



Weaponization of Anti-Terror Financing Measures

The Turkish government's new transnational repression tool to silence its critics



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I. Introduction

1. This stakeholder submission is related to the Turkish government's abuse of anti-terrorism laws and tools which, in the ordinary course of events, are supposed to be used to fight the financing of terrorism. Since 2014, the year that a pro-government group called Unity in the Judiciary¹ won the election for the Council of Judges and Prosecutors, the Turkish authorities have constantly abused the country's overly broad anti-terrorism laws for political reasons. This practice peaked following the 2016 coup attempt, and during the ensuing state of emergency regime, in which more than 1.5 million individuals were put under criminal investigation, 622,646 people have been subjected to criminal investigation over alleged membership of an armed terrorist organisation, and 301,932 of these have been arrested by the police.² According to the Turkish Justice Ministry's statistics, there has been a steady increase in the use of the main anti-terrorism provision, namely, Art. 314 of the Turkish Penal Code (TPC), by the country's public prosecutors. These statistics highlight that, in total, Turkish prosecutors filed more than 420,000 charges under Art. 314 TPC between 2013 and 2020, and more than 265,000 individuals were sentenced under the same Article between 2016 and 2020.³
2. In a 2020 decision, The Grand Chamber of the European Court of Human Rights found that this provision lacked the quality of law and was not foreseeable.⁴ Not only has the right to liberty been breached through this blatant human rights violation, but also the right to property of hundreds of thousands of individuals has also been breached, by both administrative and judicial measures. According to a report entitled 'The Erosion of Property Rights in Turkey', after 2016, a total of USD 32 billion worth of assets were confiscated or taken over by the Government, under the pretext of fighting terrorism.⁵ Furthermore, a total of 213,696 estates have been frozen at the request of the Executive or the Judiciary, with the same pretext.⁶

II. Turkish government's transnational repression campaign

3. According to Freedom House, transnational repression is a phenomenon which is becoming the new "normal". This is a situation in which authoritarian states reach across national borders to silence dissent amongst the diaspora and exiled communities.⁷ Accusing the targets of terrorism has been one of the pretexts that States have used during such campaigns. Freedom House says that in 58% of 689 cases of transnational repression, States accused the victims of terrorism. The report concludes that States have deployed four main tactics, which include; direct attacks, co-opting other countries, mobility controls, and threats from a distance.
4. After 2016, the Turkish Government embarked on a transnational repression campaign "*that mirrored its domestic crackdown*"⁸, so even those who fled the country are no lon-

1 <https://peacejustice.eu/report-witch-hunts-judicial-club-platform-unity-judiciary/>

2 Anadolu Ajansı, <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>

3 Abuse of the Anti-Terrorism Provision by Turkey is steadily increasing (2013-2020) <https://arrestedlawyers.org/2021/06/10/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/>

4 Selahattin Demirtaş v. Turkey (No. 2), Application no. 14305/17, <http://hudoc.echr.coe.int/fre?i=001-207173>

5 The Erosion of Property Rights in Turkey (April 27, 2020). SSRN: <https://ssrn.com/abstract=3586084>

6 Ibid.

7 https://freedomhouse.org/sites/default/files/2021-02/Complete_FH_TransnationalRepressionReport2021_rev020221.pdf

8 Ibid, <https://www.foreignaffairs.com/articles/turkey/2018-01-29/remarkable-scale-turkeys-global-purge>

ger safe from persecution, due to this crackdown. Until recently, Turkey's crackdown has involved extradition requests, mobility control through the abuse of Interpol's notice system, and the Stolen and Lost Travel Document database, as well as illegal rendition, which has been carried out on its own or in co-operation with other countries. Since 2016, the expatriation of Gülenists has been on the top of Turkey's international political agenda and, to this end, Turkey has sent more than 1,000 extradition requests to 109 countries⁹. However, there is no single instance where the court of a respondent state has granted Turkey's extradition requests. The courts in Greece, Germany, the United Kingdom, Brazil, Romania, Bosnia, Poland, Montenegro, and Sweden have refused extradition requests sent by the Turkish authorities, either due to the political nature of the accusations, due to their failing to pass a dual criminality test, or due to the risk of being subjected to torture or ill-treatment in Turkey.^{10 11} Similarly, Interpol has so far rejected over 830 Red Notice requests from Turkey, due to their political nature/motive.^{12 13} Yet Turkey has been successful in the expatriation of over 100 individuals through illegal renditions (without the due process of law), either on its own, or in co-operation with other countries, including Kenya, Albania, Azerbaijan, Afghanistan, Cambodia, Gabon, Kosovo, Kazakhstan, Lebanon, and Pakistan.¹⁴

5. In 2021, Turkey added a new tool to its transnational repression toolbox, the weaponisation of international anti-terror financing measures. This will be explained in detail in the following chapters.

III. Brief background information

6. In 2011, Turkey was placed onto the Grey List by the Financial Actions Task Force,¹⁵ due to the deficiencies within its legal framework and its inefficient practices in relation to money laundering and anti-terrorism financing. To remedy the situation, Turkey enacted the Law on the Prevention of the Financing of Terrorism (Law No. 6415) in 2013¹⁶ which resulted in its removal from the Grey List in 2014.
7. In December 2019, the FATF warned Turkey about its non-compliance with several FATF recommendations, especially those that are related to the freezing of assets linked to terrorism and the proliferation of weapons of mass destruction.¹⁷ In a bid to avoid being placed onto the Grey List by FATF, Turkey amended its Law on the Prevention of the Financing of Terrorism in January, 2021.
8. Of these amendments, the most relevant provision for this submission is that stipulating that regarding the "Requests to Foreign Countries for the Freezing of Assets and the Procedures for Assets in Turkey" (Article 7 of Law no. 6415):

9 <https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/firari-fetoculer-icin-109-ulkeyle-iade-trafigi-yurutuldu/2303943>

10 https://arrestedlawyers.files.wordpress.com/2020/02/extradition-to-turkey-one-way-ticket-to-torture-unfair-trial_.pdf

11 <https://www.turkishminute.com/2022/04/13/ion-out-of-sight-not-out-of-reach/>

12 <https://www.hurriyetdailynews.com/interpol-rejects-turkeys-773-red-notice-requests-on-feto-official-165277>

13 <https://kronos35.news/tr/interpol-daire-baskani-sevgel-kirmizi-bulten-taleplerimiz-feto-teror-orgutu-olarak-gorulmedigi-icin-red-dediliyor/>

14 https://freedomhouse.org/sites/default/files/2021-02/FH_TransnationalRepressionReport2021_rev020221_CaseStudy_Turkey.pdf

15 The Financial Action Task Force is an intergovernmental organisation founded in 1989 on the initiative of the G7 to develop policies to combat money laundering. In 2001, its mandate was expanded to include terrorism financing.

