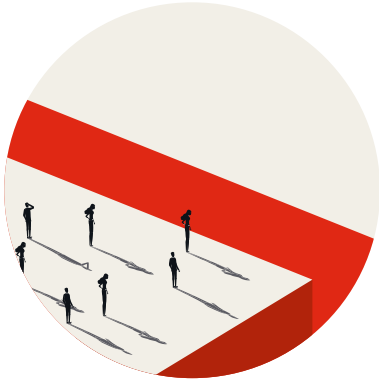


BRIEFING NOTE ON
LAW NO.7262
A FURTHER THREAT TO THE
FREEDOM OF
ASSOCIATION
IN TURKEY





1. INTRODUCTION

On 31 December 2021, the controversial Law No. 7262 on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction¹ was swiftly passed following a brief deliberation by the Turkish Justice Commission in the Grand National Assembly of Turkey (TBMM).

THIS LAW'S STATED PURPOSE WAS TO IMPLEMENT THE RECOMMENDATIONS OF THE TURKISH FINANCIAL ACTION TASK FORCE (FATF), ALONG WITH A SERIES OF UN SECURITY COUNCIL RESOLUTIONS.

However, most of its articles either lacked any direct connection with this purpose, or introduced measures that clearly exceeded its scope.

In its 2019 Mutual Evaluation Report², the FATF set out recommendations for combatting the financing of terrorism and money laundering, and outlined the potential risks associated with non-profit organisations (NPOs). Its recommendation No. 8 was for an independent, risk-based assessment of NPOs to prevent their legitimate activities being targeted, interrupted or penalised. However, under Law No. 7262 all NPOs, including human rights organisations, are deemed to pose a risk and are therefore subjected to disproportionate measures that are tantamount to harassment.

On examination, this piece of legislation, which amends seven Turkish laws including the *Law on Associations* and the *Law on Aid Collection*, introduces strict supervision, surveillance and restrictions on the rights to association and the independence of activities. The amendments grant the authorities in Turkey arbitrary control over online aid collection and constrain civil society organisations (CSOs)³ activities and partnerships through increased fines and burdensome audits. They also allow the dismissal of the executives and staff of associations facing prosecution or convicted on terrorism-related charges, thereby unreasonably restricting or terminating their activities.

THIS BRIEFING NOTE DISCUSSES THE SCOPE OF LAW NO.7262 AND THE RISK IT POSES FOR THE INDEPENDENCE OF CIVIL SOCIETY.



1. See Law No. 7262, <https://www.tbmm.gov.tr/d27/2/2-3261.pdf> [Turkish language publication].
2. <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>
3. Under Turkish law, it defines associations and foundations.

2. DISPROPORTIONATE MEASURES AFFECTING THE OPERATION OF CSOS

Among the many facets of *Law No. 7262* that will have direct consequences for NPOs, the first relates to aid collection activities. *Law No. 2860 on Aid Collection* already requires individuals and organisations to be authorised to collect aid. The latest amendment to Article 6 of this law incorporates organisations' online aid campaigns into the existing authorisation system. Once it has been determined that an unauthorised aid campaign is being run online, the Turkish Ministry of the Interior or governorship can demand the organisation running the campaign to terminate it within 24 hours. Through this change, if the campaign provider cannot be reached within this period, the decision to block the access to the content by the justice of peace upon the requests of the governorship or the Ministry of Interior has been cleared. Considering the criticism about the independence of the Criminal Judgeships of Peace⁴, this change, which allows the Ministry of Interior to directly intervene in the financial resources of the institutions, raises concerns.

Another amendment to the same law raised fines for unauthorised aid collection activities. The administrative penalty for unauthorised aid collection activities was increased from 700 Turkish lira to 5,000-200,000 Turkish Lira (TL).

THE SCOPE OF THE BAN HAS THUS BEEN EXTENDED, MAKING IT EASIER FOR THE AUTHORITIES TO DISRUPT FINANCIAL RESOURCES OF ASSOCIATIONS.

Law No. 7262 also amended *Law No. 5253 on Associations*, granting the Turkish Ministry of the Interior more control over CSOs, by imposing stricter auditing, irrespective of their operations. Although this Ministry and Civil Society Relations Directorates were already authorised to carry out inspections in Turkey, these were based on a specific decision or complaint rather than being periodical. However, this amendment makes non-inspection an exception rather than a rule, the duration of which must not exceed three years.

The jurisdiction for inspections, which previously fell under the Turkish Ministry of the Interior and local authorities, was expanded to include all public officials. Auditors are entitled to request relevant information and documents, which no organisation may refuse to provide, notwithstanding the provisions of other laws, including the *Law on the Protection of Personal Data*.

