



TURKEY'S TRANSNATIONAL REPRESSION:

**Abuse of asset freezing mechanisms
under the pretext of prevention of
terrorist financing**



About the Stockholm Center for Freedom

The Stockholm Center for Freedom (SCF) is a non-profit advocacy organization that promotes the rule of law, democracy and human rights with a special focus on Turkey.

SCF was set up by a group of journalists who were forced to live in self-exile in Sweden against the backdrop of a massive crackdown on press freedom in Turkey.

SCF is committed to serving as a reference source by providing a broader picture of rights violations in Turkey, monitoring daily developments, documenting individual cases of the infringement of fundamental rights and publishing comprehensive reports on human rights issues.

SCF is a member of the Alliance Against Genocide, an international coalition dedicated to creating the international institutions and the political will to prevent genocide.

Table of Contents

1. INTRODUCTION	3
2. LEGAL FRAMEWORK FOR ASSET FREEZING UNDER THE PREVENTION OF FINANCING TERRORISM	8
3. ABUSE OF ASSET FREEZING UNDER THE GUISE OF PREVENTION OF FINANCING TERRORISM	13
4. RIGHTS VIOLATIONS STEMMING FROM THE ASSET FREEZING DECISIONS	18
5. IMPACT OF ASSET FREEZING DECISIONS ON TURKISH NATIONALS LIVING ABROAD	21
6. CONCLUSION: LEGAL AND PRACTICAL REMEDIES	25

1. INTRODUCTION

President Recep Tayyip Erdoğan has been systematically destroying the rule of law and the fundamental pillars of Turkey's already imperfect democracy with the aim of consolidating his one-man rule. While Turkey has been experiencing a deepening human rights crisis since a coup attempt on July 15, 2016, President Erdoğan's long arm has also reached tens of thousands of Turkish citizens abroad.

Since the failed coup, the Turkish government has been carrying out an extraordinary campaign of transnational repression against its critics overseas. The methods of the government's continuing transnational repression against dissidents have been well documented by the Stockholm Center for Freedom (SCF). SCF's report on the International Criminal Police Organization (INTERPOL) system demonstrated how President Erdoğan's government has weaponized for its transnational repression the International Notice System to target political opponents.¹ Another SCF report published in October 2021 further detailed how the government has used extrajudicial and illegal methods for the forcible transfer to Turkey of its citizens.²

Turkey's efforts at transnational repression against critics abroad do not seem to be winding down. On the contrary, Erdoğan's government is inventing new tools and methods with a view to intimidating opponents and suppressing dissent. The most recent innovation was the publication of lists of Turkish citizens whose assets have been frozen under the pretext of the prevention of financing terrorism. In this context, the Law on the Prevention of Financing Terrorism (Law No. 6415), which came into force in 2013,³ was significantly amended by the Law on the Prevention of Financing of Proliferation of Weapons of Mass Destruction (Law No. 7262) in 2020.⁴

¹ Stockholm Center for Freedom (SCF), 'Turkey's Abuse of INTERPOL: How Erdoğan Weaponized the International Criminal Police Organization for Transnational Repression', August 24, 2021, at <https://stockholmcf.org/turkeys-abuse-of-interpol-how-erdogan-weaponized-the-international-criminal-police-organization-for-transnational-repression/>

² Stockholm Center for Freedom (SCF), 'Turkey's Transnational Repression: Abduction, Rendition and Forcible Return of Erdoğan Critics', October 21, 2021, at <https://stockholmcf.org/turkeys-transnational-repression-abduction-rendition-and-forcible-return-of-erdogan-critics/>

³ See Official Gazette, Date: 16/02/2013, No. 28561, at <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6415.pdf>

⁴ See Official Gazette, Date: 31/12/2020, No. 31351 (5th Repetition), at <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>

Article 1 of Law No. 6415 states that *'This Law is drafted ... to enforce the International Convention for the Suppression of the Financing of Terrorism dated 1999⁵ and the decisions of the United Nations Security Council within the scope of this Law relating to suppression of terrorism and financing terrorism and to regulate the crime of financing terrorism and determine the rules and procedures for asset freezing with a view to suppressing terrorism financing.'* Article 1 of Law No. 7262, which amends Law No. 6415, also provides that *'The purpose of this Law is to regulate the rules and procedures relating to the sanctions of the United Nations Security Council for the prevention of financing of proliferation of weapons of mass destruction.'* Article 2 of Law No 7262 further points out that *'The provisions of this Law shall be applied pursuant to the scope of United Nations Security Council decisions.'*



The United Nations office in Geneva

Despite the express limitations referred to above in Articles 1 and 2 of Law No. 7262 relating to the purpose and scope of the law, the amendment has gone beyond what was necessary and is irrelevant to the purposes of suppressing the financing of proliferation of weapons of mass destruction.⁶ The amendments also triggered harsh criticism from relevant UN bodies and rapporteurs for targeting freedom of

⁵ For International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations in Resolution 54/109 of 9 December 1999, see <https://www.un.org/law/cod/finterr.htm>

⁶ Library of Congress, 'Turkey: Parliament Passes Law to Suppress Financing of Weapons of Mass Destruction Proliferation', January 27, 2021, at <https://www.loc.gov/item/global-legal-monitor/2021-01-27/turkey-parliament-passes-law-to-suppress-financing-of-weapons-of-mass-destruction-proliferation/>

association and unduly restricting and controlling civil society.⁷ Many international institutions and nongovernmental organizations expressed their concerns over the passage of Law No. 7262.

In a joint letter sent to the Turkish government on February 11, 2021, UN Special Rapporteurs criticized Turkey's new terrorism financing legislation for its provisions that exceed the scope of the law and targets freedom of association in the country.⁸ *'... provisions of the law greatly exceed the aim of preventing financing of terrorism and weapons proliferation'*, the letter said. The UN officials asked Ankara to reconsider certain aspects of the legislation to ensure its compliance with international human rights conventions and to provide information on how the process of implementation of this law is compatible with the obligations for fair trial and due process stipulated in the International Covenant on Civil and Political Rights (ICCPR).