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

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

17 <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-turkey-2019.html>

Requests to Foreign Countries for the Freezing of Assets and Procedures for Assets in Turkey

Article 7 – (1) (Amended:27/12/2020-Art.7262/38.) Apart from the subjects regulated in Articles 5 and 6, the Assessment Commission, based on reasonable grounds to demonstrate that the person, institution or organisations have committed the acts within the scope of Articles 3 and 4, may decide to make a suggestion to the President in regard to requesting the freezing of their assets in foreign countries.

(2) The decision of the President regarding the requests for the freezing of assets that are made to foreign countries, shall be notified to the requested country by the Ministry of Foreign Affairs.

(3) (Added: 27/12/2020-Art.7262/38) Apart from the subjects regulated in Articles 5 and 6, the Ministers of the Treasury, Finance and Internal Affairs may together decide, upon the suggestion of the Assessment Commission, upon the assets of the person, institution or organisations that have, based on reasonable grounds, committed the acts within the scope of Articles 3 and 4, following their proscription by the courts as a terrorist organisation which is located in Turkey having their assets frozen or, provided that the reasonable grounds have ceased to exist, to remove the freezing of such assets .

(4) (Added:27/12/2020-Art7262/38) The Decision to freeze assets, which was given in accordance with Paragraph 3, shall be immediately implemented and shall, no more than 48 hours later, be submitted for approval to the Ankara Assize Court, which shall be designated by the Council of Judges and Prosecutors. The Court, within 5 days, shall, following its consideration as to the existence of reasonable grounds, decide whether to hold or dismiss the decision to freeze assets, and notify MASAK of its decision. The decision of the court may be appealed against in accordance with the provisions of the Criminal Procedure Code.

(5) (Added:27/12/2020-Art.7262/38) The Assessment Commission shall, starting from the publication of the decision to freeze assets that are located in Turkey, assess the existence of reasonable grounds at six months intervals and submit its suggestion to the relevant ministers.

(6) (Added:27/12/2020-Art.7262/38) Any requests by relevant persons concerning the repeal of a decision to freeze assets shall be made to the Assessment Commission. The Commission shall submit to the relevant ministers its suggestions as to the requests. Requests which are considered inadmissible shall, in accordance with Paragraph 4. be referred to the relevant court for consideration.

(7) (Added:27/12/2020-Art.7262/38) In a case wherein, in accordance with Paragraph 3, a decision for the freezing of assets that are located in Turkey is given, MASAK shall decide whether to make a denunciation with a request for initiating an investigation about the relevant persons, in accordance with the Criminal Procedure Code. The decisions given following an investigation or prosecution shall be sent to MASAK for submission to the Assessment Commission.

9. After this amendment, the Government adopted an asset-freezing decree in regard to 377 individuals, in April, 2021. Of those 377 people, 205 are linked to the Gülen Movement, while the remaining 172 are linked to the Kurdistan Workers' Party's (PKK), the Revolutionary People's Liberation Party/Front (DHKP/C), and ISIL.¹⁸ However, In November, 2021, the FATF once again placed Turkey on to its Grey List, and the FATF president said *"Turkey needs to show it is effectively tackling complex money laundering cases, and show it is pursuing terrorist financing prosecutions...and prioritising cases of U.N. designated terrorist organisations, such as ISIL and al Qaeda"*, and added that FATF was aware of human rights organisations' concern over Turkey's treatment of its civil society.¹⁹ In December, 2021, Turkey adopted another asset-freezing decree targeting 770 real and legal persons,^{20 21} and, of those, 455 are linked to Gülen Movement.

IV. Overview of the asset freezing decisions adopted in April and December, 2021

10. These two decisions targeted the Gülen Movement, the Kurdistan Workers' Party (PKK), the Revolutionary People's Liberation Party/Front (DHKP/C), and ISIL. While, PKK, DHKP/C and ISIL are internationally designated as terrorist organisations, there is no country other than Turkey which regards the Gülen Movement as a terrorist organisation. Yet, of the 1147 targeted persons, 670 were targeted over their alleged affiliation with the Gülen Movement. Those 670 persons included journalists, academics, authors, teachers, and lawyers, most of whom have been granted asylum by democratic Western countries because of the politically-motivated persecution inflicted on them by the Turkish government. For instance, the second Decree, dated 20th December 2021, targeted 34 journalists who are members of the International Journalists' Association, based in Brussels. Of those 34 journalists, 22 are still practising their profession abroad. Targeted journalists currently live in the USA, Germany, The Netherlands, The United Kingdom, Sweden, and Canada. The first Decree, dated 7th April, 2021, also targeted journalists, columnists, authors and academics living abroad.
11. Those targeted journalists are vocal critics of the Turkish government, and they are also documenting the human rights violations and corruption cases that are taking place in Turkey. For instance, the journalist Cevheri Guven, with 450,000 subscribers on his Youtube channel and 222,000 followers on Twitter, provides wide coverage of the torture, arbitrary imprisonment, and corruption cases taking place in Turkey. Similarly, the journalist Sevinc Ozarslan, of Bold Media (which has 385,000 subscribers on Youtube), covers the torture and the imprisonment of women. The Netherlands-based journalist Basri Dogan, who was awarded the Royal Order of the Netherlands in 2020, is one of the targeted journalists.²² The journalist Mehmet Cerit, who is editor in chief of a Dutch newspaper called De Krant Tekening, was also targeted by the Turkish government.²³ Currently, Sweden-based journalist and editor in chief of the Nordic Monitor, Abdullah Bozkurt²⁴, who covers radicalisation in Turkey and the Turkish government's relationship with jihadist groups widely, and who also suffered a physical assault

