

Introduction and summary of the report

This report examines the extreme human rights violations after the unlawful seizure of Bank Asya (Asya Participation Bank, www.bankasya.com.tr) by the government. The bank was established by private sector investors' capital with the permission of the law, and has been served for 20 years to 4 million account owners and thousands of business firms with five thousand employees. The report indicates unfair practices such as labeling, exposure to alleged membership of a terrorist organization, expulsion from the profession, confiscation of bank accounts, arbitrary detention, arrest and torture that targeted the bank, its shareholders, its employees, its thousands of customers who opened account and deposited money. In the report also Turkish judiciary and public authorities' views and practices on bank related fabricated crimes and Turkish Judiciary's losing independence will be evaluated.

1. Bank Asya Participation Bank's process from establishment to seizure

Asya Finance Kurumu A.S. (Bank Asya Participation Bank) was established with the approval and permission of the Council of Ministers on 11 Apr. 1996 by means of private sector entrepreneur's capital, in accordance with the letter of the Ministry of State dated 03 Apr. 1996, number: 13509 according to law no: 3182 article no:96 date: 25 Apr. 1985 and the provisions of the Decree No. 83/7506 of 16 Dec.1983 and numbered 83/7506 . (1)

On 3 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 will be used by the Saving Deposit Insurance Fund (SDIF), afterwards, with the decision of the fund board announcement in the Official Gazette dated 23 July 2016 and numbered 29779, the Bank's operating permit was canceled, the operations is stopped and the bank was closed.

2. Being a Bank Asya Customer is a Crime

After the Justice and Development Party Government's restrictions in Turkey on Gulen movement and Asya Participation Bank since 2014 and after coup attempt on July 15, 2016, Bank Asya customers were exposed to a number of violation of rights. After the coup attempt on July 15, 2016, Gulen movement was shown as responsible for the coup and declared as terrorist organization, and then the criterion of being a partner, employee, and customer of Bank Asya was accepted as an important factor for the membership of the organization by politicians of the government and members of the judiciary. People, not blamed of any offenses were accused of being members of a terrorist organization because they only worked in the bank, had an account or used bank's credit card and other banking services and were subjected to criminal investigation. However, in the decision of the UN Human Rights Committee dated 01/06/2019, it was decided that depositing money into Bank Asya would not be a crime. (2)

(1) (25.04.1996 / 22621 Official Gazette - Decision no : 96/8041)

(2) For the full text of the verdict

(https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/125/D/2980/2017&Lang=en)

According to BRSA decision published in the Official Gazette No. 29779 dated July 23, 2016, any banking activities were prohibited, deposit acceptance was not restricted nor limited, it was not seen necessary, and entering into branches and using e-banking were open and legal until the time the bank was closed. But despite this, customers who used legal banking services were tagged as guilty by the ruling party, Justice and Development Party, ignoring the principle of "no crime without law" and also retrospectively by blaming also the account holders that have account on the dates that there were no prohibitions. Because of the accusation of Bank Asya tag, hundreds of thousands of people suffered unfair practices such as Tagging, Exposure to the allegation of membership in a terrorist organization, detention, arrest, issuance, seizure of bank accounts and torture.

3. Losing the independence of the Judicial System and Authorities in Turkey and the attitude of the Judiciary and the Public Authorities against the charges related to Bank Asya

Following the coup attempt of July 15, 2016, the Gulen Movement was shown as responsible for the coup and declared as a terrorist organization. Afterwards, the Judiciary adopted the Bank Asya criterion as an important criterion for the membership of the organization, and hundreds of thousands of people were accused with bank Asya evidence by the tagging method.

a- Attitude of the judicial authorities;

The Savings Deposit Insurance Fund has unfairly seized the accounts and assets of the Bank's depositors and shareholders. Both public and judicial authorities have lost their independence and this caused grievances by violating the ECHR and other international rules and domestic law.

