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FAIR TRIAL RIGHTS AND JUDICIAL INDEPENDENCE IN THE 17 AND 25 DECEMBER PROCEEDINGS

Submitted by

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(SRL Swiss)

The Security Studies and Rule of Law Association (SRL Swiss) is a Geneva-based, non-profit and non-political civil society organisation established pursuant to Articles 60–79 of the Swiss Civil Code. The Association works to protect human rights, strengthen the principles of the rule of law, and assess the compatibility of security policies with fundamental rights.

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EXECUTIVE SUMMARY

The principal finding of this report is that the judicial law-enforcement officers who served in the 17 and 25 December bribery and corruption investigations were punished not because they had conducted an unlawful investigation, but because they had uncovered extensive evidence implicating persons at the highest levels of political power and their close associates. The case file as a whole shows that the convictions were founded not on individualised criminal acts, but on subsequently constructed accusations of 'establishing and leading, or membership of, an armed terrorist organisation', a 'coup', 'espionage', 'unlawful interception' and 'violation of private life'.

The offences examined in the judgment of the 3rd Criminal Chamber of the Court of Cassation, File no. 2021/4197, Decision no. 2023/2716, include establishing and leading an armed terrorist organisation, membership of an armed terrorist organisation, committing offences on behalf of an organisation, and aiding an armed terrorist organisation (Annex 1). Accordingly, the issues of judicial independence and fair-trial rights examined in this report are also directly relevant to the protection of human rights in criminal proceedings conducted in the context of counter-terrorism.

In the 17 December investigation, searches conducted pursuant to judicial warrants yielded millions of United States dollars, euros and Turkish lira concealed in shoe boxes and bath loofahs; 228 digital items were examined by ten experts; bribery arrangements, payment schedules and smartphone messages were documented; and 41 folders of documents concerning fictitious transit trade submitted to Halkbank were identified (Annex 70). The 25 December investigation was opened by Public Prosecutor Muammer Akkaş on 6 March 2012, continued for approximately twenty-one months, and was submitted to the prosecution service in a police investigation report of approximately 1,005 pages dated 15 December 2013 (Annexes 68 and 69). The communications of 71 persons were intercepted pursuant to court orders, and the interception and surveillance orders bore the signatures of nineteen different judges.

Immediately following the investigations, the then Minister of the Interior, Muammer Güler, the Minister of Economy, Zafer Çağlayan, and the Minister of Environment and Urbanisation, Erdoğan Bayraktar, resigned from office; the Minister for European Union Affairs, Egemen Bağış, was excluded from the Cabinet. Although these developments do not, in themselves, constitute an admission of criminal liability, they demonstrate that the investigations produced serious political and institutional consequences.

Despite these concrete findings and political developments, before the evidence uncovered by the investigation had been assessed, the management and personnel of the Financial Crimes Branch were removed on 18 December 2013; the investigating prosecutor was removed from the case on 26 December 2013; the search and arrest measures were abandoned; and the case file was transferred to newly appointed prosecutors. Without questioning the suspects about the source or substance of the

evidence attributed to them, and without conducting the necessary examination of the file, those prosecutors issued a decision of non-prosecution on 25 July 2014.

By contrast, the law-enforcement officers who had collected the evidence were made defendants and, following prolonged detention, obstruction of access to defence evidence, rejection of witness requests and alteration of the previously constituted judicial formation, were sentenced to severe penalties (Annexes 1–5 and 42–47). The Venice Commission's findings concerning the establishment, jurisdiction and closed horizontal appeal system of the criminal judgeships of the peace, together with the concerns regarding judicial independence recorded in Council of Europe, United Nations and OSCE documents, provide directly relevant standards for assessing the case-specific consequences of that institutional restructuring (Annexes 52–66).

Years after this purge and the closure of the files, a statement made in 2021 by Erdoğan Bayraktar, one of the principal persons directly concerned, reopened the entire judicial history to scrutiny. Bayraktar expressly stated that the transcripts, technical-surveillance records and telephone conversations in his own file were accurate 'from A to Z'. That admission by a direct subject of the file plainly contradicts the general political narrative that, at least insofar as the records concerning Bayraktar were concerned, they were fabricated or manipulated; it retrospectively corroborates evidence gathered by the law-enforcement officers at the time (Annex 74).