18 <https://stockholmcf.org/turkey-freezes-assets-of-377-people-organizations-on-terror-charges/>

19 <https://www.reuters.com/business/finance-watchdog-grey-lists-turkey-threat-investment-2021-10-21/>

20 <https://www.reuters.com/markets/europe/turkey-freezes-assets-770-individuals-us-based-foundation-2021-12-24/>

21 <https://www.resmigazete.gov.tr/eskiler/2021/12/20211224-16.pdf>

22 <https://internationaljournalists.org/journalist-basri-dogan-received-the-royal-order-of-the-netherlands/>

23 <https://dekanntekening.nl/>

24 <https://www.indexoncensorship.org/2018/02/turkey-reporter-stayed-one-step-ahead-of-crackdown/>

in 2020²⁵, is amongst those targeted with the Decree of 20th December, 2021. Another Nordic Monitor journalist, Levent Kenez, Turkey's request for whose extradition requests was recently dismissed by the Swedish courts, due to its political nature and lack of merit²⁶, is also one of those targeted by the Decree of 20th December 2021. Another, currently Sweden-based journalist and academic, Bulent Kenes, who is the author of a book entitled 'A Genocide in the Making', has also been targeted by the Turkish government.

V. Purpose of the asset freezing decisions adopted in April and December, 2021

12. The financial repression of journalists and other government critics has long been in the repression toolbox of the Turkish government. In December, 2016, the Istanbul Criminal Peace Judgeship froze the assets of 54 journalists in a single order.²⁷ As mentioned above, a total of USD 32 billion worth of assets were confiscated, or taken over by the Government, with the pretext of fighting terrorism, and a total of 213,696 estates have been frozen at the request of the Executive or of the Judiciary, with the same pretext.²⁸ The very same journalists that were targeted with the Istanbul Criminal Peace Judgeship's order of December, 2016, have now been targeted with an Administrative Decree. As any assets of theirs within Turkey have already been seized or frozen, as per a judgeship order, there is no need for an Administrative Decree to do the same. That being said, it is clear that the two administrative decrees concerned, which were enacted in 2021, were aimed at persecuting journalists abroad by exploiting the international mechanism on fighting terrorist financing.

a. Amendment to Article 7 of Law no. 6415

13. Which this amendment, dated 27th December 2020, Turkey introduced a new mechanism through which to send requests for the freezing of assets to foreign countries.

Article 7 – (1) (Amended:27/12/2020-Art.7262/38.) Apart from the subjects regulated in Articles 5 and 6, the Assessment Commission, based on reasonable grounds that the person, institution or organisations have committed the acts within the scope of Articles 3 and 4, may decide to make suggestion to the President on requesting the freezing of their assets in foreign countries.

(2) The decision of the President regarding the requests for the freezing of assets made to foreign countries shall be notified to the requested country by the Ministry of Foreign Affairs.

14. This new administrative mechanism shows the Turkish government's clear intention of targeting those abroad. It has therefore adopted two Decrees against those living

²⁵ <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/sweden-exiled-turkish-journalist-attacked-in-stockholm.html>
<https://cpj.org/2020/09/exiled-turkish-journalist-abdullah-bozkurt-attacked-in-stockholm/>

"I think this attack was targeted and is part of an intimidation campaign against exiled Turkish journalists with the clear message that we should stop speaking up against the Turkish government," Bozkurt told CPJ. *Nordic Monitor* frequently publishes articles that are critical of the Turkish President, Recep Tayyip Erdoğan, as well as publishing allegations of malfeasance by Turkish diplomats and intelligence agents, according to CPJ's review of [the outlet's recent coverage](#).

²⁶ <https://nordicmonitor.com/2021/12/swedish-supreme-court-rejects-turkeys-request/>

²⁷ <https://cpj.org/2016/12/turkey-crackdown-chronicle-week-of-december-18/>

²⁸ The Erosion of Property Rights in Turkey (April 27, 2020). SSRN: <https://ssrn.com/abstract=3586084>

abroad whose assets in Turkey have already been seized by the judicial authorities. (See: §12, §§18-22)

b. Using influence on foreign financial and financial intelligence institutions

15. There are 54 banks in Turkey and, of those, 21 are foreign banks.²⁹ There are also 27 authorised payment institutions³⁰ and 29 authorised electronic money institutions.³¹ All of these are subject to Turkish laws and regulations and are inspected by The Banking Regulation and Supervision Agency (BDDK), the Central Bank and the Financial Crimes Investigation Board (MASAK).³²
16. There are also several multinational financial intelligence and due diligence companies that have branches in Turkey. For instance, multinationals such as Refinitiv-World Check and Lexis-Nexis have branches or partners in Turkey, who collect and process data, including the personal data of individuals, and who share it with their customers across the world.
17. Through these methods, the data on the Turkish authorities' political persecution measures against its critics are included in the databanks of these banks and companies, and they are transferred abroad and can be incorporated into databases in foreign countries. This issue will be explained in detail below, based on real incidents which have taken place. (See: §§18-22)

VI. Findings of a survey conducted for this report: Consequences of the asset freezing decisions adopted in April and December, 2021

18. Within the scope of this report, we conducted a survey with 34 individuals who were targeted by the use of the aforementioned two Decrees, and who are currently living abroad. Of those, 13 participants are academics, 6 are journalists in exile, 2 are human rights defenders (the staff of human rights NGOs), 1 is a lawyer, 2 are university students, and 10 are from other professions. 20 participants have been recognised as political refugees, 10 are immigrants living abroad due to the fear of political persecution, 4 are dual national Turkish citizens. 17 participants live in the European Union, 9 in the United Kingdom and 8 in the USA and Canada.
19. 17 participants out of the 34 do not have any assets in Turkey, while the other 17 do. 12 of these 17, who have assets in Turkey, have already been subjected to asset freezing measures by judicial warrants. If the purpose of such action was not related to targeting them abroad, there would therefore be no point in including 29 of those 34 participants in actions taken under these Decrees, as the individuals either do not have any assets in Turkey or have already been subjected to asset freezing measures by judicial warrants.
20. 19 participants stated that, immediately after the respective Decree became public, they faced one or more adverse outcomes. 9 participants were denied the opening of a bank account, the bank accounts of 3 participants were closed by their banks, the credit cards of 2 were cancelled, and 3 participants' accounts on online payment platforms were closed. The

