Submission to the United Nations
Special Rapporteur on the independence of judges and lawyers

Judicial Independence and Impartiality Concerns in the Tahşiye Proceedings

Submitting Organisation

Security Studies and Rule of Law Association
(SRL Swiss)

Security Studies and Rule of Law Association (SRL Swiss) is a Geneva-based, non-profit, 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.

22 November 2026

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

Website: www.srlswiss.com • Email: info@srlswiss.com

Executive summary

The Tahşiye case encompasses two sets of proceedings arising from the same events but involving different defendants and subject matter. The first concerned the intelligence and criminal investigations into Mehmet Doğan and persons associated with him, and the operation conducted in January 2010. In the second, police officers involved in that investigation and certain media professionals were prosecuted on allegations that the investigation had served the purposes of an organisation and that evidence had been fabricated. This report focuses on the rights of the defendants in the second set of proceedings to an independent and impartial tribunal, an effective defence and safeguards against unlawful deprivation of liberty. It does not call into question the acquittals in the first case.

SRL Swiss examines six interconnected safeguards: objective rules governing the establishment of courts and the allocation of cases; judges' security of tenure and continuity in the composition of the bench; independent review of challenges to impartiality; lawyers' ability to work free from pressure; the court's responsibility to assess the case independently of the prosecution; and effective judicial review of restrictions on liberty. The allegation, made in court, that a recusal application was submitted on instructions, the adverse use of criticism of the court's impartiality when refusing a sentence reduction, and the official records of the 2015 recusal and release proceedings constitute the strongest direct evidential foundations of this assessment. (Annexes 09, 10; Annex 16; Annexes 28, 29, 30, 31, 32.)

The events of April 2015 are directly connected to the Tahşiye case. The Istanbul 32nd Criminal Court of First Instance's decision of 25 April 2015, Miscellaneous Proceedings no.2015/146, ordered the release of nine persons in investigation no.2014/133596. The recusal decision of 24 April, the release order, the record of the UYAP interruption and the return of the release warrants document the same sequence of procedural acts. The European Court of Human Rights' subsequent assessment of the court's jurisdiction to order release must be distinguished from its findings of violations arising from the continuation of detention by judges who had been disqualified. (Annexes 28, 29, 30, 31, 32, 35.)

The European Court of Human Rights reached two distinct legal conclusions concerning this sequence. In Karaca, it found violations arising from the continuation of detention by disqualified judges and the lack of effective review of the challenge to impartiality. However, it dismissed the separate complaint concerning non-enforcement of the release order, finding that the 32nd Criminal Court of First Instance lacked jurisdiction to order release at the investigation stage. The violations in Başer and Özçelik concerned the lawfulness of the judges' initial detention and the absence of reasonable suspicion. SRL Swiss seeks impartial review and judicial security of tenure while preserving these distinctions.

The court-commissioned transcript of the hearing of 25 February 2021 records the response "you are seeking recusal on instructions" to Hüseyin Nohut's application for recusal. In the judgment of 10 June 2022, the same defendant's strongly worded statements that the court was not impartial were expressly relied upon as one of the reasons for refusing a discretionary reduction of sentence. The concern about the treatment of an impartiality challenge therefore extends beyond the language used in court to sentencing itself. Although the two acts were attributable to different benches, their mutually aggravating effects on the same individual's defence rights require consideration together. (Annex 10; Annex 16.)

The record of 27 December 2016 subjects the exchange of documents between counsel and defendants to prior examination by the court. The record of 26 May 2017 imposes a three-month restriction on lawyer consultations for defendants in this case on the basis of a finding in another case. The decision of 15 June 2021 on the objection to the refusal of recusal provides only a general finding of procedural and legal compliance, without addressing the specific grounds concerning impartiality separately. SRL Swiss assesses these direct records in terms of lawyers' ability to work independently and the effectiveness of review of impartiality challenges. (Annexes 36, 37, 39.)

The Court of Cassation's judgment of 31 December 2020 found that the failure to examine a disputed signature, reliance on a recording without establishing the identity of the speaker, the use of a statement made to the police but not confirmed in court, and the failure to examine a letter at the hearing were contrary to law. It nevertheless treated those defects as having no effect on the outcome in respect of the relevant convictions. Regarding access to the case file, the interlocutory decision of 30 December 2020 recorded that the 321 folders of annexes could not be transmitted in full through UYAP and ordered delivery on storage devices and computer access for at least ten hours per week. The actual implementation of these measures, the effects of the defects on each individual and conviction, and the independent review on appeal require clarification. (Annex 15; Annex 21.)

SRL Swiss considers that the documented problems concerning impartiality and review require independent examination and effective redress. Applications concerning changes in the composition of the bench, special assignments and certain courtroom practices contain specific allegations that require answers grounded in the original records. Maintaining this distinction, SRL Swiss requests that the Special Rapporteur engage with the Turkish authorities and examine safeguards governing judicial assignments and disciplinary proceedings, recusal review and lawyers' professional independence by reference to the specific events identified.

1. Subject matter, documentary basis and procedural history

1.1. Purpose and sources

This submission examines access to an independent and impartial tribunal in the Tahşiye proceedings and the independence of lawyers as an indispensable component of that safeguard. It is based on court decisions, appellate judgments, hearing records and transcripts, official correspondence and applications submitted during the proceedings. It contains no institutional finding that the defendants are guilty. The accuracy of technical evidence and the substantive elements of the offences are addressed only insofar as they directly concern the court's duties of impartial assessment and effective review.

SRL Swiss distinguishes between document types and their evidential weight. An official decision directly records a procedural act and its reasons; a party's statement reproduced in that decision does not establish that the court accepted its truth. Where a hearing record is quoted in a pleading but the original record is not separately available, the quotation is used subject to that limitation. References to case documents in the main text are by annex number only; source details and selected original pages appear in the sequential annex index.

The examination concerns judicial acts relating to the named individuals on specified dates. The acts examined in relation to each individual are described below, and the stages of the proceedings are set out in the chronology. The assessments are confined to the dates and procedural stages documented in the records.

Consent and scope of disclosure

Erol Demirhan, Kazım Aksoy, Hayati Başdağ and Hüseyin Nohut have given full and express consent to disclosure for the purposes of this submission. Their consent covers the submission of their names and information concerning them to the relevant international organisations, their use in communications transmitted to the Turkish authorities, and their inclusion in public United Nations reports. These authorisations are not presented as powers of attorney. Signed consent forms are kept separate from the public report.

The examination is not confined to these four individuals. Other defendants are named insofar as necessary to explain the acts recorded in court decisions and hearing records and the shared concerns about judicial safeguards. No claim is made that full disclosure consent or authority to represent those other individuals has been obtained.

Preservation of the right to apply to the European Court of Human Rights

This submission is made within the mandate of the United Nations Special Rapporteur on the independence of judges and lawyers to communicate with governments and make recommendations. The individuals concerned retain their rights in respect of existing and

future individual applications to the European Court of Human Rights. This submission neither replaces those applications nor suspends the applicable time limits.

For the purposes of Article 35 § 2 (b) of the European Convention on Human Rights, the relationship with another international procedure depends on the nature of the mechanism and the persons, facts and complaints covered by the respective applications. This submission does not request consideration under the individual communications procedure of the United Nations Human Rights Committee or the individual opinions procedure of the Working Group on Arbitrary Detention. If such a referral is contemplated, SRL Swiss requests prior contact so that the individuals concerned and their representatives may assess its implications for their rights of application to the European Court of Human Rights. Admissibility is a matter for that Court. (ECHR, Articles 34–35; ECtHR, Practical Guide on Admissibility Criteria; OHCHR, Special Procedures Submission Portal.)

Individuals covered and specific judicial acts

This report examines acts concerning different individuals at different times together in order to identify concerns about independence and impartiality in the Tahşiye proceedings. A practice documented in relation to one individual is not presumed to have occurred in relation to every defendant. Each event is assessed by reference to the individual, the court and the procedural stage concerned.

For Hüseyin Nohut, the central concern is that his challenge to the court's impartiality was construed against him both during the proceedings and in the judgment. The court-commissioned transcript of the hearing of 25 February 2021 records the response "you are seeking recusal on instructions" to his recusal application. In the judgment of 10 June 2022, his strongly worded criticism of the court's lack of impartiality appears among the reasons for refusing a sentence reduction. SRL Swiss examines these two acts in terms of the adverse consequences for a defendant of exercising the right to seek an impartial tribunal. The acts are attributable to different benches, and that distinction is maintained. (Annex 09; Annex 10; Annex 16.)

