



**Input to the
Global Study on the Impact of Counter-Terrorism Measures on Civil Society
and Civic Space**

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<p>HUMAN RIGHTS IN THE FIGHT AGAINST TERRORISM IN TURKEY: NATIONAL AND TRANSNATIONAL FINANCIAL REPRESSION ON TURKISH DISSIDENTS</p> <p>This report aims to shed light on the Turkish government’s use of the fight against terrorism financing as a pretext to silence both domestic dissent and critical voices abroad.</p> <p>After a military coup attempt in July 2016, more than 120,000 public sector workers were summarily dismissed from their jobs by emergency decree-laws issued between 2016 and 2018¹. More than 2 million people faced criminal investigation for terrorism².</p> <p>Since 2018, the Turkish government has been financially targeting dissidents abroad, particularly members of the Gülen movement, and assaulting financial freedoms and privacy under the guise of combating the financing of terrorism³.</p> <p>Domestic Financial Repression</p>

¹ The Inquiry Commission on the State of Emergency, <https://soe.tccb.gov.tr>

² “Terror Crime Statistics,” Solidarity with OTHERS, <https://www.solidaritywithothers.com/terror-crime-statistics>

³ “Turkey to target financing of Gulen followers abroad, Erdogan says,” Reuters December 13, 2018, <https://www.reuters.com/article/us-turkey-security-idUSKBN1OC1EL>

The arbitrary practices outlined below do not cover the full range of financial problems faced by dissidents. They are merely examples that indicate the Turkish government's abuse of the risk-based approach (RBA) implemented by financial institutions as part of compliance requirements with Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regulations.

1. **Cancellation of credit cards:** Credit cards of the decree-law victims⁴ have been blocked by some banks. A document sent by state lender Halkbank to the parliament's Human Rights Inquiry Commission revealed that the dismissal from public service by decree-law was considered by the state-run bank as grounds for the restriction of credit cards⁵.
2. **Refusal to open a bank account:** Some banks refused to open accounts for decree-law victims, citing a blacklist⁶. The Ministry of Treasury and Finance claimed that the action was in compliance with Banking Regulation and Supervision Agency (BDDK) regulations without providing further explanation.
3. **Denial of deposits:** Some banks refused to allow decree-law victims withdraw their deposits from their accounts, citing a blacklist⁷.
4. **Denial of loans:** Banks refused to offer loans to decree-law victims⁸.

Legal Framework Leading to Arbitrary and Unfair Practices

Turkey defined the asset freezing measure in domestic law with Law No. 6415 on the Prevention of Financing of Terrorism dated February 7, 2013⁹. This law enables the freezing of assets of individuals, institutions and organizations within the scope of United Nations Security Council (UNSC) Resolutions 1267, 1988, 1989 and 2253.

Article 38 of the Law on the Non-Proliferation of Weapons of Mass Destruction No. 7262 dated December 27, 2020¹⁰ establishes a mechanism to freeze the assets of individuals, institutions

⁴ "Decree-law victims" is a widely used term to refer to those who have been dismissed from their public sector jobs by state of emergency decree-laws between 2016 and 2018.

⁵ "KHK'lı öğretmenın kredi kartı iptal edildi," Deutsche Welle Turkish-language service, May 7, 2020, <https://www.dw.com/tr/bankadan-khk-yaniti-karti-ihrac-nedeniyle-kapatildi/a-53363760>

⁶ "KHK'lılar neden banka hesabı açamıyor sorusuna mevzuat linki gönderdi," Kronos, July 7, 2020, <https://kronos36.news/tr/bakan-albayrak-khklilarla-ilgili-uc-onergeye-yine-link-gondererek-yanit-verdi/>

⁷ "KHK'li diye banka parayı vermedi," Cumhuriyet, January 1, 2020, <https://www.cumhuriyet.com.tr/haber/khkli-diye-banka-parayi-vermedi-1711916>

⁸ "KHK'lılar kamu bankalarının kredisine de başvuramıyor," Kronos, May 10, 2022, <https://kronos36.news/tr/khklilar-kamu-bankalarinin-kredisine-de-basvuramiyor-kredi-puanini-hesaplamayan-sistem-tasarlamislar/>

⁹ "Terörizmin finansmanının önlenmesi hakkında kanun," Resmi Gazete, <https://www.resmigazete.gov.tr/eskiler/2013/02/20130216-3.htm>

¹⁰ "Kitle imha silahlarının yayılmasının finansmanının önlenmesine ilişkin kanun," Resmi Gazete, <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>

and organizations directly located in Turkey related to terrorist organizations defined by Turkey, regardless of the UNSC resolution¹¹.

Despite these, Turkey was nevertheless placed on the gray list of the Financial Action Task Force (FATF), which included Turkey in the watchlist in 2021 for not fulfilling its AML/CFT obligations¹². In a statement¹³ on the decision, FATF president Marcus Pleyer said “*Turkey needs to show it is effectively tackling complex money laundering cases, and prioritizes cases of UN-designated terrorist organizations such as ISIL and al Qaeda.*” The statement was seen as an implicit confirmation of the Turkish government’s weaponization of the AML/CFT system against political opponents.