Hugh Williamson, Europe and Central Asia director at Human Rights Watch (HRW), slammed Ankara, saying, *'The Turkish government's new law on curbing financing of terrorism, with the new powers it grants the Interior Ministry, conceals within it another purpose: that is to curtail and restrict the legitimate activities of any nongovernmental group it doesn't like.'* Williamson further warned that *'the proposed law may curtail legitimate civil society activity rather than contribute to preventing terrorism financing and money laundering'*.⁹

Amnesty International further pointed to the immediate 'chilling effect' of the terrorism financing law on civil society and the unpredictable nature of discretionary powers granted to the executive and underlined that *'The new legislation constitutes a prime example of the unintended consequences of FATF [Financial Action Task Force]¹⁰ policy and standards which are all too often misused by repressive*

⁷ Stockholm Center for Freedom (SCF), 'Turkey's terrorism financing law targeting freedom of association draws concern from UN, February 16, 2021', <https://stockholmcf.org/turkeys-terrorism-financing-law-targeting-freedom-of-association-draws-concern-from-un/>

⁸ Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering 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, Reference: OL TUR 3/2021, February 11, 2021, at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26004>

⁹ Human Rights Watch (HRW), 'Turkey: Draft Law Threatens Civil Society, Bill on Preventing Terrorism Financing Targets Freedom of Association, December 24, 2020, at <https://www.hrw.org/news/2020/12/24/turkey-draft-law-threatens-civil-society>

¹⁰ Financial Action Task Force (on Money Laundering) (FATF) is an intergovernmental organization founded in 1989 on the initiative of the G7 to develop policies to combat money laundering. Its mandate was expanded to include terrorism financing in 2001, <https://www.fatf-gafi.org/>

*governments to suppress civil society and restrict the rights to freedom of association and expression in the name of combatting money laundering and terrorism financing.*¹¹

All the concerns expressed above became reality with the publication of the lists of Turkish citizens whose assets were frozen within the framework of prevention of alleged terrorism financing. The first asset freezing decision was published in the Official Gazette on April 7, 2021 for a list of 377 Turkish nationals¹² and another on December 24, 2021 for a list of 771 Turkish nationals.¹³ The asset freezing decisions were taken by the minister of treasury and finance and were co-signed by the minister of interior. The asset freezing decisions, which are administrative actions purportedly taken pursuant to Article 7, Paragraph 3 of Law No. 6415 on the Prevention of Financing Terrorism, are further discussed below.

Ankara's campaign has primarily targeted people affiliated with the Gülen movement, a faith-based group inspired by Turkish cleric Fethullah Gülen. The efforts of the Turkish government have also been expanded to include Kurds and leftists. The latest annual human rights report on Turkey by the US Department of State sets out significant violations by Turkey including 'politically motivated reprisal against individuals located outside the country' and 'kidnappings and transfers without due process of alleged members of the Gülen movement'.¹⁴

People whose names appear on the published lists have faced various repercussions including the freezing or closure of their accounts, negative credit scores and various other personal and financial difficulties in Western countries. The individuals living in the West are labelled as "terrorists" and "persons financing terrorism" by the financial risk intelligence databases that provide financial intelligence services to banks and financial institutions merely because their names appear on an arbitrary list published by their own government, even without going through judicial process.

¹¹ Amnesty International, 'Turkey: Terrorism Financing Law Has Immediate 'Chilling Effect' on Civil Society: Impact of Law No. 7262 on Non-Profit Organizations', October 19, 2021, at <https://www.amnesty.org/en/wp-content/uploads/2021/10/EUR4448642021ENGLISH.pdf>

¹² Decision from the Ministry of Treasury and Finance, Assets Freezing Decision, Decision No: 2021/1, Decision Date: 06/04/2021, see *Resmi Gazete* (Official Gazette), Dated: 07 April 2021, No. 31447, at <https://www.resmigazete.gov.tr/eskiler/2021/04/20210407-28.pdf>

¹³ Decision from the Ministry of Treasury and Finance, Assets Freezing Decision, Decision No: 2021/5, Decision Date: 20/12/2021, see *Resmi Gazete* (Official Gazette) Dated: 24 December 2021, No. 31699, at <https://www.resmigazete.gov.tr/eskiler/2021/12/20211224-16.pdf>

¹⁴ United States Department of State, '2021 Country Reports on Human Rights Practices: Turkey', at <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/turkey/>

This report analyzes how the asset freezing decisions that are purportedly based on the prevention of financing terrorism have been weaponized to suppress critics abroad as a further means of Turkey's transnational repression. To this end the report first of all discusses the legal framework of asset freezing under the guise of prevention of financing terrorism and demonstrates how this legal framework has been abused by Turkey. The report further explores the rights violations caused by the publication of the asset freezing decisions and their impact on Turkish individuals living abroad. Finally, the report concludes with a brief account of legal and practical remedies available to those affected by the publication of the asset freezing decisions.

2. LEGAL FRAMEWORK FOR ASSET FREEZING UNDER THE PREVENTION OF FINANCING TERRORISM

The asset freezing decisions by the relevant ministries under the pretext of the prevention of terrorism financing were published in the Official Gazette on April 7, 2021 and December 24, 2021. Article 1 of both of these administrative decisions states that *'It is decreed that the assets in Turkey of persons, corporations and organizations whose names are mentioned in the appended lists be frozen in accordance with Article 7, Paragraph 3 of Law No. 6415 and pursuant to the existence of reasonable causes for the commission of the acts falling within the scope of Article 3 and 4 of the same Law.'* The appended lists do not provide any individual assessment or reasoning in relation to what these purported reasonable causes were. The appended lists merely provide the full names of the individuals with their Turkish identification number, date and place of birth and mother and father's names.