For Ertan Erçıktı, the recusal and release applications of 20 April 2015 provide concrete evidence of his request for detention to be reviewed by an impartial authority. They establish the direct link between the April 2015 recusal and release proceedings and the Tahşiye investigation. The Court of Cassation's 2020 judgment also found the failure to examine a disputed signature unlawful. SRL Swiss focuses on effective consideration of these objections by an independent authority and a reasoned assessment of the effect of the acknowledged procedural defect on the conviction. (Annex 15; Annex 26; Annex 27; Annex 28.)

For Hidayet Karaca, the assessment centres on effective review of the challenge to the impartiality of the judges deciding on detention. The findings of violations in Karaca v. Türkiye show that the concern is more than an allegation advanced by the defendant. The

European Court nevertheless assessed the consequences of the recusal decision separately from the jurisdiction of the court that ordered release. The report maintains that distinction and focuses on access to impartial detention review and redress for the violations found. The documentary sequence relating to April 2015 is examined in detail below. (Annex 28; Annex 29; Annex 30; Annex 31; Annex 32.)

Erol Demirhan and Kazım Aksoy are expressly named in the release decision of 25 April 2015, Miscellaneous Proceedings no.2015/146. Demirhan is also one of the six persons whose detention was continued in the decision of 26 May 2017 despite the court's statement that the period under Article 102 § 2 of the Code of Criminal Procedure had expired. For Aksoy, the record of 27 December 2016 makes delivery of defence documents brought by his lawyer subject to prior examination by the court. These acts directly connect the individuals to the documents concerning impartial detention review and counsel's independent preparation of the defence. (Annexes 35, 36, 37.)

For Erdem Kısa, Mehmet Savaş Özcan and İsmail Yücel Zırh, the examination concerns counsel's participation at the hearing of 25 February 2021. The hearing record and transcript require separate consideration of the stage at which counsel was present for each defendant. In particular, substantive questions were put to Erdem Kısa before his lawyer joined the hearing, raising the question whether legal assistance was available at the critical stage of the procedural act. For SRL Swiss, the connection with judicial independence lies in the court's responsibility to secure effective defence participation and protect counsel's professional role. (Annex 09; Annex 10.)

Impartiality in the conduct of hearings is also assessed through specific records concerning other defendants. These include questions to Ahmet Basık that assumed a disputed meeting had occurred, restrictions on Tolga Güzeltaş's submissions concerning ECtHR case-law, and the statement to Aytekin Ağören that his remote participation screen could be switched off. The report does not conclude that the screen was actually switched off in the latter instance. For Hayati Başdağ, the judicial act concerning examination of a signature provides an example of the court addressing a defence request. These records are assessed with regard both to restrictive measures and to measures enabling the defence to participate. (Annex 21.)

Mustafa Başer and Metin Özçelik are considered here as the judges who made decisions in the April 2015 recusal and release proceedings. The issue in their case is the effect of criminal proceedings initiated after a judicial decision on the guarantee of independent judicial decision-making. The European Court's findings concerning their initial detention in Başer and Özçelik v. Türkiye are relevant to the distinction between appellate review of a judicial decision and criminal pressure on a judge unsupported by evidence of personal criminal conduct. This assessment does not imply that judges may never be investigated.

1.2. Two distinct sets of criminal proceedings

The subject of this examination is the investigation opened in 2014 and the subsequent proceedings against police officers involved in the January 2010 investigation and certain media professionals, rather than the January 2010 investigation itself. The subsequent prosecution of professional activities does not in itself establish either unlawfulness or guilt. The question is whether the allegations were examined by an independent tribunal designated in advance and whose impartiality could be effectively reviewed. The acquittals in the first case are not called into question. (Annex 13; Annex 15; Annex 16.)

1.3. Chronology of trial and appellate proceedings

Date / act	Case and legal significance
13–19 December 2014	Investigation no.2014/133596: access restriction, police custody and detention. Annexes 11, 12, 26, 27; Karaca.
20–27 April 2015	Recusal applications; 29th Criminal Court of First Instance decision no.2015/92; 32nd Criminal Court of First Instance release decision no.2015/146 concerning nine persons in Tahşiye; UYAP and enforcement correspondence. Annexes 26–32; Annex 35.
30 April–1 May 2015	Initial detention of Özçelik and Başer. ECtHR, Başer and Özçelik.
10–15 July 2015	Nohut's voluntary attendance; release on expiry of police custody; renewed apprehension based on the decision of 13 July and detention on 15 July. Annex 23.
3 November 2017	Istanbul 14th Assize Court, case no.2015/281, decision no.2017/172: first principal judgment convicting officials and media professionals. Annex 13.
21 September 2018	Third Criminal Chamber of the Istanbul Regional Court of Appeal, case no.2018/707, decision no.2018/1102: appellate review. Annex 14.
31 December 2020	Sixteenth Criminal Chamber of the Court of Cassation, case no.2019/4737, decision no.2020/6918: partial affirmation and quashing by individual/offence. Annex 15.
2020–2022	Related case no.2020/90; proceedings following remittal under case nos.2021/53 and 2021/123. Annexes 16, 21.
10 June 2022	Istanbul 14th Assize Court, case no.2021/123, decision no.2022/172: judgment following remittal. Annex 16.

Date / act	Case and legal significance
21 April 2025	Third Criminal Chamber of the Court of Cassation, case no.2025/2143, decision no.2025/11659: affirmation with corrections of specified convictions for organisation-related offences. Annex 18.

Following the quashing of the earlier judgment, proceedings continued under case no.2021/53 and subsequently no.2021/123. In parallel, related case no.2020/90 proceeded on a separate indictment and through a separate series of hearings. Parts of that case were also severed and joined to other proceedings. A practice recorded at a hearing in case no.2020/90 is therefore not treated as having occurred in relation to all other defendants. The report identifies the hearing and individual concerned when assessing the shared safeguard at issue.

The judgment of 10 June 2022, case no.2021/123, decision no.2022/172, was delivered by a bench presided over by Şenol Kartal, with Ferhat Şahin and Oğuzhan Gül as members. The 2021 hearings presided over by Akın Gürlek and that judgment are distinct judicial acts. Institutional continuity and the effects of earlier acts on the subsequent judgment must be examined without attributing the conduct of one judge to another. (Annex 16; Annexes 09, 10.)

The judgment of the Third Criminal Chamber of the Court of Cassation of 21 April 2025, case no.2025/2143, decision no.2025/11659, names nine individuals. For Adem Akpınar, it addresses the procedural consequences of withdrawing his appeal and seeking to retract that withdrawal. For the other eight, the convictions for organisation-related offences were upheld with corrections. This decision cannot be presented as a blanket affirmation of every case and every charge referred to as Tahşiye. (Annex 18.)

The judgment reviews convictions for membership of an organisation in respect of Halit Akbulut, Hüseyin Nohut, Mehmet Ali Doğan, Talat Burak Karaltı, Tolga Güzeltaş and Yakup Ergün, and for committing an offence on behalf of an organisation in respect of Çetin Öztürk and Recep Güleç. It corrects the statutory provision cited and the application of the recidivism rules. These corrections do not constitute an individualised examination establishing that the concerns about impartiality and the ability to challenge evidence discussed in this report were remedied. (Annex 18.)

1.4. Establishment of the criminal peace judgeships and the objection procedure

Law no.6545, adopted on 18 June 2014 and published in Official Gazette no.29044 of 28 June 2014, replaced the criminal courts of peace with criminal peace judgeships specialising in judicial functions at the investigation stage. Article 48 amended Article 10 of Law no.5235, while Articles 83–84 regulated the transfer of the former courts' trial

functions to the criminal courts of first instance. The stated aims included specialisation in preventive measures and separation of the judge deciding those measures from the trial on the merits. (Law no.6545, Articles 48, 83–84; Venice Commission, CDL-AD(2017)004.)

At the relevant time, Article 268 § 3 of the Code of Criminal Procedure, as amended by Article 74 of the same Law, provided that objections to decisions of a criminal peace judgeship would generally be examined by the next judgeship in numerical order, with objections to the last-numbered judgeship's decisions going to the first. The decision restricting liberty and the review on objection thus remained within the same category of judgeships. This description concerns the framework in force in 2014–2015, when the Tahşiye investigation began. (Law no.6545, Article 74.)

