



PERMANENT MISSION OF THE REPUBLIC OF TURKEY  
TO THE UNITED NATIONS OFFICE IN GENEVA

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The Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference the Joint Communication from Special Procedures (OL TUR 3/2021) has the honour to enclose herewith the observations provided by the Government of the Republic of Turkey.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 16 April 2021

Encl: As stated.

Office of the High Commissioner for Human Rights  
Palais des Nations  
1211 Geneva 10



**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM THE  
SPECIAL PROCEDURES**

**(Reference: OL TUR 3/2021)**

1. With reference to the letter of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while encountering terrorism, the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders dated 11 February 2021, the Government would like to submit its observations herein below.

**I. OBSERVATIONS**

2. The Law no. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction is prepared with the participation of relevant public institutions and NGOs and is based on Financial Action Task Force's (FATF) 4<sup>th</sup> round mutual evaluation report published in 2019 to address existing shortcomings in the legislation and to increase effectiveness in combatting money laundering and terrorism financing as well as the prevention of the financing of proliferation of weapons of mass destruction.

3. Detailed provisions specifying the principles and procedures for the implementation of the Law no. 7262 have been introduced with the By-Law published on 26 February 2021.

*Regarding freezing of assets measures and judicial and administrative oversight*

4. The regulations regarding the UNSC's resolutions 1267 (1999) and 1373 (2001) are stipulated in the Law No. 6415 on the Prevention of the Financing of Terrorism, and the decisions taken within this framework are administrative. Domestic freezing of assets introduced with Article 38 of the Law no. 7262 is also an administrative mechanism in line with the UN and FATF standards and aimed towards domestic freezing of assets of the persons and organizations who are assessed to be associated with terrorist organizations.

5. In other FATF member countries, decisions regarding domestic freezing of assets are also taken entirely through administrative mechanism. Turkey's practices in this manner, are similar to the French practice, in which the authority to decide on domestic freezing of assets is given to the Ministers of Internal Affairs, Economy and Foreign Affairs and International Development. In

addition, Turkish legislation also contains certain provisions related to the protection of rights and freedoms.

6. As per Article 7/3 of the Law no. 6415, the following conditions are required to be met in order to decide for domestic freezing of assets;

- The organization to which the person is affiliated is declared as a terrorist organization by Turkish independent courts,
- “*Reasonable cause*” conditions as specified in UN and FATF standards exist,
- The competent Assize Court finds the decision in compliance with the “*reasonable cause*” condition.

7. There are several legal remedies that can be applied against the domestic freezing of assets decision. The decision can be appealed to another Assize Court, an annulment application can be lodged to the Assessment Commission, an action for damages claimed to be incurred by the State can be filed, a lawsuit can be brought before the administrative courts, an individual application can be put forth to the Constitutional Court after other domestic remedies are exhausted.

8. The Assessment Commission is an additional mechanism to judicial and administrative processes in place. The Commission’s mandate is to make assessments within the scope of the UNSC resolutions and to propose relevant measures. In this regard, the Commission is tasked with giving recommendation to the relevant authorities regarding implementing or annulling freezing of assets measures upon certain conditions mentioned above are met. If the Commission finds an annulment application inappropriate, it shall send it to the relevant court for further review. The Commission also shall review freezing of assets decisions for persistence of “*reasonable cause*” condition, every 6 months at most.

9. The Commission, under the chairmanship of Chairman to the Financial Crimes Investigation Board, consists of members who are at least general director or vice chairman level from Ministry of Justice, Ministry of Foreign Affairs, Ministry of Energy and Natural Resources, Ministry of Interior, Ministry of Defense, Ministry of Commerce, Banking Regulation and Supervision Agency, Board of Treasury Controllers, National Intelligence Service, Nuclear Regulatory Authority and Capital Markets Board. In this regard, qualifications and requirements of the Commission members are clearly specified.

10. The discretionary power exercised by public administrations with regard to the prevention of financing of terrorism is subjected to both judicial and administrative review. Considering the due process in evaluating the “*reasonable cause*”, the remedy mechanisms in place and both judicial and administrative oversight, the Government is of the view that principles with regard to right to fair trial and right to property are respected.

Regarding amendments to Law on Associations no. 5253

11. With the amendments made to Article 3 of the Law on Associations no. 5253 in line with the recommendations and standards specified by the FATF, it has been prescribed that persons convicted of financing terrorism, money laundering and drug offenses shall not serve in the administrative board and board of auditors of associations for up to three years. There are no provisions preventing persons convicted of such crimes to become members of associations or take part in the general assembly meetings thereof. In other words, these provisions do not set an obstacle against their becoming members, but managers. Therefore, the arrangement in its current form does not impair the essence of the freedom of association. Anyone can establish an association without prior permission, and the associations can freely carry out their activities, except for the issues that are prohibited by the Constitution or constitute a crime.

