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OSCE MATCH-FIXING REPORT THE RIGHT TO A FAIR TRIAL, JUDICIAL INDEPENDENCE AND ANALYSIS OF SELECTIVE LIABILITY

Submitted by

Security Studies and Rule of Law Association
(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 under Articles 60–79 of the Swiss Civil Code. The Association works to protect human rights, strengthen the rule of law, and assess the compatibility of security policies with fundamental rights.

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Security Studies and Rule of Law Association, 15 rue des Savoises, 1205 Genève, Switzerland

Website: www.srlswiss.com • E-mail: info@srlswiss.com

EXECUTIVE SUMMARY

The proceedings publicly known as the "Match-Fixing Case" came to prominence following the operation carried out on 3 July 2011 as part of an investigation initiated by the Istanbul Chief Public Prosecutor's Office into allegations of match-fixing and incentive payments in football. Sports club executives, players, technical staff and agents were taken into police custody or remanded in detention; telephone conversations, technical and physical surveillance records, digital material and financial data were entered in the case file as evidence. The trial, which commenced upon acceptance of the indictment prepared by the Istanbul Chief Public Prosecutor's Office, resulted in convictions against a number of defendants. Some of those judgments were reviewed by the Court of Cassation. The matter was also examined in sporting and legal proceedings before the Turkish Football Federation (TFF), UEFA, the Court of Arbitration for Sport (CAS) and the Swiss Federal Supreme Court.

Following the political and judicial developments in Türkiye after 17–25 December 2013, the Match-Fixing Case was reopened. Separate criminal proceedings were brought against police officers who had conducted, or participated in, the original investigation, on allegations that evidence had been fabricated or falsely recorded and that the investigation had been conducted as a "frame-up". The charges in this subsequent case included membership of an armed terrorist organisation, as well as falsification of official documents, false accusation and violation of the confidentiality of communications; the trial proceeded on the basis of those charges (Annex 12; Annex 13). While persons accused in the original case were acquitted in the retrial proceedings, law-enforcement personnel involved in the investigation were convicted of various offences, including document falsification, false accusation and violation of the confidentiality of communications. This report does not seek to adjudicate afresh whether match-fixing occurred in football. It examines whether the criminal liability attributed to the officers in the subsequent proceedings was adequately established in terms of specific conduct, individual intent, evidence and causation, and whether the trial complied with fair-trial guarantees.

The issues of judicial independence and fair-trial rights examined in this report must therefore also be considered in the context of protecting human rights while countering terrorism. This assessment does not rest on accepting the truth of the membership allegation or assuming that every defendant was convicted of that offence. It rests on the nature of the charges in the case file and the fact that the proceedings were conducted within that framework (Annex 12; Annex 13).

The central finding of this report is that, although the criminal liability of the judicial police personnel who served in match-fixing investigation no. 2010/2287 had to be established by reference to each defendant's individual conduct and intent, the investigation conducted pursuant to prosecutorial instructions and numerous judicial orders was recharacterised years later on the basis of examination records prepared by the police. The issue is not whether the substantive conclusions of those subsequent records or court decisions were correct. The fundamental issue is that review of the lawfulness and legal effect of a judicial decision belongs to the judicial authorities designated by law; the police, which operate within the executive hierarchy, cannot assume that function. The blurring of this boundary of competence was made a basis for imposing severe criminal liability on the officers who implemented the investigation. Taken together with changes in the judicial panel at the judgment stage and the determination of a voluminous case within a short period, this gave rise to serious fair-trial concerns.

Rather than merely repeating the chronology, the report examines each area of violation separately. Each section identifies the nature of the violation, the specific event in the case, the primary document, the relevant international standard and the resulting conclusion. Defence submissions, indictments and judgments have not been presumed to be correct: each source has been assessed only to the extent of what it establishes and the legal function it serves. Annex 25 provides a consolidated cross-reference between the international materials and the specific areas of violation; the relevant standard is also applied to the facts in each section below.

The first area of violation concerns the guarantee of an independent and impartial tribunal and the right to a judge established by law. The eighteenth hearing, held on 9–16 November 2020, was conducted by Presiding Judge Ömer Yıldırım and panel members Muhammet Ziya Gündüz and Ali Çolak. The record of the nineteenth hearing, dated 1 February 2021, states that "the previous records were read owing to a change in the composition of the panel"; that hearing was conducted by Presiding Judge Ahmet Uğuz and members Muhammet Ziya Gündüz and Murat Tuncer. The twentieth hearing, held from 17 May to 4 June 2021, again opened with a reference to a "change in the composition of the panel". Judgment was delivered unanimously on 4 June 2021 by Presiding Judge Ahmet Uğuz and members Ali Çolak and Murat Tuncer. The presiding judge and one member thus first appeared in the case approximately four months before judgment; the final three-judge panel first sat together on 17 May 2021, at the opening of the final hearing, and delivered judgment eighteen days later (Annexes 14–16).

These facts do not, in themselves, establish the purpose for which the panel was assigned. They nevertheless require an explanation of how much evidence the final panel heard directly, how it assessed the defence submissions, and whether it had a realistic opportunity for collective deliberation in a case involving 108 defendants, thousands of pages and extensive digital evidence. A finding of "special appointment" can be conclusively established only by reference to appointment or temporary-assignment decisions of the Council of Judges and Prosecutors (HSK), judicial commission decisions on the allocation of work, and case-allocation records.

The second, central area of violation is that, notwithstanding the review and upholding of the first-instance judgment in the 2011 investigation by the Court of Cassation, and the examination of the same underlying facts in proceedings before the TFF, UEFA, CAS and the Swiss Federal Supreme Court, that legal position was wholly reversed amid structural interventions in the judiciary following the 17–25 December period. Even if the subsequent court was not legally bound by the earlier decisions, it was required to explain, through detailed reasoning amenable to scrutiny, the diametrically opposed conclusions it reached on the basis of the same chain of evidence.

A further, related central issue is the de facto review of judicial decisions by the police. The finding that "the earlier interceptions were unlawful", which formed the principal basis of the subsequent investigation in 2016, was made not by judicial authorities but in records drawn up directly by police officers. Yet the interception of communications, technical surveillance, searches, seizures and detention measures in the 2010–2011 investigation were based on prosecutorial applications and judicial orders issued at the time. The lawfulness of those decisions can be assessed only by the authorities empowered by law to determine objections and appeals. The police may investigate facts; they cannot decide whether a court order had a sufficient basis, whether its legal conditions were met, or what legal consequences it produces.

The third area of violation concerns legality and legal certainty. The mere presence of a signature on a document is insufficient to justify punishing an interception operator, a transcript officer, a physical surveillance officer, a typist or an administrative employee years later for technically implementing a judicial order. For each person, it must be established which information was false, that the person knew it to be false, that he or she intended to mislead the prosecutor and judge, and what individual contribution was made to the resulting outcome. The acceptance of an unavoidable mistake in respect of certain subordinate officers, resulting in decisions not to impose a penalty in the reasoned judgment in the “frame-up” case, demonstrates that the court itself recognised that the performance of the duty cannot automatically be treated as criminal.

The fourth area of violation concerns the right to a reasoned judgment and individualised criminal responsibility. The fact that a judgment runs to thousands of pages does not establish that the defence’s substantive objections have been answered. Where the judgment itself acknowledges that the voices belong to the persons concerned and that the surveillance footage contains no tampering, editing or additions, it must clearly identify the specific recording, falsification and individual intent on which the offences of document falsification, false accusation and violation of the confidentiality of communications are based. An official title, service in a particular unit, or the number of records signed cannot be substituted for individual criminal intent. The specific conduct and individual intent relied upon for the charge of membership of an armed terrorist organisation must also be examined separately from the other charges.

The fifth area of violation concerns equality of arms and adequate time and facilities for the preparation of the defence. The source, integrity and chain of transfer of the raw audio recordings, interception transcripts, telecommunications traffic records (HTS), cell-site data, technical surveillance footage and seized digital media used in the match-fixing investigation must be open to document-by-document scrutiny. The same applies to whether the defence was able to examine that material with independent expert assistance and whether its technical objections received reasoned answers. The available documents do not disclose a consolidated schedule providing an uninterrupted link, for every item, between the raw recording, transcript, analytical product, hash value and defence copy. That gap cannot be filled by assumptions adverse to the defendants (Annex 11 and Annex 20).