Asset Freeze Decisions as an Instrument of Financial Repression

The Ministry of Treasury and Finance and the Ministry of Interior of the Republic of Turkey jointly on April 6, 2021 and December 20, 2021 published two different asset freeze decisions in the Official Gazette on April 6, 2021¹⁴ and December 20, 2021¹⁵ respectively. The decisions included asset freeze lists that included the names of 659 people allegedly affiliated with the Gülen movement¹⁶.

These lists amount to a flagrant abuse of the AML/CFT system as they portray political opponents, particularly members of the Gülen movement, as belonging to the same category as members of networks that are actually recognized as terror groups by the international community. Those listed on the basis of their real or perceived links to the Gülen group are typically people with no violence of history, such as journalists, academics, NGO executives, businesspeople, former judges, former prosecutors, lawyers, former police officers, former military personnel and people from all walks of life. It should be noted here that the trials of Gülen-linked individuals in Turkey typically disregard the basic legal principle of individual criminal responsibility and that they are conducted on the basis of bogus indictments that fail to

¹¹ Its chilling effect on civil society has been severely criticized. See AI’s report on this issue: <https://www.amnesty.org/fr/wp-content/uploads/2021/10/EUR4448642021ENGLISH.pdf>

¹² “Jurisdictions under Increased Monitoring,” March 2022, <https://www.fatf-gafi.org/en/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-march-2022.html>

¹³ “Finance watchdog ‘grey lists’ Turkey in threat to investment,” Reuters, October 21, 2021, <https://www.reuters.com/business/finance-watchdog-grey-lists-turkey-threat-investment-2021-10-21/>

¹⁴ “Malvarlığının dondurulması kararı,” Resmi Gazete, April 6, 2021, <https://www.resmigazete.gov.tr/eskiler/2021/04/20210407-28.pdf>

¹⁵ “Malvarlığının dondurulması kararı,” Resmi Gazete, December 20, 2021, <https://www.resmigazete.gov.tr/eskiler/2021/12/20211224-16.pdf>

¹⁶ “C-İç dondurma kararı ile malvarlıkları dondurulanlar,” Financial Crimes Investigation Board (MASAK), <https://masak.hmb.gov.tr/7madde>

provide any evidential basis other than the defendants' social or economic links to the Gülen group.

Negative Impact of the Decisions on Dissidents Abroad

The foreign-based critics of the Turkish government report several problems they faced after being placed in the asset freeze lists, particularly in their relations with financial institutions.

1. ***Slowdown in financial transactions:*** Listed individuals reportedly experienced significant slowdowns in their financial transactions to the extent that they have suffered commercial losses, with their loan applications and money transfers taking longer than usual.
2. ***Rejection of loan applications:*** Listed individuals saw their loan applications rejected on other than financial grounds or without justification.
3. ***Inability to send/receive money transfers:*** Listed individuals were denied money transfers on the grounds of AML/CFT regulations.
4. ***Closure of accounts or refusal to open accounts:*** Listed individuals saw their requests to open accounts rejected or their existing accounts shut down, leading to financial exclusion¹⁷.

The above-mentioned issues stem mainly from two reasons. The first reason is that fintech services employ Turkey's executive asset freeze decisions in their KYC (Know Your Customer) and CDD (Customer Due Diligence) controls under AML/CFT. Secondly, financial institutions themselves base their individual risk assessments on such lists.

Financial Markets Data Providers

There are several companies that offer AML/CFT solutions or KYC and CDD services. Yet, there is no indication that these companies take into account the human rights aspect of the data that they process. Not only are they prone to falling foul of the law, especially on data protection, but also they mislead their clients (i.e. banks, mortgage providers etc.) into making erroneous AML/CFT risk assessments due to the automatic data processing systems they provide.

According to the World Bank, all identification systems used for CDD and KYC controls should be free from discrimination in policy, in practice, and by design¹⁸. However, KYC and CDD

¹⁷ For example, U.S.-based journalist Adem Yavuz Arslan posted on his Twitter account that his bank account and Uber account were closed due to his name being on the lists, <https://twitter.com/ademyarlan/status/1508908026278944772>

¹⁸ "Principles on Identification for Sustainable Development: Towards the Digital Age," World Bank, February 2021, p.12

checks based on data provided by fintech companies negatively affect political exiles and refugees. Vulnerable and marginalized groups are often the least likely to have proof of their identity, but also the most in need of the protection and services linked to identification¹⁹. FATF also draws attention to this issue in its opinions. The use of innovative technology in the financial sector brings with it not only significant and potentially transformative benefits, but also risks of unintended consequences, potential conflict with competing objectives, such as privacy, inclusion, equitable outcomes, and vulnerability to witting abuse²⁰. As far as Turkey is concerned, fintech companies use and provide their customers with false and misleading information prepared by an authoritarian regime with the sole purpose of financially targeting its opponents abroad.