12. As for the implementation of measures stipulated in Article 30/A of the Law on Associations, it is required that the prosecution has been started for terrorism financing, money laundering or drug crimes and the act in question must be committed in scope of the activities of the association. Only after these requirements are met, as a temporary measure, the Minister of Interior may dismiss persons or the bodies where these persons work. In cases where this measure would prove insufficient or delays would be detrimental, the Minister of Interior shall temporarily suspend the activities of the association and file an application with the court immediately, following which the court shall deliver, within 48 hours, its decision on temporary suspension. It has been further stipulated that the persons concerned can, at any time, request the lifting of the decision on temporary suspension of activities and the court shall make its decision without delay. By this way, it is sought to prevent terrorist organizations and criminal networks from abusing associations.

13. Similar practices are implemented in other FATF member countries and these measures are not peculiar to Turkey. In the event that a crime against constitutional order or crimes such as racism, discrimination, terrorism and similar offenses have been committed, the Minister of Interior in Germany, the Council of Ministers in France, and the Charity Commission in the United Kingdom

can order the closure of associations, the suspension from duty and the appointment of temporary managers.

14. Considering the other FATF members' practices which involve similar if not heavier sanctions and for a wider range of offenses, the Government is of the view that measures introduced with Law no. 7262 are well within the line with Turkey's international obligations and freedom of association.

Regarding auditing of associations

15. With the amendments made, it is envisaged that associations shall be audited in terms of their compliance with the law, every year based on risk assessments. The risk criteria have been specified in "National Risk Assessment Report" and "Guidelines for Preventing the Abuse of NGOs in Financing Terrorism" documents and shall be reviewed every year.

16. Association Auditors By-Law of 22 September 2004 and Association Auditors Directive of 30 September 2020, specify the scope and purposes of auditing and set the methods of work for the auditors. In this regard, the Government is of the view there is no ambiguity in the scope of the audits.

Regarding administrative sanctions concerning associations

17. One of the criticisms brought in the FATF 4<sup>th</sup> Mutual Evaluation Report is that the existing administrative sanctions were ineffective and neither proportionate nor dissuasive.

18. With the amendments made to Article 32 of the Law on Associations, judicial penalties for not providing necessary documents to auditors have been changed into administrative fines with increases in the amount of the fine, which on one hand, is more favorable to individuals in terms of legal consequences, and on the other, preventing the associations from not providing the necessary documents by bearing the fine.

19. The said administrative fines are determined by the local authority according to the gravity of the act, taking into account the lower and upper limits specified in the law. These fines may be appealed to a competent court, and the court may change the amount. The court's decisions is further subject to review by higher courts.

20. The changes were welcomed by FATF and positive feedback was received.

Regarding illegal fundraising activities on the Internet

21. The fact that fundraising on the Internet is open to abuse for the purpose of financing terrorism and therefore must be regulated is addressed in the “Emerging Terrorist Financing Risks” guide published by FATF in 2015.<sup>1</sup>

22. With the Law No. 7262, the preconditions sought prior to the authorization of fundraising are determined to provide transparency in fundraising works and actions and to ensure accountability. Regulations aim to provide measures to prevent the laundering of assets arising from crime, the financing of terrorism and the abuse of civil society, and to protect the social values charity and solidarity. The provisions do not contain any compelling regulations or amendments to the preconditions to obtain authorization for fundraising activities and only aims to prevent unauthorized fundraising activities through the internet. The decision to block access is given by the courts and can be appealed.

23. These measures are confined to solely fulfilling the requests by the FATF which deemed the sanctions as insufficient. In most provisions that contain penalties, firstly a warning to stop the action shall be issued, and in case the action is not stopped despite the warning, a penalty is envisaged. Therefore, the Government would like to emphasize that the action will only be penalized if it is persistently repeated. There is no intention to clamp down on any NGO which respects the law and public order.

24. Fundraising is not only carried out by NGOs. Both real persons and public institutions applying for aid collection are subject to the same procedure specified in the Law No. 2860 on Aid Collection. Therefore, there is no separate evaluation method applied to associations. The conditions sought before the permission to be granted are specified in order to carry out the aid collection works and transactions in a transparent manner and to put forward an accountable practice.

25. In light of explanations above, it is evident that these provisions do not impair the right to a fair trial and freedom of expression and assembly.

Regarding Judicial Reform Strategy and Human Rights Action Plan

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<sup>1</sup> The report can be accessed via <https://www.fatf-gafi.org/media/fatf/documents/reports/Emerging-Terrorist-Financing-Risks.pdf>.