I SUBJECT MATTER, METHODOLOGY AND PRINCIPAL FINDINGS

The report examines together investigation no. 2010/2287, indictment no. 2011/598 of the Istanbul Chief Public Prosecutor’s Office, the original reasoned judgment of the Istanbul 16th Assize Court, the judgment of the 5th Criminal Chamber of the Court of Cassation, retrial decisions, the TFF and UEFA proceedings, CAS award no. 2013/A/3256, review by the Swiss Federal Supreme Court, the proceedings before the Istanbul 23rd Assize Court under case no. 2016/62, and the records of the hearings in that case. Its purpose is not to determine afresh whether acts of match-fixing occurred, but to assess the procedural safeguards in the criminal proceedings brought against law-enforcement personnel on the basis of the same evidence and investigative acts. The examination also encompasses the charge of membership of an armed terrorist organisation in the subsequent case file and the conduct of the proceedings on that charge alongside the other allegations (Annex 12; Annex 13).

The initiating document in the investigative chain is the letter dated 23 November 2010, no. 22115-2700, concerning allegations of match-fixing and betting. The documentary package containing that letter and the related applications and orders for the monitoring of communications was compiled under investigation no. 2014/164254 of the Istanbul Chief Public Prosecutor's Office (Annex 1). Its inclusion under a later investigation number does not alter the date of the initiating letter of 23 November 2010 or its function in the investigative chain. Annex 1 is, however, used as a source package showing the initiating letter and related measures, rather than as a complete inventory of all initiating documents.

The 451-page indictment dated 2 November 2011, no. 2011/598, identifies the scope of investigation no. 2010/2287 as brought to trial, the allegations by person and act, the statutory provisions relied upon, and the principal categories of evidence, including communications records, HTS records and digital material (Annex 2). The indictment is not treated as a judgment that proves the truth of its own accusations. It is used as a primary procedural document identifying the facts and material on which the original investigation was brought before the court. That distinction is important in assessing the specific grounds on which the same acts and material were differently characterised in the subsequent "frame-up" proceedings.

The copy in Annex 3 of the original reasoned judgment of the Istanbul 16th Assize Court, case no. 2011/63, judgment no. 2012/71, contains pages 1–499 of the 682-page judgment. Annex 3 is therefore used to show the structure of the available assessment of defendants and evidence; it is not treated as a complete copy representing the final 183 pages or the entire operative outcome. Comparison between the indictment (Annex 2), this partial judgment and the Court of Cassation judgment (Annex 4) is likewise confined to the persons, acts and evidential matters that can be verified across those sources.

The 50-page judgment of the 5th Criminal Chamber of the Court of Cassation, dated 17 January 2014, case no. 2013/16791, judgment no. 2014/516, reviewed on appeal the judgment of the Istanbul 16th Assize Court in case no. 2011/63, judgment no. 2012/71 (Annex 4). It did not leave the first-instance judgment intact as an immutable and wholly confirmed outcome; it quashed parts of that judgment on different legal grounds in respect of particular defendants and offences. Annex 4 is accordingly used in comparison with the subsequent proceedings not on the assumption that the entire original judgment became final, but as a review document showing the appellate outcome for its respective parts.

The evidentiary method follows the sequence of identifying the violation, the specific facts, the primary document, the limits of what that document establishes, the international standard and the conclusion. Preparation of Annex 18 involved reviewing 17,020 PDF pages and 309 TIFF images of judicial orders, totalling 17,329 source pages and images. Comparison of the main index with the order inventory identified 307 unique judicial-order identifiers: 225 orders for the monitoring and interception of communications and 82 orders for covert observation and technical surveillance. Thirty-eight orders issued by fifteen different judges were separately verified against their original signature pages. Indictments, reasoned judgments, Court of Cassation judgments, retrial decisions, hearing records, defence pleadings, digital evidence records, and TFF, UEFA, CAS and Swiss Federal Supreme Court materials were also assessed together. No document was treated as conclusive merely because it was official or originated from the defence. CAS and Swiss Federal Supreme Court decisions are not decisions of a higher court binding on Turkish criminal courts; they serve as comparative sources showing how the same facts were assessed in different adjudicative proceedings. Annex 25 cross-references the OSCE, UN, Council of Europe, European Court of Human Rights (ECtHR), Venice Commission, OHCHR, PACE and European Commission materials used throughout the report to their applications in this case.

Principal Finding 1. The investigative measures were implemented pursuant to successive prosecutorial applications and numerous judicial orders. The subsequent conviction must explain, for each individual and each order, the causal link between the judge's independent decision and the information supplied by the police.

Principal Finding 2. The lawfulness of judicial decisions may be reviewed only by the judicial authorities designated by law to determine challenges and conduct review. If the series of police examination records was used to assess the sufficiency, validity or legal effect of investigative orders, exceeding the boundaries of factual inquiry, the police were effectively placed in the position of an appellate authority. In the present case, the finding that "the earlier interceptions were unlawful", which formed the principal basis of the 2016 investigation, was made not by a judicial authority but directly in records prepared by police officers. Basing a criminal conviction on this functional transfer of judicial power constitutes a grave violation of judicial independence, legal certainty and equality of arms.

Principal Finding 3. The composition of the trial panel changed twice at the judgment stage. The final presiding judge and one member delivered judgment in this voluminous case within approximately four months of joining it; the final three-judge panel did so within only eighteen days of sitting together. Although the purpose of the appointments has not yet been documented, this creates a serious problem as to the appearance of objective impartiality, the right to a judge established by law, and the principle of immediacy. A legal explanation is required as to how the court read and examined thousands of pages, the annex files and the defence submissions on the merits, assessed the evidence, and reached its decision within such a short period of eighteen days.

Principal Finding 4. The acquittals on organisation-membership charges, profiling codes classifying individuals as outside the organisation, findings that there was no ByLock or Bank Asya data, and decisions recognising an unavoidable mistake in respect of certain personnel in the "frame-up" judgment require an explanation of the concrete criteria distinguishing them from convicted defendants performing the same duties.

II VIOLATION OF THE GUARANTEE OF AN INDEPENDENT AND IMPARTIAL TRIBUNAL

A Changes to the Trial Panel Before Judgment

Paragraph 5.8 of the 1990 OSCE Copenhagen Document, Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR) require adjudication by an independent and impartial tribunal established by law. Impartiality is not confined to the absence of personal prejudice on the part of a judge: the constitution of the court and the manner in which judges are assigned to the case must not give rise to objectively justified doubts. For the application of these guarantees to the changes in the panel in this case and the relevant sources, see also [10], [12], [14] and Annex 25.

The headings of the records of the first to twentieth hearings show ten different panel compositions and eleven successive changes in composition, including the temporary/duty panel at the fifteenth hearing. Excluding the transition to the temporary panel and the return to the regular panel, there were nine changes to the panels conducting the substantive trial. Initial defence submissions were heard by different compositions at hearings 1–8; a substantial part of the evidential and witness proceedings at hearings 9–18 was conducted by the panel of Ömer Yıldırım, Muhammet Ziya Gündüz and Ali Çolak. Two critical changes occurred at the judgment stage: between the eighteenth and nineteenth hearings and between the nineteenth and twentieth. The final panel first sat together on 17 May 2021 and delivered judgment on 4 June 2021. Although the records state that “the previous minutes were read”, no record identifying the particular judge and date has been found showing that the subsequently appointed members reviewed the complete earlier audio and video recordings (Annex 19).

