out their legitimate activities.

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WEAPONIZING COUNTER-TERRORISM

TURKEY EXPLOITS TERRORISM FINANCING ASSESSMENT TO TARGET CIVIL SOCIETY

The government of Turkey has exploited a 2019 Financial Action Task Force (FATF) assessment report to supplement its arsenal of counterterrorism laws, many of which are routinely used to target civil society organizations. This briefing paper highlights the numerous ways that the Turkish authorities historically have targeted civil society, including by harassment, investigation, prosecution and conviction on trumped up terrorism charges. Law No. 7262 is only the most recent tool in the Turkish government's toolbox of counterterrorism measures

Amnesty International calls on FATF and other relevant interlocutors to ensure that Turkey's responses to FATF assessments fully comply with FATF policy and more importantly, the country's international human rights obligations. FATF should immediately address Turkey's blatant exploitation of the task force's stated narrow objectives to send a clear signal to other governments that terrorism financing laws and policies cannot be trained on civil society under cover of alleged FATF compliance "requirements".