**26.** The Judicial Reform Strategy, which serves as a roadmap for the works carried out in the field of justice, was shared with the public in 2019. The objectives and activities in the Strategy are to strengthen the rule of law, to protect and promote rights and freedoms more effectively, to strengthen the independence and impartiality of the judiciary, to increase transparency, to simplify judicial processes, to improve access to justice, to strengthen the right to defense and to increase effectiveness of the right to trial within a reasonable time.

**27.** Enhancing international cooperation in the field of prevention of cross-border organized crimes, terrorism, financing of terrorism, crimes committed in cyber environment, human trafficking, migrant smuggling, laundering of assets arising from crime and drug trafficking are among the activities of the Strategy. In this regard collaboration with many mechanisms such as OECD and GRECO is being carried out.

**28.** With the Human Rights Action Plan (HRAP), which was announced on 2 March 2021, establishment of a strong, accessible and effective human rights protection system is determined as the primary goal. The Action Plan is prepared with broad participation of NGOs and persons and institutions operating in the field of human rights. Opinions and suggestions of human rights organizations were taken into account. At the international level, reports and recommendations of the relevant bodies and committees of the Council of Europe, the European Union, the United Nations and the Organization for Security and Cooperation in Europe, in particular the decisions of the European Court of Human Rights have been heeded.

## **II. CONCLUSION**

**29.** Preventing the financing of terrorism, as also stressed by the UN and FATF, is of great importance in terms of combatting terrorist organizations which constitute a severe threat to democracies and public order.

**30.** In this context, Law No. 7262 has been prepared with the participation of relevant public institutions and NGOs in accordance with FATF recommendations and UN standards, and it does not serve any ulterior purpose other than combatting money laundering, financing terrorism and financing proliferation of weapons of mass destruction. The Government, in this aspect, wishes to remind the Special Rapporteurs that evaluating the legislation in question should primarily concern the FATF in the international field as its recommendations are recognised as the global anti-money laundering and counter-terrorist financing standard.

**31.** The purpose of the Law is to maintain transparency with a more effective oversight, to prevent abusing people’s good intentions to provide aid, and to ensure that NGOs become more reliable. In addition to all these objectives, recommendations by FATF which develops policies in the fight against the financing of terrorism, have also been fulfilled.

**32.** No one has been subjected to any investigation, trial or convictions for legally conducted civil society activities. There are no restrictions placed in the new legislation for human rights defenders and other civil society members to receive local or international financial support.

**33.** It is primarily the competence of the relevant public authorities to assess what measures are necessary in combatting organized crime as domestic authorities are in a position to make a more accurate decision on the measures to be taken in this field. For this reason, administrations have a certain discretionary power in determining which measure will be applied. This discretionary power is subjected to both judicial and administrative review.

**34.** Freedom of association, which is among the fundamental rights and freedoms enshrined in the Turkish Constitution, may only be restricted by law for reasons set forth in the Constitution. The measures taken are in accordance with the legitimate restrictions as stipulated in the provisions of the European Convention on Human Rights relating to the freedom of association. With the newly introduced legislation, it is out of question to restrict the establishment of associations, membership therein or their activities. Likewise, this regulation does not undermine the essence of or eliminate individuals’ freedom of assembly and association. Everyone wishing to do so can form associations without prior permission and freely engage in civil society activities except for issues prohibited by the Constitution or those constituting offenses.

**35.** There is also no ambiguity or vagueness in the sanction measures, how these sanctions will be applied, the audits for associations or the definition of terror<sup>2</sup> as these matters are clearly specified in the relevant Laws, By-Laws and Directives.

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<sup>2</sup> Terror is clearly defined in Article 1 of the Law no. 3713 as; “*Any criminal action conducted by one or more persons belonging to an organisation with the aim of changing the attributes of the Republic as specified in the Constitution, the political, legal, social, secular or economic system, damaging the indivisible unity of the State with its territory and nation, jeopardizing the existence of the Turkish State and the Republic, enfeebling, destroying or seizing the State authority, eliminating basic rights and freedoms, damaging the internal and external security of the State, the public order or general health by using force and violence, and by one of the means of pressure, intimidation, oppression or threat.*”.



**36.** Finally, the Government would like to draw attention to misguided information and lack of objectivity present in the communication as it appears that the main allegations on the communication are made hastily with neither having a comprehensive knowledge of the legislation on all of its aspects nor making fair comparisons to other countries' practices. The Government hereby requests the Special Rapporteurs to retract the communication, study the legislation with all of its aspects impartially and in depth, follow its implementation in practice and afterwards render it public. The Government expects from the mandate-holders to uphold their responsibilities with regard to principles of cooperation, genuine dialogue, objectivity and non-selectivity in their communications.