²⁹ https://www.tbb.org.tr/en/Content/Upload/Dokuman/189/Banks_in_Turkey_2020.pdf

³⁰ <https://www.tcmb.gov.tr/wps/wcm/connect/EN/TCMB+EN/Main+Menu/Core+Functions/Payment+Services/Payment+Institutions>

³¹ <https://www.tcmb.gov.tr/wps/wcm/connect/EN/TCMB+EN/Main+Menu/Core+Functions/Payment+Services/Electronic+Money+Institutions>

³² <https://www.tcmb.gov.tr/wps/wcm/connect/EN/TCMB+EN/Main+Menu/Core+Functions/Payment+Services/Payment+Services+Overview>

German newspaper *Die Welt* reported that Deutsche Bank had closed the accounts of some of their customers who had Turkish origins, for the same reason.³³ Further, 5 participants' banks requested an explanation in order to be able to decide whether to keep him/her as a client.

21. Most of the participants said that his/her bank, or the online payment platforms, became aware of the listing under these Decrees through the Worldcheck Refinitiv and Lexis Nexis databases. Some participants stated that the Turkish embassy in his/her country visited the banks and informed them about the Decrees.
22. These findings show that the Turkish government uses anti-terrorist fighting tools to disguise its transnational political repression. What is worse, is that, although the Turkish Foreign Affairs Ministry has not been able to successfully deceive foreign governments, it has been successful in influencing private entities, such as banks and other financial institutions.

VII. Reports on the amendments to the Law on the Prevention of the Financing of Terrorism (Law No. 6415)

a. Amnesty International Report: Weaponising Counterterrorism | Turkey Exploits Terrorism Financing Assessment to Target Civil Society³⁴

23. The report said:

Law No. 6415 established the offence of the "financing of terrorism", and provided for the freezing of assets with the aim of preventing such financing. According to this law, amongst other things, it is forbidden to collect or provide funds for acts set forth as being terrorist offences, within the scope of Turkey's Anti-Terrorism Law No. 3713 of 12th 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. ... The constellation of counterterrorism laws currently in force in Turkey includes unacceptably broad definitions of "terrorism" and "terrorist offender." As UN Special Rapporteurs noted in a 26th August, 2020, communication to the government, Turkish law defines "terrorism" in terms of an organisation's political aims, rather than by the specific conduct of an offender, i.e., encompassing specific intent to cause death or serious bodily harm. 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 the relevant articles of the Turkish Penal Code, Article 7/2, which criminalises "making propaganda for a terrorist organisation", ... The provisions of the Turkish Penal Code criminalising terrorism-related offences, such as Article 314 (membership of a terrorist organisation), 220/6 (committing a crime in the name of a terrorist organisation without being its member), and 220/7 (assisting a terrorist organisation without being its member) are routinely used by the Turkish authorities to convict individuals without clear and convincing evidence that the alleged criminal acts have been committed. Prosecutors

³³ <https://www.welt.de/wirtschaft/article238072823/Deutsche-Bank-kuendigt-Konten-von-Erdogan-Gegnern-in-Deutschland.html>

³⁴ Weaponizing Counterterrorism: Turkey Exploits Terrorism Financing Assessment to Target Civil Society <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>

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 recognisable criminal offence, or when it must be directly linked to the planning or commission of a recognisable criminal offence. In most cases, prosecutors do not provide evidence demonstrating any link to a terrorist organisation, nor do they attempt to prove that the accused has committed a criminal offence constituting “assistance to a terrorist organisation”. In the last five years, and as the examples below reflect very well, 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.

24. The same Amnesty International report also underlined that there was no possible remedy in Turkey for the victims of the abusive misuse of anti-terror laws by the Turkish authorities:

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 criticised 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. 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 being related to Article 5 (the right to liberty and security) in 16 judgments; Article 6 (the right to a fair trial) in 23 judgments; Article 10 (the freedom of expression) in 31 judgments; and Article 11 (the freedom of assembly and association) in 11 judgments.

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 the right to an effective appeal were also routinely violated in criminal prosecutions and summary dismissals. 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. 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” organisations. ... 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. 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. Their dismissals did not include specific evidence nor details of their alleged wrongdoing. Amongst 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”

organisations without either 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 the liberty and security of person, as well as the rights to work and freedom of movement.

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 the adoption of 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 "normalised" the use of exceptional measures, granting to themselves a vastly expanded array of powers that are routinely used to target civil society actors and others, including judges and workers whom they consider opponents. In 2017, amendments to the Turkish Constitution included changes to the composition of, and procedure for appointing members of the Council of Judges and Prosecutors. 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. 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.

25. Amnesty International Turkey's conclusions are correct. The Ankara 4th Heavy Penal Court that was vested with the power to review administrative asset freezing decrees, rubber-stamped the decrees of April and December, 2021, that are the subjects of this study, on 9th April, 2021³⁵ and 29th December, 2021³⁶. In the parts of the decision that provide the justification for the Court's conclusion, bearing in mind the fact that this is a decision in which the rights of more than 1,100 individuals were being considered, only ran to about one and a half pages, in which the Court was mainly citing the legal provisions. The individual's objections against the approval decision were summarily dismissed by Ankara 5th Heavy Penal Court with a half page decision, and without any justification.³⁷ The individuals' request to obtain a copy of the case files, in order to effectively use their right to appeal, was also dismissed by the Ankara 4th Heavy Penal Court.

b. Report of Third Sector Foundation of Turkey (TUSEV)

26. Their report, dated February 2021, concluded that Turkey's practice, with regard to anti-terrorist financing policies, were not proportionate and they disrupted legitimate civil activities, and therefore it was in breach of FATF recommendations.³⁸