This report does not proceed on the assumption that judicial decisions are inherently correct. In view of the serious concerns regarding judicial independence identified in the case file, both the judicial decisions and the objections raised by the defendants and their counsel have been examined with equal scrutiny. The indictment, expert reports and reasoned judgments have not been treated as self-authenticating proof of the accusatory assessments they contain; they have been used to determine which objections went unanswered, which investigative acts were performed and which necessary acts were omitted. The substantive assessment has been conducted by considering together the primary documents submitted by the defendants and their counsel, the coherent evidential chain formed by those documents, and the courts' response to that evidence and those objections.

This report concerns the proceedings against eighteen defendants: principally Yakub Saygılı, Mustafa Demirhan, Kazım Aksoy, Yasin Topçu, Nazmi Ardıç, Mahir Çakallı, Arif İbiş, Mehmet Akif Üner, İbrahim Şener, Mehmet Fatih Yiğit, Mehmet Habip Kunt, İsmail Arpacı, Mehmet Sait Sevinç, Ahmet Kalender, Ahmet Üzümcü, Ayhan Arıkanoğlu, Duran Denizci and Adem Atik. Not all defendants in the two proceedings were in the same legal position. Sixty-one persons were tried in the 17 December case and seventy-one in the 25 December case, with some appearing as defendants in both. During the proceedings, certain defendants were acquitted, had their cases severed, obtained quashing decisions, or were retried. Rather than analysing every defendant in both cases individually, the report therefore focuses on these eighteen persons, who

received lengthy prison sentences and whose circumstances require particular examination from the standpoint of violations of fair trial rights. Nevertheless, the concrete findings in the case files clearly indicate that defendants outside this central group were likewise exposed to the systematic violations identified in this report.

I SUBJECT MATTER AND PRINCIPAL FINDINGS OF THE REPORT

This assessment also encompasses the charges brought against the defendants of establishing or leading an armed terrorist organisation, membership thereof, committing offences on behalf of an organisation, and aiding an organisation; whether those charges were substantiated by concrete and individualised evidence forms part of the report's examination of fair-trial rights.

The principal finding derived from a combined examination of 69 case-file documents and 15 reports issued by international organisations is as follows: the measures taken in the 17 and 25 December files were based on the written and oral instructions of the competent public prosecutors, judicial orders and the applicable rules of criminal procedure. There is no evidence that the law-enforcement officers determined the subject matter or targets of the investigations on their own initiative. Nevertheless, prosecutorial instructions and judicial orders were deprived of effect in the assessment leading to conviction, and the same measures were recharacterised years later as criminal acts.

The documentary record indicates that the true reason for the criminal proceedings was not misconduct by law enforcement, but the fact that the investigations reached persons at the centre of political power. Instead of examining the substance of the bribery and corruption evidence, the legitimacy of that evidence was attacked; the prosecutors and police officers conducting the investigations were removed from office; and repetitive disciplinary and criminal proceedings were then brought against them. This sequence indicates that criminal liability was derived not from concrete conduct, but from the persons' functions and institutional affiliation in the investigations.

The political consequences of the investigations and subsequent statements cannot be disregarded in the assessment of the files. The resignation of three ministers and the exclusion of another from the Cabinet cannot be regarded as admissions of guilt for the purposes of criminal law; they nevertheless demonstrate that the investigations produced serious consequences even within the executive. Erdoğan Bayraktar's express confirmation in 2021 of the transcripts, technical-surveillance records and telephone conversations in his own file is, beyond the question of political responsibility, a fact directly bearing on the reliability of those records. Although that statement does not amount to blanket corroboration in respect of every defendant and every item of evidence, it substantially weakens the general contention that the investigation records were fabricated or altered in their entirety (Annexes 74 and 75).

II CONCRETE EVIDENCE OBTAINED IN THE 17 AND 25 DECEMBER INVESTIGATIONS

A Material Evidence in the 17 December Investigation

The 17 December file does not consist solely of telephone conversations. It contains, as an evidential whole, cash seized during searches conducted under judicial warrants, money-counting machines, banking and funds-transfer records, physical-surveillance reports, digital material, smartphone messages, bribery payment schedules, false transit-trade documents and expert reports. In particular, the foreign currency and Turkish lira discovered in shoe boxes and bath loofahs constitute direct physical evidence that the accusations were not an abstract narrative constructed after the event (Annex 70).