The judgeships were established in June 2014; restrictions on access and detention measures in the Tahşiye investigation followed in December 2014; impartiality challenges were brought in April 2015. This sequence provides the context for the defence's objections to the newly established review system. The central concern was not merely the date of establishment, but whether an objection procedure operating among the same judgeships could effectively examine a specific complaint about those judges' impartiality. The violations found in Karaca constitute the individual manifestation of that concern in connection with Tahşiye. (Annexes 11, 12, 26, 27, 28.)

In its 2017 opinion, the Venice Commission observed that horizontal review among a limited number of judgeships created a closed system of review and impeded consistency in case-law. It criticised the insufficiently individualised reasons given in decisions with serious consequences for liberty and recommended replacing horizontal review with review by a higher judicial authority. These findings provide an institutional basis for understanding why recusal and detention objections in Tahşiye require effective judicial examination outside that closed structure. (CDL-AD(2017)004.)

1.5. Designation of the court and allocation of cases

The specialisation notice issued by the First Chamber of the High Council of Judges and Prosecutors (HSYK) on 12 February 2015 assigned the Istanbul 13th and 14th Assize Courts to certain offences against State security and the constitutional order, and to terrorism offences. It relied on the provision inserted into Article 9 of Law no.5235 by Law no.6572, citing workload, cases transferred from abolished courts and the need for specialisation. The notice also states that the 9th–17th Assize Courts were brought into operation on 7 April 2014 by a decision of 3 April 2014. Establishment, commencement of operations and specialist designation are distinct acts. (Annex 34.)

The notice provides that pending cases are not to be transferred to another court on grounds of division of work, that the new allocation applies to cases brought after publication, and that specialist courts are to continue receiving cases through the general allocation system. The measure does not support a conclusion that the court was

established solely for the Tahşiye case. SRL Swiss examines how these general rules were applied to the Tahşiye file and to the formation of the second bench. Specific objections raised during the proceedings about case allocation and the bench require reasoned answers, beyond a general reference to the power to establish courts. The specialisation notice alone does not establish how cases were actually allocated or why the second bench was selected. (Annex 03; Annex 05; Annexes 33, 34.)

1.6. Continuity of the bench and safeguards governing judicial assignments

The appeal alleges that 23 differently constituted benches sat over 120 hearings, that 22 judges from outside the court were assigned to the case, and that one defendant's ten-day defence was heard by six benches. It also identifies changes involving five judges, three benches and two prosecutors between 18 and 22 September 2017, and states that counsel's request to present the defence before the regular bench was not granted. These figures are those advanced in the appeal; they are not presented here as independently recalculated from all hearing attendance lists. (Annex 03; Annex 06.)

SRL Swiss considers that an allegation of changes on this scale cannot be dismissed as a mere staffing matter. The reason for each change, the deciding authority, its duration, notification to the parties and the new bench's access to earlier testimony should be established. Particular importance attaches to the difference between the bench hearing the substantive defence and the bench delivering judgment, and to the reasons given in response to any request for a rehearing. A change of judge is not in itself a violation; the absence of safeguards against arbitrary assignment must be assessed together with the loss of direct engagement with the evidence. (Annex 03; Annex 06.)

1.7. Allegations concerning external influence and judicial security of tenure

Submissions made during the proceedings link the reassignment of trial prosecutor Ali Kaya and the taking into custody of bench member Bünyamin Karakaş to alleged pressure on the court. Political statements, including statements made in July 2017, were also raised in relation to the atmosphere preceding judgment. The applications establish that these allegations were made during the proceedings; they do not, by themselves, establish a causal link between a particular judicial position and the reasons for an assignment or custody measure. (Annex 01; Annex 03; Annex 05; Annex 33.)

SRL Swiss therefore considers that the dates and reasons for the relevant appointments, transfers and investigative measures should be subject to independent scrutiny, rather than presuming that any particular judge received instructions. The original records of political statements and the concrete safeguards protecting the court from external influence should also be examined. The official documents and ECtHR findings concerning Başer and Özçelik are assessed separately below as a stronger evidential sequence. (Annexes 28, 29, 30, 31, 32.)

2. April 2015: recusal, release and the detention of judges

2.1. Direct documentary connection to the Tahşiye investigation

The recusal application of 20 April 2015 prepared by lawyer Ömer Turanlı on behalf of Ertan Erçıktı challenges the impartiality of the Istanbul criminal peace judges and discusses the authority competent to examine the application. A separate release application of the same date contests detention since 19 December 2014 in investigation no.2014/133596, setting out explanations concerning the individual's duties and the evidence, and requesting release or judicial supervision. It argues that documents signed in the performance of official duties did not prove criminal intent and that exculpatory documents had not been considered. These are the specific objections advanced by the defence at that time. (Annexes 26, 27.)

The 29th Criminal Court of First Instance's decision of 24 April 2015, Miscellaneous Proceedings no.2015/92, expressly identifies investigation no.2014/133596 and records applications under that heading on behalf of Ömer Köse, Yurt Atayün and Ertan Erçıktı. Its operative part grants the recusal applications and designates the 32nd Criminal Court of First Instance to examine the release applications. The decision therefore also covers applications in the Tahşiye investigation. (Annex 28.)

The 32nd Criminal Court of First Instance's letter of 27 April 2015, correspondence no.2015/177, lists seven investigations and seven release decisions, Miscellaneous Proceedings nos.2015/143–149. Investigation no.2014/133596 is included. The ECtHR's account of the facts states that the combined proceedings concerned 63 suspects across seven investigations. This is not the number of persons in the Tahşiye case alone; nor can the number of warrants be substituted for the number of individuals, since different investigations may have generated more than one warrant for the same person. (Annex 30.)

The specific decision in the Tahşiye investigation is Judge Mustafa Başer's decision of 25 April 2015, Miscellaneous Proceedings no.2015/146. Its operative part orders the release of Ömer Köse, Yurt Atayün, Ertan Erçıktı, Mustafa Kılıçaslan, Kazım Aksoy, Tufan Ergüder, Ali Fuat Yılmazer, Erol Demirhan and Hidayet Karaca, unless they are detained or serving a sentence for another offence. This directly documents the connection between those nine individuals and the decision. The existence of the order does not establish that release actually occurred or that no detention order existed in another case. (Annex 35.)

Decision no.2015/146 records that the prosecution did not transmit the investigation file or its opinion and that the examination proceeded on certified copies and digital material supplied by defence counsel. Its reasoning addresses the failure to substantiate individual risks of absconding or interference with evidence, and alternative measures. These are the deciding court's records and assessments; SRL Swiss does not present them as a final determination of the defendants' innocence or as confirmation of the court's jurisdiction

to order release. Access to the documents necessary for judicial review and the dispute over enforcement of the decision should be examined together. (Annex 35; Annexes 30, 31.)

2.2. Preparation of the decisions, interruption of UYAP access and refusal of enforcement

The record of 27 April states that preparation of the seven decisions began through UYAP at 18:47 on 25 April, that their numbers were obtained from the system, and that the texts were completed outside the system after access was blocked at 20:42. It records that the documents were signed by hand on 25 April and electronically on 27 April. Signed by the judge and court staff, this is a contemporaneous record of the sequence of acts. It does not, by itself, identify who caused the interruption, its technical cause or any instruction from an authority. (Annex 29.)

In letter no.2015/177 of 27 April, the 32nd Criminal Court of First Instance stated that the release warrants had been returned without enforcement by letter no.2015/1152 of 26 April and resubmitted them to the enforcement office. The court maintained that its designation was final and that its decisions had to be implemented. That legal position is the court's own reasoning; it is not equivalent to the outcome of the subsequent ECtHR examination. (Annex 30.)

The Enforcement and Judgments Office's letter of 27 April 2015, no.2015/1158, relies on the Istanbul 10th Criminal Peace Judgeship's decision of 25 April, no.2015/847. The Office again returned the warrants relating to the seven decisions on the grounds that the 32nd Criminal Court of First Instance lacked competence and jurisdiction and that continued detention had been ordered. The same document therefore establishes both non-enforcement and the authority's stated justification. (Annex 31.)