³⁵ Ankara 4th Heavy Penal Court, 2021/102, 09.04.2021

³⁶ Ankara 4th Heavy Penal Court, 2021/355, 29.12.2021

³⁷ Ankara 5th Heavy Penal Court, 2021/239, 20.04.2021

³⁸ An Analysis of The Application of Financial Action Task Force Recommendations and Its Implication On Civil Society in Turkey, https://www.tusev.org.tr/userfiles/images/MaliEylemGorevGucuSivilToplumEN_26022021.pdf

VIII. International Legal Framework on Anti-terrorism laws

27. Terrorism attacks the values that lie at the heart of the Charter of the United Nations: respect for human rights; the rule of law; rules of war that protect civilians; tolerance among peoples and nations; and the peaceful resolution of conflict.³⁹ History has proven that there is no country in the world that is completely safe from terrorism, no matter how powerful the security apparatuses it has are. International cooperation in fighting terrorism is therefore required, but the lack of any agreed international definition for the term '*terrorism*' makes this cooperation ineffective. Despite several attempts by the United Nations, the Council of Europe, and the European Union, the initiative to reach a universal consensus on the definition of the term '*terrorism*' has failed.

Attempts of the United Nations to give a definition

28. The International Convention for the Suppression of the Financing of Terrorism, of 1999, defines terrorism as "any . . . act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act."

29. The United Nations Security Council resolution of 2004 elaborates upon this definition, stating that terrorist acts are "criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or the taking of hostages, with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, to intimidate a population or compel a government or an international organisation to do or to abstain from doing any act."⁴⁰ The UN General Assembly reaffirmed this definition in January, 2006 (Resolution 60/43), defining terrorist acts as "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes."⁴¹

Attempts at definition by the European Union

30. The European Convention on the Suppression of Terrorism, of 1977, does not provide a definition of terrorism. To remedy this absence, the Council of the European Union's Framework Decision on combatting terrorism, of 13th June, 2002, put forward guidance on the definition of a terrorist offence.⁴² Article 1 of the Framework Decision states that terrorist offences are offences under national law, which, given their nature or context, may seriously damage a country or an international organisation and that are committed with the aim of: (i) seriously intimidating a population, or (ii) unduly compelling a Government or international organisation to perform or abstain from performing any act, or (iii) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, shall be deemed to be terrorist offences: (a) attacks upon a person's life which may cause death; (b) attacks upon the physical integrity of a person; (c) kidnapping or hostage taking; (d) causing extensive destruction to a Government or public

39 A more secure world: our shared responsibility: Report of the High-level Panel on Threats, Challenges and Change, (Para,148) https://www.un.org/ruleoflaw/files/gaA.59.565_En.pdf

40 Resolution 1566 (2004) Adopted by the Security Council at its 5053rd meeting, on 8th October, 2004. <https://www.un.org/ruleoflaw/files/n0454282.pdf>

41 UNGA Resolution, A/RES/60/43, 8th December, 2005, Measures to eliminate international terrorism

42 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0475>

facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in major economic loss; (e) seizure of aircraft, ships or other means of public or goods transport; (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons; (g) release of dangerous substances, or causing fires, floods or explosions the effect of which is to endanger human life; (h) interfering with or disrupting the supply of water, power or any other fundamental natural resource, the effect of which is to endanger human life; (i) threatening to commit any of the acts listed in (a) to (h).

The Council of Europe

31. The Council of Europe's Convention on the Prevention of Terrorism of 2005 states "acts of terrorism have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform, or abstain from performing, any act, or to seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation."⁴³

Observing human rights and freedoms is an integral part of combatting terrorism

32. Acts of terrorism are violations of human rights and freedoms. Acts of terrorism "ai[m] at the destruction of human rights, fundamental freedoms and democracy [...] undermin[e] pluralistic civil society and hav[e] adverse consequences on the economic and social development of States".⁴⁴ Acts of terrorism "endanger innocent lives and the dignity and security of human being everywhere, threaten the social and economic development of all States, and undermine global stability and prosperity"⁴⁵.
33. States have a duty to protect individuals under their jurisdiction from acts of terrorism. States are under the obligation to criminalise and prevent terrorist acts, as well as to bring those responsible for such acts to justice. However, States should do so by observing the law and respecting human rights. The UN General Assembly solemnly reaffirmed the centrality of respect for human rights to counter-terrorism measures and has stated that *effective counterterrorism measures and the protection of human rights are not conflicting goals, but are complementary and mutually reinforcing*.^{46 47} In The United Nations Global Counter-Terrorism Strategy, which was adopted by the General Assembly Resolution 60/288, set out measures to ensure respect for human rights for all, and the rule of law was determined as being one of the four pillars of combatting terrorism.⁴⁸

43 <https://rm.coe.int/16808c3f55>

44 UN General Assembly Resolution 48/122 (1993).

45 UN Security Council Resolution 1377 (2001).

46 A/RES/60/288, 2006, the Global Counter-Terrorism Strategy

47 In larger freedom: Towards development, security, and human rights for all; report of the Secretary-General, U.N. Doc. A/59/2005 (2005).

48 https://www.unodc.org/documents/terrorism/Publications/Training_Curriculum_Module2/17-04123_eBook_FINAL.pdf