4. Review of Violations of Rights against International and National Regulations

4.1 Violation of the principle of no penalty without a law

According to United Nations Universal Declaration of Human Rights (Art. 11 f. 2), and Article 7 § 1 of the Constitution of the Republic of Turkey (Article 38), *"No one shall be found guilty of any criminal offense or omission which does not constitute a criminal offense under national or international law when committed. Likewise, no heavier penalty can be imposed than the one applicable at the time of the crime."*

Depositing Money in the Bank Asya Participation Bank was adopted as a crime Criterion in Turkey. In this context, hundreds of thousands of people who opened an account and made money transactions in Bank Asya were subjected to criminal investigations - expulsion from public office - detention - torture - imprisonment.

The Bank had operated based on the authorization given by the relevant public authority and under the supervision and control of the Authority since 1994. As the Banking Regulation and Supervision Board decided the abolition of the permit of the Bank's activities with decision date: 22.07.2016 and no: 6947, until that date, there has been no issues for the Bank in performing banking activities in Turkey.

Despite the fact that a depositor-bank relationship with the bank whose activity has not been stopped, transferring money through this bank, does not create liability for criminal law and never constitutes the

basis of the accusation of membership of a terrorist organization and the principle of "no crime without law" has been violated due to the accusations in relation with Bank Asya.

3

4.2. Infringement of Presumption of Innocence

Based on the opening of accounts and the presence of any kind of account transactions, any kind of remittances in Bank Asya, individuals were recognized as potential members of the organization. In this context, the Prosecutor's Office, by considering the existence of the person's bank account / account transactions, remittances as sufficient evidence for the membership of the organization, has conducted detention and interrogation against the person, and judges decided to arrest, and the innocent people were subjected to long term detention.

There is a violation of the presumption of innocence guaranteed by the United Nations Universal Declaration of Human Rights (art. 11, f. 2), the European Convention on Human Rights (art. 6/2) and Articles 36 and 38 of the Constitution.

Salih TANRIKULU, president of The Inquiry Commission on the State Of Emergency Measure, where civil servants, expelled by State of Emergency Decrees, apply, said in a statement that the deposition of money to Bank Asya was still counted as a crime.(7)

On the official website of the Inquiry Commission on the State Of Emergency Measure, in an announcement dated 15/03/2019 **with a heading ANNOUNCEMENT ON THE DECISIONS OF THE INQUIRY COMMISSION ON THE STATE OF EMERGENCY MEASURES** declares that number of applications to the Commission as of 15/03/2019 was **126,000**. When considering the number of decisions made by the Commission (**63,100**), the applications under review was **62,900**. Commission started the decision making process on December 22, 2017 and as of **15/03/2019** number of decisions (**4,750 accepted, 58,350 rejected**) was totally **63,100**. (8)

Accordingly, from the date that the Commission began to decide, **after 15 months** had passed, the decision was made on about **half of the total applications**. As seen from this announcement 58,350 applications were rejected out of 63,100 applications. It has been seen that most of the rejections given here were because of depositing money to Bank Asya.

A Kastamonu University staff was allegedly accused as a member of the organization and expelled in violation of his right to innocence without a judicial decision because of depositing money in a Bank Asya account. In addition, an investigation was conducted by the Prosecutor's Office on charges of being a member of a Terrorist Organization but a decision of non-prosecution was issued. Although a decision of non-prosecution was issued by the judicial authority, it was decided by the Inquiry Commission to reject the applicant's application because of "depositing money into Bank Asya". (9)

(7) [\(http://www.tr724.com/ohal-komisyonuna-gore-bank-asyaya-para-yatirmak-hala-delil/\)](http://www.tr724.com/ohal-komisyonuna-gore-bank-asyaya-para-yatirmak-hala-delil/)

(8) <https://ohalkomisyonu.tccb.gov.tr/>

(9) <https://www.memurlar.net/haber/778079/ohal-komisyonu-ev-kredisini-kapamayi-teror-orgutune-destek-olarak-gordu.html>

Regarding the person under investigation or prosecution by public authorities or officials, the statement of "the defendant may be guilty" in the final decision, even if the conviction has not been finalized by a conviction, and also when no conviction of guilt has been expressed or that the criminal proceedings have been concluded by a decision other than conviction means the breach of presumption of innocence. **(10)**

