

Turkey: New law seriously threatens freedom of association and must be repealed

STATEMENT - THE OBSERVATORY

Paris-Geneva, January 15, 2021 - The Observatory for the Protection of Human Rights Defenders (FIDH-OMCT) is deeply concerned about a last set of amendments, recently passed by Turkey's Grand National Assembly, which have the potential to further restrict freedom of association and to curb civil society activities in Turkey. We call on the authorities in Turkey to immediately reverse these recent legislative changes, which have been approved despite harsh criticism[1] by civil society actors.

The controversial bill came into force on December 31, 2020 under the name of "Law no. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction". Whereas the purported objective[2] of the Law is to implement a number of UN Security Council resolutions[3] as well as the recommendations[4] of the Financial Action Task Force, the majority of the articles either have no direct connection to this objective or provide for measures manifestly exceeding this aim. The Law introduces amendments to seven laws, including the "Law on Associations" and the "Law on Aid Collection". Furthermore, it was elaborated without any consultation or contribution from stakeholders, particularly from civil society, despite it being directly concerned by these amendments, and was adopted by the Grand National Assembly of Turkey only 11 days after its submission[5].

The amendments allow the Minister of Interior to suspend staff members and/or executives of civil society organisations who are being prosecuted on terrorism-related charges and/or, subjected to the approval of the court within 48 hours, to suspend the activities of the relevant organisation. The Law also significantly increases the administrative fines that apply to organisations which would collect donations through online platforms without getting prior approval by the authorities. It includes several other provisions that allow the authorities to unreasonably restrict the activities of civil society organisations, including the possibility for the President of the Republic to freeze the assets of an organisation for allegedly financing terrorism, increasing the number of audits of civil society organisations and

their partners, as well as a ban on civil society activities for individuals convicted of financing terrorism or drug trafficking[6].

This Law not only violates the Constitution of Turkey[7] and the international standards[8] that Turkey has adhered to, but also raises serious concerns of further restrictions to civil society activities, which are already facing an unprecedented crackdown. In recent years, especially following the coup attempt in July 2016, civil society actors and human rights defenders have been continuously targeted with repressive laws and politically-motivated criminal and administrative proceedings aimed at silencing them and obstruct their work. In a context where civil society organisations have been forced to close, the criminal justice system has repeatedly been abused to crack down on civil society, prominent civil society actors have faced judicial harassment, conviction and detention based on trumped-up terrorism-related accusations, and the space for civil society has narrowed dramatically, the Law poses a dangerous threat to the very existence of independent civil society in Turkey.

The Observatory denounces the ongoing crackdown on civil society in Turkey and the newly adopted Law no. 7262, which provides additional tools to the authorities to further oppress civil society and hinder their legitimate human rights work.

We call upon:

Ø the Government of Turkey:

o To immediately repeal the Law no. 7262, entered into force on December 31, 2020, as it threatens the free exercise of freedom of association and exceeds the legitimate aim of curbing the financing of terrorism;

o To conduct meaningful and timely consultations with civil society actors and other stakeholders in the preparation of a new bill on the prevention of financing of the proliferation of weapons of mass destruction, and to ensure meaningful participation of stakeholders, including civil society actors and human rights defenders, in the decision-making process more generally;

o To halt the ongoing crackdown on all civil society actors and human rights defenders, and ensure an enabling environment in which they can freely exercise their legitimate human rights work without hindrance or fear of reprisals;

o To ensure respect for the rule of law and fundamental rights in the country, including through legislative and constitutional reforms to guarantee judicial independence as well as freedom of expression and association.

Ø the United Nations, in particular the Special Rapporteurs on freedom of peaceful assembly and association, on the promotion and protection of human rights and fundamental freedoms while countering terrorism, on freedom of opinion and expression, and on the protection of human rights defenders:

o To issue a public communication urging the Government of Turkey to immediately reverse the above stated law, which threatens the free exercise of freedom of association and other fundamental rights, and has the potential to seriously curb legitimate civil society activities and further restrict civic space in Turkey;

o To remind the Government of Turkey that any bill or policy which aims at countering terrorism and drug trafficking must abide by international human rights standards, especially those relating to the fundamental rights to freedom of association and expression and the right to defend human rights;

o To urge the government to halt all attacks on human rights defenders and civil society organizations, including any forms of judicial and administrative harassment, politically-motivated audits, suspensions and other measures which aim at obstructing their work.

Ø the Financial Action Task Force ("FATF"):

o To issue a public communication urging the Government of Turkey to immediately reverse the above stated Law no.7262, which abuses and contravenes the spirit of the FATF recommendations on Combating Money

Laundering and the Financing of Terrorism & Proliferation.