Approximately four months elapsed between the first recorded involvement of Presiding Judge Ahmet Uğuz and member Murat Tuncer on 1 February 2021 and judgment on 4 June 2021. The final three-judge panel first appeared together on 17 May 2021 and delivered judgment eighteen days later. Since Ali Çolak also sat at the eighteenth hearing, it cannot be said that “all three judges examined the case for only eighteen days”. The judgment must nevertheless explain whether all members of the deciding panel directly heard the defendants’ earlier oral submissions and the witnesses, which recordings they reviewed, and how they collectively deliberated on a file comprising thousands of pages. The absence from the file of the objective administrative basis for the assignments and of records showing that the new members examined the earlier audiovisual recordings reinforces these doubts in the defendants’ favour (Annex 19).

This chronology calls for the combined application of UN Human Rights Committee General Comment No. 32 and Recommendation CM/Rec(2010)12 of the Council of Europe Committee of Ministers. Paragraph 19 of the General Comment describes genuine judicial independence from the executive and legislature as an absolute guarantee. Paragraphs 24 and 44 of CM/Rec(2010)12 require the executive and legislature to refrain from conduct liable to undermine judicial independence and require cases to be allocated by reference to predetermined objective criteria. The issue in this case is not confined to whether the changes in the panel complied with domestic rules. Their basis, criteria and timing, the manner in which earlier oral evidence was conveyed to the new panel, and the parties’ opportunity to challenge that process must be explained together [12][13]. The sources and their application to the case are cross-referenced in Annex 25.

In texts adopted on Türkiye in 2016 and 2017, the Parliamentary Assembly of the Council of Europe called on public authorities to refrain from statements creating an impression of interference with the judiciary. Its 2021 assessment recorded continuing structural concerns regarding judicial independence and the separation of powers. The European

Commission's 2024 Türkiye Report also recorded a lack of progress regarding the composition of the HSK, safeguards governing appointments and transfers, and executive influence over the judiciary. These general findings do not establish that the particular panel was biased. They do, however, reinforce the institutional context requiring scrutiny of the two changes immediately preceding judgment against the appointment and case-allocation documents [16][27][28]. For the scope and limited use in this case of the PACE and European Commission findings, see also Annex 25.

The issue of impartiality also arises in the conduct of the hearing. The record of the sixteenth hearing shows that Mehmet Baransu's attempts to respond to Ali Koç's statement and to put questions to him were restricted, following which Baransu was removed from the courtroom. **According to Anadolu Agency's report of 3 July 2020**, Presiding Judge Ömer Yıldırım stated, after Baransu's removal: "As a panel, we see the games being played before us." Taken together, this intervention in the presentation of the defence and the statement made on behalf of the panel give rise to an objectively justified doubt as to impartiality, suggesting that a view of the case had been expressed before judgment **(record of the sixteenth hearing, pp. 7-8; [32]; Annex 26).**

B De Facto Review of Judicial Decisions by the Police

The starting point of this section is that the proceedings against the officers who conducted the match-fixing investigation were founded on records prepared directly by police officers, which purported to establish that "the telephone interceptions carried out in 2011 were unlawful". The purpose here is not to debate the substantive accuracy of a subsequent record or judgment, but to uphold the constitutional allocation of powers. Under Article 138 of the Constitution, the courts are independent; the legislative and executive organs and the administration must comply with judicial decisions and may not substitute themselves for the judiciary in reviewing or assessing them. In criminal proceedings, the lawfulness of a judicial order may be reviewed only by the authorities competent to determine the objections and other judicial remedies provided by law. The police, by contrast, are responsible for investigating facts, preserving evidence and implementing judicial orders within their prescribed limits, in accordance with the orders and instructions of the public prosecutor.

This distinction does not mean that the police may undertake no inquiry. They may investigate whether an application letter was falsified, who prepared it, whether a recording was altered, or whether a specific false fact was presented to the judge. Even in such an investigation, however, the police cannot determine whether a judicial order rested on sufficient suspicion, satisfied the requirements of the Code of Criminal Procedure (CCP), was valid, or had ceased to produce legal effects. Such a determination can be made only by an independent and competent judicial authority through an adversarial procedure in which the parties can participate.

The decisive criterion is therefore the function performed, not the terminology used. The absence of express terms such as "non-existent", "invalid" or "unlawful" from a police record does not, in itself, establish that the police did not encroach on judicial competence. If the police classify the sufficiency of the grounds for judicial decisions, form opinions on their legal conditions, or provide assessments subsequently relied upon in the indictment and judgment as a substantive basis for neutralising the earlier sequence of judicial orders, they have in substance undertaken judicial review. Nor does the subsequent court’s unqualified adoption of those records automatically cure the initial excess of competence. The court must expressly distinguish the facts established by the police from the legal assessment that falls exclusively within its own remit.

Principles 1 and 2 of the UN Basic Principles on the Independence of the Judiciary require disputes to be adjudicated by the judiciary on the basis of facts and law, free from improper influence or interference. The Venice Commission’s Rule of Law Checklist likewise treats protection against the nullification of final judgments by administrative authorities, and review of such judgments only through judicial procedures, as safeguards of the rule of law. What matters, therefore, is not the title of the 2015–2016 records but the function they perform in the indictment and judgment. If they establish signatures, dates and the attribution of documents, they constitute police fact-finding; if they determine the sufficiency and legal effect of earlier judicial orders, they encroach upon the judicial sphere [15][20]. Annex 25 cross-references these two instruments to the boundary between police investigation and judicial review.

The review of the 2010–2011 period identified 307 distinct investigative orders: 225 concerning the monitoring and interception of communications and 82 concerning covert observation and technical surveillance (the complete deduplicated series of 82 orders is in Annex 10). Three catalogue entries appearing under the 2nd and 3rd Assize Courts were found to duplicate records of the 12th and 13th Assize Courts bearing identical dates and order numbers; those entries were excluded from the final count (complete deduplicated series in Annex 9; combined chain of orders in Annex 18). Records examining the grounds for those orders, the implementation records and the personnel concerned were subsequently prepared in 2015–2016. The assessment cannot therefore be confined to a single order or record. For every order, the grounds for the application, the prosecutor’s action, the judge’s reasoning, the implementation record and the subsequent assessment of criminal liability must be examined together.

Individualised Proof Required for Criminal Liability

A subsequent finding that an investigative order was erroneous or insufficient does not prove criminal intent on the part of the officer who implemented it. To establish criminal liability, evidence beyond reasonable doubt must show, for each defendant, which specific fact presented to the judge was false, who produced it, whether the defendant knew it was false and intended to mislead the judge, and how the false information affected the order. A legal opinion subsequently formulated by the police cannot substitute for any of these elements.

A prosecutorial application and a judicial order do not confer immunity that renders every police act invariably lawful. Nevertheless, for a person implementing an operative judicial order within the limits of official duties, they create an appearance of lawfulness and a basis for reliance on public authority. Overcoming that position requires specific proof of awareness of manifest unlawfulness and of individual intent. Otherwise, responsibility for the outcome is placed on the subordinate implementing officer, while the independent assessment duties of the prosecutor and judge are excluded, thereby severing the chain of causation.

C Asymmetry Between the Judges and Prosecutors Issuing Decisions and the Officers Implementing Them

Within the chain of investigative measures, the police report, prosecutorial application, judicial order, implementation by the Telecommunications Communication Presidency (TİB) or the relevant technical unit, and the resulting record are separate acts. The judge issuing the order must scrutinise the information provided by the police; the prosecutor must assess the factual and legal basis of the application. Where the subsequent court severely punishes only subordinate implementing personnel, it must explain why the independent decisions of the prosecutor and judge have been treated as having no effect in the causal analysis.

Paragraph 8 of the operative part of the reasoned judgment in the "frame-up" case provides for notification to the HSK concerning the public prosecutors and judges who served in investigation no. 2010/2287, made applications and issued orders. That ruling shows that the court itself acknowledged that the legal decision-making in the chain of measures was not confined to the police. The matters requiring examination are which police report underlay which prosecutor's application, which judge authorised the measure in the exercise of independent judicial power, and what conclusion was reached for each actor and act when the same measure was subsequently treated as criminal.