The 32nd Criminal Court of First Instance's decision of 27 April, Miscellaneous Proceedings no.2015/188, details reported difficulties in delivering and executing the documents. It provides for a criminal complaint against officials who failed to process the release documents and notification to the HSYK. It records the judge's objection and referral; it is not a final finding of criminal responsibility concerning every person whose conduct it describes. (Annex 32.)

2.3. The ECtHR's distinction between recusal and jurisdiction to order release

Karaca v. Türkiye is central to this distinction. The ECtHR examined separately the 29th Criminal Court of First Instance's decision on recusal and the 32nd Criminal Court of First Instance's jurisdiction to order release at the investigation stage. The continuation of detention by disqualified judges while the recusal decision remained effective violated Article 5 § 1 ECHR; the inability to secure effective judicial examination of the impartiality issue violated Article 5 § 4. This is not a general ruling that all criminal peace judges lack impartiality in every case.

At paragraph 164 of the same judgment, the Court accepted that the 32nd Criminal Court of First Instance lacked jurisdiction at the relevant time over preventive measures at the investigation stage. The complaint about non-enforcement of the release order was found manifestly ill-founded. Nevertheless, the obligation to ensure review of detention by a competent and impartial authority following the recusal decision remained. The jurisdictional issue does not remove the need for impartial review.

In Karaca, no violation was found in respect of reasonable suspicion at the outset, but the Court found a violation of Article 5 § 3 because the continued detention was not supported by relevant and sufficient reasons. Sufficient suspicion for initial detention does not automatically render every subsequent detention measure lawful or establish the impartiality of the reviewing authority.

2.4. Judicial security of tenure and the judges' initial detention

The recusal and release decisions were followed by the judges' suspension from office on 27 April 2015, Metin Özçelik's detention on 30 April and Mustafa Başer's detention on 1 May 2015. In Başer and Özçelik v. Türkiye, delivered on 13 September 2022, the ECtHR found violations of Article 5 § 1 because the initial detentions disregarded the prior-authorisation safeguard applicable to judges and because reasonable suspicion of an offence had not been demonstrated at that time.

The ECtHR's assessment does not exclude the possibility of procedural or jurisdictional errors in the judicial acts. Alleged irregularities in decision-making must be distinguished from specific, individualised suspicion that a judge belonged to a terrorist organisation. Evidence obtained later and the 2017 convictions could not retrospectively justify the initial detentions in 2015. No violation was found, however, in respect of the separate complaint challenging the jurisdiction of the Bakırköy 2nd Assize Court, which ordered detention.

The judicial independence issue is not that judges may never be investigated. It is that a contested judicial decision may become a basis for deprivation of liberty without a link to personal criminal conduct. Detaining a judge for deciding recusal or release applications may have a chilling effect on other judges examining similar requests. SRL Swiss treats this as an institutional risk to independent judicial decision-making, not as proof of instructions given to a particular judge at a later stage.

2.5. Reliance on the same events in the 2025 Tahşiye judgment

The judgment of 21 April 2025 states that judges of the 29th and 32nd Criminal Courts of First Instance attempted unlawfully to release certain defendants during the investigation. It refers to the judges' convictions of 24 April 2017 and the decision upholding them on 26 September 2017. The 2015 events thus appear not only as historical background but also within the factual narrative accepted in the Tahşiye cassation judgment. (Annex 18.)

Applying for release and challenging a judge's impartiality are statutory procedural rights. Their exercise cannot be converted into an adverse indicator of organisational affiliation on the basis of a subsequent criminal judgment against the judge who determined the application. The effect of the reference in the 2025 judgment on the assessment of individual responsibility, and the treatment of the relevant findings in the ECtHR's 2022–2023 judgments, require explanation. (Annex 18.)

3. From an impartiality challenge to adverse sentencing considerations

3.1. An accusatory response recorded at the hearing

The official record of the hearing of 25 February 2021 in case no.2020/90 before the Istanbul 14th Assize Court runs to seven pages. On 3 March 2021, the court appointed an expert to transcribe the recording. The expert's submission of 8 March 2021 contains a 29-page transcript of a recording lasting two hours, four minutes and fifty seconds. Two different forms of record of the same hearing can therefore be compared. The court-commissioned status of the transcript distinguishes it from an account subsequently produced by a party alone; it does not remove the need to preserve the original audiovisual recording. (Annexes 09, 10, 17.)

The court-commissioned transcript records presiding judge Akın Gürlek responding to Hüseyin Nohut's recusal application with "presumably those were the instructions concerning recusal" and "you are seeking recusal on instructions". The defendant asks what instructions are being referred to and is then warned not to speak without being given the floor. The record shows that the defence's impartiality challenge was met with an implication of external direction, rather than a response examining the merits of the challenge. (Annex 10.)

The exercise of a procedural right cannot be treated as an adverse indication of conduct on behalf of an organisation. The presiding judge's words attribute an incriminating meaning to the defendant's conduct before the grounds of the application have been determined. SRL Swiss considers this a specific and serious concern regarding the safeguard of objective impartiality. That assessment rests on the meaning and procedural context of the recorded words, not on speculation about the judge's thoughts.

According to the official record, the court rejected the recusal application as an abuse of process under Article 31 § 1 (c) of the Code of Criminal Procedure and indicated the available objection procedure. The existence of that decision does not, by itself, demonstrate independent review of the accusatory oral response or the grounds concerning impartiality. (Annex 09; Annex 10.)

The institution-certified recusal application of 26 May 2021 again brought the allegation of acting on instructions and the discrepancy between the records before the court. The

objection of 3 June and the judicial decision of 15 June also document the review stage of this second application. Allegations in the application concerning appointments and political connections are not treated as established facts merely because they appear in a pleading. SRL Swiss focuses on the scrutiny of the recorded statements and the specific impartiality objections. (Annex 08; Annex 10; Annexes 38, 39.)

The Istanbul 15th Assize Court's decision in Miscellaneous Proceedings no.2021/185 considered together objections concerning recusal, a stay of proceedings, territorial jurisdiction and subject-matter jurisdiction, rejecting them on the ground that the decisions complied with procedural and substantive law. SRL Swiss finds that the decision contains no separate assessment of the allegation of acting on instructions or the objective impartiality challenge. The decisive shortcoming for the effectiveness of the remedy is the failure to answer the specific impartiality objection itself. (Annex 05.)

The copy of the decision bears the date 25 February 2021. In a subsequent application, Nohut states that he lodged his objections on 8 March and was served with the decision on 30 March, requesting the reasons and correction of the date. The discrepancy between the date on the document and the chronology reported by the applicant requires clarification through the original electronic records and proof of service. It does not, by itself, establish that the decision was prepared in advance. (Annex 05.)

3.2. Individualised examination of renewed recusal applications

The decision rejecting the application of 26 May 2021 at the hearing of 27 May is quoted in the institution-certified objection of 3 June 2021. That objection alleges that the previous reasoning was repeated and that specific grounds concerning the new bench were not examined. The Istanbul 15th Assize Court's decision of 15 June 2021, Miscellaneous Proceedings no.2021/385, is directly available: after stating that it had examined the file and the objection, the court dismissed the objection on the general ground that the refusal of recusal complied with procedural and substantive law. The decision does not separately address the allegation of acting on instructions, the record discrepancy or the objections concerning the changed composition of the bench. (Annex 08; Annexes 38, 39.)

SRL Swiss distinguishes between access to a judicial remedy and independent examination of the substantive grounds raised. Decision no.2021/385 provides for an objection to the Istanbul 16th Assize Court within seven days; it cannot therefore be characterised as final or unchallengeable. The available decision does not show whether that further remedy was used or its outcome. The date discrepancy in decision no.2021/185 concerns a different act and cannot be attributed to decision no.2021/385. (Annex 05; Annexes 38, 39.)

3.3. Refusal of a discretionary sentence reduction in the 2022 judgment

In the reasoned judgment of 10 June 2022, Hüseyin Nohut's basic sentence for membership of an organisation was set at seven years and increased by one half to ten

years and six months. In refusing to apply Article 62 of the Criminal Code, the court expressly relied, alongside his conduct during the prosecution phase, on "his persistent, strongly worded statements that the court was not impartial". This is the court's own reasoning, not the defendant's interpretation. (Annex 16.)