The Council of State

Article 2 of the Asset Freezing Decision dated April 6, 2021 states that *'A lawsuit may be filed against this Decision before the Council of State [Supreme Administrative Court] within 60 days of its publication in the Official Gazette in accordance with Article 24 of the Law on the Council of State, Law No. 2575 and Article 7 of the Administrative Procedural Law, Law No. 2577.'* Article 2 of the Asset Freezing

Decision dated December 20, 2021 further provides that *'An appeal may be filed against this Decision before the respective Ankara High Criminal Court pursuant to the Code on Criminal Procedure in accordance with Article 7, Paragraph 4 of Law No. 6415.'* While the earlier asset freezing decision makes explicit reference to the possibility of a revocation by the Council of State, the latter decision only refers to the possibility of appeal against the decision before an Ankara High Criminal Court. Despite the absence of an express reference to revocation in the latter decision, it may be possible to file a revocation action against the decision before the administrative courts.

Both asset freezing decisions allegedly rely on Article 7, Paragraph 3 of Law No 6415, which provides that *'In addition to the matters regulated under Article 5 and 6, after final verdicts are issued by the courts setting out the terrorist nature of the organizations and pursuant to the existence of the reasonable causes that the persons, corporations or organizations have committed the acts falling within the scope of Article 3 and 4, the Minister of Treasury and Finance and Minister of Interior may jointly decide upon the recommendation of the Assessment Commission to freeze their assets in Turkey and to lift the freezing orders once these reasonable causes have disappeared.'*

Article 5 of Law No. 6415 referred to above relates to the enforcement of decisions of the United Nations Security Council involving the freezing of assets. Article 6 of Law No. 6415 referred to above regulates the rules and procedures concerning requests made by foreign states for the freezing of assets. These articles are therefore not a subject of further scrutiny for the purposes of this analysis.

Articles 3 and 4 of Law No. 6415 referred to above describe the acts that constitute the crime of financing terrorism. Article 3 prohibits procuring or collecting funds for the commission of a number of acts listed in the same article.

Article 3(a) prohibits the procurement or collection of funds to cause intentional killing or severe bodily harm for the purposes of terrorizing and intimidating the public or of forcing a government or international organization to carry out an act. Article 3(b) further forbids the procurement and collection of funds for the purposes of carrying out the acts considered to be crimes of terrorism under Counterterrorism Law No. 3713 (TMK) dated April 12, 1991. Article 3(c) also prohibits the procurement

and collection of funds for the purposes of carrying out acts that are described as crimes and prohibited under the international conventions to which Turkey is a party.

The inclusion of the acts considered crimes of terrorism under Law No. 3713¹⁵ constitutes a special risk that can be easily abused under the implementation of the terrorism law in Turkey. The pretext of 'terrorism' has been exploited by Turkish judicial authorities in line with the government's discourse, especially since the coup attempt.

According to Ministry of Justice statistics, since 2016 there has been a sharp increase in the use of so-called 'terrorism' charges under Article 314 of the Turkish Penal Code (TCK).¹⁶ While 8,416 charges were filed under Article 314 in 2013, the number soared to 146,731 in 2017, 115,753 in 2018, 54,464 in 2019 and 33,885 in 2020.¹⁷ These statistics highlight that in total, Turkish prosecutors filed more than 420,000 charges under Article 314 between 2013 and 2020 and that more than 265,000 individuals were sentenced under the same article between 2016 and 2020.

¹⁵ **Terrorist organisations**

Article 7 – *Those who establish, lead, or are a member of a terrorist organisation in order to commit crimes in furtherance of aims specified under article 1 through use of force and violence, by means of coercion, intimidation, suppression or threat, shall be punished according to the provisions of article 314 of the Turkish Penal Code. Persons who organise the activities of the organisation shall be punished as leaders of the organisation.*

Any person making propaganda for a terrorist organisation shall be punished with imprisonment from one to five years. If this crime is committed through means of mass media, the penalty shall be aggravated by one half. In addition, editors-in-chief (...) who have not participated in the perpetration of the crime shall be punished with a judicial fine from one thousand to fifteen thousand days' rates. However, the upper limit of this sentence for editors-in-chief is five thousand days' rates. The following actions and behaviours shall also be punished according to the provisions of this paragraph:

- a) Covering the face in part or in whole, with the intention of concealing identities, during public meetings and demonstrations that have been turned into a propaganda for a terrorist organisation*
- b) As to imply being a member or follower of a terrorist organisation, carrying insignia and signs belonging to the organisation, shouting slogans or making announcements using audio equipment or wearing a uniform of the terrorist organisation imprinted with its insignia.*

If the crimes indicated under paragraph 2 were committed within the buildings, locales, offices or their annexes belonging to associations, foundations, political parties, trade unions or professional organisations or their subsidiaries, within educational institutions, students' dormitories or their annexes, the penalty under this paragraph shall be doubled.

For the English text of Counterterrorism Law No. 3713 see

https://www.legislationline.org/download/id/3727/file/Turkey_anti_terr_1991_am2010_en.pdf

¹⁶ **Armed Organisation, Article 314**

(1) Any person who establishes or commands an armed organisation with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years.

(2) Any person who becomes a member of the organisation defined in paragraph one shall be sentenced to a penalty of imprisonment for a term of five to ten years.

(3) Other provisions relating to the forming of an organisation in order to commit offences shall also be applicable to this offence.

¹⁷ The Arrested Lawyers Initiative, Abuse of the Anti-Terrorism Provision by Turkey is steadily increasing (2013-2020), updated on July 6, 2021,

<https://arrestedlawyers.org/2021/06/10/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/>

As a result, Turkey is by far the leader in the number of prisoners convicted of terrorism in Europe, according to the 2021 Council of Europe (CoE) Annual Penal Statistics on Prison Populations report, better known as SPACE I.¹⁸ According to SPACE I data, 32,006 people convicted of a terrorism-related crime are currently behind bars, and 30,555 of these people, or 95 percent, are in Turkish prisons. Thus, anyone opposing the government may be accused of having connections to a 'terrorist group' or aiding and abetting a 'terrorist group' or disseminating 'terrorist propaganda' with the consequences of a possible freeze of assets.