The examination underlying Annex 18 verified thirty-eight orders issued by fifteen different judges against the original images and signature pages. Fourteen of those fifteen judges appear, under the same professional registration numbers, in the list annexed to HSK General Assembly decision no. 2016/426 of 24 August 2016 dismissing members of the judiciary. As no subsequent reinstatement decision was identified in open official records, those persons are shown in the current table as no longer holding judicial office. The latest open official record identified for Tuncay Aslan, registration no. 32383, is a 2018 record of his service as presiding judge of a Bakırköy Assize Court; his present status could not be conclusively established from later open official records. These career-status records do not establish that the dismissals or reassignments resulted from particular investigative orders in investigation no. 2010/2287. Nevertheless, while detailed convictions were entered against law-enforcement personnel on the basis of specific measures, the judgment does not explain the outcome of proceedings concerning the judges in respect of those same orders. The asymmetry of responsibility raised by the defence rests on this order-by-order comparison.

This gap in information cannot be construed adversely to the defence. The existence of a judicial order does not provide absolute immunity where an officer knowingly supplies false information. A conviction must nevertheless establish the precise false information, its author, the defendant's knowledge and intent, and its causal effect on the judge's independent decision. The entire outcome cannot be attributed to the implementing officer while wholly disregarding the judge's authority to examine and reject the application. The failure to ask the issuing judge whether he or she was misled, or to address that issue in the reasoning, is a material deficiency in the causation and individual-responsibility analysis that supports the defence.

OHCHR's March 2018 report on Türkiye and Venice Commission Opinion CDL-AD(2016)037 identified shortcomings in individualised reasoning, effective remedies and judicial review in the mass dismissals during the state of emergency. Those reports do not establish that the reassignments or dismissals recorded in Annex 18 were connected to particular decisions in investigation no. 2010/2287, and cannot substantiate a finding of guilt against the judges concerned. Their significance for this case is that the judges' subsequent dismissal cannot replace the reasoning required to establish individual intent and causation on the part of the officers in respect of the same investigative orders. Separate evidence is required for each actor and each act [18][19]. See also Annex 25 for the use of the OHCHR and Venice Commission findings as standards of individualised reasoning and effective scrutiny, rather than as evidence of guilt.

D Subsequent Status of the Judges Who Issued the Investigative Orders and the Asymmetry of Responsibility

From the defence perspective, the essential comparison is between the judges who authorised the interception of communications, technical surveillance and other investigative measures in investigation no. 2010/2287, the prosecutors who applied for those measures, and the officers who implemented them. The procedural chain comprised the police report, the prosecutorial application and the judicial order. The subsequent court cannot attribute the entire outcome to law-enforcement personnel without identifying the particular falsehood in the police report that decisively affected the judge's independent assessment.

Person or group	Role in case no. 2010/2287	Verified subsequent status	Implications for the defence
Zekeriya Öz	Initial instruction of 2 December 2010 and commencement of the investigation	Subsequent judicial and professional proceedings appear in the records; no separate outcome linked to this initiating act is specified.	The decision to initiate and direct the investigation must be assessed separately from police acts.
Mehmet Berk	Applications for measures, oral instructions and investigative acts	His oral instruction of 10 April 2011 was verified in the same document package as the judicial approval of 11 April 2011.	The prosecutorial application is an independent decision-making stage in the chain of measures.
Fifteen different judges verified against original signature pages	Decision-making authority in the chain of 225 communications monitoring and interception orders and 82 covert observation and technical surveillance orders	Public appointment and career records do not establish equally comprehensive and conclusive outcomes for all judges. These measures have not been shown to rest on particular orders in case no. 2010/2287.	Subsequent career status must not be confused with criminal liability arising from a particular investigative order.

Person or group	Role in case no. 2010/2287	Verified subsequent status	Implications for the defence
Tuncay Aslan	Judge who issued technical surveillance order no. 2010/2423 of the 9th Assize Court on 21 December 2010	Listed in the HSK decision of 17 January 2023 as Presiding Judge of the Bakırköy 10th Assize Court; the same decision withdrew his presiding authority and assigned him as a judge with general competence.	He was in office according to the latest verified official record, dated 2023; no separate outcome concerning liability for a particular order is specified.
Bülent Akasma	Judge whose original signature was verified in the chain of orders	Listed in a 2019 HSK record as a presiding judge of a Bakırköy Assize Court; his presiding authority was withdrawn and he was assigned as a judge with general competence.	He was in office according to the latest verified official record, dated 2019; his later status and the outcome of liability for particular orders are not separately specified.
Police defendants	Different duties in preparing and implementing prosecutorial applications and judicial orders	Detailed convictions were entered, multiplied by reference to the number of persons and victims.	Each defendant's specific false information, intent and causal influence on the judicial order must be established separately.

Interim conclusion. Annex 18 sets out the chain of 307 distinct investigative orders and thirty-eight orders issued by fifteen different judges that were individually verified against their original signature pages. Publicly available appointment and career records do not establish that those persons were held accountable for the particular orders in investigation no. 2010/2287. The decisive deficiency from the defence perspective is that, while severe and detailed criminal consequences were imposed on implementing officers who had no power to issue the orders, the judgment did not set out with equivalent clarity the roles of the prosecutors and judges in the same acts, their causal contribution, or the outcome of the assessment of responsibility for each order.

III VIOLATION OF LEGALITY AND LEGAL CERTAINTY

A Criminalisation, Years Later, of Acts Performed Pursuant to Judicial Orders

The principle of legality requires not only that offences and penalties be prescribed by law, but also that their application be reasonably foreseeable to the individual. To punish a public official who technically implements a procedurally operative prosecutorial instruction or judicial order, it must be specifically established that the official knew the instruction was manifestly criminal or that the underlying document was false. A subsequent court's finding that the earlier order was insufficiently reasoned does not, in itself, prove that the subordinate implementing officer acted with criminal intent at the time.

Interception operators, transcript officers, physical surveillance officers, typists, records clerks and branch chiefs do not perform the same functions. Transcribing a telephone conversation and signing the transcript, or conducting and recording physical surveillance, is not in itself an offence; on the contrary, these are duties performed within a legal framework. Where criminal conduct is alleged, the act constituting the offence, the defendant's knowledge, intent and contribution to the outcome must be established separately for each person. Mere contact with an audio recording does not show that a defendant altered it; a signature on a surveillance record does not show that the defendant fabricated footage; and signing a form recording a judicial order does not, by itself, show knowledge of any falsity underlying that order.

The court's application of the doctrine of "unavoidable mistake" under Article 30(4) of the Turkish Criminal Code (TCC) to certain subordinate defendants in the "frame-up" proceedings further demonstrates the importance of this distinction. Decisions that no penalty should be imposed on Zafer Sırlan, Zahide Sağlam and certain other personnel for duty-related offences raise the question of what additional evidence existed against other defendants who performed similar work but were convicted. A conclusion that one defendant performing the same duty acted under an unavoidable mistake, whereas another acted with criminal intent to further an organisation's purposes, must rest on objective, specific and reviewable criteria.

B Failure to Address Earlier Judicial and Sports Adjudicative Decisions Through Reasoned Analysis

A principal foundation supporting the defence of the officers who served in the match-fixing investigation is that the investigative acts and the evidence obtained had already undergone judicial scrutiny. In its judgment of 17 January 2014, case no. 2013/16791, judgment no. 2014/516, the 5th Criminal Chamber of the Court of Cassation expressly held that the statutory conditions for interception and technical surveillance were satisfied, that the interception transcripts and physical surveillance records had been obtained in accordance with procedural and substantive law, and that there was no error in relying on them as a basis for judgment. The Chamber also recorded that the telephone conversations were corroborated by meetings, physical surveillance and transfers of money, and that the defendants to whom the recordings were read essentially challenged their interpretation while confirming the content of the conversations. These are judicial findings directly supporting the defence against the general "frame-up" narrative that the officers fabricated non-existent events and conversations (Annex 4, pp. 11–16).