According to the documents and evidential summaries examined, there is communications, surveillance, financial-record and digital-examination evidence that Rıza Sarraf provided Zafer Çağlayan with EUR 45 million in cash as well as a luxury watch, jewellery and other benefits; that he provided Süleyman Aslan with EUR 3 million, USD 3.9 million and TRY 1 million in fifteen separate acts; Muammer Güler with USD 6.6 million in fourteen separate acts; and Egemen Bağış with USD 1.5 million in three separate acts. Findings that a total of TRY 3 million was transferred to TÜRGEV in two transactions for delivery to Bilal Erdoğan also form part of the same body of evidence (Annex 70).

Erdoğan Bayraktar's 2021 statement is of particular importance to the reliability of the records in the 17 December file. Bayraktar stated that the transcripts, technical-surveillance records and telephone conversations in his own file were accurate, and that his file also concerned misconduct in public office. Although confined to his own file, this statement plainly contradicts the general claim that the communications and technical-surveillance records were edited or fabricated. The failure to subject the criminal complaints lodged following the statement to an effective legal examination also raises the question why the judicial authorities did not assess this new evidence (Annexes 74 and 75).

According to the case-file summary examined, the conversations attributed to Recep Tayyip Erdoğan and his son Bilal Erdoğan and commonly known as the 'zeroing recordings' were not obtained during the judicial interceptions in either the 17 or the 25 December file. This report therefore does not rely on those recordings as primary evidence in these proceedings. Its principal finding is substantiated without recourse to them, through the cash seized in searches, court-authorised interception and surveillance, digital examinations, banking records and procurement documents.

B Sources and Methods of Collection of the 25 December Evidence

The evidential basis of the 25 December file consists of judicial interception orders and audio recordings, records held by the Telecommunications Communication Presidency (TİB), historical traffic data and cell-site analyses, physical-surveillance images and

reports, CCTV recordings from the municipal system and private premises, e-mail and digital-material examinations, search and seizure records, bank and company records, land-registry and planning documents, tender specifications and bid information, reports by Banking Regulation and Supervision Agency (BDDK) and Customs inspectors, and tender results verified through open sources. This range demonstrates that the investigation did not depend on a single source or interpretation; rather, different categories of evidence corroborated one another.

The allegation that the investigation was initiated autonomously by law enforcement or for political purposes is plainly contradicted by the chronology of the file. The investigation was opened following a severance decision by a public prosecutor; interception of communications, physical surveillance and other protective measures were carried out entirely pursuant to judicial orders. The interception records were not created by the police, but recorded through the TİB system and transferred to the file. Taken as a whole, the documents examined identify, for every measure, the prosecutor who issued the instruction, the judge who made the order, the date of the measure and the resulting evidence.

C Bribery Pool and Media Group Transactions

The investigation records find that funds exceeding USD 550 million were collected from businesspersons for the transfer of the Turkuvaz Media Group. The evidential chain includes communications concerning demands for payment and the organisation of payments, surveillance records documenting meetings between businesspersons, the amounts transferred to Zirve Holding, and the temporal correspondence between those funds and the transfer of the media group's shares. The records show that the investigation concerned a system of benefits based on the award of high-value public contracts in return for bribes.

The same evidence contains communications and surveillance records regarding the roles of various persons in the fund-raising arrangement, including Binali Yıldırım, Mehmet Cengiz, Nihat Özdemir, Celal Koloğlu, İbrahim Çeçen, Adnan Çebi and Abdullah Tivnikli. The report does not attribute responsibility to those persons through an abstract political assessment, but by reference to the connection between the relevant transcript, surveillance record, company record, movement of funds and procurement result.

D Public Procurement and Transfers of Benefits

The 25 December police report examined numerous tenders, including the Kurtköy–Akyazı and Kınalı–Odayeri motorway sections, the Vezirhan–İnönü T26 tunnel, the Palu–Genç–Muş railway, the Çanakkale–Ezine–Ayvacık road, the Mahmutbey–Mecidiyeköy metro line, the Viranşehir–Kızıltepe junction and construction of a Turkish Airlines hangar. The fact that tender conditions or the successful company were known in conversations before publication, that competing bids were coordinated, that certain

firms were paid to withdraw and that tender outcomes corresponded to earlier conversations constitutes central evidence in the investigation.