A discretionary reduction is not an automatic entitlement for every defendant. Nevertheless, seeking recusal, presenting reasoned criticism of impartiality or denying the charge is different from a specific breach of courtroom order. The reasons for refusing the reduction must identify the conduct that exceeded the exercise of defence rights and explain why it warranted adverse treatment in sentencing. Treating the strength of criticism of impartiality alone as an adverse factor forces the defendant to choose between exercising a procedural right and receiving a more favourable sentencing assessment.

The statements of 25 February 2021 were made at a hearing presided over by Akın Gürlek; the judgment of 10 June 2022 was delivered by the bench presided over by Şenol Kartal. Nevertheless, the same defendant's impartiality objections were first met with an allegation of acting on instructions and later recorded as adverse conduct in sentencing. This reveals a continuing concern about defence safeguards. SRL Swiss requests reconsideration of that reasoning by an impartial authority. (Annexes 09, 10; Annex 16.)

3.4. Specific indications from other hearings

The transcript of the hearing of 30 December 2020 records questions to Ahmet Basık which, on the basis of cell-site/contact data, assume that a face-to-face meeting occurred. The defendant attempts to explain his location and the area around his residence. If a particular meeting and contribution to an offence are inferred from telephone or cell-site records, the technical limitations of those records and alternative explanations must be examined. Framing the question as an established proposition risks discounting the defence's explanation from the outset. (Annex 21.)

On 2 July 2021, Tolga Güzeltaş's submissions concerning ECtHR judgments were restricted as repetition of familiar decisions and unnecessary exposition; he was given a short period to complete his remaining defence. On 5 November 2021, Aytekin Ağören was told that his screen could be switched off. The first instance concerns the opportunity to present legal argument; the second concerns the ability of a remotely participating defendant to continue speaking. The extract examined does not establish that the screen was actually switched off. (Annex 21.)

A court has authority to manage hearings, limit repetition and maintain order. That authority must not be exercised without explaining which defence issue has already been adequately heard, or by attaching an accusatory meaning to an impartiality challenge. The assessment rests on the effects of the recorded interventions on the defence's specific function, not on an assertion that every hearing was conducted in the same manner.

3.5. Conduct of hearings, prejudgment and professional background

The appeal recounts that certain objections raised at the hearings of 22 December 2015 and February 2016 were met with the response that they could be raised on appeal in cassation. The same account appears as a defence submission in the reasoned judgments of 2017 and 2022. Its reproduction in a judgment is not a separate judicial finding that the event occurred. For SRL Swiss, the issue is whether an objection capable of affecting the outcome was deferred to a future remedy rather than addressed before judgment. (Annex 03; Annex 13; Annex 16.)

The applications also allege references to current political events at the hearings of 24 February and 27 July 2017; an assessment of Yurt Atayün by reference to his earlier police work on 7 April 2017; and accusatory assumptions in questions put to Mehmet Savaş Özcan on 27 December 2016. These are separate events requiring examination against the original records. SRL Swiss considers that substituting a defendant's former duties or external political debate for evidence of the act charged may undermine the guarantee of objective impartiality. (Annex 03.)

Questions quoted from the hearing of 22 November 2016 likewise examine the defendant's professional conduct on the assumption that a disputed meeting took place. The same account records the presiding judge explaining that the complainant's account was not being accepted as conclusively true and that the questions were based on allegations and records. SRL Swiss takes that explanation into account. The examination concerns whether the possibility of an alternative explanation remained open and whether the answer was steered towards a predetermined narrative, rather than the mere fact that questions were asked. (Annex 33.)

3.6. Defence criticism and threats of disciplinary measures

The appeal alleges that, on 6 April 2017, counsel's objection to an intervening party's interference with the defence was restricted; that a defendant was removed from the courtroom on 17 April; and that the acts carried out in his absence were not explained at the next hearing. The applications also recount a warning in July 2017 threatening the detention of relatives attending as spectators. SRL Swiss assesses these events as impartiality allegations requiring answers based on their records and context, not as conclusively established disciplinary misconduct. (Annex 03; Annex 05.)

Intervention necessary to maintain courtroom order must be distinguished from intervention suppressing defence objections to the prosecution and an intervening party. The assessment should address the reason for the intervention, its duration, its equal application to both sides and the removed person's subsequent opportunity to challenge the procedural acts. Merely invoking disciplinary authority without explaining those safeguards does not adequately answer an impartiality complaint. (Annex 03.)

4. Lawyers' independence and the integrity of records for judicial review

4.1. Statements taken before counsel's participation

At the beginning of the transcript, Erdem Kısa's counsel is said to be attending another hearing. Questioning proceeds before counsel joins. On arriving later, counsel states that she would have wished the act to take place in her presence. Counsel's general inclusion in the official list of persons present does not establish during which part of the questioning she actually provided assistance. (Annex 10; Annex 09.)

The transcript similarly records when counsel for Mehmet Savaş Özcan and İsmail Yücel Zırh joined. The official record separately notes the later arrival of Zırh's counsel. These differences preclude a single, uniform allegation for every defendant. For each individual, it is necessary to determine what was asked and answered while counsel was absent, whether that part of the questioning was repeated and whether it was relied on in the judgment. (Annexes 09, 10.)

Actual legal assistance during questioning on the substance of a charge is different from counsel's appearance in the courtroom at some point during the day. If statements obtained before counsel's arrival are to be used adversely without repeating the questioning or allowing the defendant to discuss them with counsel, later participation does not automatically cure the initial deficiency. In the records examined, the decision to proceed with questions about duties and events after being told that Erdem Kısa's lawyer was at another hearing requires particular explanation.

4.2. Discrepancies between the hearing record and the expert transcript

The official record contains standard entries concerning the explanation of Nohut's rights, his defence and his previous statements. In the court-commissioned transcript, however, the discussion centres on procedural matters such as subject-matter jurisdiction, authorisation to investigate, participation and recusal. The official record also states that the defendant would not present his defence at that stage and sought recusal. SRL Swiss identifies a discrepancy between these records affecting whether substantive questioning was completed, which requires resolution through independent review. (Annex 09; Annex 10.)

The application to correct the record of 4 March 2021 and the recusal application of 26 May 2021 establish that the discrepancy was raised during the proceedings. SRL Swiss's comparison of the official record with the court-commissioned transcript also shows that it concerns a substantive defence act. The existence of an application does not, by itself, establish that the discrepancy was remedied. (Annexes 09, 10; Annex 24; Annex 08.)

The interlocutory decision of 21 January 2022 provides for examination of the SEGBİS recordings between hearings and for securing Nohut's participation at the next hearing

so that his defence may be heard. This is a concrete step taken by the court in response to the record and defence issues. Without establishing the outcome of that examination and what occurred at the subsequent hearing, it cannot be said either that the problem was remedied or that it was never addressed. (Annex 21.)

The original recording, transcript and official record should be compared, and discrepancies independently resolved. Where statements obtained before effective assistance of counsel are used adversely, appropriate redress should be provided and, where necessary, the act repeated with full defence participation. Correction of a hearing record is more than an archival matter: it preserves the evidential foundation of appellate review and defence rights.

The Court of Cassation's 2020 judgment also identified discrepancies in electronic signatures and names in certain hearing records from the first trial, treating them as capable of correction. It is not alleged that those discrepancies alone invalidate all hearings. Nevertheless, it must be possible to trace who corrected a record and on the basis of which act and recording. A dispute over whether a substantive defence act took place cannot be reduced to the subsequent completion of a signature. (Annex 15; Annexes 09, 10.)

4.3. 321 folders and limited computer access

The interlocutory decision of 30 December 2020 expressly records that the investigation annexes comprise 321 folders and could not all be uploaded through UYAP. The court ordered that 64 GB storage devices be obtained to serve the annexes on 14 defendants detained in other cases, and that copies also be supplied on storage devices to defendants at liberty and their counsel. It further directed that imprisoned defendants be given computer access for at least ten hours per week. SRL Swiss finds that this decision directly documents the scale of the file and the difficulties in transmitting it. (Annex 21.)

On 25 February 2021, Nohut stated that the indictment had reached him on 1 October 2020 and its annexes approximately four and a half months later; that he could use a computer for nine hours per week; and that he sought twelve hours. The account of nine hours' actual access is the defendant's statement. The difference between the ten-hour judicial direction and the reported practical provision is relevant to implementation. Both periods must be assessed against the size of the file and the needs of the defence. (Annex 10; Annex 21.)