No punishment without law, the quality of law and foreseeability

34. The principle of no punishment without law that is envisaged in Article 11 of the Universal Declaration of Human Rights⁴⁹, Article 15 of ICCPR⁵⁰, Article 7 of ECHR, is one of the human rights that States should observe while criminalising and prosecuting terrorism and terrorism-related acts. Stipulating that a certain action will constitute an offence does not mean that the principle of legality has been respected. The law in question must have the quality of law⁵¹, meaning that it must be both accessible and foreseeable in order to prevent any arbitrariness by the domestic courts, and it must be sufficiently clear for individuals to be able to conduct themselves in accordance with its commands. To provide an effective safeguard against arbitrary prosecution, conviction and punishment, laws imposing criminal punishment must be written in a way that gives “fair notice” of what conduct is prohibited.^{52 53 54} The concept of “law” implies “qualitative requirements, including those of accessibility and foreseeability. It follows that the offences and the relevant penalties must be clearly defined in law. This requirement is satisfied when the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, or by way of appropriate legal advice, to a degree that is reasonable in the circumstances, what acts and omissions will make him criminally liable.”⁵⁵ Secondly, where there is judicial development of the law, any changes must be predictable.⁵⁶
35. The European Court of Human Rights, The UN Human Rights Committee, the Special Rapporteur on Human Rights while Countering Terrorism, and the High Commissioner for Human Rights have frequently expressed their concern that the counter-terrorism legislation of many States does not meet the requirements of accessibility and foreseeability. In reviewing the counter-terrorism legislation of Member States they have, for instance, expressed the following criticisms:
- There is a: “Lack of precision in the particularly broad definitions of terrorism and terrorist activity; ... the State party should: Adopt a narrower definition of crimes of terrorism limited to offences that can justifiably be equated with terrorism and its serious consequences.”⁵⁷
 - “The vaguely defined crime of collaboration [with terrorist organisations] runs the risk of being extended to include behaviour that does not relate to any kind of violent activity” and “the vagueness of certain provisions on terrorist crimes in the ... Penal Code carries with it

49 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

50 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

51 Insufficient “quality of law” concerning the definition of the offence and the applicable penalty constitutes a breach of Article 7 of the Convention (Kafkaris v. Cyprus [GC], §§ 150 and 152).

52 https://www.unodc.org/documents/terrorism/Publications/Kenya%20HR%20manual/Kenya_Manual_e-book.pdf

53 See, e.g., ECtHR, Alimuçaj v. Albania, Application No. 20134/05, Judgment of 7 February 2012, paras. 149-151.

54 https://www.echr.coe.int/Documents/Guide_Art_7_ENG.pdf

55 Cantoni v. France, § 29; Kafkaris v. Cyprus [GC], § 140; Del Río Prada v. Spain [GC], § 79)

56 https://www.echr.coe.int/Documents/Research_report_quality_law_requirements_criminal_law_Art_7_ENG.PDF

However clearly drafted a legal provision may be, in any system of law, there is an inevitable element of judicial interpretation. The role of adjudication vested in the courts is precisely given in order to dissipate such interpretational doubts as remain (Kafkaris v. Cyprus [GC], § 141). The progressive development of the criminal law through judicial law-making is a well-entrenched and necessary part of legal tradition in the States that are Parties to the Convention. Article 7 of the Convention cannot be read as outlawing the gradual clarification of the rules of criminal liability through judicial interpretation from case to case, provided that the resultant development is consistent with the essence of the offence and could reasonably be foreseen (S.W. v. the United Kingdom, § 36; Streletz, Kessler and Krenz v. Germany [GC], § 50; Kononov v. Latvia [GC], § 185; Norman v. the United Kingdom, §§ 60 and 66). 36. The foreseeability of judicial interpretation relates both to the elements of the offence (Pessino v. France, §§ 35-36; Dragotoniu and Militaru-Pidhorni v. Romania, §§ 43-47; and Dallas v. the United Kingdom, §§ 72-77) and to the applicable penalty (Alimuçaj v. Albania, §§ 154-162; Del Río Prada v. Spain [GC], §§ 111-117).

57 Concluding Observations of the Human Rights Committee, Russian Federation (CCPR/C/RUS/CO/6), 29 October 2009, Para. 3.

the risk of a 'slippery slope', i.e., the gradual broadening of the notion of terrorism to acts that do not amount to, and do not have sufficient connection to, acts of serious violence against members of the general population."⁵⁸

- "that the offence of the 'encouragement of terrorism' has been defined ... in broad and vague terms."⁵⁹
36. In common law, the "void for vagueness" doctrine was established to ensure the requirement that the foreseeability of criminal laws is observed. The United States Supreme Court said: "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application."
37. The lack of a universal definition for terrorism facilitates the politicisation and misuse of the term "terrorism" to curb non-terrorist, or even legal activities. Some states have anti-terror legislation that is very vague and overly broad. By misusing, in some cases even weaponising anti-terrorism laws, States violate the rights and freedoms of individuals. The vague and overly broad definitions of terrorism violate the principles of no punishment without law, and the prohibition of retrospective punishment. These problems ring true for Turkey's main anti-terrorism provisions.

IX. Abuse of anti-terrorism laws by the Turkish government

38. In 2014, Turkey's AKP government launched a crackdown campaign against the Gülen Movement. Since this campaign began, Turkish prosecutors have begun to misuse anti-terrorism provisions in this crackdown on the Gülen Movement and on other critics of the Government. According to the Turkish Justice Ministry's statistics, there has been a steady increase in the use by public prosecutors of Art. 314 TPC; 8,416 charges were filed under Arts. 314 TPC in 2013, 146,731 in 2017, 115,753 in 2018, 54,464 in 2019 and 33,885 in 2020. These statistics highlight that, in total, Turkish prosecutors filed more than 420,000 charges under Art. 314 TPC between 2013 and 2020, and more than 265,000 individuals were sentenced under the same Article between 2016 and 2020.⁶⁰ The statistics for 2021 are yet to be published. On 20th February, 2021, the Minister of the Interior, Süleyman Soylu, stated that 622,646 people have been subjected to criminal investigation over alleged membership of an armed terrorist organisation, because of their links with the Gülen Movement and 301,932 of these have been arrested by the

58 Report of the Special Rapporteur on Human Rights While Countering Terrorism, Spain (A/HRC/10/3/Add.2), 16th December, 2008, Paras. 9 and 52.