Article 4 of Law No. 6415 referred to above further describes the crime of 'financing terrorism.' Article 4, Paragraph 1 provides that *'An individual who procures or collects funds for a terrorist or terror organization in order to use it totally or partially for the purpose of the commission of the act set out as a crime under Article 3 or by knowing and willing that such funds will be so used even without being connected to a specific act will be punished with imprisonment of five to ten years, in the event that his conduct does not constitute another crime requiring a heavier penalty.'* According to the wording of Article 4, the funds must be procured or collected from the start for the purposes of committing the crimes specified in Article 3. Therefore, the funds must be procured or collected for a terrorist or a terrorist organization, and an individual must contribute to the funds willingly, knowing that the funds will be used for the commission of the specified crimes listed in Article 3.

It must be emphasized that aiding and abetting a terrorist organization by way of general assistance would not constitute the crime of financing terrorism under Turkish criminal law because such actions are separately considered to be aiding and abetting a terrorist (criminal) organization under Article 220/7 of the Turkish Criminal Code.¹⁹ For instance, providing accommodation, clothing or food or donating money for the needs of the members of a terrorist organization would not constitute the crime of financing terrorism but would fall within the scope of aiding and abetting a terrorist organization, whereas procuring or collecting funds to meet the needs of a terrorist group, which is to carry out armed assault, for instance, on a police station,

¹⁸ COE Annual Penal Statistics 2021, at <https://wp.unil.ch/space/space-i/>

¹⁹ '(Amended on July 2, 2012 by Article 85 of Law No. 6352) Any person who aids and abets an organisation knowingly and willingly, although he does not belong to the structure of that organisation, shall also be sentenced for the offence of being a member of that organisation. The sentence to be imposed for being a member of that organization may be decreased by one-third according to the assistance provided.'

For the English text of the TCK see European Commission for Democracy through Law (Venice Commission), Opinion No. 831/2015, Penal Code of Turkey, Strasbourg, February 15, 2016, https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf

would constitute terrorism financing. While the Turkish Supreme Court of Appeals considered collecting money for the People's Protection Units, the armed wing of the Kurdistan Workers' Party (PKK) in Syria, to constitute the crime of financing terrorism,²⁰ it viewed providing food and shelter to PKK members as aiding and abetting a terrorist organization.²¹

Article 7(3) of Law No. 6415 requires the existence of procedural and substantive conditions before imposing an asset freeze. An important procedural condition provided in Article 7(3) quoted above is that an asset freeze may be imposed only after an organization is declared a terrorist organization following a final court verdict. An important substantive condition provided in Article 7(3) is that there must be 'reasonable causes' to demonstrate that the persons, corporations or organizations have committed the acts that fall within the scope of the crime of financing terrorism under Articles 3 and 4 of Law No. 6415.

The following section examines if and to what extent these conditions are met for Turkish nationals whose assets have been frozen.

²⁰ 9. Criminal Chamber of the Supreme Court of Appeals, Judgment Date: 14/01/2013, Case No. 2010/17630, Decision No. 2013/959.

²¹ 9. Criminal Chamber of the Supreme Court of Appeals, Judgment Date: 25/03/2013, Case No. 2012/700, Decision No. 2013/4535.

3. ABUSE OF ASSET FREEZING UNDER THE GUISE OF PREVENTION OF FINANCING TERRORISM

The freezing of assets mainly targets Turkish nationals with alleged involvement in the Gülen movement. The asset freezing decision of April 6, 2021, for instance, includes the following categories:²² List 1 – FETÖ²³/PDY ‘Terrorist Organization’²⁴ (205 individuals); List 2 – DEAŞ (Islamic State in Iraq and the Levant, or ISIL) Terrorist Organization (86 individuals); List 3 - the PKK/KCK Terrorist Organization (77 individuals); and List 4 – DHKP/C Terrorist Organization (9 individuals). On the other hand, the asset freezing decision of December 20, 2021 contains the following categories:²⁵ List 1 - FETÖ/PDY ‘Terrorist Organization’ (454 individuals and 1 foundation); List 2 - the PKK/KCK Terrorist Organization (108 individuals); List 3 – Terrorist Organizations including ISIL, Hizbullah, etc. (119 individuals); and List 4 – Leftist Terrorist Organizations including DHKP/C, MLKP, etc. (89 individuals). Thus, the individuals with alleged links to the Gülen movement are the dominant category on the asset freezing lists.

In order to freeze assets under the prevention of financing terrorism mechanism, Article 7(3) of Law No. 6415 quoted above expressly sets out that there must be a final court judgment which conclusively establishes that the structure concerned is a terrorist organization. As a matter of fact, according to the settled case law of the Turkish Supreme Court of Appeals, there must be a final court verdict that conclusively determines an organization to be an armed terrorist organization.²⁶ Consequently, in order to convict a person of membership in an armed terrorist organization, there must a prior final court verdict (*res judicata*) which declares that structure an armed terrorist organization.

²² Decision from the Ministry of Treasury and Finance, Assets Freezing Decision, Decision No: 2021/1, Decision Date: 06/04/2021, see *Resmi Gazete* (Official Gazette), Dated: 07 April 2021, No. 31447, at <https://www.resmigazete.gov.tr/eskiler/2021/04/20210407-28.pdf>

²³ FETÖ is an acronym for the ‘Fethullahist Terrorist Organization’ and is used in indictments and other legal documents in Turkey. There is, however, no recognition of such a terrorist organization internationally.

²⁴ No other country or international institution other than Turkey considers the Gulen or Hizmet Movement as a terrorist organization.

