

## **Letter to Venice Commission in Relation to Law No. 7262 Preventing Financing of Proliferation of Weapons of Mass Destruction in Turkey**

Countries need to cooperate in combating the financing of terrorism (TF) and money laundering (ML). The Financial Action Task Force (FATF) was established to fight these crimes on a global level, aiming to strengthen the political will and encourage regulatory reforms. With commitments from more than 200 countries and jurisdictions, the FATF has developed the FATF Recommendations, or FATF Standards, which ensures a coordinated global response to prevent organized crime, corruption, and terrorism.<sup>1</sup> The FATF periodically publishes reports that are specific to countries, stating the shortcomings in the fight against TF/ML and follows up on the recommendations. Turkey has been a member of the FATF since 1991.

A comprehensive report on Turkey was published after a visit in March 2019. According to the report, many shortcomings were pointed out in the fight against ML/FT. Mainly,

- ... *“however, TF investigations within these cases are largely directed towards identifying the assets held rather than the identification of the collection, movement and use of funds or other assets.”*

- ... *“Outside of FETÖ/PDY investigations, there is limited evidence that public prosecutors have used MASAK analysis to extend their investigation to include the bigger networks.”*

-... *“AML/CFT coordination has not been brought together under a single whole-of-government policy approach,”*

-... *“MASAK’s work has increased many folds since the attempted coup in 2016 with an exponential rise in judicial requests from public prosecution and courts, which has caused strains on the capacity of AML/CFT authorities.”*

-... *“Turkey does not use 1373 processes effectively, which is not consistent with its risk profile.”<sup>2</sup>*

Moreover, the report underscores deficiencies in the implementation of, otherwise sufficient body of counter TF/ML regulations,

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<sup>1</sup><https://www.fatf-gafi.org/about/>

<sup>2</sup><https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Executive-Summary-Mutual-Evaluation-Report-Turkey-2019.pdf>

-... *“Turkey has an adequate legal framework that should enable the authorities to confiscate the proceeds of crime through a number of measures,”*

-... *“Turkey’s legal framework allows for UNSCR 1267 designations to be transposed,”*

-... *“Turkey does not have any legal impediments to seeking and responding to a variety of requests for international co-operation both formal and informal.”*<sup>3</sup>

It is stated in the report that Turkey is sufficient as a legal infrastructure. The Turkish Government has enacted a new law stating that it should take steps to fulfill FATF standards. Although Turkey did not have any problems with the lack of legislation, the Government used the FATF report as a legitimacy tool to increase the pressure on Non-Governmental Organizations (NGOs) and individuals.

Law No. 7262 Preventing Financing of Proliferation of Weapons of Mass Destruction was published in the Official Gazette dated December 31, 2020, and thus entered into force. Contrary to what its title suggests, the law contains very little in the way of upholding the FATF criteria. Instead, it introduces amendments to six existing laws such as Law No 5253 on Associations, Law No2860 on Collection of Donations, and Law No 1136 on Attorneys.

It is unfathomable as to how the law in question is on “preventing the financing of proliferation of weapons of mass destruction”. The three Special Rapporteurs of the United Nations and the Council of Europe Commissioner for Human Rights have also expressed serious concerns about the law in their letters to the Government. The gravest of these concerns is the increased pressure on NGOs as well as individuals, which is discussed in detail below:

- 1- Article 12 of Law No. 7262 appends a paragraph to Article 3 of Law No. 5253 on Associations. The amendment bars persons convicted of certain crimes to take part in associations indefinitely, which violates Article 53 of the Turkish Penal Code (TPC) titled "Deprivation of Using Certain Rights". Article 53 reads *“... A person shall not exercise these rights until the completion of the term of his penalty of imprisonment...”* and therefore, lifts the restrictions after the execution of the sentence. However, the appended paragraph prevents convicted persons from joining associations indefinitely.
- 2- Article 15 of Law No. 7262 appends a subsection to Article 30 of Law No. 5253 on Associations, which reads: *“If a prosecution is initiated on the persons assigned in the organs of the associations apart from the plenaries or relevant persons on the ground of the offences within the scope of the offences specified in the Law No.6415, on Prevention of the Financing of Terrorism dated 07.02.2013, and of the offences of manufacturing and trafficking narcotic drugs and psychotropic substances or of the offences of laundering assets derived from crimes, the persons or the relevant organs may be suspended from office by the Minister of Interior as a temporary measure.*

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<sup>3</sup><https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Executive-Summary-Mutual-Evaluation-Report-Turkey-2019.pdf>

*If the measure stated in paragraph (1) is not sufficient and it is inconvenient to delay the measure, the Minister of Interior may cease the activity of the association temporarily and make application to the court.*” The amendments empower the Ministry of Interior to dismiss persons suspected of stated offences from their duties in an association. Moreover, the appended article allows for the suspension of activities of an association due to prosecution of its members or affiliates. The Government does not tolerate any form of dissent and the universal principles of rule of law such as the presumption of innocence and the individuality of crime and punishment are simply ignored. After the coup attempt of 15 July 2016, the Government changed many laws pertaining to the structure of independent institutions and professional groups hindering their constitutional rights. The amendments to Law on Attorneys constitute a great example regarding the Government’s efforts to silence lawyers and Bar Associations.