Records from the same investigation were also examined in the TFF and UEFA proceedings, with differing outcomes as regards persons, clubs and matches (Annex 6). Fenerbahçe's objections to the telephone records in its appeal to CAS against the UEFA sanction included incorrect or incomplete translation, removal from context, attributing a match-fixing meaning to conversations, and misidentification of some speakers. Although CAS accepted criticisms of the quality of the translations, it emphasised that particular translation errors did not require the exclusion of all telephone records, and attached importance to the earlier examination of the original Turkish records by other adjudicative bodies. Disputes over translation, interpretation or speaker identity cannot substitute for evidence that the original recordings were fabricated by the police (Annex 7, paras. 283–295).

CAS applied a standard of persuasion higher than merely finding that an event was more likely to have occurred than not, but lower than the criminal standard of proof “beyond reasonable doubt” (Annex 7, paras. 272–282). That distinction neither deprives the evidential examination of its value nor explains why the same records should subsequently be regarded as false or fabricated. In its judgment of 16 October 2014, no. 4A_324/2014, the Swiss Federal Supreme Court dismissed the application following a limited review of the grounds for setting aside the award, without retrying the facts; the CAS award was not set aside (Annex 8). The significance of this sequence of decisions for the defence is that the investigative records were not assessed solely by the police, but were also scrutinised by different adjudicative bodies.

The reasoning supporting the subsequent convictions must therefore specifically address the earlier judicial assessments and the defence objections founded upon them. Criminal intent cannot be inferred merely from service in the investigation without establishing which part of which document was false, the examination by which that was established, and how the defendant knowingly participated in the act. It is not for the defence to prove afresh the lawfulness of every investigative act that underwent judicial scrutiny years earlier; it is for the prosecution to prove the charge against each defendant through concrete, individualised evidence. The imposition of severe criminal liability on the basis of a general “frame-up” narrative, without resolving the contradictions with the earlier decisions or answering the defendants’ substantive objections, is incompatible with the right to a reasoned judgment, the presumption of innocence and the principle of individual criminal responsibility (Annex 4; Annex 7; Annex 13; Annex 23).

C Assessment of the Legal Effect of Withdrawal of a Complaint

The reasoned judgment expressly records that Sadri Şener initially complained of unlawful interception but subsequently withdrew his complaint. Nevertheless, in the operative part, Sadri Şener is included in the lists of persons by reference to whom separate penalties were imposed for violation of the confidentiality of communications, falsification of official documents and false accusation. The legal relationship between the withdrawal of the complaint and the convictions entered thereafter must be clarified, particularly in respect of the offence of violation of the confidentiality of communications (Annex 13, pp. 145, 2753–2755).

Under Article 139 of the TCC, investigation and prosecution of the offence of violation of the confidentiality of communications under Article 132 are contingent upon a complaint. The consequences of withdrawing a complaint must be assessed under Article 73, in particular paragraphs 4 and 6. The court must therefore examine the scope of the withdrawal and its legal effect for the defendants concerned, and explain why convictions were nevertheless entered. For the defence, this is not a peripheral procedural matter, but a substantive objection concerning the statutory conditions for punishment. As regards false accusation and falsification of official documents, the issue is not the complaint requirement, but how the reasoning supporting the convictions is reconciled with Şener’s statements that no conversations or acts that were not his own had been attributed to him and that the interception transcripts had not been tampered with.

IV VIOLATION OF THE RIGHT TO A REASONED JUDGMENT AND OF INDIVIDUAL CRIMINAL RESPONSIBILITY

A Conflating an Inventory of Evidence with Proof of the Elements of an Offence

The fact that the reasoned judgment comprises 2,899 pages does not establish that it provides lawful and individualised reasoning. Reproducing evidence and defence submissions in a judgment is entirely different from proving the elements of the offence in respect of each defendant. Indeed, the reasoned judgment examined neither explains how the offences attributed to the defendants were committed or came about nor identifies any concrete evidence supporting those charges. A defendant's signature on twenty different surveillance records does not, in itself, prove criminal intent. The court must explain, by reference to concrete evidence, which false act the defendant knowingly performed, the consequences it produced for the person concerned, and how the defendant contributed to that outcome. Without establishing this causal link, individual criminal intent and liability cannot be constructed solely from the number of signatures.

Applying the same template to numerous defendants, changing only the name, role and number of signatures, increases the risk of collective liability. The general narrative concerning membership of an armed terrorist organisation cannot substitute for individual intent in respect of the other offences. Circular reasoning of the kind "the defendant committed offences in the case because he was an organisation member" and "he is an organisation member because he served in the case" is incompatible with the presumption of innocence.

UN Human Rights Committee General Comment No. 32 states that a fair trial is secured not merely by holding a hearing, but by subjecting the parties' material submissions and evidence to genuine judicial assessment. The ECtHR Guide on Article 6 in its criminal aspect likewise does not require courts to answer every sentence of a defence submission; it treats the duty to address decisive arguments capable of changing the outcome as part of the right to a reasoned judgment. The central issues requiring an individualised response in this case are the specific information deemed false, the evidence that the defendant knew it was false, its effect on the judicial order, and the criteria distinguishing the defendant from others performing similar duties [12][14]. Annex 25 cross-references the sources governing reasoned judgments and individualised assessment.

B Internal Contradictions in the Judgment Concerning Audio and Video Recordings

In his statement reproduced in the reasoned judgment, Sadri Şener expressly stated that no conversation, act or event in which he had not participated had been attributed to him, that the voice in the conversations was his own, and that the interception transcripts contained no inaccuracies or tampering. These are specific statements supporting the defence, made by the very person whose communications were recorded, in response to accusations that the records were created by fabricating non-existent conversations and events (Annex 13, p. 147).

The legal assessment concerning Onur Baltacı likewise states that there was no allegation of manipulation or editing of the images and sound, or evidence of additions or deletions. The court assessed the physical surveillance officers' work in recording the existing situation and preparing records, and decided that no penalty should be imposed on Baltacı for the offences other than the membership charge. These findings in the defendants' favour, recorded in the court's own judgment, must also be specifically addressed in relation to defendants convicted for similar acts. Criminal intent cannot be inferred from an official role, signature or number of records without identifying the individual act and evidence accounting for the different outcome. A general "frame-up" narrative cannot replace individualised proof or the reasoning required to overcome these favourable findings (Annex 13, pp. 2251–2252; Annex 23).

C The Disconnect Between the Armed Terrorist Organisation Membership Charge and the Other Offences

The case file also contained a charge of membership of an armed terrorist organisation, and the proceedings were conducted on that charge together with the other allegations (Annex 12; Annex 13). The factual basis of the membership allegation and the elements of the other charges, such as falsification, false accusation and violation of the confidentiality of communications, must be examined separately. A general assessment concerning one charge cannot substitute for proof of individual conduct, knowledge and intent in respect of the others.

The judgment records that some defendants had no ByLock or Bank Asya records, were classified as outside the structure in profiling data on an SD card, or had been acquitted in separate organisation-membership proceedings. These matters do not automatically establish that the other offences were not committed. They nevertheless constitute important counter-evidence weakening the proposition that falsification, false accusation or deprivation of liberty was undertaken for an organisational purpose.

In Onur Baltacı's case, the code classifying him as outside the organisation, his acquittal on the membership charge, and the findings that the footage had not been edited must be considered together. If the court nevertheless entered a conviction, it must explain the independent evidence linking his physical surveillance duties to criminal intent. The same standard must be applied to other defendants acquitted of membership or in respect of whom indicators of organisational affiliation were absent.

V VIOLATION OF EQUALITY OF ARMS AND THE RIGHT TO AN EFFECTIVE DEFENCE

A Lack of Full and Usable Access to Digital Evidence

The probative value of the communications records, interception transcripts, HTS and cell-site data, and technical surveillance footage used in the match-fixing investigation depends on their uninterrupted linkage to the judicial order, originating authority or device, raw data, speaker identification and derivative analytical product. Providing the defence only with selected transcripts or tables does not replace the opportunity to test the integrity of the raw data and its attribution to particular persons with independent expert assistance. The scope of the hearing records and limits of attribution are set out in Annex 11; the digital integrity chain is addressed in Annex 20. The same opportunity for effective examination must be afforded in respect of material relied upon for the charge of membership of an armed terrorist organisation in the subsequent case.

