

The Process of Designating Terrorist Organizations in Israel

Background

The Counter-Terrorism Law – 2016 (hereinafter: **the Law**), replaced several outdated laws and was enacted in order to provide Israel with appropriate criminal and administrative law tools in preventing and responding to the evolving nature of terrorism and its related threats. The multifaceted nature of terrorist activities, which involves a variety of actors using different methods, creates unique challenges, which require a careful balance between security needs and human rights. *Inter Alia*, the law sets out the procedure for designating a terrorist organization and the seizure and confiscation of terror-related assets criminalizes certain conducts and imposes sanctions and penalties.

The Designation as a Terrorist Organization

The Law authorizes the Minister of Defense to designate by order a body of persons as a terrorist organization.

The Law defines¹ two categories of terrorist organizations:²

1. An organization involved in terrorist activity (colloquially referred to as a 'first tier organization'); and
2. An organization that supports or finances terrorist organizations. It is thereby providing those organizations with significant economic and social infrastructure, enabling their activities (colloquially referred to as 'second tier' organizations').
3. An organization that was designated as a terrorist organization abroad (by the UN Security Council or by a different state) in accordance with the process that the law sets out in this manner.

Once an organization is designated as a terrorist organization, any of its sections, branches, factions and institutions, or any other body subordinated to the organization, shall be considered part of the terrorist organization.³

¹ Art. 2 to the law, which include all the definitions for the purpose of this law.

The Designation Procedure

In the case of second tier organizations, in order for the criminal and administrative measures enshrined in the law to apply to them, the Minister of Defense **must** formally designate them.⁴

The Law provides a detailed procedure for this designation, which was carefully designed to ensure due process:

- The Minister of Defense may **temporarily** designate an organization as a terrorist organization, after receiving a written reasoned request from a head of a security, approved by the **Attorney General**, stating the supporting information and facts.⁵ The temporary designation will become permanent if the organization did not request the review of the temporary designation or if such a request was denied.⁶
- The Minister of Defense must be convinced that the organization falls within the definition of a "terrorist organization", and that it has a connection to Israel.
- In the case of 'second tier' organizations, the security agency may submit the designation only after providing the organization with a warning, as long as such a warning shall not thwart the possibility of taking action against the organization, and if the warning was unheeded .⁷

A Petition to the Advisory Committee

During the period in which the organization is designated in a temporal designation, the organization may challenge the decision and submit its written arguments to an Advisory Committee appointed by the **Minister of Justice**.⁸

³ Ibid

⁴ Ibid

⁵ Art. 3(b) and 4(a)

⁶ Article 6

⁷ Art. 3(c)

⁸ Article 2

The Advisory Committee's Composition

The Advisory Committee shall be composed of:

- (1) A Chairperson – a retired **Supreme Court Justice** or **District Court Judge**, to be appointed in consultation with the President of Supreme Court;
- (2) A jurist who is qualified to serve as a District Court Judge; and
- (3) An additional member with experience in the field of security and counterterrorism, who shall be appointed in consultation with the Minister of Defense.

The law expressly prohibits the members of the Committee to be in any type of conflict of interests.

The Procedure before the Committee

- The written arguments must be submitted to the Advisory Committee within two months from the temporary designation. This period may be extended.⁹
- The committee shall consider the arguments raised by the organization and hear counter-arguments presented by the security service. It may also summon the parties.¹⁰
- After reaching a decision, the Committee shall send its reasoned recommendation to the Minister of Defense, as soon as possible and not more than **four months** from the date on which the request to designate was transferred to it. This period may be extended.¹¹
- The Minister of Defense shall consider the organization's arguments and the Advisory Committee's recommendation and decide whether to permanently designate the relevant organization as a terrorist organization.
- This permanent designation shall also go into effect if the organization does not submit any arguments with respect to the temporary designation.
- It should be noted that the designated organization may review the request for designation made by the head of the security service, the

Article 5(c)⁹

¹⁰ Article 5(e)(1)

¹¹ Article 5(e)(2)

recommendations of the Advisory Committee and the decision of the Minister of Defense, unless the material is classified.¹² If the decision is based on confidential information, the committee shall notify the organization of this fact and provide to it a summary of this information.

Revocation

Even after the designation has been finalized, the organization may submit a request to revoke its designation to the Advisory Committee, which shall transfer its recommendation with respect to the request to the Minister of Defense. If the Minister of Defense finds that the organization is indeed no longer involved in terrorist activity, or that there was no basis for the designation, he/she may revoke it.¹³

Additional Supervisory Mechanisms

In addition to the aforementioned process, the Ministerial Committee on National Security Affairs may decide to revoke the designation notwithstanding the Minister of Defense's decision.¹⁴

The final decision of the Minister of Defense with regard to the designation as a terrorist organization or its revocation is an administrative decision, and it may be petitioned to the Supreme Court sitting as the High Court of Justice.

¹² Article 8

¹³ Article 7

¹⁴ Article 7(e)