59 Concluding Observations of the Human Rights Committee, United Kingdom (CCPR/C/GBR/CO/6), 21st July, 2008.

60 See, Footnote.3

police (**gözetli** in Turkish).⁶¹ Consequently, Turkey has the largest population of inmates who have been convicted of terrorism-related offences, according to a Council of Europe ('COE') report which shows that more than 95% of the inmates in the COE Member States who have been sentenced for terrorism are in Turkish prisons.^{62 63}

39. In the case of *Demirtas v. Turkey* (No 2, the European Court of Human Rights (ECtHR) found that Turkey's main anti-terrorism provision was not 'foreseeable' and thus breached the Convention.⁶⁴
40. After the 2016 coup attempt, public prosecutors and courts across the country adopted a list of variables through which to determine whether an individual is a member of the Gülen Movement and thus a 'terrorist.' These variables are usually as follows:
- (i) being a depositor at Bank Asya;
 - (ii) using or downloading the Bylock messaging application;
 - (iii) analysis of social media activity and the websites visited;
 - (iv) donations made to relief organisations with alleged GM links, i.e., Kimse Yok Mu;
 - (v) being a resident or student in those schools, universities and dormitories that have been closed under the state of emergency as a result of alleged GM links, or sending children to those educational institutions;
 - (vi) subscription to GM periodicals;

cancelling their subscription to DIGITURK, a satellite television provider, as a result of its decision to end the broadcasting of seven television channels that are critical of the AKP government; being a shareholder in companies that have been dissolved/seized under the state of emergency as a result of alleged GM links; being a manager, employee, or member of a trade union, association, foundation or company that has been closed/dissolved/seized under the state of emergency as a result of its alleged GM links.

41. At this point, it is worth noting that all of those conducting such activity as that described above were all participating in/making transactions with organisations that were, at the material time, legal and operating under government licences or authorisation: the TV channels,
42. Bank Asya^{65 66}, Kimse Yok Mu⁶⁷, schools⁶⁸, universities⁶⁹ and foundations⁷⁰, and/or operating under the authorisation and inspection of the Ministry of the Interior or the Ministry of Work

61 Anadolu Ajansı, <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>

62 COE Annual Penal Statistics – SPACE I 2020, https://wp.unil.ch/space/files/2021/04/210330_FinalReport_SPACE_I_2020.pdf

63 Third party intervention by the Italian Federation for Human Rights in **the case of Saglam v. Turkey (Application no. 14894/20)**, <https://arrestedlawyers.files.wordpress.com/2021/10/third-party-intervention-by-fidu-logo-12.10.2021.pdf>

64 Selahattin Demirtaş v. Turkey (No. 2), Application no. 14305/17, <http://hudoc.echr.coe.int/fre?i=001-207173>

65 Under Turkish law, banks are founded by a special license that is issued by a regulatory public authority.

66 Asya Finance Kurumu A.S. (Bank Asya Participation Bank) was established with the approval and permission of the Council of Ministers on 11th April, 1996. Its opening ceremony was carried out with the participation of the then Prime Minister, Tansu Ciler, President Recep Tayyip Erdoğan, former President Abdullah Gül, and others members of the political and social elites. It has a license to collect taxes, and other public financial obligations, such as social security premiums, fines, etc. On 3rd May, 2015, the Banking Regulation and Supervision Board (BRSA) decided that 63 percent of the privileged share, which determines the Board of Directors of Bank Asya, would be used by the Savings Deposit Insurance Fund (SDIF), afterwards, with the decision of the funding board's announcement in the *Official Gazette*, dated 23rd July, 2016, and numbered 29779, the Bank's operating permit was canceled, its operations stopped and the bank closed.

67 Given by Parliament.

68 Under Turkish law, private schools are licensed and are inspected by the Ministry of Education.

69 Under Turkish law, private universities are founded by a law that is enacted by parliament, and therefore they have the status of being a public entity.

70 Under Turkish law, foundations are established through an order of authorisation that is adopted by a court.

and Employment. Moreover, most of those organisations had been given special titles and privileges, such as tax exemption⁷¹, public benefit association⁷², government subsidy, or an outstanding public service award.⁷³ In other words, this was all lawful activity in the exercise of rights that are protected by the ECHR.

43. Subconclusion:

- a) The Gülen Movement has not been designated as a terrorist organisation by the UN, the EU, or in any country except Turkey; and
- b) Variables used by Turkey to designate someone as a terrorist in no way fit in with any international treaties or provisions on combatting terrorism, as well as with the legal framework that has been created by the UN, the EU and the Council of Europe.

X. Unintended consequences of the FATF Standards

44. In a synopsis⁷⁴ published by FATF in October, 2021, FATF admitted that standards it had put forward resulted in unintended consequences against innocent real and legal persons. According to FATF, the themes of the unintended consequence are mainly: (1) De-risking; (2) Financial Exclusion; (3) Curtailment of Human Rights; and (4) Undue targeting of NPOs. We will consider the first three of these, since they are the most relevant to our subject.⁷⁵

De-risking	The phenomenon of financial institutions terminating or restricting business relationships with clients, or categories of clients, to avoid, rather than manage, risk, in line with the FATF's risk-based approach. ⁷⁶
Financial Exclusion	The misapplication of the FATF Standards, and, in particular, the failure to use the proportionality that is central to the risk-based approach, which can lead to, or compound, financial exclusion. FATF states that there are two main factors which contribute to financial exclusion. Firstly, implementation issues at the country or private sector level, which lead to the misapplication of the FATF Standards, and, in particular, the failure to use the proportionality that is central to the risk-based approach. Secondly, FATF and other activities do not adequately encourage authorities, the private sector and assessment teams to understand the impact of financial exclusion. The FATF Standards are primarily focused on higher risk situations, so that enhanced measures are mandatory in high risk situations, while simplified measures are optional in low risk situations. ⁷⁷

71 Given by the Cabinet of Ministers.

72 Given by the Cabinet of Ministers.

73 The Kimse Yok Mu relief organisation was given statuses relating to tax exemption, public benefit associations, and was also give an outstanding public service award by the Turkish Parliament.

74 Unintended Consequences of the FATF Standards, <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>

75 Ibid.

76 FATF clarifies risk-based approach: case-by-case, not wholesale de-risking, October, 2014, www.fatf-gafi.org/documents/documents/rba-and-de-risking.html.