The records of the first to twentieth hearings show that, throughout the trial, the defence made requests concerning witnesses, experts, digital data, transcripts, HTS records, access to documents, the Audio and Video Information System (SEGBİS), and time. The examination was therefore not restricted to hearings 18–20: the initial request, its repetition, the interlocutory ruling and actual implementation were compared chronologically for every request (Annexes 20–22). The fact that a request was recorded or granted does not establish that defence rights were secured in practice. The date of delivery, inventory of contents, usability of the format and actual time available for examination were distinguished for each person.

The ODIHR Trial Monitoring Reference Manual treats "equality of arms" not as the formal allocation of identical time to each party, but as a reasonable opportunity to present arguments and evidence and respond to the opposing party's material. Paragraphs 32–33 of UN Human Rights Committee General Comment No. 32 likewise include access to documents and other evidence within "adequate facilities". Scrutiny under this standard cannot end with the existence of a delivery record: it must establish the completeness of the data, usability of the format, delivery date, suitability for expert examination, and the actual time remaining before judgment [11][12]. The international standards governing access to digital evidence, adequate facilities and equality of arms are also cross-referenced in Annex 25.

The available separate transcripts of hearings 1, 2, 4–8, 10, 12, 14, 16, 18 and 19 have been inventoried; transcripts confined to particular persons or portions of a hearing have been separately identified. No assumption has been made about consistency between minutes and recordings where a separate transcript was not found. The hearing audio recordings and their transcripts must not be assessed solely by reference to selected sentences.

Annex 20 directs the examination specifically to the digital evidence in match-fixing investigation no. 2010/2287. Every communications record, interception transcript, HTS or cell-site analysis, technical surveillance image and seized digital item must be analysed separately by reference to its legal basis, source, method of acquisition, data integrity, chain of custody, derivative analysis, defence scrutiny and judicial response.

The indictment, the original judgment of the Istanbul 16th Assize Court dated 2 July 2012, the judgment of the 5th Criminal Chamber of the Court of Cassation dated 17 January 2014 partly upholding and partly quashing that judgment, the retrial judgment of the Istanbul 13th Assize Court dated 9 October 2015, and the assessments in the annexes to the Constitutional Court application must be compared by reference to the same defendant, charge and evidence. It must be emphasised that, in delivering the retrial judgment, the Istanbul 13th Assize Court wholly rejected the abstract "frame-up" allegations. It based its decision not on a finding of a frame-up, but solely on the statutory amendment to Article 135 of the CCP and the resulting change to the provision concerning the non-interception of organisation leaders under Article 220 of the TCC. The 2015 judgment was therefore not a single acquittal covering all persons and all charges: it combined acquittals, confirmation of the previous judgment, deferral of the pronouncement of judgment (HAGB), and decisions that there was no need to adjudicate afresh (Annex 5).

The verified documentary scope of Annex 5 is confined to the judgment of 9 October 2015. Subsequent appellate developments, decision references and signed primary copies are not available in the present documentary set and have therefore not been included as established outcomes. Where a technical record cannot be located in the available series of documents, the conclusion must be limited to "not verified within the documentary set"; no direct finding of "falsification" or "editing" should be drawn without a separate technical expert examination.

B Restrictions on Defence Time and Interventions by the Presiding Judge

In a case involving 108 defendants, thousands of pages and numerous digital records, an abstract allocation of equal time for defence submissions does not secure substantive equality. The number of charges against the defendant, the volume of evidence and the technical nature of the defence must be taken into account. The presiding judge may intervene to prevent repetition, address irrelevance or manage time, but such intervention must not in practice prevent the presentation of substantive defence arguments.

Presiding Judge Ahmet Uğuz's joining the panel on 1 February 2021, and the constitution of the final panel immediately before the final hearing, heighten the significance of restrictions on defence time. If the deciding judges did not hear the earlier defence submissions directly, it must be explained whether they listened to the recordings or afforded an opportunity to present the defence again. Reading the minutes is not invariably equivalent to hearing lengthy and technical oral submissions directly.

The principle of immediacy addressed in the ECtHR Guide on Article 6 treats the deciding judges' direct contact with oral evidence as an important component of a fair trial. Although a change in judicial composition does not invariably require a fresh hearing, compensatory procedures are required where witness credibility, the defendant's account or the context of recordings is decisive. The inquiry must establish not merely whether the new members read the earlier minutes, but whether they listened to recordings of the defence submissions, whether the parties were permitted to repeat or supplement those submissions, and whether that method was recorded in the judgment [14]. For the application of the standards on immediacy, changes in judicial composition and compensatory procedures to this case, see also Annex 25.

C Comparison of Hearing Recordings with the Official Minutes

The official minutes of the eighteenth hearing comprise 32 PDF pages, whereas the transcript comprises 173 pages. At least 103 defence submissions and 15 statements were recorded in the minutes without their substance, using only the formula "The defence submission/statement was recorded in audio and video". Likewise, the official minutes of the nineteenth hearing comprise 10 PDF pages, while the transcript prepared by the court-appointed expert from a SEGBİS recording lasting 5 hours and 18 minutes comprises 64 pages. This difference in volume does not, in itself, prove an irregularity. It nevertheless shows that the official minutes are insufficient to identify which evidence the defence challenged, on what grounds, and which oral submissions were examined by the new panel (Annex 14; Annex 15; Annex 22).

In the transcript of the nineteenth hearing, Presiding Judge Ahmet Uğuz explained that the panels had been merged pursuant to an HSK decision of 28 January and that he had been appointed presiding judge. The same transcript shows the application of a uniform 45-minute limit for defendants' submissions on the expert report and witness testimony. Ahmet Kalender requested an additional 30–45 minutes; the request was refused on the ground that "the 45-minute period applies to every defendant". Kalender stated that, because the allotted time was insufficient, he had been unable to make oral submissions in response to the witness statements. İbrahim Emre explained that he had not received the incoming documents and had been unable to examine the expert report because of illness and quarantine. None of these explanations is reproduced substantively in the official minutes (Annex 15; Annex 22).

Nazmi Ardıç's request for additional time was likewise refused by reference to the equal-time rule, and he was informed that he could submit the remainder in writing. Ardıç stated that he had not yet presented even half of his criticisms of the expert report, that he considered it biased, and that the further change in the panel had raised concerns about a fair trial. The official minutes record only the refusal of additional time and the possibility of written submissions; they do not record the substance of the unfinished defence or the objection concerning the panel's impartiality. No express, individualised answer specifically addressing these procedural objections could be identified in the reasoned judgment either (Annex 13; Annex 15; Annex 22).

The record of the twentieth hearing shows that the final panel, comprising Presiding Judge Ahmet Uğuz and members Ali Çolak and Murat Tuncer, opened the hearing with the entry that "the previous minutes were read owing to a change in the composition of the panel". That formula is not an adequate record establishing that a substantive examination took place. The eighteenth-hearing minutes omit the content of at least 103 defence submissions and 15 statements, while the nineteenth-hearing minutes fail to convey the substance of the difficulties in preparing the defence, the unfinished submissions and the objections to the changes in judicial composition. Reading those minutes cannot therefore logically establish that the judges acquainted themselves with hundreds of pages of oral defence submissions absent from them. No separate transcript of the twentieth hearing, nor any dated record, review schedule, interlocutory ruling or explanation in the reasoned judgment showing that the final panel examined the earlier raw recordings or complete transcripts, has been identified in the available documentary set (Annexes 14–16; Annex 22).

This absence of documentation is more serious when considered together with the volume of the case and the judgment timetable. Annex 18 alone involved reviewing 17,020 PDF pages and 309 TIFF images, amounting to 17,329 source pages and images; indictments, reasoned judgments, defence submissions, digital evidence and hearing recordings are outside that count. The final three-judge panel first appeared together on 17 May 2021 and delivered judgment approximately eighteen days later. Dividing the volume of Annex 18 alone by eighteen days yields approximately 963 pages or images per day. This rough calculation does not, in itself, prove that no documents were read. It does, however, render implausible, in light of ordinary experience and a reasonable judicial working schedule, an assumption that the entire file and the oral defence submissions omitted from the minutes were substantively examined solely because the record states that "the previous minutes were read". The scope, dates and method of that examination must be specified for each panel member (Annex 18; Annex 22).