For example, the documents examined show that the conditions of the Vezirhan–İnönü T26 tunnel tender were known in conversations on 7 October 2013, before the tender notice of 23 October 2013; in the Palu–Genç–Muş railway project, the company identified in advance in the police report subsequently won the tender. Technical and physical-surveillance records concerning the Çanakkale–Ezine–Ayvacık road tender indicate that the bids of twelve firms were coordinated and that certain firms were paid to 'withdraw'. This evidence shows that the police did not invent fictitious offences, but investigated concrete events subsequently corroborated by official tender results.

E Real Property, Planning Permission and Other Benefit Relationships

The investigation covers a range of benefit relationships, including the valuation and transfer of high-value property in Etiler; attempts to transfer thermal power plants to Yasin El Kadı; irregular mining licences; preparation of the tender specifications for kiosks and cafés in the Marmaray area according to the conditions of the company entering the tender so that they could be awarded to Simit Sarayı; the land and planning-permission issue between Bilal Erdoğan and Ali Ağaoğlu; and villas alleged to have been built for Recep Tayyip Erdoğan in Urla.

The Urla file contains records indicating that university academics were paid to alter the zoning status, that a receipt for a low amount was issued after payment to legitimise the transaction, and that the report was prepared within an exceptionally short period. Closure of the file without investigating the accuracy and legal implications of this evidence is a fundamental issue that had to be answered before the investigating officers were punished.

III TERMINATION OF THE INVESTIGATION AND NEUTRALISATION OF THE EVIDENCE

On 18 December 2013, officers of the Financial Crimes Branch of the Istanbul Security Directorate who were conducting the investigation were removed from their posts. On 26 December 2013, Prosecutor Muammer Akkaş was removed from the file; during the same period, existing judicial search, seizure and arrest orders were prevented from being executed. The file was transferred to new prosecutors, including İrfan Fidan, İsmail Uçar and Fuzuli Aydoğdu. These measures are confirmed by the Court of Cassation judgment, the letter of the Deputy Chief Public Prosecutor and official records concerning the transfer of the investigation (Annexes 1 and 2). On 25 July 2014, the new prosecutors issued a decision of non-prosecution in respect of 96 suspects. The documentary review shows that this decision did not individually rebut the evidence set out in the 1,005-page police report; the suspects were not questioned on the substance of the interception, surveillance, movements of funds and procurement records, and the investigation was closed on the basis of merely formulaic statements (Annexes 3–5). The non-prosecution decision is therefore not proof that the bribery and

corruption evidence was false; it instead documents that the evidence was not effectively investigated. Following the parliamentary inquiry concerning four former ministers, the motions to refer each minister to the Constitutional Court sitting as the Supreme Criminal Tribunal were rejected in votes held on 20 January 2015. Those votes were not acquittals following an adversarial judicial examination of the evidence. Their rejection therefore does not establish that the physical evidence in the investigation files was false or legally rebutted. Considered together, the failure to submit the files to effective judicial scrutiny and the later confirmation of his own records by one of the persons directly concerned reinforce the concern that the material truth was never examined by an independent tribunal (Annexes 74 and 76).

IV PROSECUTION OF THE OFFICERS WHO COLLECTED THE EVIDENCE

After the investigation was closed, the direction of the judicial process was reversed: proceedings against the bribery and corruption suspects were discontinued, while the prosecutors and police officers who had collected the evidence became the targets of new investigations. The file as a whole indicates that accusations of a 'coup', 'espionage', 'unlawful interception' and 'violation of private life' were instrumentalised to discredit the investigation politically. The fact that each law-enforcement measure had been taken pursuant to prosecutorial instructions and judicial orders was disregarded, and collective criminal liability was constructed by reference to function, institution and association.