²⁵ Decision from the Ministry of Treasury and Finance, Assets Freezing Decision, Decision No: 2021/5, Decision Date: 20/12/2021, see *Resmi Gazete* (Official Gazette) Dated: 24 December 2021, No. 31699, at <https://www.resmigazete.gov.tr/eskiler/2021/12/20211224-16.pdf>

²⁶ Stockholm Center for Freedom (SCF), ‘Rule of Law(lessness) in Erdoğan’s Turkey: Violation of the principle of legality and no punishment without law in post-coup trials’, March 22, 2022, p. 7-11, at <https://stockholmcf.org/scf-releases-new-report-on-rule-of-lawlessness-in-erdogans-turkey/>

The final but erroneous court decision declaring the Gülen movement as a terrorist organization under the label of FETÖ/PDY is arguably the decision of the 16th Criminal Chamber of the Supreme Court of Appeals on April 24, 2017 upheld by the General Assembly of the Criminal Chambers on September 26, 2017.²⁷ According to the settled case law of the Supreme Court of Appeals, the characterization of a structure as a terrorist organization must be carried out in trials dealing with criminal conduct that involves ‘force’ and ‘violence’.²⁸ Almost all the trials regarding the movement (save those relating to the coup attempt of July 15, 2016 itself) do not relate to a crime involving force and violence allegedly committed by the said organization in which the suspect is accused of membership. Yet the 16th Criminal Chamber has determined the Gülen movement to be an armed terrorist organization by merely presuming that the armed actions on July 15, 2016 were carried out by this group without actually undertaking a criminal trial in relation to these events.²⁹ This erroneous acceptance, which is also in violation of the principle of presumption of innocence, is nevertheless relied upon by criminal courts across the country.

The United Nations Human Rights Committee and the Working Group on Arbitrary Detention (WGAD) have considered a total of 18 cases concerning individuals detained on the basis of their alleged links to the Gülen movement.³⁰ In 16 of those cases, WGAD found a Category V violation that includes deprivation of liberty, violation of international law or discrimination based on political or other opinion. The significance of these cases is that they point to a clear pattern of deprivation of liberty despite the absence of criminality. The cases also underline that the complainants are arbitrarily deprived of their liberty for the exercise and enjoyment of their fundamental rights.

In the two most recent applications in 2021, WGAD stated that *‘The Working Group notes that the present case is the most recent concerning individuals with alleged links to the Fethullah Terrorist Organization/the Parallel State Structure (the Hizmet movement) that have come before the Working Group in the past three years. In all these cases, the Working Group has found that the detention of the individuals*

²⁷ 16th Criminal Chamber of the Supreme Court of Appeals, Date of Decision. 24/4/2017, Case No. 2015/3, Decision No. 2017/3; General Assembly of the Criminal Chambers of the Supreme Court of Appeals, Date of Decision. 26/09/2017, Case No. 2017/16-956, Decision No. 2017/370, see at <http://kazanci.com.tr/gunluk/cgk-2017-16-956.htm>.

²⁸ SCF, Rule of Law(lessness) in Erdoğan’s Turkey, p. 11-17.

²⁹ SCF, Rule of Law(lessness) in Erdoğan’s Turkey p. 15.

³⁰ For a brief discussion of these cases from the perspective of the violation of the principle of legality and no punishment without law see SCF, Rule of Law(lessness) in Erdoğan’s Turkey, p. 34-39.

concerned was arbitrary. It notes a pattern of targeting those with alleged links to the Fethullah Terrorist Organization/Parallel State Structure (the Hizmet movement) on the discriminatory basis of their political or other opinion.³¹

Additionally, the Special Procedures (Special Rapporteurs) of the Human Rights Council have repeatedly expressed concerns about the application of the anti-terrorism laws in Turkey.³² For instance, in their communication on August 26, 2020 (Ref No. TUR 13/20), the Special Rapporteurs shared inter alia the following findings: *'... This definition appears to frame "terrorism" primarily by an organization's political aims rather than the specific conduct of an offender. ... The definition of a "terrorist offender" under article 2 includes any member of an organization with a terrorist aim, even if he or she does not commit a crime in furtherance of the terrorist aim. ... Defining any individual who is deemed a member of a "terrorist organization" as a terrorist offender, regardless of their specific involvement in any criminal conduct, creates an unrestrained definition of a "terrorist offender" that is left open to arbitrary application and abuse.³³*

The Special Rapporteurs further indicated in their communication of November 10, 2020 (Ref No. TUR 20/2020) in relation to allegations of arbitrary arrest, detention and/or prosecution of individuals: *'The grounds and evidence which these accusations rely on consist of activities such as having a bank account at Bank Asya; subscribing to Gülenist affiliated newspapers, journals or magazines; downloading and/or using an application called ByLock; sending their children to schools run by the Gülen Movement; attending religious sermons; participating in diverse activities and events related to the Gülen Movement and similar acts. It appears that none of these activities, in themselves, constitute criminal acts but are*

³¹ Human Rights Council – Working Group on Arbitrary Detention, Opinion No. 84/2020 concerning Osman Karaca (Cambodia and Turkey), A/HRC/WGAD/2020/84, March 3, 2021, para 75, at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_84.pdf; Human Rights Council – Working Group on Arbitrary Detention, Opinion No. 66/2020 concerning Levent Kart (Turkey), A/HRC/WGAD/2020/66, February 2, 2021, para 65, at https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_66.pdf

³² Special Procedures of the Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. Special Procedures have sent the following communications in respect of the counterterrorism law in Turkey: 11 December 2017 (Ref No. 13/2017); 26 October 2017 (Ref No. TUR 11/2017); 22 February 2018 (Ref No. TUR 3/2018); 4 May 2018 (Ref No. TUR 7/2018); 1 October 2018 (Ref No. TUR 14/2018); 22 October 2018 (Ref No. 15/2018); 23 April 2020 (Ref No. 4/2020); 26 August 2020 (Ref No. TUR 13/20). For Special Procedures of the HRC see <https://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx>; for communication report and search see <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>

³³ Special Rapporteurs' Communication Reference OL TUR 13/2020, August 26, 2020, at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?qId=25482>, p. 5.