The adequacy of preparation time cannot be assessed solely from the date of service of the indictment. Actual delivery and legibility of the annexes, computer capacity, opportunities for consultation and note-taking, the ability to work with counsel and the volume of new evidence must be examined together. Particularly in a case comprising hundreds of folders, the passage of a short calendar period does not show that a defendant could use the evidence. Participation remains merely formal if the defence cannot determine which evidence to challenge and on what grounds.

The record of 21 January 2022 documents requests for materials by Hidayet Karaca and Hüseyin Nohut and the corresponding court letters. This is a separate procedural stage from the general transmission problem documented on 30 December 2020. Whether orders to transmit documents were implemented must be established by reference to the content delivered, the delivery date and records of usability. (Annex 21.)

Delivery of a storage device to the defence and effective access are not equivalent standards. Time for examination, the operating conditions of the device, search and note-taking facilities, consultation with counsel and the volume of new evidence must be assessed together. The actual effect of the court's facilitative measures must be measured against these practical conditions.

The file also records time allowed for the defence, the granting of certain participation requests and orders to transmit documents. The question is whether those opportunities actually remedied the specific deficiency. Redress must be demonstrated by the dates and conditions of use, not merely by the opportunity described in an interlocutory decision. (Annex 21.)

4.4. Confidential work with counsel and court supervision

The second interlocutory ruling in the record of the Istanbul 14th Assize Court's 56th hearing, held on 27 December 2016, limits consultation with counsel during the hearing recess to fifteen minutes under gendarmerie supervision and subjects the exchange of documents between counsel and defendants to prior examination by the court. The same record states that documents supplied by Yurt Atayün's counsel were found unobjectionable and authorised for delivery, while the numerous documents brought by Kazım Aksoy's counsel would be considered after examination was completed. The record thus directly establishes that the trial court reviewed the content of defence documents and made delivery conditional on that review. (Annex 36.)

The fifteenth interlocutory ruling at the 90th hearing, held on 26 May 2017, refers to a finding of covert exchange of information and documents in separate proceedings before the Istanbul 13th Assize Court, case no.2015/366. It treats the allegation that both cases concerned the same organisation as grounds for a three-month restriction on the defendants' prison consultations with lawyers in this case. The decision recites the options under Decree-Law no.676 of recording consultations, having an official present, seizing documents and restricting consultation times, then orders implementation of the relevant provision. The record does not establish which option was actually applied to which individual. The absence of an individualised, concrete basis for extending a finding in another case to these defendants nevertheless reveals a clear deficiency in reasoning, relevant to the principle that lawyers must not be identified with their clients' causes and to the defence's ability to work independently. (Annex 37.)

SRL Swiss finds that subjecting the content and strategy of the defence to the trial court's prior approval, and importing general reasoning from another case, weaken counsel's

independent professional role. Being within a gendarmerie officer's sight and being within hearing are different interferences; the record alone does not prove that conversations were actually overheard. By contrast, making delivery of documents conditional on court examination is an express judicial order. The individual necessity of these measures, the adequacy of less restrictive means and review on objection each require distinct justification. (Annexes 36, 37.)

4.5. Effective legal representation, time for the defence and the final statement

The attendance record for the 56th hearing of 27 December 2016 lists Hüseyin Nohut's bar-appointed counsel, Halil İbrahim Aktay. In light of this direct record, it cannot be found that all hearings from the 24th to the 58th proceeded without counsel. The examination must address actual legal assistance at each hearing and substantive procedural act. Allegations concerning limited time for the defence and restrictions on the final statement of 3 November 2017 require separate assessment; the available written final statement does not, by itself, establish the form of any oral intervention. (Annex 02; Annex 03; Annex 36.)

Where substantive acts take place without counsel, adequate preparation is denied and objections are treated in the judgment as adverse conduct, the combined effect weakens counsel's professional role and the court's ability to hear the parties on an equal basis. The court's power to limit repetition does not replace reasons addressing the specific circumstances of a change of counsel or late delivery of evidence. (Annex 03; Annexes 09, 10; Annex 21.)

The covering letter serving the 90th hearing record states that the SEGBİS transcript had not yet been completed. Its brief entries on defence submissions therefore cannot be treated as a complete transcript of all oral statements. The document is a direct source for the content and reasons of the interlocutory rulings; it does not, by itself, resolve every allegation about restrictions on oral defence submissions. (Annex 37.)

5. Assessment of evidence independently of the prosecution

5.1. Effective review of procedural defects identified by the Court of Cassation

The Court of Cassation's judgment of 31 December 2020 found unlawful the failure to have a disputed signature examined, reliance on a recording without establishing the speaker's identity, the use of a police statement not confirmed in court, and the failure to examine a letter at the hearing. It treated these defects as having no effect on the outcome in respect of the relevant convictions. SRL Swiss's concern is not the accuracy of the technical evidence, but whether acknowledged procedural defects were independently assessed for each defendant and conviction. (Annex 15.)

The appellate court also quashed parts of the judgment in respect of certain defendants and offences and made corrections concerning defence counsel's fees and transcription costs. It is therefore not alleged that review produced no result. What is sought is a concrete explanation of why the remaining defects did not affect the judgment and how the proceedings following remittal remedied them. (Annex 15; Annex 16; Annex 18.)

5.2. Treatment of requests to investigate exculpatory matters

The appeal and post-remittal applications allege that specific requests, including for Zeki Çatalkaya to be heard, were rejected, some despite prosecution support, and that several requests to investigate exculpatory matters were disposed of through collective reasoning. SRL Swiss does not conclude that every request had to be granted. The question is whether the request's function in the defence was understood and whether the reasons for refusal addressed that function. (Annex 03; Annex 06.)

The applications also criticise the prosecution's submission of its opinion on the merits on 28 July 2017 before examination of the evidence was complete, and its continued reliance on the indictment's narrative. Timing or similarity to the indictment does not alone prove bias. The court must independently assess new evidence and exculpatory defence explanations in its own reasoning rather than automatically incorporating the prosecution's narrative into the judgment. (Annex 01; Annex 03; Annex 13.)

5.3. The court's practical authority to obtain documents

The appeal states that the annexes to Sadettin Yazgülü's statement were not transmitted to the court on grounds of confidentiality. The full defence submissions likewise raise objections that decisions and correspondence concerning investigative measures were not obtained for the file despite the court's requests. These matters are relevant to whether the court had practical access to the documents necessary to examine the case independently of the prosecution. In the absence of the original requests and responses, no conclusion is drawn that the prosecution systematically withheld documents from the court. (Annex 03; Annex 33.)

SRL Swiss considers that, where a judicial request for documents is not complied with, the court's coercive or remedial response must be explained. Independent judicial scrutiny of confidentiality grounds and the opportunity to challenge material used against the defence under appropriate safeguards concern the effectiveness of judicial authority, not merely access to the file. (Annex 03; Annex 21.)

6. Impartial hearing and the management of witness examination

6.1. The ability to challenge unilateral accounts

The interlocutory decision of 1 July 2016 quoted in the initial defence submissions rejects a request to recall Turgut Yıldırım and Bünyamin Ateş on the grounds that they had already been heard and had stated that they would not answer questions. The interlocutory decision of 3 June 2016 relies on the fact that intervening parties outside the court's territorial jurisdiction had been heard by courts acting on judicial requests and that no prior request to participate had been made. For SRL Swiss, the question is whether, if an allegation was to be used adversely, the court ensured an effective opportunity for the defendant to challenge the statement. (Annex 33.)

The applications also recount assessments favouring the taking of evidence by the trial court itself or through SEGBİS in proceedings conducted on judicial request by the Ankara 13th Assize Court on 19 January 2017, no.2017/28, and the Malatya 2nd Assize Court on 29 June 2016, no.2016/133. This raises a difference in approach to examination safeguards between the courts executing the requests and the trial court. Effective review of the impartial hearing guarantee requires a specific explanation of why safeguards proposed by those courts were not implemented. (Annex 03.)

6.2. Prior notice, simultaneous proceedings and recall of witnesses

Accounts of hearings in 2016 record the objection that the defence could not prepare questions because it did not know in advance that intervening parties or witnesses would attend. The same text records the presiding judge explaining that some individuals had appeared of their own accord and, at the hearing of 17 August, naming persons who might be heard the following day. This counterexample precludes an allegation that notice was never given. SRL Swiss considers that the opportunity to prepare must be examined for each individual and hearing. (Annex 03; Annex 33.)