4. Established by *Law No. 6545 of the Turkish Penal Code*, which entered into force on 28 June 2014, the Criminal Justice of the Peace system raises serious concerns among civil society organizations and international human rights mechanisms regarding its independence and the impartiality of its judges since it works as a closed circuit: a decision of one Justice of the Peace can only be appealed by another Justice of the Peace. According to the Venice Commission, the UN Special Rapporteur on freedom of opinion and expression and the Council of Europe's Commissioner of Human Rights, the Criminal Justice of the Peace system does not guarantee the right to a fair trial. According to the Office of the UN High Commissioner for Human Rights, "these courts have been using emergency decrees to issue detention orders, including detaining journalists and Human Rights Defenders, imposing media bans, appointing trustees, or blocking internet." For further information, see: <https://www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf>

MOREOVER, PENALTIES WERE INCREASED FOR VIOLATION OF THIS LAW, WITH CSOs AND THEIR STAFF FACING FINES OF UP TO 200,000 TL AND PRISON SENTENCES OF UP TO ONE YEAR.

The amendment to Article 19 of the *Law on Associations* provides for the auditing of partners of an audited organisation. Consequently, any organisation that has been allocated an aid by the audited association or any kind of facilities, establishments and partnerships belonging to them is liable to be audited. The amendment to Article 36 of the *Law on Associations*, also applies organisations with overseas headquarters within its scope, implying that funds and grants distributed by the branches of associations and foundations operating in Turkey will also be subject to audit. Given the vulnerability of CSOs to arbitrary audits, this regulation could result in the reluctance of civil society to cooperate, thus reducing their collaboration and resources.

Since *Law No. 7262* entered into force, several CSOs have undergone increased auditing. Interviews conducted by Amnesty International⁵ for a recent report revealed that these auditing regulations are hampering CSOs, since there are no protective measures to prevent their arbitrary use as a punitive measure. According to the report, the auditors are focusing on these organisations' reliance on foreign funds.

FURTHERMORE, IT IS UNCLEAR WHICH INSTITUTION WILL BE RESPONSIBLE FOR CONDUCTING THE AUDIT, WITH SOME BEING DIRECTLY AUDITED BY THE TURKISH MINISTRY OF THE INTERIOR, AND OTHERS BY INSPECTORS FROM THE PROVINCIAL BRANCHES OF THE TURKISH GENERAL DIRECTORATE FOR RELATIONS WITH THE CIVIL SOCIETY.



5. <https://www.amnesty.org/en/wp-content/uploads/2021/10/EUR4448642021ENGLISH.pdf>

Additionally, there are concerns as to whether the audits are being used as a means of harassment to obstruct organisations' operations. The Amnesty report revealed that an LGBTI+ organisation was audited four times in one-and-a-half years. Moreover, the results of these audits were not shared with organisations, keeping the organisations in the dark on the evaluation of the auditors regarding their activities.

THIS SITUATION DOES NOT ALLOW INSTITUTIONS TO REGULATE THEIR ACTIVITIES IN ACCORDANCE WITH THE AUDIT, AND RAISES CONCERNS THAT THE INFORMATION COLLECTED BY THE AUDITORS COULD BE ARBITRARILY USED TO TARGET NGOS AND HINDER THEIR ACTIVITIES.

3. VIOLATION OF FREEDOM OF ASSOCIATION UNDER THE GUISE OF SECURITY

Turkey is bound under the *1999 International Convention for the Suppression of the Financing of Terrorism*. It has also been a Member State of the FATF since 1991. Thus, it has an international duty to prevent the financing of terrorism. It is additionally required to assure compliance with its other obligation under international law, including human rights. However, a study of Turkey's security discourse and practices indicates that it has led to the development of anti-terrorism legislation at the expense of respecting and protecting human rights and fundamental freedoms. According to the Venice Commission opinion on *Law No. 7262* in 2021⁶, civil society is still grappling with the restrictions the State of Emergency regime, introduced in the aftermath of the failed coup attempt on 15 July 2016, which has been permanently extended through a raft of regulations that were greatly influenced by its *Anti-Terrorism Law*.

6. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)023cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)023cor-e)

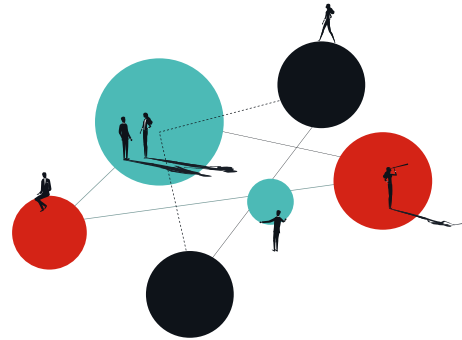


It has become increasingly common practice for human rights defenders in Turkey to be targeted and prosecuted under *Anti-Terrorism Law No. 3713*. This law's excessively broad and vague definition of terrorism and terrorist offences, means that any protest, dissent or peaceful demonstration can be deemed a terrorist act.