The criminal proceedings against the investigating law-enforcement officers were not limited to accusations of a 'coup', 'espionage', 'unlawful interception' and violations of the right to respect for private life. The offences examined in the judgment of the 3rd Criminal Chamber of the Court of Cassation, File no. 2021/4197, Decision no. 2023/2716, also expressly include establishing and leading an armed terrorist organisation, membership of an armed terrorist organisation, committing offences on behalf of an organisation, and aiding an armed terrorist organisation (Annex 1). The Court of Cassation likewise assessed the 17 and 25 December proceedings within the framework of the structure referred to as FETÖ/PDY and its activities within the police and the judiciary. Accordingly, the proceedings against the defendants fall to be examined not only in terms of general criminal-law principles and fair-trial guarantees, but also as to whether the criminal-law powers exercised in the context of counter-terrorism complied with human-rights and rule-of-law standards.

The material elements of force and violence required for the offence of attempting a coup were not established in respect of the defendants; no weapon, organised force, act of execution or suitable instrument was identified. Nevertheless, the political consequence of the investigation was treated as evidence of a 'coup objective', and lawful evidence-gathering measures were recharacterised as offences directed towards that objective. This approach is incompatible with the principles of legality in criminal law, individual criminal responsibility and foreseeability.

V VIOLATION OF THE GUARANTEE OF AN INDEPENDENT AND IMPARTIAL TRIBUNAL

The trial took place in an environment in which the highest levels of the political authorities had publicly described the investigation as a 'coup' and the work of a 'parallel structure'. The sequence examined shows that those statements did not remain political rhetoric, but were converted into institutional consequences through changes of prosecutors, the removal of law-enforcement personnel, the establishment of criminal judgeships of the peace, changes to the trial bench and proceedings against judges who issued decisions. In those circumstances, not only the court's subjective impartiality but also, in the eyes of a reasonable observer, the appearance of independence and impartiality was lost.

This assessment is not based solely on the parties' accounts. The Venice Commission identified detailed concerns regarding the extensive powers, closed horizontal appeal system, and appearance of independence and impartiality of the criminal judgeships of the peace (Annexes 54 and 55). Its other opinions on judicial safeguards and the structure of the Council of Judges and Prosecutors (Annexes 52 and 53), the Council of Europe Commissioner for Human Rights' findings regarding changes of judges and politically sensitive cases (Annex 56), Parliamentary Assembly reports (Annexes 57–60), communications of the United Nations Special Procedures (Annexes 61–63), and OSCE and United Nations fair-trial standards (Annexes 64–66) cumulatively demonstrate the structural problem of judicial independence during the same period.

The manner in which the trial bench was constituted, the dates and allocation decisions by which the judges were replaced, the time available to the new bench to master the file as a whole, and whether it genuinely examined the evidence submitted by the defendants and their counsel were not explained. Considered together, the judgment and procedural chronology show that the bench was replaced in its entirety during the trial; that the bench delivering judgment did not personally hear all the evidence received directly at earlier hearings; and that substantial objections concerning impartiality were not answered with concrete reasons. These facts support the finding that the bench constituted before judgment was not the natural result of ordinary, predetermined rules, but was formed so as to determine a particular political case (Annexes 42, 44 and 47).

VI THE APRIL 2015 RELEASE ORDERS AND JUDICIAL INDEPENDENCE

On 20 April 2015, defence counsel applied for the recusal of the criminal judges of the peace on the ground that they had lost their impartiality and requested the defendants' release. On 24 April 2015, the Istanbul 29th Criminal Court of First Instance granted the recusal applications and assigned the Istanbul 32nd Criminal Court of First Instance to determine the release applications. On 25 April 2015, the 32nd Criminal Court of First Instance ordered the release of 63 persons (Annexes 28–30).

The release warrants were not executed and were returned to the court. The Istanbul 10th Criminal Judgeship of the Peace treated the decisions of the 29th and 32nd Criminal Courts of First Instance as legally 'non-existent', and the enforcement authority did not release the detainees (Annexes 31–34). Judges Metin Özçelik and Mustafa Başer, who issued the decisions, were subsequently suspended, detained and each sentenced to ten years' imprisonment. This sequence, occurring immediately after the release orders, created a clear chilling effect by signalling to other judges who might decide in favour of liberty that they could face grave personal consequences; it exerted direct pressure on the appearance of independence and impartiality in subsequent detention reviews and trials.