4

4.3. Violations in terms of the protection of personal data

All information and documents related to Bank Asya depositors (personal data) were seized collectively by the Police Departments without a court decision and a "system" (database) was established by the Police in this regard. In this system, all information (personal data) such as who is a Bank Asya customer or depositor, on which date they deposited money into their accounts or how much they withdrew or converted to foreign currency, and which amount of money they transferred, were illegally seized and used by the investigation authorities. Using the system created, without any court decision, the letter of the prosecutor's office could have been answered immediately on the same day and all information regarding the account transactions of the suspects were produced and sent to the Attorney General **(11)**. Any article of law in force in Turkey does not allow mass amount of personal data belonging to customers to be seized by police at once. Therefore, without any legal basis, all bank customers' personal data were seized and by violating to respect all Bank Asya customers' privacy right, the Principle of Privacy Act was violated.

As international regulations, The United Nations Guidelines on Computer Data Processing of Personal Data Files, Council of Europe, Convention No. 108 on the Protection of Individuals Against the Automatic Processing of Personal Data and the Convention No. 181 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flows and The General Data Protection Regulation (EU) 2016/679 (GDPR) were violated. In addition, as the National Regulations, Constitution (Art. 20) and Law No. 6698 on the Protection of Personal Data, Turkish Penal Code No. 5237 (Art.136 and Art. 140) were violated. By violation of the personal data of hundreds of thousands of people, they were expelled from civil servant jobs, custody and detention was issued.

(10) (Panteleyenko/Ukraine, Doc. No: 11901/02, 29/6/2006)

(11) (In the "CONFIDENTIAL" letter to the Adana Chief Public Prosecutor's Office by Adana Provincial Security Directorate on October 20, 2016 (Issue: 75027471-66679. (12210).2016 / - Subject: ByLock) responded to the demands of the Attorney General's Office as follows: *In the ByLock inquiry made within the D Branch Data Program of the Department of Anti-Terrorism Department, ... was found as ByLock user, additionally, according to the inquiry in the system existing in our department, ... named person has been determined as having an account in Bank Asya. "*)

4.6. Arbitrary Detention

4.6.1 Because of having a bank account and existence of account transactions, many people were alleged to be member of organization by Turkish public authorities and after unfair detentions, they were arrested. Turkey's Supreme Judicial Court has ruled that a bank account transaction is a sufficient evidence for a membership of the organization.

Article 19 of the Constitution provides that an arrest can only be done if there is a strong suspicion of crime. In accordance with Code of Criminal Procedure article 100/1, in order for a person to be arrested, from the moment of the first decision, concrete evidence showing the strong suspicion of a crime must be shown at the time of arrest and there must be concrete information and evidence indicating that there is at least one reason for arrest and judicial control would be insufficient.

5

According to Article 101 of the code of criminal procedure, the concrete evidence, information and findings on all these three issues must be clearly stated in the justification of the decisions for arrest. It is stated in the reports of the Council of Europe institutions that the date of 15 July 2016, when there was the attempted coup, must be the beginning date in terms of accusing the terrorist organization membership or leadership. Evidences for the offense, except those involved in the coup attempt, must only be regarding the dates after 15 July 2016. In short, the applicant was arrested in breach of domestic law (code of criminal procedure Art. 100 and 101), as he had been detained without presenting concrete evidence of a suspected offense, without showing them in the justification for the arrest. The organization and its membership should not be mentioned before 15 July 2016. Despite the fact that the Bank continued its legal activities until July 2016, the fact that more than 50,000 people were arrested by evaluating bank transactions which dated before 15 July as crime of the membership of an organization, is a violation of the principle of arbitrary detention.

4.6.2 A shallow search conducted on social media networks on the internet, twitter users who mentioned that they received Bank Asya related convictions and that their juridicial investigation continues are shown below.