As a result, human rights defenders and civil society can be arbitrarily labelled "terrorist offenders". For instance,

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is among many other human rights defenders charged with Disrupting the Unity and Integrity of the State, Incitement, Membership of a Terrorist Organisation, Publishing and Disseminating Statements by a Terrorist Organisation, in connection with articles she wrote or published during her time as Chief Editor at the *Özgür Gündem Newspaper*, one of the prominent organs of the Kurdish press, which was closed-down with the emergency decree on 29 October 2016.



According to the Council of Europe (CoE) Commissioner for Human Rights Hammarberg's 2011 Report on Turkey, the case of Eren Keskin is emblematic, as it demonstrates that "even non-violent statements can be subject to proceedings when they are seen to overlap with any one of the aims of a terrorist organisation"⁷.

Law No.7262 allows the Turkish Ministry of the Interior to intervene in the private matters of an association, including the election of its executive committee, as well as its activities and internal affairs, under the amendment to Article 3 of the *Law on Associations*. The amendment prohibits those convicted under *Law No. 6415 on the Prevention of the Financing of Terrorism* from taking office and those who already occupy office from continuing their duties, in any organ of an association other than its general assembly.

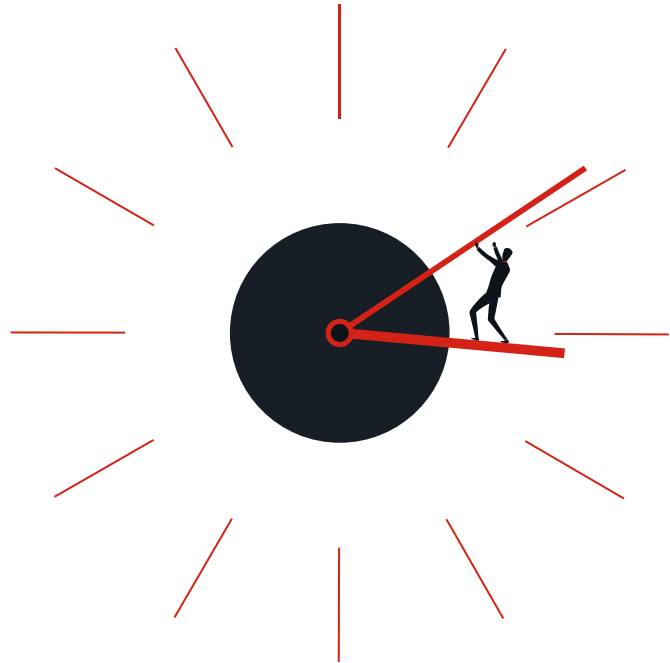
7. CoE HR Commissioner Hammarberg's Report on Turkey (2011), <https://rm.coe.int/16806db752>

Under Article 30/A on the dismissal and temporary suspension from activity, which was recently added to the *Law on Associations*,

THE TURKISH MINISTER OF THE INTERIOR CAN DISMISS THE DIRECTORS AND/OR STAFF OF ASSOCIATION PROSECUTED ON TERRORISM-FINANCING RELATED OFFENSES AND/OR TO TEMPORARILY SUSPEND THE ASSOCIATION FROM ACTIVITY, SUBJECT TO COURT APPROVAL WITHIN 48 HOURS.

The same article allows for the replacement of associations' executives with government-appointed trustees.

Among the anti-terrorism measures, *Law No. 7262* grants the Turkish Ministry of the Interior the authority to violate the freedom of association⁸. The breadth of scope of *Law No.7262*, along with the wide application of anti-terror laws and concerns regarding the autonomy of the judiciary, have paved the way for the complete restriction of independent civil society in Turkey, which is already under unprecedented pressure.



8. Namely, Article 20 of the *Universal Declaration of Human Rights*, Article 17, Article 20 and Article 22 of the *ICCPR*, Article 11 of the *ECHR*

4. RECOMMENDATIONS:

The OMCT urges the Government of Turkey to:

- Immediately repeal Law No. 7262, the scope of which exceeds the legitimate aim of combatting the financing of terrorism, and which jeopardises the freedom of association;
- Guarantee the meaningful and timely participation of stakeholders, including civil society actors and human rights defenders, in the preparation of new legislation on the prevention of financing of the proliferation of weapons of mass destruction, as well as in wider decision-making processes;
- Put an end to all acts of harassment –including judicial– against all other human rights actors in Turkey, and ensure that they are able, in all cases, to carry out their legitimate human rights activities and exercise their rights without any hindrance or fear of reprisal;
- Fulfil its obligations to respect the rule of law and fundamental rights and freedoms in Turkey, including through legislative and constitutional reforms that guarantee judicial independence, as well, as the freedom of expression and association.