77 Unintended Consequences of the FATF Standards, <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>

Curtailment of Human Rights	<p>The FATF said it had also been made aware of instances of the misapplication of the FATF Standards ... potentially as an excuse for measures with some other motivation. FATF says there are a number of ways in which the misapplication of the FATF Standards may affect due process and procedural rights, including:</p> <ul style="list-style-type: none"> – excessively broad or vague offences in legal counterterrorism financing frameworks, which can lead to the wrongful application of preventative and disruptive measures, including sanctions that are not proportionate; – issues relevant to the investigation and prosecution of terrorist financing and money laundering offences, such as the presumption of innocence and a person’s right to effective protection by the courts; and – the incorrect implementation of UNSCRs and FATF Standards in relation to due process and procedural issues for asset freezing, including the rights to review, to challenge designations, and to basic expenses.⁷⁸
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XI. Conclusion

45. The following conclusions can be drawn from the present study:

- i. FATF standards are important as a means through which to check a State’s compliance with anti-terrorist financing and money laundering standards, which help make the world a safer place; however, as FATF admitted, anti-terrorist financing and money laundering standards are prone to being intentionally abused for political purposes, and this can also result in unintended consequences.
- ii. Although money laundering is universally well defined, terrorism and its related offences, such as the financing of terrorism, do not have a universal definition. This means that there is a specific threat that such offences can be used to persecute political opponents and civil society actors. This extends outside the criminal sphere to the listing of individuals as terrorists, which, under the scheme that is presently in place in Turkey, leaves them with little opportunity to challenge such a designation, and may have serious implications for individuals’ ability to live and survive abroad
- iii. For the above reasons, the FATF standards that are properly required from States may have the consequence of being used by some States to curtail the freedom of individuals, even individuals who have escaped from those States as refugees. FATF accepts that its standards may be abusively deployed ‘as an excuse measure with another motivation’⁷⁹.
- iv. As well as having seriously detrimental effects on individuals’ rights, such abusive deployment of FATF standards can also have the opposite effect than that which was intended by

⁷⁸ Ibid.

⁷⁹ Ibid.

FATF, in that States who use broad measures to persecute their political opponents are not taking targeted measures to prevent terrorism and terrorist funding as envisaged, resulting in a lacuna in protection from these activities in those States.

- v. The FATF must take measures, not only to protect those who are under vague anti-terrorism provisions for political reasons, but also to ensure that its standards are targeted to prevent terrorism and terrorist funding, which is their fundamental aim.
- vi. Turkey's abuse of anti-terrorism measures is very well documented, as set out above.
- vii. The Gülen Movement has not been designated as a terrorist organisation by any country other than Turkey, and there is no evidence that the Turkish designation is properly made.
- viii. The variables used by the Turkish government to determine someone's membership of the Gülen Movement do not fall within the legal framework that has been put forward by the UN, the EU, and the COE, and, on the contrary, they breach the fundamental rights and freedoms that are enshrined by the UDHR, ICCPR, and ECHR. The ECtHR found that Turkey's main anti-terrorism provision was not '*foreseeable*' and thus breached the Convention.⁸⁰
- ix. The Turkish government has been abusing the interational cooperation on fighting terrorist financing to deploy it as a transnational tool of repression
- x. The Turkish government has been abusing its influence over multinational financial institutions and financial data processing companies to target dissidents living abroad.

XII. Recommendations

46. To FATF, FATF-style regional bodies, national financial conduct authorities and financial regulators:
 - i. Fully and explicitly recognise the key role played by human rights defenders and civil society actors in preventing and countering violent extremism,
 - ii. Make an unequivocal statement that FATF measures must not be used as a tool of political persecution,
 - iii. Involve human rights defenders, human rights NGOs, and bar associations as stakeholders and partners in overall actions, as well as encouraging such a participatory approach at the national level, and accept an obligation for public consultation,
 - iv. Launch the UN's universal periodic review style periodic monitoring cycle on States' compliance with FATF standards and human rights,
 - v. Initiate an 'abusers list' to name and shame those States that abuse the tools for fighting terrorist financing and money laundering for ulterior motives;
 - vi. Review states' legislations and legal provisions under the ECtHR's case law on the quality of law principle,

⁸⁰ Selahattin Demirtaş v. Turkey (No. 2), Application no. 14305/17, <http://hudoc.echr.coe.int/fre?i=001-207173>

- vii. Consider the judgment of the ECtHR and the opinions and reports of the UN human rights bodies on respective States while evaluating their compliance,
- viii. Work with human rights groups and international organisations to conduct regular reviews into States' compliance with the above,
- ix. Remind financial institutions that financial inclusion is a fundamental right,
- x. Remind financial institutions and financial data processor companies that designations about individuals should be treated with utmost caution when they are made by States that: a) are placed on the FATF's Grey List, or, b) that international tribunals or human rights bodies have found, or are reported, to be breaching human rights and freedoms, or of having vague and abusive anti-terror or AML provisions,
- xi. Remind financial institutions and financial data processor companies that designations about journalists and other human rights defenders and political refugees should be treated with utmost caution, and ensure that,
- xii. the daily life of those subjected to measures, where it appears that these are politically motivated, should not be disrupted.

47. To governments:

- i. Pass legislation to reduce the benefits of engaging in transnational repression,
- ii. Pass legislation to financially compensate individuals who are persecuted due to the abuse of anti-terrorism laws and tools,
- iii. Raise the cost of engaging in transnational repression and use more frequently targeted sanctions on those individuals who are responsible for grave human rights violations against exiles, by using transnational repression tools,
- iv. Require financial institutions and financial data processor companies to have greater transparency, to comply with fundamental rights and freedoms, and, particularly, with the presumption of innocence,
- v. Require multinational financial institutions and financial data processor companies to comply with business and human rights guidelines, particularly with those of the OECD and the UN,
- vi. Require multinational financial institutions and financial data processor companies to conduct due diligence processes in relation to human rights in relation to data that is provided by States which a) are placed on the FATF's Grey List, or, b) that international tribunals or human rights bodies have found, or that are reported to be, breaching human rights and freedoms, or having vague and abusive anti-terror or AML provisions,
- vii. Educate financial institutions to ensure that their officials understand that the mere existence of a measure adopted by a foreign country, or news articles, cannot be considered conclusive evidence of criminality.