The application also refers to evidence-taking on judicial request on the same day as the principal hearing; alleges that, although Ubeydullah Çelik's recall was authorised, the defence was not notified of the subsequent act; and states that certain records produced on judicial request were not examined at the hearing. The court's intervention in questions to be put to Cemal Aslan was also challenged. These are not assessments of the truthfulness of witnesses. They call for objective review of the opportunities to question witnesses afforded to each side. (Annex 03.)

6.3. Acts following remittal and the remaining need for review

The reasoned judgment of 10 June 2022 records that the anonymous witness Damla was heard on 24 September 2021 and Yunus Dolar on 22 October 2021; on 17 December 2021,

the court dispensed with hearing Afyon after inquiries and correspondence failed to secure that witness's attendance. It therefore cannot be said that none of the three witnesses was heard or that the dates are unknown. SRL Swiss assesses the court's acts on the basis of this official record. (Annex 16.)

The remaining examination concerns which defendants and counsel could ask questions at those hearings, what safeguards applied to the examination of the anonymous witness, and the extent to which the judgment relied on the prior statement of the person who was not heard. The fact that a witness was heard does not alone establish effective questioning; failure to hear a witness does not alone invalidate the entire judgment. The weight of the statement and the measures counterbalancing the defence's disadvantage must be shown together. (Annex 15; Annex 16.)

7. Conflicting judicial roles and an effective complaints mechanism

7.1. Earlier acts and subsequent review functions

Oktay Açar presided over the bench that delivered the Istanbul 15th Assize Court's decision of 15 June 2021, Miscellaneous Proceedings no.2021/385. This directly establishes his role in reviewing the recusal objection. The allegation that he also participated in earlier communications measures appears in applications and in the defence submissions reproduced in the 2022 reasoned judgment. The later decision does not itself establish the earlier measure or its scope. For SRL Swiss, objective impartiality requires comparison of the original decisions to determine whether the earlier act and the subsequent review concerned the same issue. (Annex 05; Annex 16; Annex 39.)

SRL Swiss seeks a functional safeguard rather than making a personal accusation: withdrawal and recusal mechanisms must operate effectively where a judge is required to review the correctness of his or her own previous decision or a previously expressed, decisive view of guilt. Both the scope of the earlier decision and the judicial function exercised in the later review matter to the assessment of conflicting roles. (Annex 05; Annex 16.)

7.2. Distinguishing HSK complaints from judicial recusal proceedings

The application to the Council of Judges and Prosecutors (HSK) of 22 March 2021 and its annexes show that allegations concerning the conduct of hearings and impartiality were also submitted to the disciplinary authority. An examination measure dated 15 March 2017 appearing in another annex concerns an earlier application and cannot be presented as the outcome of the 2021 complaint. The available documents do not establish the final outcome of the later application. (Annex 04; Annex 05.)

A disciplinary complaint does not substitute for timely examination of an impartiality challenge by an independent judge. SRL Swiss seeks disclosure of the registration and outcome of the complaints and a reasoned examination of the allegations that preserves judges' defence rights and security of tenure. Review must not become punishment for the content of a judicial decision; it should address specific allegations concerning conduct and procedural safeguards. (Annex 04; Annex 05.)

8. Detention: access, individual risk and effective objections

8.1. Access to the file and challenges to detention

The prosecution's request and the criminal peace judgeship's decision of 13 December 2014 restrict inspection of the file and the taking of copies on the ground that access would jeopardise the investigation. The decision refers generally to the type of offence and the material in the file. For an effective challenge to detention, the central issue is the extent to which the defence could access material essential to the deprivation of liberty. Access to the entire file must be distinguished from access to information necessary to challenge detention. (Annexes 11, 12.)

8.2. Nohut: the sequence of acts on 10–15 July 2015

The record of 10 July 2015 shows that Hüseyin Nohut voluntarily attended the police station at 12:30. In its questioning decision of 11 July 2015, no.2015/336, the Istanbul 1st Criminal Peace Judgeship ordered the release of Nohut and Ahmet Öztürk, stating that the 24-hour police custody period had expired and no extension had been ordered. That release was neither an acquittal on the merits nor a finding that suspicion was absent; it implemented the judicial safeguard governing the duration of police custody. (Annex 23.)

The questioning record of 15 July 2015, Miscellaneous Proceedings no.2015/1922, shows that Nohut was brought before a judge again on the basis of the Istanbul 2nd Criminal Peace Judgeship's decision of 13 July, no.2015/3497. The Istanbul 8th Criminal Peace Judgeship ordered his detention that day. In addition to its factual account supporting suspicion, the decision lists the potential sentence, the offence's inclusion in the statutory catalogue, risks of absconding and interference with evidence, and the inadequacy of judicial supervision. It does not explain how those risks were reconciled with his voluntary attendance. (Annex 23.)

This sequence requires two separate examinations: redress for the breach of the police custody time limit, and the subsequent detention order's own legal and individual grounds. The basis for the renewed apprehension is the decision of 13 July referred to in the questioning record of 15 July. The dispute over enforcement of Başer's release orders in April 2015 must not be conflated with this act on a different date.

8.3. Avoidance of individualised reasons for detention

In the extract from the hearing record of 23 February 2017, Nohut criticises the absence of reasons specific to him for continuing detention. The presiding judge states that he considers abstract reasoning more appropriate because explanations relating to the individual and the evidence might disclose the final judgment in advance. The explanation reflects a concern not to express a premature view of guilt, but that concern does not remove the duty to explain the grounds for restricting liberty. (Annex 20; Annex 19.)

Declaring guilt established is different from assessing reasonable suspicion, individual risks of absconding or interference with evidence, and the adequacy of alternative measures in detention review. Deliberately preferring abstract reasons makes it harder for a defendant to identify the current facts to contest and for a higher authority to conduct review. The record therefore concerns more than tone: it directly indicates the standard applied in reviewing deprivation of liberty.

The decision of 14 June 2017, Miscellaneous Proceedings no.2017/563, rejects four individuals' objections to detention on common grounds. It lists the legal characterisation of the offence, the state of the evidence, the statutory catalogue, the potential sentence, suspicion of absconding and the inadequacy of judicial supervision. It does not separately identify the current conduct or facts giving rise to those risks for each person. Similar reasons appear in the objection decisions of 7 July 2017. (Annex 22.)

The continuation order at the hearing of 13 June 2017 contains a broader list of evidence. Listing material considered to support suspicion nevertheless does not suffice to individualise the risks of absconding or interference with evidence. The same decision's statement concerning the period under Article 102 § 2 of the Code of Criminal Procedure for certain defendants also requires the initial period and the reasons for extension to be explained by individual and date. This record alone is not treated as establishing that every statutory maximum period was exceeded. (Annex 22.)

The decision at the 90th hearing on 26 May 2017 states that the detention periods under Article 102 § 2 of the Code of Criminal Procedure had expired for Ali Fuat Yılmazer, Ertan Erçıktı, Erol Demirhan, Hidayet Karaca, Ömer Köse and Yurt Atayün, yet continues their detention by reference to the previous reasons, the state of the evidence and the fact that some defence submissions had not been completed. This is the court's own assessment of the period. No conclusion that the absolute maximum was exceeded is drawn without distinguishing the initial period from the limits on extensions. SRL Swiss's concern is the failure, despite that acknowledgment, to explain separately the legal basis for extension and each individual's current risk. Incomplete defence submissions do not, by themselves, constitute an individual risk of absconding or interference with evidence. (Annex 37.)

New detention orders were made against Adem Akpınar and Halit Akbulut at the same hearing; these must be distinguished from the orders continuing other individuals' detention. In Mustafa Altunbulak's case, bench member Ömer Karagöl dissented in favour

of release in view of his child's care needs and the adequacy of judicial supervision. The dissent shows that an assessment of alternative measures was specifically articulated within the case. It does not, by itself, prove external pressure on the majority; it requires scrutiny of why the majority's reasons assessed the individual circumstances and the less restrictive measure differently. (Annex 37.)

The violations of Article 5 §§ 3 and 4 found in Karaca should be assessed alongside these domestic decisions. The seriousness of the charge and the scale of the case do not dispense with individual risk assessment as detention continues. Repetition of earlier reasons by the reviewing authority does not, by itself, remedy deficiencies in impartiality or specificity.