Differential Institutional Treatment According to the Outcome of Judicial Acts

The documentary schedule for the 17 December investigation identifies 48 measures and 27 different judges in relation to interception orders alone. When orders for interception, technical and physical surveillance, extensions, corrections and objections are considered together, at least 32 different judges participated in 94 judicial measures. The great majority remained in office after 2014; some were appointed as presidents of assize courts, to regional courts of appeal, or as members of the Court of Cassation. This demonstrates that the investigative measures cannot be portrayed as the activities of a few individual law-enforcement officers acting outside judicial supervision (Annex 71).

By contrast, the professional and criminal fate of Judge Metin Özçelik of the Istanbul 29th Criminal Court of First Instance and Judge Mustafa Başer of the Istanbul 32nd Criminal Court of First Instance was entirely different. Özçelik's decision of 24 April 2015 granting the recusal application was followed by Başer's release orders of 25 April 2015; the decisions were not enforced, and both judges were suspended and detained within a short period. In Başer and Özçelik v. Turkey, the European Court of Human Rights held that their detention was not based on a reasonable suspicion and found a violation of Article 5 of the Convention (Annex 72).

The resulting comparison shows that the institutional treatment of judges serving during the same period and within the same group of proceedings varied according to the outcome, rather than the nature, of the judicial act. Judges who authorised investigative measures or later ruled against the defendants remained in office and were promoted, whereas the decisions of the two judges who ruled in favour of liberty were not enforced and those judges were suspended and detained. Objectively, this gives rise to a strong appearance of selective interference, which must be explained by ordinary, predetermined criteria independent of political influence.

This sequence is of critical importance not only to the right to liberty and security of Metin Özçelik and Mustafa Başer, but also to the independence of the judges who would subsequently determine the cases against the same defendants. The non-enforcement of the release orders and the immediate targeting of the judges who issued them

through criminal investigations conveyed to other judges the message that decisions in favour of the defendants would carry severe personal consequences. Even if the trial court were assumed to have been subjectively impartial in such an environment, the appearance of independence and impartiality was seriously impaired in the eyes of a reasonable external observer. The guarantee under Article 6 of the Convention of an independent and impartial tribunal established by law must be examined by considering together the non-enforcement of the April 2015 decisions, the proceedings against the judges, the subsequent changes to the trial bench and the manner in which the bench delivering judgment was constituted.

VII OBSTRUCTION OF THE DEFENCE'S ACCESS TO EVIDENCE

Although the court ordered the copying of certain images and historical traffic records, the defence sought forensic images of all digital material relied upon for conviction, together with hash values, chain-of-custody information and a genuine opportunity for technical examination. Access to complete forensic images of 191 disks was restricted, delayed for months or refused on grounds of cost, third-party information, technical impossibility and shortage of personnel (Annexes 6–13).

Limited access was provided to some historical traffic-data CDs, TİB logs, Financial Crimes Branch camera recordings, forensic images of digital material, expert reports, a flash-drive image, BDDK and Customs Inspector reports, evidential disks, interception transcripts, audio recordings and search records. That access was nevertheless insufficient to permit effective examination of all evidence relied upon for conviction. Considered together, the scope of the data, timing of delivery, usable format, time allowed for examination and ability to obtain assistance from an independent technical expert show that the access afforded was sufficient only to create the appearance of a defence right; it did not provide a genuine and effective opportunity to prepare, test and rebut the prosecution evidence. Conviction notwithstanding incomplete and delayed access therefore violated equality of arms and the guarantee of adequate time and facilities for the preparation of the defence.

VIII REJECTION OF WITNESSES AND DEFENCE REQUESTS

The violation of fair-trial rights arising from the refusal to hear material witnesses and experts was not remedied merely because certain witnesses were heard. Hüseyin Çapkın, Bekir Gencer and Yılmaz Kıstı gave evidence; by contrast, at the hearing of 4 January 2019 the defence requests for witnesses, documents and expert examination were rejected en bloc, and the file was referred to the prosecution for its submissions on the merits (Annex 14). The statement of protected witness Bayrak, taken outside the main proceedings, was relied upon for conviction, while defence requests that the witness be recalled and questioned were rejected without any reasons (Annexes 15 and 16).

