

Conclusion: Assessment and Interpretation of Law No. 7262

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In the light of UNSC Resolutions, FATF Recommendations and their relevance with human rights law obligations, the following conclusions can be drawn with regard to Law No. 7262. First of all, pursuant to the amendment to the Law of Associations, in case a prosecution is impleaded due to the offences within the scope of the Law No. 6415, a measure of suspension from duty and cease and desist order for the association may be applied. Although FATF adjudges that the offences within the scope of Law No. 6415 are in line with Recommendation 5, the interpretation of terror crimes among the said offences in defiance of the human rights obligations of Article 314 of the Turkish Penal Code in the past¹, raises concerns in terms of the enforcement of the terrorism financing offense.

Secondly, the amendments on Law No. 7262, Law of Associations and the Law on Aid Collection are limited to authorisation, monitoring and audit measures, and as such, it represents merely one pillar of the effective approach to prevent the abuse of non-profit organizations for the purpose of financing terrorism as emphasized by FATF. In order for non-profit organizations to acknowledge and to combat their own risks and perils, it is essential that they receive sustainable support from the state. When Turkey's shortcomings in this regard are taken into consideration which had been reiterated in the Mutual Evaluation Report of 2019, it is hardly accomplishable that apt sustainable support will be provided in a year's time. The fact that the law was adopted in a short span of time without consultation with civil society constituents indicates that the requirement for mutual dialogue expressed in the FATF Recommendations was not observed and duly implemented.

Thirdly, FATF Recommendation 8 stipulates that the approach towards non-profit organizations should be risk-based. The only change that can be considered as an indicator of this approach in Law No. 7262 is the clause added to Article 19 of the Associations of Law stating "it is fundamental that the audits are carried out each year -not to exceed three years-,

¹ European Commission for Democracy through Law (Venice Commission) Opinion on Articles 216, 299, 301 And 314 of the Penal Code of Turkey Adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016) Opinion No. 831/2015 (15 March 2016), par. 98-107. Ayrıca bkz. ECHR, *Gülcü v. Turkey*, No: 17526/10, 19 January 2016; ECHR, *Işıkkırık v. Turkey*, No: 41226/09, 14 November 2017.

according to the risk assessments to be conducted." Nevertheless, this clause states that risk assessment will determine the frequency of audits. However, FATF Recommendations stipulate that risk is to be taken as a basis for designation of the non-profit organizations that will be subject to monitoring and auditing and of the types of audits and sanctions. It is incompatible with the FATF Recommendations that organizations which bear no risk and those bearing low risk are subject to the same rules as high risk bearing organizations. According to the 2018 National Risk Assessment which is reflected in the FATF Mutual Assessment Report, the finding that humanitarian aid organizations located close to the conflicts in the south of the country are at risk is not reflected and enacted in the relevant statute law.

Fourthly, Turkey abstains from making an explicit non-profit organization definition. A spate of states and governments decided that philanthropic charitable organizations, especially those that provide aid abroad are to be included in FATF definition following the risk assessments. Turkey on the other hand is not acceding restraints with regard to definition within the scope of Law No. 7262. In accordance with the definition of FATF, this stand puts the organizations that are not interested in "*fundraising and distributing money as a priority*" under the obligation of strict supervision, reporting and obtaining permission, and the regulation as such is contrary to the focused approach principle of FATF.

Fifthly, FATF Recommendation 8 counsels that measures for non-profit organizations be proportionate and not complicate the activities of legitimate organizations. Proportionality should be considered concomitantly with a risk-based approach. When taken into account that the National Risk Assessment is not shared with the public, it does not make sense to what extent the imprisonment and administrative fines aggravated by the amendments made for the Law of Associations and Law on Aid Collection will eliminate the contingent risks. It would be incompatible with the principle of proportionality to impose these sanctions to organizations that bear low risk or no risk at all as the non-profit organization sector is not segregated in consideration of risk basis.

Sixth, measures against non-profit organizations are limited only to combating terrorism financing. Pursuant to the amendment of Article 3 of the Law on Associations which included convictions for production and trade of drugs or stimulants and money laundering of asset arising from crime, the enforcement regarding the restraints on the right to establish an association went beyond the scope of FATF Recommendation 8.

Seventh, the provisions on the freezing of assets of the Counter-Terrorism Financing Law are in line with UNSC Resolutions and FATF Recommendations. In compliance with the targeted financial sanctions regime, the decision to freeze assets is not necessarily based on a court decision. Therefore, the decision to freeze the internal assets of individuals and organizations pursuant to the amendments made on the Law No. 7262 by the Minister of Interior and the Minister of Treasury and Finance does not constitute a contradiction per se. Furthermore, acknowledgement of the reasonable suspicion (doubt) criteria and granting individuals or entities the right to appeal against the decision are also in concordance with FATF Recommendations.

Finally, the obligation to comply with UNSC Resolutions and FATF Recommendations do not take precedence of human rights law obligations. Turkey must enforce the said decisions and recommendations in compliance with European Convention on Human Rights and freedom of association, right to a fair trial and obligation to respect property rights arising from International Covenant on Civil and Political Rights. UNSC and FATF also reiterate that the measures to be taken must be compatible with human rights.

Table: UNSC Resolutions and FATF Recommendations Regarding Law No. 7262

| Law No. 7262 | UNSC Resolutions | FATF Recommendations | | Subject |
|-----------------------|---|---------------------------|-----------------------------|--|
| | | After 2012 | Before 2012 | |
| Article 1-6 | UNSC Resolutions No. 1718 (2006), 2087 (2013), 2094 (2013) and 2270 (2016) regarding Democratic People's Republic of Korea UNSC Resolution No. 2231 (2015) on Islamic Republic of Iran | Recommendation 7 | - | Targeted financial sanctions related to the proliferation of weapons of mass destruction |
| Article 7-17 | - | Recommendation 8 | Special Recommendation VIII | Non-profit organizations |
| Article 18 and 24 | - | Recommendation 4 | Recommendation 3 | Confiscation and temporary measures |
| Article 19, 35 and 36 | - | Recommendation 5 | Special Recommendation II | Terrorism financing offense |
| Article 20 | - | Recommendations 22 and 23 | Recommendation 12 and 16 | Non-financial businesses and professions |
| Article 21 | - | Recommendation 10 | Recommendation 5 | Customer due diligence (and record keeping) |
| Article 22 | - | Recommendation 18 | Recommendation 15 and 22 | Internal controls and foreign branches and subsidiaries |
| Article 23 and 25 | - | Recommendation 35 | Recommendation 17 | Sanctions |
| Article 27-34 | - | Recommendation 24 | Recommendation 33 | Transparency and beneficial ownership of legal persons |

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| <p>Article 35 and 37-42</p> | <p>UNSC Resolutions No. 1267 (1999), 1988 (2011), 1989 (2011) and the consequent resolutions regarding Taliban, Al Qaeda and Osama bin Laden</p> <p>UNSC Resolution No. 2253 (2015) on ISIS</p> <p>UNSC Resolution No. 1373 (2001) covering general sanctions</p> | <p>Recommendation 6</p> | <p>Special Recommendation III</p> | <p>Targeted financial sanctions related to terrorism and terrorist financing</p> |
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