*rather an exercise of rights protected by the International Covenant on Civil and Political Rights (“the ICCPR”).*³⁴

Thus, the suspects in the Gülen movement-related trials are declared members of a terrorist organization on the basis of their legal and innocuous activities, which did not involve any participation in the coup attempt or any other violent act or any criminality.³⁵ The legal activities involving the exercise and enjoyment of fundamental rights are used to demonstrate the connection of the individuals to the movement. This real or perceived connection to the movement or participation in its activities is then categorically interpreted as evidence of membership in an armed terrorist organization named FETÖ/PDY.

As a matter of fact, any asset freezing decision requires the existence of an armed terrorist organization in the first place and procuring and collecting funds for that organization after it is legally recognized as a terrorist organization in the manner described under Article 7(3) of Law No. 6415. The declaration of the Gülen movement as an armed terrorist organization, which violates the principle of the non-retroactivity of criminal laws, makes it legally implausible to invoke Article 7(3) of Law No. 6415 as legal grounds for asset freezing. Even if the erroneous decision of the General Assembly of the Criminal Chamber of September 26, 2017 was accepted as the date of establishment of an armed terrorist organization (FETÖ/PDY), it is impossible to freeze the assets of the alleged members of the Gülen movement under Article 7(3) of Law No. 6415 for their legal and innocuous activities prior to this date.

Further, there must be ‘reasonable causes’ to demonstrate that the persons, corporations or organizations have committed the acts falling within the scope of the crime of terrorism financing under Articles 3 and 4 in accordance with Article 7(3) of Law No. 6415. What are these reasonable causes which demonstrate that these individuals have committed such acts? There is no explanation in the asset freezing decisions as to how these reasonable causes came to exist. Most of the trials related to the movement are based on membership in an armed terrorist organization (FETÖ/PDY). In terms of the legal requirements of asset freezing under Article 7(3) of Law No. 6415, it is not sufficient to be accused of or be convicted of membership in an armed terrorist organization in order to freeze assets. Almost none of the

³⁴ Special Rapporteurs’ Communication Reference AL TUR 20/2020, November 10, 2020, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25660>, p. 3.

³⁵ SCF, Rule of Law(lessness) in Erdoğan’s Turkey p. 22.

post-coup attempt trials (except those relating to military personnel allegedly involved in the actual coup attempt) is actually based on any alleged terrorist conduct or acts that involve coercion or violence.

Article 7(3) of Law No. 6415 further requires that fund procurement or collection take place in a prescribed manner so that the assets of the individuals may be frozen. Therefore, in order to freeze the assets, an individual must 'willingly' contribute to the funds 'knowing' that it will be used for the commission of the crimes specified under Article 3 of Law No. 6415. How was it understood that these individuals aided and abetted a terrorist organization in such a manner that constitutes financing terrorism as described under Article 7(3) of Law No. 6415? For which prohibited acts listed in Article 3 of Law No. 6415 did these individuals provide financing? Individuals who are not convicted of or even charged with financing terrorism are listed by the two ministries as terrorism financiers with no explanation or justification. The only criteria for asset freezing is the self-declared 'reasonable causes' by the two ministries for which there is no objective criteria set out by the law.

4. RIGHTS VIOLATIONS STEMMING FROM THE ASSET FREEZING DECISIONS

Individuals whose assets are frozen may ostensibly file a revocation action against the decision before the Council of State and/or appeal the decision to the respective Ankara high criminal court in accordance with Article 7(4) of Law No. 6415. However, the asset freezing measure that specifically targets persons allegedly linked to the Gülen movement is closely connected to the political agenda of the current Turkish government.



Council of Judges and Prosecutors (HSK)

The judiciary has become highly politicized under the pressure and control of the government, especially since the coup attempt in 2016.³⁶ It is not reasonable to expect the judiciary to display the degree of independence and impartiality that may be required in such highly politicized cases. In fact, Article 7(4) of Law No. 6415 provides that a court that will deal with appeals to asset freezing decisions shall be determined and appointed by the Council of Judges and Prosecutors (HSK), which is effectively under government control. Instead of leaving the matter to the general jurisdiction of any high criminal court, authorizing Turkey's HSK to pick and choose the court is a further indication of the politicized nature of judicial practice and may

³⁶ See Stockholm Center for Freedom (SCF), Turkey's Judicial Council: Guarantor or Annihilator of Judicial Independence, March 2021, at <https://stockholmcf.org/turkeys-judicial-council-guarantor-or-annihilator-of-judicial-independence/>

constitute a violation of the principle of natural justice under Article 37 of the Turkish Constitution.³⁷

The purported appeal process to an Ankara high criminal court lacks almost all the guarantees of an effective remedy and the right to a fair trial. First of all, the individuals whose assets are frozen are labelled as terrorists via lists published in the Official Gazette by a co-ministerial decision without any trial conducted or any court decision obtained. This further violates the principle of presumption of innocence and hence again the right to a fair trial.

It is highly difficult to regard this appeal process as an effective remedy because the individuals will only be able to object to the decision without having recourse to any of the information and documents on asset freezing and without a hearing. Therefore, the principles of equality of arms and adversarial proceedings and hence the right to a fair trial will have been violated.

Article 7(4) of Law No. 6415 provides for an appeal against the asset freezing decisions. However, an examination by the high criminal court in accordance with Article 7(4) of Law No. 6415 will only be confined to the existence of reasonable causes that will be put forward by the ministries and not according to any submissions to be made by the individuals affected. In fact, on April 9, 2021 the Ankara 4th High Criminal Court (Miscellaneous Decision No. 2021/102) decided to continue the asset freezing decisions of all the individuals whose names were previously published in the Official Gazette by the Ministry of Treasury and Finance (Decision No: 2021/1, Decision Date: 06/04/2021).

Some individuals filed further appeals against the above decision of the Ankara 4th High Criminal Court, which bears hardly any legal reasoning. These appeals were rejected on April 20, 2021 by the Ankara 5th High Criminal Court (Miscellaneous Decision Number 2021/239) without any explanation but only maintaining that the appeals were rejected as the decision of Ankara 4th High Criminal Court is in compliance with the law and procedure. That is the only explanation put forward by the Ankara 5th High Criminal Court for upholding the decision of the Ankara 4th High Criminal Court that decided to continue the asset freezing decisions of 377

³⁷ *'B. Principle of natural judge*

ARTICLE 37- No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.'