The rejection of requests concerning Fuat Birtan, Ekrem Aydıner, Ali Cengiz Hacıosmanoğlu and technical experts, together with the refusal of witness, expert, Information and Communication Technologies Authority (BTK) and further-investigation requests submitted in the 25 December case on 8 March and 22 November 2018, indicates that the court avoided examining the defendants' substantive objections and expressly restricted the rights of the defence (Annexes 17–19). Time limits imposed on defendants and counsel, and difficulties in using the computer-equipped defence room, further curtailed their ability to prepare and present the defence (Annexes 20–22).

IX EVIDENTIAL AND REASONING DEFICIENCIES IN THE ESPIONAGE CONVICTION

In the espionage conviction entered following the quashing judgment, the reasons did not identify separately the specific information deemed to constitute a State secret, establish that each defendant knew of that status, or show that each acted with the specific intent required for espionage. The defence submission that the Haliç Congress Centre images and photographs of the Skoda Export meeting were obtained in the course of a judicial investigation was not addressed, nor was it explained at what point an act performed on prosecutorial instructions became the procurement of information for espionage purposes (Annexes 23, 24 and 27).

The fact that the Haliç images were recorded by the routine security system of a private establishment, that Yasin El Kadı was among the suspects in the investigation, and that the images were requested pursuant to prosecutorial instructions demonstrates the direct judicial purpose of the measure. Discrepancies between document dates and registration numbers cannot constitute evidence of an intent to commit espionage; they must be explained by the institutions that created and retained the documents. Mustafa Demirhan's statements and the findings concerning the chain of custody of the Haliç material further support this legal requirement (Annexes 25 and 26).

X THE RIGHT TO AN EFFECTIVE REMEDY AND THE FAILURE TO DETERMINE COMPLAINTS

The defence's criminal complaints concerning alteration of digital evidence, preparation of inaccurate expert reports and irregularities in the report-preparation methodology were not subjected to independent technical examination. Obtaining an institutional response from the BTK and Avea/Türk Telekom does not mean that the other technical complaints were effectively investigated. Some complaints were determined by reference to the pending proceedings; others were removed from consideration or were not taken up for investigation (Annexes 35–41).

XI PROLONGED DETENTION CONDITIONS OF IMPRISONMENT AND REASONABLE TIME

Prolonged confinement in a single-occupancy cell, deprivation of social contact, monitoring of lawyer consultations and restrictions on family communication were not

confined to Yakub Saygılı. A substantial number of the persons concerned were held in detention or imprisonment for lengthy periods; in some cases, the detention of spouses compounded the interference with family life.

Yakub Saygılı's applications concerning his confinement in a single-occupancy cell, the monitoring of his consultations with counsel and the obstruction of telephone contact with his spouse constitute concrete evidence documenting widespread detention practices and violations of the same nature.

In respect of all defendants, the matter must be assessed under the prohibition of ill-treatment, confidentiality of the defence and the right to respect for family life (Annexes 42–51). Communications of the United Nations Special Procedures concerning deprivation of liberty and pressure on legal professionals, together with the Nelson Mandela Rules, provide standards directly applicable to that assessment (Annexes 61–63 and 67).

More than twelve years have elapsed from 2014, when abstract criminal accusations first began to be relied upon as grounds for detention, to September 2026. The procedural chronology, comprising first-instance judgments, appellate proceedings and the proceedings following the quashing judgment, demonstrates that the case lacks a lawful foundation and that every acceptable time limit has long since been exceeded (Annexes 42–47). Some of the persons concerned have been continuously deprived of liberty since 2014 under decisions lacking any lawful basis. The fact that almost the entire period was spent in detention or serving sentences aggravated the effects of the violation and caused irreversible consequences for family, professional and social life.

XII APPLICABLE INTERNATIONAL FAIR TRIAL STANDARDS

The same standards also apply to criminal proceedings conducted in the context of counter-terrorism; an accusation of terrorism or involvement in a terrorist organisation does not displace the guarantees of an independent and impartial tribunal, defence rights, equality of arms, reasoned judgments and individual criminal responsibility.