@horseman_pitt @senaSENA2709 @samimiborsaci @muyagu99 @eris_hale @hezarfen2020
@mucerretseyler @mnzek79 @NMesud1 @672_Asyakartali @hytzlmm @gulevurgun4545 @yytekin064 @burcu_yeniceli @Tuba21701092 @ramazan77569113 @CiftciHelal @rasit_ekinci
@Hanifiyldz1 @Stalwart_Falcon @baykaltartar @eminecannnn @BankasyaMagdur
@Halil89051433 @BankasyaZede @mrt_yldrm52

4.6.3 Similarly, in the letter dated 13 May 2016, submitted by the Chief Public Prosecutor's Office of the Republic of Turkey to the General Directorate of Security within the scope of the investigation file no: 2014/37666, it is seen that they had conducted an investigation about 50,000 public employees who had an account in Bank Asia, long before the coup attempt. It should be strongly foreseen that most of these people are dismissed, arrested and subjected to torture. **(12)**

4.6.4 Some of the examples of unfair arrests reaching thousands; Samsun 2th Criminal Court File No: 2018/40 Conviction: Imprisonment, Isparta 2th Criminal Court File No:2018/119 hereby referred to as a conviction.

Due to ownership of Bank Asya deposit account and money transactions, people were subjected to intensive torture. According to Turkey's Human Rights Association Event Notification No. 02/2019 date: 09/01/2019, it has been reported that people had been tortured because of the presence of a person's bank account. (13)

4.8 Infringement of Property Rights

Following the abolition of Bank Asia's operating permit, the deposited money in the hundreds of thousands of accounts held by the Bank was also seized by the public authority. In this context, millions of deposits in the accounts were not paid to the account holders. In the applications made by the beneficiaries, accounts were blocked under the name of investigation by the Financial Crimes Investigation Institution (MASAK), the Savings Deposit Insurance Fund (SDIF) and Bank Asya, which does not have any legal basis. Depositors, who performed routine banking transactions during the time banking activities were not prohibited, are not paid with their rights. Because the deposits in the accounts are the self-assets of the individuals, this constitute the violation of the right to property.

6

The depositor, whose account was blocked, requested that the deposits in his accounts be paid to him; however, in the response letter sent by the Savings Deposit Insurance Fund (SDIF) it was stated that it was blocked by the decision of SDIF council and payment was impossible. Hundreds of thousands of people have been victimized only because they had an account in Bank Asya, suffered financial difficulties because of seizures in their deposits, being tagged and subjected to investigation. (14)

(12) (@AmnestyOnline- Evidence of torture including rape and other abuse of detainees in Turkey – amn.st/6015BlaOd – 24/07/16). “The serious human rights violations documented by an Amnesty International team on the ground in Turkey are alarming. These findings are based on detailed interviews with lawyers, doctors, family members and an eyewitness to torture in a detention facility.” (Amnesty International).

(13) According to Turkey's Human Rights Association Event Notification No. 02/2019 date: 09/01/2019, it has been reported that the person was tortured because of the presence of the person's bank account. (Statement of the person in the relevant section of the report: *..I closed my bank account in 2015. I said I currently don't have an account. They started beating me for lying. Because I told him that I tell the truth and I gave him the same answers, they covered my eyes with a plastic bag. I don't know from where the kicks were coming, they were kicking me constantly.*)

(14) Savings Deposit Insurance Fund 04.02.2019 NUMBER: TMSF.BHL.260/39720 SUBJECT: Request for Information *"As the participation funds, which were in the account/accounts in your name within the bankrupt Asya Participation Bank Corp. (Bank Asya), were transferred to Vakif Participation Bank Corp. in the scope of insurance participation fund, your account was blocked because of the FETO/PDY investigations carried out by SDIF and Bank Asya Audit teams and Audit Reports in this context. Therefore, it is not possible to make any payments regarding this participation fund at this stage. In addition, Bank Asya blocking is issued in your account in the Asya Participation Bank Corp. (Bank Asya)."*

5. Recommendations

1- Due to accusations in relation with Bank Asya, hundreds of thousands of people suffered unfair practices such as tagging, exposure to the allegation of membership in a terrorist organization, detention, arrest, issuance, seizure of bank accounts and torture. The rights enshrined in the Constitution and the ECHR should be enforced at the legal level. **(15)** In order to end Bank Asya related unfair arrests, punishment and torture in Turkey, it is our wish that the Commission should directly get in contact with the people in power and take concrete steps to end the grievances.