For the English text see the Turkish Constitution of the Republic of Turkey, at <https://www.anayasa.gov.tr/en/legislation/turkish-constitution/>

individuals. Hence these judicial decisions further support the conclusion that the appeals provided by Law No. 641 are not effective in practice, either.

Article 7(4) of Law No. 6415 also violates the principle enshrined under Article 2(2) of the Turkish Penal Code (TCK) which provides that 'No criminal offense or penalty shall be created by any regulatory provisions adopted by the administration'.³⁸ Further, granting 'disproportionate' and 'unforeseeable' powers to the state apparatus in order to freeze individual assets by arbitrarily affiliating them with certain groups will not be considered to be 'prescribed by law' in accordance with the case law of the European Court of Human Rights (ECtHR).³⁹ Thus, the absence of legality in the interference with an individual's right to property per se will constitute a violation of the right to property under Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) without the need for further examination under the case law of the ECtHR.

Similarly, exposing the names of individuals in connection with an alleged terrorist organization without obtaining a final and conclusive court verdict is already very problematic in terms of the violation of the right to privacy. Displaying and sharing detailed information and personal data in the asset freezing decisions such as the identification number, mother and father's name and date and place of birth make the interference with the right to privacy even more disproportionate and excessive. Such exposure may constitute illegal procurement and dissemination of personal data under Article 136 of the TCK.⁴⁰

³⁸ For the English text see of the TCK see European Commission for Democracy through Law (Venice Commission), Opinion No. 831/2015, Penal Code of Turkey, Strasbourg, February 15, 2016, https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf

³⁹ 'Prescribed by law' means three things under the case law of the European Convention on Human Rights (ECHR): 1) there must be a specific rule or regime which authorizes the interference; 2) the individual must have adequate access to the law in question (*The Sunday Times v United Kingdom* (1979) 2 EHRR 245); and 3) the law must be formulated with sufficient precision to enable the individual to foresee the circumstances in which the law would or might be applied (*Malone v United Kingdom* (1984) 7 EHRR 14).

⁴⁰ *Illegally Obtaining or Giving Data*

Article 136 (1) Any person who illegally obtains, disseminates or gives to another person someone's personal data shall be sentenced to a penalty of imprisonment for a term of two to four years.'

5. IMPACT OF ASSET FREEZING DECISIONS ON TURKISH NATIONALS LIVING ABROAD

The publication of the list of individuals whose assets are frozen has had more negative repercussions than the actual asset freezing itself. Most of these individuals had already been exposed to various forms of persecution by the Turkish government, especially following the coup attempt. The assets of these individuals had already been frozen or been the subject of various restrictions in the ongoing prosecutions and trials. Most of these individuals do not have sizeable assets, anyway. What seems to be expected from the publication of the lists is not so much to ensure that the assets are frozen but to make this decision public and publicize the names of those whose assets are frozen.



Individuals whose assets are frozen include journalists, rights activists and academics.

As pointed out above, the asset freezing lists mainly target individuals with alleged involvement in the Gülen movement, even though Kurds, leftists and other groups are also targeted. A brief examination of the lists demonstrates that the asset freezing appears to target certain categories of Turkish citizens mostly living abroad, which includes members of the media, professionals such as judges and prosecutors, police officers, military personnel, lawyers, teachers and businessmen. This also supports the conclusion that the real intention behind the publication of

the asset freezing lists is to target and suppress dissent rather than to prevent the financing of terrorism.

The individuals whose names appear in the published lists have faced various repercussions including account freezing and closure, negative credit scores and various other personal and financial difficulties. Most of these individuals may not be aware that their personal data as an alleged terrorism financier have been compiled and shared with other private and financial institutions. A quick analysis of the lists clearly shows that most of these individuals have sought asylum and been granted refugee status in the West, especially in Europe, the US and Canada.

The individuals first persecuted by the Turkish government who have sought and been granted refugee status in the West have nevertheless ended up being unfairly and unlawfully targeted by financial institutions and private businesses. They are labelled as 'terrorists' and 'persons financing terrorism' by the financial risk intelligence databases which provide financial intelligence services to banks and financial institutions merely because their names appear on an arbitrary list published by their own government. Most of these individuals are not aware that incorrect, misleading and defamatory information about them has been processed in violation of data protection laws until they face a problem in the form of account closure or blockage or some other transactional issue. This puts the targeted individuals in double or maybe triple jeopardy after fleeing the persecution of their own government and having to survive and establish a new life in a foreign country, and now being targeted once more by private corporations as a result of such defamatory information in violation of data protection laws.

Risk intelligence databases collect, process and share information with banks, financial institutions and private businesses that are subscribers to their services. For instance, Refinitiv World-Check Risk Intelligence is one of those risk intelligence databases. According to its website, Refinitiv World-Check provides structured risk intelligence data to help its customers fulfill their Know Your Customer (KYC), Anti-Money Laundering (AML) and third party screening and due diligence obligations.⁴¹ The coverage and content of the processed data includes politically

⁴¹ Refinitiv World-Check Risk Intelligence, https://solutions.refinitiv.com/world-check-kyc-screening?utm_content=Refinitiv%20Brand%20Product-UKI-EMEA-G-EN-Exact&utm_medium=cpc&utm_source=google&utm_campaign=581061_World-CheckRIPaidSearchBAU&elqCampaignId=17078&utm_term=refinitiv%20world%20check&qclid=CjwKCAjwxOCRBhA8EiwA0X8hi4oqwi0-PG-iQiFEw-rHYICRlaEyWFaCOjaEp8QUFpH2NNOXeActMxoCOzAQAvD_BwE&qclsrc=aw.ds

exposed persons (PEP), close associates and family members, global sanctions lists, global regulatory and law enforcement lists and AI-powered negative media screening.