Financial data providers claim that they only collect the data which is already in the in the public domain and do not assess whether the state behind the data has been acting lawfully and fairly when doing so. They also claim that any conviction is made available to their clients, irrespective of whether that conviction is a result of fair trial free from political considerations. Whereas;

- The claim that data is only collected from the public domain is not a sufficient defense, as the public domain is not always a reliable indicator of lawful and fair behavior. For example, governments and companies may release false or misleading information to the public, or suppress information that should be made public.
- The claim that any conviction is made available to clients, regardless of whether it is the result of a fair trial, implies that the data provider is not taking any responsibility for the veracity and fairness of the data they are providing. This could be problematic for clients who rely on this information to make decisions, as they may be basing their decisions on incomplete or inaccurate information.
- The statement that the data provider does not assess the fairness of state actions when collecting data is a failure to take responsibility for the ethics of their actions. It is imperative that data providers consider the implications of their actions on different stakeholders and how their business conduct may contribute to unethical practices.
- By not ensuring that the data they collect is from fair and lawful sources, data providers are at risk of contributing to the erosion of democracy and human rights. This can cause negative consequences for individuals, communities and society as a whole.

Contractual obligation of financial data providers towards their clients should only be considered a rather less significant interest, albeit a legitimate one, compared to that of the data subject. In any case, providing clients inaccurate and unlawful data based on unlawful asset freeze orders issued by an authoritarian regime may hardly be considered a proper fulfilment of one's

¹⁹ Ibid, p.7

²⁰ "Opportunities and Challenges of New Technologies for AML/CFT," FATF, July 2021, p.42, para.130

contractual obligations. It is simply supporting an authoritarian regime which abuses the international system of combating money laundering and terrorism financing. On the other hand, the right of a data subject not to be exposed to financial exclusion, de-risking, or financial discrimination is a much more fundamental concern

Problems Arising out of the Individual Risk Assessments

The AML/CFT regulations have made the successful application of risk-sensitive CDD controls to all customers a condition for the establishment of a business relationship. The false data collected and published by financial data providers about people who are politically targeted by their countries of origin are used in a way that causes discrimination in individual risk assessments made by obliged financial institutions and results in refusing to enter into or terminating business relations with customers, also called de-risking.

Terrorism or terrorist financing-related allegations against persons who are politically targeted by their country of origin do not constitute a reason for financial institutions to take a decision not to establish customer relations. In many of its views, the FATF also recommends managing the risk rather than de-risking²¹.

The AML laws only prohibit entering or maintaining a business relationship in a very limited area. Most of the decisions of terminating the business relationship relevant to the Turkish dissidents as a result of an AML/CFT risk assessment is not within this scope and is against the law. Financial institutions have to comply not only with AML/CFT legislation, but also with other legislation such as anti-discrimination.

Financial institutions, however, often fail to inform their customers of flawed individual risk assessments or update them as and when needed referring to freedom of contract principle or the civil and criminal immunity as provided by the relevant AML/CFT regulations and national laws.

Conclusion

It should be noted that the financial problems faced by Turkish dissidents is primarily a human rights issue. According to the UN Global Counter-Terrorism Strategy adopted by the UN General Assembly, Member States have the obligation to promote and protect human rights for

²¹ “FATF clarifies risk-based approach: case-by-case, not wholesale de-risking,” FATF, October 23, 2014, <https://www.fatf-gafi.org/documents/documents/rba-and-de-risking.html>

all²². The UN Security Council's relevant resolutions²³ on terrorism and counterterrorism too, emphasize that all of Member States' counter-terrorism measures must comply with their obligations under international law, in particular, international human rights law, international humanitarian law, and international refugee law. Moreover, Article 17 of the UN International Convention for the Suppression of the financing of Terrorism guarantees international human rights of the people regarding whom any measures are taken, or proceedings are carried out pursuant to the Convention.

In an opinion of it in 2021, FATF also touched upon curtailment of human rights with a focus on due process and procedural rights and counted it among the unintended consequences of the FATF Standards²⁴.

The Turkish government, in an effort to silence its opponents living abroad through financial pressure, is abusing the international AML/CFT compliance system in a way that harms not only Turkish dissidents but also the reputation of financial institutions as they are misled into operating on the basis of false data. Financial data providers which feed data provided by authoritarian regimes like the one in Turkey into the financial system without first verifying its accuracy are in breach of their contractual obligations to their clients.

Unless both financial institutions and financial data providers adopt a human rights-oriented approach to providing AML/CFT solutions and fulfilling their obligations on that ground, they will be implicated in the transgressions of authoritarian regimes.

²² <https://www.un.org/counterterrorism/cct/human-rights>

²³ Resolutions 1456 (2003), 1624 (2005), 1805 (2008), 2129 (2013), 2178 (2014), 395 (2017) and 2396 (2017)

²⁴ FATF, "High-Level Synopsis of the Stocktake of the Unintended Consequences of the FATF Standards", October 27, 2021, p.5 <https://www.fatf-gafi.org/media/fatf/documents/Unintended-Consequences.pdf>