The comparison in Annex 22 shows that the formal allocation of equal time is not equivalent to a genuine opportunity to present an effective defence. Likewise, a formulaic entry stating that the file was "read" cannot substitute for genuine and substantive examination. Whether the option of written submissions provided compensation must be assessed individually by establishing whether the submissions were actually filed, examined by every panel member, considered in collective deliberations, and answered in the reasoned judgment insofar as they raised decisive objections. Although the existing deficiencies do not in themselves establish bias, they prevent verification that equality of arms, immediacy, collective deliberation and the right to a reasoned judgment were secured (Annex 22).

VI VIOLATION OF THE PRESUMPTION OF INNOCENCE AND THE RIGHT TO ADVERSARIAL PROCEEDINGS

The court's task is not to validate the narrative in the indictment, but to test the accusation against the defence's counter-evidence. If the notion of a "frame-up" becomes an overarching narrative presupposing that every defendant acted for an organisational purpose and every investigative document was false, the presumption of innocence is deprived of effect. The court must first establish the factual falsehood, then the individual's knowledge and intent, and finally the causal link between the offence and its consequences. The fact that proceedings included a charge of membership of an armed terrorist organisation cannot justify presuming either that charge to be true or that the defendant committed the other offences.

Verification of the attribution of certain interception transcripts and images, the earlier courts' reliance on the same recordings as evidence, CAS's extensive assessment of the facts, acquittals of some defendants on organisation-membership charges, and findings of unavoidable mistake for subordinate personnel are important matters supporting the defence. The court may decline to accept them, but must give specific answers to these arguments, which are capable of affecting the outcome.

The categorical language used by political authorities and Fenerbahçe executives while the retrial and "frame-up" proceedings were pending also requires examination from the standpoint of objective appearances. Those statements do not, by themselves, establish that any judge was influenced or that judgment was delivered under instructions. The examination must focus on the content of the statement, the speaker's institutional influence, its timing and references to pending proceedings, and whether the judiciary appeared independent of that discourse [12][20]. (Annex 26)

On 22 March 2012, the then Prime Minister Recep Tayyip Erdoğan argued at the UEFA Congress that "individuals and institutions should be distinguished" in relation to the match-fixing allegations. That statement expressed a clear political position in favour of separating the club from the sanction while the original criminal trial was pending. Erdoğan's description of the proceedings as a "frame-up" in his message to the Fenerbahçe president on 3 July 2021, shortly after the Istanbul 23rd Assize Court's judgment of 4 June 2021, shows that the public framing of the case was adopted at the highest level of the executive. Erdoğan's declared support for Fenerbahçe does not render the statements legally void. Political office, identification with the club and categorical language about the outcome nevertheless form a context that must be recorded when assessing the appearance of judicial independence from external influence [29][30]. (Annex 26)

In his statement of 30 March 2012, Aziz Yıldırım, a defendant in the proceedings and Fenerbahçe's long-serving president at the material time, maintained that the case had nothing to do with match-fixing, that the evidence should be produced, and that the narrative of guilt was unacceptable. A defendant's defence of himself and the club he represents falls within the legitimate exercise of defence rights and freedom of expression. Nevertheless, his position as club president, the large supporter base and extensive media visibility gave those statements greater public influence than an ordinary defendant's account. The court's duty was not to adopt or reject that dominant narrative, but to determine each charge on evidence tested at trial and to demonstrate through its reasoning that it was independent of the public campaign [31]. (Annex 26)

On 3 July 2020, Ali Koç, acting as Fenerbahçe president, gave evidence on behalf of the complainant club in the pending "frame-up" proceedings. He categorically maintained that Fenerbahçe had not engaged in match-fixing and that the operation sought to take over the club. That statement was made while the trial was pending. By contrast, his "time for accountability" statements of 27 December 2021 and 3 July 2022 followed the Court of Cassation's upholding of the acquittal and cannot therefore be relied upon as evidence of pressure preceding the earlier judgment. The economic influence of the Koç family and Koç Group does not establish either the legal accuracy of the statements or their actual effect on the court. The analysis must distinguish the appearance of external pressure arising from the statement of 3 July 2020 during the pending proceedings from the continuation of the public discourse reflected in the later statements [32][33]. (Annex 26)

These three strands of public discourse do not occupy the same legal position: Erdoğan represented the executive, Aziz Yıldırım was a defendant and the club president at the material time, and Ali Koç represented the complainant club and an influential economic group. The report therefore does not merge their statements into a single allegation of "interference". The examination sought is whether, in the face of these intense and competing public narratives, the court assessed the evidence individually, adopted language of guilt before judgment, and demonstrated its independence in a manner that did not give rise to objectively reasonable doubts. PACE's calls in its resolutions on Türkiye for public authorities to refrain from statements creating an impression of interference with the judiciary, together with the prohibition of improper influence in the UN Basic Principles, provide the normative basis for this examination [20][27]. (Annex 26) Annex 25 cross-references the sources governing the assessment of public statements and the appearance of independence from external influence.

VII INDIVIDUALISATION OF CRIMINAL LIABILITY AND SENTENCING, AND PROPORTIONALITY

Criminal liability in respect of the charge of membership of an armed terrorist organisation and the other offences in the case file must be considered separately. Terrorism-related sentence enhancements must likewise be scrutinised by reference to the defendant's specific conduct and the reasons given in the judgment. The charge, the judicial outcome and the grounds for enhancement cannot be presumed identical for all defendants (Annex 13; Annex 24).

The separate application of the offences of false accusation, falsification, violation of the confidentiality of communications and deprivation of liberty for each victim, combined with enhancements for successive offences and terrorism-related aggravation, produced exceptionally high aggregate sentences. Separate penalties may be imposed where there are multiple independent acts. It must nevertheless be made clear how the same report, signature or sequence of duties was translated into a particular number of offences and victims.

Where the sentence results from mechanically multiplying the number of victims rather than assessing the individual's actual contribution, proportionality and individual responsibility are undermined. The judgment must be open to scrutiny through a schedule setting out, for every defendant, the date of the act, the victim, the conduct constituting the offence, intent, the basic sentence, enhancements, the rules governing concurrence and aggregation, and the aggregate outcome.

The ODIHR trial-monitoring approach and Article 14 of the ICCPR do not entail recalculating sentences in place of the national court. They require, however, that findings of guilt and the sanction rest on individualised reasoning amenable to scrutiny. The arithmetic presented in Annex 24 therefore does not, in itself, establish disproportionality. The inquiry is whether each repetition was proved by reference to a separate act and a separate victim, and whether the aggregate outcome was linked, through reasoned analysis, to the person's actual role [11][12]. For the standards governing individualised reasoning and scrutiny of sanctions, see also Annex 25.

The operative part of the judgment of 4 June 2021 sets out, under each defendant's name, the offence, the number of victims, the basic sentence, increases and reductions, the final sentence for that person, and, for certain defendants, the detention ruling. Annex 24 extracts these rulings by defendant and expresses sentences imposed separately for each victim as "individual sentence × number of repetitions". The arithmetic totals are identified not as a single aggregate sentence expressly pronounced by the court, but as calculations showing the scale of the penalties in the operative part. The table should be used to test whether the relationship between the level of duties and signatures, on the one hand, and arithmetic outcomes amounting to hundreds of years, on the other, was justified on a person-by-person and act-by-act basis.

VIII APPLICATION OF INTERNATIONAL FINDINGS TO THE CASE

The inclusion in the case file of a charge of membership of an armed terrorist organisation, and the conduct of the proceedings on that charge as well, directly connect this report to the protection of human rights while countering terrorism (Annex 12; Annex 13). The standards concerning an independent and impartial tribunal, the presumption of innocence, equality of arms, an effective defence and a reasoned judgment applied in this report must also govern that context. Counter-terrorism does not dispense with the requirement to test charges against evidence specific to the individual [11][12][14].