Ø the Council of Europe, its Secretary-General, its Commissioner for Human Rights and its Parliamentary Assembly:

o To promptly and firmly react to this development by issuing a public statement urging the Government of Turkey to immediately reverse the Law no. 7262 which threatens the free exercise of freedom of association and other fundamental rights, and has the potential to seriously curb legitimate civil society activities and further restrict civic space;

o To schedule a debate at the next session of the Parliamentary Assembly to discuss the amendments and their impact on human rights, especially on freedom of expression and association and the right to defend human rights, in the context of a wider crackdown against civil society and human rights defenders in Turkey, and issue a resolution condemning Law no. 7262 and urging the authorities in Turkey to ensure an enabling environment for civil society, as well as the effective exercise of the rights enshrined in the Convention, especially the right to freedom of association and expression and right to public participation;

o To instruct its Commission for Democracy through Law (Venice Commission) to examine the new Law no. 7262 in light of the constitutional standards set by the Council of Europe and which all its member states are bound to respect, and issue recommendations to the Government of Turkey based on this assessment;

Ø the European Union, its Vice-President/High Representative for Common Foreign and Security Policy ("CSFP"), its Commissioner for Enlargement and the European Parliament, and its member states:

o To promptly and firmly react to this development by issuing a public statement urging the Government of Turkey to immediately reverse the above stated legislative amendments, which threaten the free exercise of freedom of association and other fundamental rights, and has the potential to seriously curb legitimate civil society activities and further restrict civic space;

o To use all diplomatic channels, including the annual human rights dialogue and any other meeting between the EU representatives and representatives of the Government of Turkey such as the upcoming meeting scheduled for January 21 between Turkey's Foreign Minister and EU Vice-President and High Representative for CFSP, to express concern over the above mentioned amendments and urge the Government of Turkey to repeal Law 7262;

o To review the EU's counterterrorism cooperation with Turkey to ensure that it does not contribute to facilitating human rights violations, in particular to cracking down against civil society and human rights defenders;

o To publicly reaffirm the importance of supporting civil society and human rights defenders, including financially, and including in the context of counter-terrorism; publicly express concern regarding the ongoing global trend of abuse by states of counter-terrorism legislation and policies to target and harass civil society and human rights defenders; to promote the adoption of a universally recognised definition for terrorism in multilateral fora in order to avoid the use of overly broad definitions against human rights defenders;

o To promote the improvement of the FATF framework through supporting the launch of a new review cycle of the interpretative note on recommendation 8 in order to introduce safeguards to protect freedom of expression and freedom of association by ensuring independent civil society and human rights defenders are not harassed, arrested, prosecuted or otherwise targeted under the pretext of the fight against terrorist financing abuse.

The Observatory for the Protection of Human Rights Defenders (the Observatory) was created in 1997 by the World Organisation Against Torture (OMCT) and FIDH. The objective of this programme is to prevent or remedy situations of repression against human rights defenders. OMCT and FIDH are both members of ProtectDefenders.eu, the European Union Human Rights Defenders Mechanism implemented by international civil society.

[1] See, Joint Statement signed by more than 600 civil society organisations, Kitle ?mha Silahlar?n?n Yay?lmas?n?n Finansman?n?n Önlenmesine ?li?kin Kanun Teklifi Anayasaya ve Örgütlenme Özgürlü?üne Ayk?r?d?r! (December 22, 2020). Available in Turkish at: <https://siviltoplumsusturulamaz.org/>

[2] See, the Bill on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction and its objective (December 16, 2020). Available in Turkish at: <https://www2.tbmm.gov.tr/d27/2/2-3261.pdf>

[3] Security Council Resolutions 1267 (1999), 1988 (2011), 1989 (2011), 2253 (2015) and 1373 (2001).

[4] Financial Action Task Force, Anti-money laundering and counter-terrorist financing measures: Turkey - Mutual Evaluation Report (December 2019). Available at: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

[5] The bill was submitted to the Presidency of the Assembly on December 16, 2020 and it was adopted by the Assembly on December 27, 2020.

[6] For more information, see the assessment made by the human rights organisations in Turkey: Bill for the Prevention of Financing of the Proliferation of Weapons of Mass Destruction - Assessment (December 22, 2020). Available at: <https://ihop.org.tr/kitle-imha-silahlarinin-yayilmasin-finansmaninin-onlenmesine-iliskin-kanun-teklifine-dair-degerle>

[7] Article 33 of the Consitution of Turkey

[8] Particularly, Article 11 of the European Convention on Human Rights and Article 22 of the International Covenant on Civil and Political Rights, both of which recognise the right to freedom of association.