The OSCE/ODIHR Fair Trial Legal Digest gives concrete expression to the requirements of an independent and impartial tribunal, equality of arms, examination of witnesses and reasoned judgments (Annex 64). Trial Monitoring: A Reference Manual for Practitioners provides monitoring criteria regarding the establishment of the tribunal, replacement of judges, effective participation of the defence and the overall fairness of the hearing (Annex 65). General Comment No. 32 of the United Nations Human Rights Committee requires that judicial independence, preparation of the defence and the right to examine witnesses be guaranteed in practice and not merely in form (Annex 66).

These standards have not merely been cited as abstract legal principles; the concrete events and findings identified in the files have been rigorously assessed in their light. Accordingly, changes to the bench and the April 2015 process have been examined under the guarantee of an independent tribunal; obstruction of access to digital material

under equality of arms; refusal to hear witnesses and experts under the right to adversarial proceedings; non-individualised coup and espionage accusations under the obligation to give reasons; and the proceedings exceeding twelve years under the right to trial within a reasonable time.

XIII CONCLUSIONS AND RECOMMENDATIONS TO OSCE PARTICIPANTS

Since the proceedings examined in this report also involve charges of establishing and leading an armed terrorist organisation, membership of an armed terrorist organisation, committing offences on behalf of an organisation, and aiding an armed terrorist organisation, the documented issues must also be assessed from the standpoint of the protection of human rights when combating terrorism.

The documents examined show that the bribery and corruption evidence obtained in the 17 and 25 December investigations was not effectively investigated, while criminal proceedings were brought against the prosecutors and law-enforcement officers who had collected that evidence pursuant to prosecutorial instructions and judicial orders. In particular, the first-instance convictions give rise to serious doubt as to whether the concrete conduct and intent attributed to each defendant were established through individualised evidence and whether the defence's material objections were answered with adequate reasons.

Erdoğan Bayraktar's statement confirming the transcripts, technical-surveillance records and telephone conversations in his own file is an important fact requiring renewed and independent examination of the narrative that the investigative evidence was fabricated in its entirety. Just as the ministers' departure from office cannot constitute a legal admission of criminal responsibility, Parliament's decisions not to refer them to the Constitutional Court sitting as the Supreme Criminal Tribunal do not constitute acquittals or judicial assessments of the evidence. Those developments do not remove the need for a substantive and adversarial examination of the physical evidence before an independent tribunal (Annexes 74 and 76).

The concerns in question cannot be treated as isolated procedural errors. Taken together—the replacement of prosecutors; removal of law-enforcement officers; decisions of non-prosecution in both the 17 and 25 December files without an effective investigation of the physical evidence; non-enforcement of the April 2015 release orders and criminal proceedings against the judges who issued them; the composition of the trial benches; restrictions on defence access to evidence and witnesses; the failure to make digital evidence available for independent technical examination; and prolonged detention under severe custodial conditions—they disclose a comprehensive structural problem that extinguished the guarantees of judicial independence and a fair trial.

The Warsaw Human Dimension Conference is not a judicial remedy empowered to issue binding decisions on individual convictions. Its principal function is to review the manner in which OSCE participating States implement their human-dimension

commitments and to bring structural concerns requiring the international community's urgent attention to the agenda. The findings in this report should therefore be considered in the context of Türkiye's compliance with its OSCE commitments concerning judicial independence, the rule of law and fair trial rights.

Against this background, the authorities of the Republic of Türkiye should ensure an effective review by independent bodies of the relevant proceedings against the guarantees of an independent and impartial tribunal, equality of arms, adequate time and facilities for the defence, examination of witnesses, reasoned decisions and trial within a reasonable time; make the digital evidence available to the defence and for independent forensic examination; examine the destructive effect on judicial independence of the unexecuted release orders and the proceedings against the judges who issued them; and reassess without delay the necessity and proportionality of continuing detention.

Finally, OSCE participating States and OSCE/ODIHR are called upon to keep the matters documented in this report continuously on the agenda in bilateral and multilateral dialogue concerning Türkiye's implementation of its human-dimension commitments; closely monitor and report on developments relating to judicial independence and fair-trial guarantees; consistently emphasise, in contacts with the Turkish authorities, the need for independent technical examination and effective judicial review; and activate appropriate monitoring, expert-support and follow-up mechanisms within their respective mandates.

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