International standards are applied in this report as criteria for scrutinising specific alleged violations, rather than presented in a freestanding collection of quotations. The OSCE Copenhagen Document, UN General Comment No. 32, CM/Rec(2010)12, and the findings of PACE and the European Commission are applied to the constitution of the court and case allocation; the UN Basic Principles and Venice Commission materials to the boundary of competence between police and judiciary; the ODIHR Trial Monitoring Reference Manual and UN General Comment No. 32 to access to digital evidence and defence time; the ECtHR Guide on Article 6 to immediacy and reasoned judgments; and the UN Basic Principles and PACE resolutions to external public statements. Each is linked to the facts in the relevant section. OHCHR and Venice Commission reports concerning the state of emergency are used as contextual sources explaining the need for individualised reasoning and effective scrutiny, without creating a presumption of guilt. Annex 25 individually cross-references each international instrument's full citation, link, guarantee or institutional finding, and the specific issue it tests in this case.

IX QUESTIONS ADDRESSED TO OSCE/ODIHR AND THE PARTICIPATING STATES

1. Which HSK, judicial commission, work-allocation, temporary-assignment and case-allocation decisions underlay the changes in the panel during hearings 1–20 before the Istanbul 23rd Assize Court, and how was the subsequently appointed members' contact with earlier oral evidence documented?

2. What working arrangements enabled Presiding Judge Ahmet Uğuz and member Murat Tuncer to examine the voluminous file between their first appearance in the case on 1 February 2021 and judgment on 4 June 2021?

3. Once the final three-judge panel was constituted on 17 May 2021, by what method did it directly examine the earlier witness testimony and oral defence submissions?

4. What questions were put to the officers who prepared the 2015–2016 series of records, and how was the boundary maintained between factual examination and document attribution, on the one hand, and assessment of the legal sufficiency of judicial orders, on the other?

5. Where and how did the prosecution and the trial court distinguish the factual findings in the series of records from the legal assessment that only a competent judicial authority may undertake?

6. Irrespective of the terminology used in the records, were the police assessments transformed into a substantive basis for conviction that displaced the legal effect of earlier judicial orders or substituted for those orders?

7. What was the outcome of the notification to the HSK concerning the prosecutors who applied for the measures and the judges who authorised them, and what objective grounds explain the differential treatment of police officers and members of the judiciary within the same chain of acts?

8. Have the specific information deemed false, the evidence of the defendant's knowledge of its falsity, and its causal effect on the judicial order been separately identified for each defendant?

9. Where an unavoidable mistake was accepted in respect of certain personnel, what concrete evidence distinguished convicted defendants performing similar duties?

10. How were the findings that the voices belonged to the persons concerned and that certain footage had not been edited reconciled with the convictions for falsification and false accusation?

11. What independent evidence established intent in respect of the other offences for persons acquitted of organisation membership, coded as outside the organisation, or having no ByLock or Bank Asya record?

12. Were the raw audio recordings, interception transcripts, HTS and cell-site data, technical surveillance footage and seized digital media used in the match-fixing investigation made available for independent defence examination with their provenance and integrity chains preserved?

13. Did restrictions on defence time and interventions by the presiding judge safeguard the right to an effective defence when assessed together with the number of defendants, the volume of the file and the changes in judicial composition?

14. Were the factual contradictions between the assessments of the first-instance court, Court of Cassation, TFF, UEFA, CAS and Swiss Federal Supreme Court and the judgment in the "frame-up" case addressed through reasoned analysis?

15. Are the aggregate sentences resulting from the multiplication of offences by the number of victims and the application of enhancements proportionate to each defendant's individual culpability and actual causal contribution?

16. Were the categorical statements about the pending proceedings made by the executive, the defendant club executive and the executives of the complainant club assessed in terms of timing, content and institutional influence, and were the procedural safeguards preserving the court's appearance of independence identified?

17. Were the findings of PACE, the European Commission, OHCHR and the Venice Commission concerning judicial independence, security of tenure and effective scrutiny in Türkiye taken into account in the case-specific examination of changes in the panel before judgment and deficiencies in individualised reasoning? Annex 25 identifies, with sources, the question tested by each institutional finding in this case.

18. Was the link between the charge of membership of an armed terrorist organisation and each defendant's specific conduct and individual intent examined separately from the other charges, and how were the guarantees of an independent tribunal, the presumption of innocence and an effective defence preserved in proceedings conducted within a counter-terrorism framework?

X CONCLUSIONS AND PRACTICAL RECOMMENDATIONS

Finding 1. The presiding judge and one member of the deciding panel first appeared in the case approximately four months before judgment. The final three-judge panel was constituted at the opening of the final hearing and delivered judgment eighteen days later. Considered together with the volume of the case, this chronology calls for independent monitoring of compliance with the right to a judge established by law, objective impartiality, immediacy and collective deliberation.

Finding 2. Competence to review the lawfulness of judicial orders belongs not to the police but to the judicial authorities designated by law. If the series of police records exceeded factual inquiry and was used to assess the sufficiency or legal effect of investigative orders, and the subsequent judgment relied substantively on that assessment, the police were effectively assigned an appellate function. This raises an issue of judicial independence irrespective of the descriptions used or whether the outcome of the subsequent decision is considered correct.

Finding 3. Punishing officers who implemented judicial orders requires specific proof, for each individual, of awareness of manifest unlawfulness, the precise false statement, criminal intent and causal contribution. Place of service, official title, signature or number of records cannot substitute for those elements.

Finding 4. The judgment's acknowledgements concerning the attribution of voices and images, acquittals on organisation-membership charges, profiling codes classifying individuals as outside the organisation, and findings of unavoidable mistake must be reconciled with the reasons for conviction on an individual basis.

Finding 5. In respect of document falsification, false accusation and violation of the confidentiality of communications, the judgment must separately identify the specific conduct attributed to each defendant and the evidence substantiating it. The defendant's knowledge and intent, and the causal link between the alleged conduct and the consequences of the offence, must be established individually. Shared narratives, information about duties or titles, and collective recitations of evidence cannot replace this individualised proof.

Finding 6. Comparison of the first to twentieth hearings shows recurring gaps throughout the trial in the documentation of individual delivery and reasoning concerning access to digital evidence, witness and expert requests, participation through SEGBİS, defence time and the substantive adequacy of the minutes. It could not be verified that the changed panel's contact with earlier oral evidence was documented through complete recordings.

Finding 7. The subsequent case included a charge of membership of an armed terrorist organisation alongside charges of falsification of official documents, false accusation and violation of the confidentiality of communications, and the proceedings were conducted on that basis. The report's findings on procedural safeguards must therefore also be assessed in the context of protecting human rights while countering terrorism. This finding neither means that all defendants were convicted of membership nor accepts the truth of that charge (Annex 12; Annex 13).

OSCE/ODIHR is not being asked to substitute itself for a national court and determine guilt or innocence. What is sought is case-specific monitoring of the constitution of the court and changes in the panel; the boundary between police fact-finding and legal review reserved to judicial authorities; the function of the series of records in the indictment and judgment; defence facilities; reasoned judgments; individual criminal responsibility; proportionality; and the protection of human rights while countering terrorism. This should include requesting the relevant documents from the Turkish authorities and reporting the findings within the framework of OSCE human dimension commitments. Annex 25 cross-references the sources and subject matter of the international standards to be applied in that monitoring.

SOURCES AND DOCUMENTS

[1] The 17,020 PDF pages and 309 TIFF images of orders reviewed for Annex 18; the chain of 307 distinct investigative orders and thirty-eight orders issued by fifteen different judges, individually verified against the original signature pages.
[2] Istanbul Chief Public Prosecutor's Office, indictment no. 2011/598 (Annex 2).
[3] Istanbul 16th Assize Court, case no. 2011/63, judgment no. 2012/71: available partial copy of the original reasoned judgment, pages 1–499 of 682 (Annex 3).
[4] Court of Cassation, 5th Criminal Chamber, judgment of 17 January 2014, case no. 2013/16791, judgment no. 2014/516 (Annex 4).
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