2- The independence of the judiciary must be reinstated. Structure of existing Council of Judges and Prosecutors needs to be changed to make the judiciary independent of the presidential system and individuals need to be prosecuted independently. The political pressure on the judiciary should be reduced and the independence of the courts should be restored. **(16)** The judiciary needs to create a political and legal environment which allows the independent and impartial practice of its functions and that the executive and the legislature respect the separation of powers. The executive power needs to limit its role and influence on the Council of Judges and Prosecutors and needs to implement further safeguards to prevent the intervention of the Council of Judges and Prosecutors in the proceedings by providing sufficient assurance that judges will not change their positions against their will.

7

Being a "Bank Asya Depositor" should be eliminated from "being a crime criterion" in administrative and judicial authorities and in terms of criminal proceedings, Chief Public Prosecutors should issue lack of grounds for legal action and Criminal Courts should decide acquittal. This would be a good solution. Unjust detention of detainees should be abolished and they should be evacuated, their rights for freedom should be returned to them.

5- In administrative jurisdiction, issuances due to Bank Asya charges must be abolished and reinstated. **(17)**

6- Compliance with the law should be ensured in the confiscation of assets with allegations of financial crimes before public authorities and the judiciary. The blockages in the accounts of Bank Asya depositors shareholders must be removed and the rights of the depositors needs to be paid. **(18)**

7- Financial damages and non-pecuniary damages incurred due to Bank Asya accusation should be compensated.

(15) However, the main shortcomings still exist. The rights arising from the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECHR) are not yet fully implemented. A comprehensive framework law on fighting against discrimination in line with European standards needs to be urgently adopted. (European Union, Turkey 2015 Report, https://www.ab.gov.tr/files/000files/2015/11/2015_turkiye_raporu.pdf)

(16) The independence of the judiciary and the principle of separation of powers have been damaged, and judges and prosecutors are under intense political pressure. The campaign carried out by the government against the alleged parallel structure within the state has been carried out effectively, sometimes damaging the independence of the judiciary. Significant efforts are

needed to restore and secure the independence of the judiciary. (European Union, Turkey 2015 Report, https://www.ab.gov.tr/files/000files/2015/11/2015_turkiye_raporu.pdf)

The struggle against the alleged "parallel structure" was formally included in the government program and on the agenda of the National Security Council. Remarkable changes and dismissals from the police, public service and judiciary continued (see also public administration reform). Representatives of the executive power made public statements regarding ongoing judicial investigations targeting individuals allegedly members of the "parallel structure" and thus interfered with the independence of the judiciary. Judicial investigations have been significantly expanded with crimes ranging from illegal listening and spying to membership in an armed terrorist organization. Such claims should be examined in accordance with the principle of separation of powers and the independence of the judiciary. Transparent procedures and the judicial process should be operated in accordance with the Constitution. (European Union, Turkey 2015 Report, https://www.ab.gov.tr/files/000files/2015/11/2015_turkiye_raporu.pdf)

(17)- Recent dismissal and deduction of ranks in the context of the struggle against the "parallel structure" have been a source of concern. (European Union, Turkey 2015 Report, https://www.ab.gov.tr/files/000files/2015/11/2015_turkiye_raporu.pdf)

- However, due to the recent allegation that a large number of civil servants in executive positions have joined the "parallel structure", their dismissal and deduction of their ranks has been of concern.

(18) Financial investigations are still not made duly. Precautionary freezing of assets is rarely used and the amount of assets confiscated is small.

In cases of corruption and organized crime, financial investigations are not systematically conducted. The establishment of the freezing of assets related with alleged offenses as a protection measure continues to function effectively. The number of corruption cases, in which the assets resulting from the crime were confiscated, increased from 11,048 in 2013 to 12,324 in 2014.

(European Union, Turkey 2015 Report, https://www.ab.gov.tr/files/000files/2015/11/2015_turkiye_raporu.pdf)