There have been numerous complaints from the Turkish individuals who found out that their personal data have been processed and shared by Refinitiv World-Check with other private and financial institutions. According to a report by Die Welt,⁴² Germany's Deutsche Bank has closed the accounts of three critics of the Turkish government without providing a reason, possibly over dubious risk intelligence that relies on information coming from Ankara. The victims of Deutsche Bank's decision discovered that since December 2021 a note about them had been posted on the international database of Refinitiv. Die Welt's report says the database has the names of the three individuals and describes them as members of a terrorist organization, FETÖ, a derogatory acronym used by the Turkish government to refer to Gülenists as terrorists.

The above is certainly not an isolated incident, and there are many individuals facing similar problems. In the samples viewed by the author of this report, the data processed and posted by Refinitiv World-Check include the name, Turkish identification number and date and place of birth of the individual. In one of the cases, the Turkish individual is classified under the category of 'Non-conviction Terror' with reference to 'Fetullahçı Terör Örgütü/Parallel Devlet Yapılanması,' which can be translated as 'Fethullahist Terrorist Organization/Parallel State Structure'. The 'Further Information' section of the form also provides the following data: '[Biography] Reported associate (other) of Fetullahçı Terör Örgütü/Paralel Devlet Yapılanması (FETÖ/PDY). ... [Reports] December 2021 – assets in Turkey blocked by the Ministry of Treasury and Finance pursuant to Law No. 6415 on the Prevention of Financing Terrorism (Official Gazette of the Republic of Turkey No. 31699).' Further, the person is listed as 'Terror Related' under 'Special Interest Categories'.

As a result of submissions made by some individuals following a data request, Refinitiv World-Check appears to include the inputs from the data subject as well as referring to some reports from international organizations indicating the political

⁴² Die Welt, 'Deutsche Bank kündigt Konten von Erdogan-Gegnern in Deutschland', [Deutsche Bank closes accounts of Erdogan opponents in Germany], April 11, 2022, at <https://www.welt.de/wirtschaft/article238072823/Deutsche-Bank-kuendigt-Konten-von-Erdogan-Gegnern-in-Deutschland.html>; SCF, 'Erdogan's long arm: Deutsch Bank closes accounts of Erdogan opponents without giving any reason', April 12, 2022, at <https://stockholmcf.org/erdogans-long-arm-deutsche-bank-closes-accounts-of-erdogan-opponents-without-giving-any-reason/>

nature of the terror charges and asset freezing sanctions in Turkey. The responses provided by Refinitiv World-Check to the individual data subjects seek to explain the way their services operate and the caveat that they remind their subscribers of the need to confirm the information with other sources. Refinitiv World-Check also tries to limit their role and involvement in processing and posting these personal data to being only a conduit and hence attempting to deflect the liability to the information source and to the subscribers.

However, Refinitiv World-Check's responses and amendments in the posted data do not provide a full and effective remedy. It does not remove the unlawful and arbitrary characterization of the individual who has been implicated with terrorism and financing terrorism. Further, Refinitiv World-Check does not rectify and correct the unlawful and arbitrary portrait of the individuals without communication and/or submission. Each such individual has to file an inquiry to learn if their data are processed by Refinitiv World-Check and find out what is actually included in the record and seek to amend that record and/or include their side of the story. What is most terrifying is the fact that an individual's right to a good reputation is violated and the 'stain' remains there unless a full and complete removal from the database is provided. Thus, what Refinitiv World-Check offers in individual cases is devoid of providing a *restitutio ad integrum* for the individuals concerned.

6. CONCLUSION: LEGAL AND PRACTICAL REMEDIES

Individuals facing problems from the inclusion of their personal data in such risk intelligence databases may have recourse to a number of legal and practical remedies depending on the respective jurisdiction concerned. This section is not intended to be conclusive advice on the prospect of the available remedies; therefore, expert advice should be sought for individual cases in each jurisdiction.

One of the first things to do is communicate directly with the financial institutions or private businesses concerned, explaining the circumstances behind such incorrect, misleading and defamatory information resulting from the publication of the arbitrary and unlawful asset decisions of the Turkish government. The way to approach these institutions and businesses may depend on the individual circumstances, the problems faced and the institutions addressed. Providing your personal CV or personal statements explaining your circumstances, submitting letters of reference from colleagues and professionals, providing documents demonstrating your refugee status or presenting your judicial records displaying no criminal offenses are some of the methods that can be employed.

Another means of dealing with the issue is to directly correspond with the risk intelligence company processing and sharing such intelligence data and formally requesting that they remove any such biased, incorrect and defamatory information, amend their records and/or reflect the individual's own account of facts and events. Refinitiv World-Check provides a service on its website to check if an individual's data is processed by their database.⁴³ This allows you to request a copy of your record and update, correct and/or object to incorrect, misleading and defamatory information by submitting a data subject access request under the applicable data protection laws. All the individuals affected by the asset freezing decisions are strongly encouraged to submit such a data subject access request and demand the deletion, removal and rectification of such information.

Finally, one could seek legal advice in the respective jurisdiction and inform the data processing entity of possible judicial action if the incorrect, misleading and defamatory information is not removed and/or corrected to their satisfaction. These

⁴³ Refinitiv, 'Am I on Refinitiv World-Check?', https://www.refinitiv.com/en/products/world-check-kyc-screening/am-i-listed-on-world-check?elqTrackId=7BDA646753BAB2C75C4E8070B3FCF155&elqaid=8574&elqat=2&_qa=2.43620965.1913843671.1648566620-785761498.1647860005&_gac=1.124646520.1648570326.Cj0KCOjw3lqSBhCoARIsAMBkTb2yVSdhEBRcVo7D1OE6sljy0e-yUkmEOOXh8JY155facsKMTFv_OJUaAowKEALw_wcB

corporate bodies have strong legal teams in line with their financial strengths, but there are powerful legal arguments based on data protection and defamation laws that can be employed which can produce positive results.