- 3- Article 20 of Law No. 7262 amends Article 2 of Law No. 5549 on the Prevention of Laundering the Proceeds of Crime to include lawyers in the “Obligated Parties” section in Article 2 Subparagraph d. The article obliges lawyers to disclose relevant information on: “The realization of financial transactions regarding the purchase and sale of real estate, the establishment and abolition of limited real rights, the establishment, merger, management, transfer and liquidation of companies, foundations and associations, banks, securities and all kinds of accounts in these accounts.” The regulation contradicts the confidentiality clause as per Article 36 of Law on Attorneys and the essence of the legal defense profession. A lawyer is sanctioned to disclose his/her clients’ information upon “suspicion”, in violation of the right to defense guarantees. Violations are punishable with imprisonment between one to three years and other heavy fines, forcing lawyers to act as informants.<sup>4</sup>The law paves the way for finding lawyers guilty by association with their clientele. As such, the right to defense, the right to seek legal counsel, and attorney-client confidentiality are violated.72 of 79 bar associations in Turkey published a statement opposing the new regulations.<sup>5</sup>
- 4- Article 35 of Law No. 7262 appends to Article 2 of Law No. 6415 on the Prevention of Financing of Terrorism the expression “*Funds and income owned or possessed by the real or legal persons acting on behalf or account and the benefits and value derived from them or their conversion into each other.*” Thus, the assets that are not under the control of the suspect but managed by a delegated person on his/her behalf are also included in the scope. Once again, this stipulation violates the principle of individuality of crime and punishment. Moreover, the fact that the phrase “acting on behalf of someone” is broad and vague paves the way for the abuse of the article/ For

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<sup>4</sup><https://birikimdergisi.com/guncel/10424/sivil-toplumu-tehdit-ve-tenkil-yasasi>

<sup>5</sup><http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?DUYURU&=9726>

instance, this regulation entails prosecution risk for all persons who exchange money with a suspect, regardless of the nature of the transaction.

- 5- Paragraph 3 of article 38 explains how authorized institutions can seize the assets of those concerned. According to the MASAK, with Article 38 of Law No. 7262, it has been made possible to freeze the assets of persons linked directly with “terrorist organizations”, regardless of the decision of the United Nations General Assembly (UNGA) or foreign country requests. MASAK interprets article 38 of Law no. 7262 in its way. With Paragraph 3 of article 38, it is stated that “*an organization must be declared as a terrorist organization by the courts*”. However, a court decision is not sought that the concerned individuals and institutions whose assets could be confiscated due to the members of any “terrorist organization”. No explanation stands out that clarifies the link between “terrorist organization” and individuals. Again, while the assets of individuals and institutions are seized, there is no court decision stating that they acquired these assets through “terrorist financing”. It is not a decision made by the judicial authorities, and even the defense of individuals and institutions is not taken by the authorized administrative institution. Considering that more than **six hundred thousand** persons were subject<sup>6</sup> to “terrorism” investigations after the coup attempt in Turkey, the gravity of the consequences becomes clear. Assets of 377 people were confiscated on April 6, 2021, based on the above-mentioned article of law.<sup>7</sup> However, the 377 people are non-Turkish citizens and even some of those are not alive anymore.<sup>8</sup> Also among the 377 people who do not have any court decision stating that they are a member of any “terrorist organization”. The relevant statement published in the Official Gazette reads: “On the basis of reasonable ground that they committed the acts within the scope of Articles 3 and 4 of Law No. 6415... their assets were frozen.”<sup>9</sup>What is "reasonable ground" within the scope of the Article 38 of Law No. 7262? The Legislator has deliberately kept the scope and the meaning of the article vague and broad so that the Secretary has the authority to freeze the assets of the dissident individuals and institutions with the pretext of "reasonable ground". In the 7th paragraph of Article 38, "*If it is decided to freeze the assets in Turkey of those concerned, it is decided by the Presidency to file a criminal complaint with the request to open an investigation in accordance with the Criminal Procedure Law.*" The assets of those concerned are frozen first and then an investigation is initiated. This paragraph is a clear summary of the process and reverses the judicial process. Those concerned are punished first and then an investigation is opened against them. In Turkey after July 2016, the definition of terrorism, relevant laws, and court decisions reveal a complete arbitrariness.

Many NGOs have opposed the law, emphasizing that the Law eliminates the freedom of association. 692 NGOs have jointly expressed their demands and objections against the

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<sup>6</sup><https://assedel.org/balance-of-ohal-assedel/>

<sup>7</sup><https://masak.hmb.gov.tr/haberler/basin-aciklamasi>

<sup>8</sup><https://www.rudaw.net/turkish/middleeast/turkey/070420219>

<sup>9</sup><https://www.resmigazete.gov.tr/eskiler/2021/04/20210407-28.pdf>

Law.<sup>10</sup> According to the Human Rights Watch (HRW), “Only six of the articles include means and regulations to combat the financing of terrorism. The rest grant the Interior Ministry and the president wide authority to restrict the activities of independent groups and diminish their role. It is unclear how the proposed measures will be limited to curbing the activities of groups with a material connection to armed groups and will not be used widely against other organizations, Human Rights Watch said. Organizations disliked by the government for their work on human rights and rule of law issues in Turkey will especially be at risk.”<sup>11</sup>

Law No. 7262 Preventing Financing of Proliferation of Weapons of Mass Destruction is yet another weapon in the Turkish Government’s dedicated arsenal against advocates of human rights and rule of law. The Law provides the Government with enough pretext to silence dissent and move further away from universal principles of human rights and democratic values.

ASSEDEL, L’Association européenne pour la défense des droits et des libertés

**assedel.org**

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<sup>10</sup><https://www.esithaklar.org/2020/12/ortak-aciklama-520-sivil-toplum-orgutunun-talebi-ortak/>

<sup>11</sup><https://www.hrw.org/node/377519/printable/print>