The 2017 detention decisions and subsequent defence and international application documents show that challenges to deprivation of liberty persisted. No aggregate duration has been calculated without distinguishing detention orders arising from different cases, detention pending proceedings from enforcement of a final sentence, and periods of release. Current status requires examination of each individual's enforcement and related case records together.

8.4. Access to decisions and the practical effectiveness of objections

The full defence submissions recount that an objection had to be lodged without the reasons for the continuation order of 15 April 2016 and that the Istanbul 15th Assize Court's decision of 9 May 2016, Miscellaneous Proceedings no.2016/370, did not separately address that service issue. Examples from October and December 2016 also allege new continuation orders before previous objections had been determined and the use of similar reasons for rejection. This chronology reflects the sequence described in the application. (Annex 33.)

A fresh review of detention is not automatically unlawful because an earlier objection remains pending. SRL Swiss examines whether the complaint against the earlier decision received timely and effective consideration, whether its reasons were accessible and whether a successful objection could provide practical redress. New decisions must not render review of the lawfulness of earlier restrictions on liberty meaningless. (Annex 22; Annex 33.)

The 2022 defence submissions on the merits likewise raise objections concerning non-individualised reasons for a risk of absconding, reviews conducted without hearing the defendant and the taking of defence statements when cases were severed or joined. The reasoned judgment confirms the joining of case no.2022/89 and severance in respect of certain individuals; that record does not, by itself, establish that no defence statements were taken. The individuals' opportunity to be heard and to work with counsel at the relevant hearings should be examined in terms of its effect on recusal and detention review. (Annex 07; Annex 16.)

8.5. What the documents establish about domestic and international applications

The individual application form identifies Constitutional Court application no.2017/33445, gives 28 November 2018 as the date of rejection and 29 November 2018 as the date of service. These details reflect statements in the application form; the report does not infer from them that domestic remedies were exhausted or that the international application has been determined. (Annex 20.)

9. Combined legal assessment of the findings

9.1. Applicable international safeguards

Article 14 of the International Covenant on Civil and Political Rights guarantees a fair hearing before an independent and impartial tribunal established by law. The UN Basic Principles on the Independence of the Judiciary require judges to decide free from improper influence and pressure and to ensure fair proceedings. In this case, the relevant standard concerns not only a judge's title or lawful appointment but also the treatment of recusal applications, the hearing of the defence and the response to decisive objections.

Article 14 § 3 of the Covenant protects adequate time and facilities for the preparation of the defence and legal assistance. Principles 16, 18, 21 and 22 of the UN Basic Principles on the Role of Lawyers provide guidance on professional work free from pressure, the non-identification of lawyers with their clients' causes, timely access to the file and confidential communication. The specific findings concerning counsel's participation and usable access to documents are assessed against these standards.

Article 9 ICCPR protects against arbitrary deprivation of liberty and guarantees effective judicial review of its lawfulness; Article 14 § 1 protects independent and impartial adjudication; and Article 14 § 3 (b), (d) and (e) protects adequate preparation, legal assistance and the examination of witnesses. Together with their counterparts in Articles 5 and 6 ECHR, these safeguards cannot be treated as disconnected formal requirements. The ability to seek recusal, the accuracy of the record and access to evidence are mutually supporting conditions of the same defence activity.

The difficulty in accessing impartial detention review in 2015 and the adverse interpretation of recusal objections in 2021–2022 are distinct acts. Both, however, weaken the right to bring an impartiality complaint before an effective authority. Deficiencies in counsel's participation and discrepancies in hearing records may make it harder to establish the problem on review. Restrictions on access to technical evidence, coupled with general reasons rejecting decisive objections, compound that disadvantage. Assessment of a violation must also consider the actual effect of remedial steps at each stage.

Defendants' responsibility cannot be established by job title or collective characterisations. The prosecution must demonstrate each individual's contribution to the alleged act and the mental element of the offence through evidence that the defence can effectively challenge. SRL Swiss seeks fulfilment of that burden of proof in independent and impartial proceedings and redress for breaches of defence safeguards, rather than repetition of accusatory narratives.

The safeguards governing judicial decision-making and discipline in the UN Basic Principles on the Independence of the Judiciary are important to the Başer–Özçelik proceedings. Appellate review of judges' acts must be distinguished from criminal pressure unsupported by personal criminal conduct. Under the Basic Principles on the Role of Lawyers, the prior examination of documents at the 56th hearing and the general restriction based on another case at the 90th hearing directly concern independent defence work. The finding relates to the content of those decisions; it is not alleged that every consultation of every defendant was overheard or recorded. (Annexes 36, 37.)

The UN Human Rights Committee's General Comment No.32 requires impartiality to be apparent to a reasonable observer and adequate time and access to documents for preparation of the defence. The allegation that a recusal request was made on instructions and the problems of computer and file access are concrete applications of those standards. An order to deliver annexes is insufficient unless the defence's actual ability to examine them is demonstrated. (CCPR/C/GC/32, 23 August 2007.)

General Comment No.35 requires pretrial detention to be exceptional and necessity to be assessed on individual circumstances. Nohut's voluntary attendance and the preference for abstract reasons at the 2017 hearing are concrete facts relevant to that assessment. (CCPR/C/GC/35, 16 December 2014.)

9.2. Application of relevant ECtHR case-law to the specific findings

Morice v. France [Grand Chamber], 23 April 2015, no.29369/10, requires impartiality to be assessed not only by a judge's subjective beliefs but also by objective facts capable of giving rise to legitimate doubts and by the confidence courts must inspire. The connection to Tahşiye is the recorded allegation of acting on instructions in response to recusal on 25 February 2021 and the adverse use of impartiality criticism in refusing a sentence reduction in 2022. The assessment concerns the objective problem of confidence created for the defendant by the documented words and reasoning, rather than speculation about the judge's inner convictions. (Annex 10; Annex 16.)

Ruiz Torija v. Spain requires an adequate response to essential arguments capable of affecting the outcome. Here, the connection concerns the rejection of recusal applications through general findings of legal compliance and the explanation of the individual effects of procedural defects acknowledged by the Court of Cassation. A lengthy answer to every detail is not required, but a decisive fact calling impartiality into question cannot be left unanswered. (Annex 05; Annexes 09, 10; Annex 15; Annex 16; Annex 39.)

Schatschaschwili v. Germany assesses together the reason for a witness's absence, the weight of the statement in the conviction and counterbalancing safeguards where the prior statement of a witness who could not be questioned is used. In Tahşiye, that standard should inform assessment of the decision to dispense with hearing Afyon and of the actual opportunities to question Damla and Yunus Dolar. The court judgment gives the hearing dates; what remains to be demonstrated through the hearing records is the opportunity to participate and ask questions. (Annex 15; Annex 16.)

Buzadji v. the Republic of Moldova [Grand Chamber], 5 July 2016, no.23755/07, requires relevant and sufficient reasons, in addition to reasonable suspicion, from the first judicial decision ordering detention. This is relevant to the common risk formulations in 2017 and the failure to individualise why judicial supervision was inadequate. Together with the directly relevant Article 5 § 3 finding in Karaca, it reinforces the distinction between evidence supporting suspicion and the necessity of detention. (Annex 22; Annex 37.)

Salduz v. Turkey [Grand Chamber], 27 November 2008, no.36391/02, emphasises legal assistance as a practical and effective defence safeguard. Its context of initial police questioning differs from the late participation of counsel at trial hearings in Tahşiye. The common principle is that legal assistance must be available at the critical stage of the act. In Tahşiye, the use of substantive statements taken before counsel's arrival and the redress subsequently provided require specific examination. (Annexes 09, 10.)

In Moiseyev v. Russia, the ECtHR recognised that case allocation and changes in the composition of the bench may involve administrative discretion, while emphasising objective reasons for repeated changes and safeguards against arbitrariness. Allegations concerning hearings and bench changes in Tahşiye should therefore be examined alongside the reasons for assignments, notice, the opportunity to object and the deciding bench's direct access to the evidence. A violation is not inferred solely from the number of changes. (Annex 03; Annex 06.)

Altay v. Turkey (No.2), 9 April 2019, no.11236/09, treats confidential communication with counsel as a fundamental defence safeguard and requires restrictions to rest on a strict legal framework and adequate safeguards. Its facts and applicable legislation differ from the 2016–2017 acts in Tahşiye. The relevant standard here requires the specific basis and scope of document and consultation supervision, and effective review safeguards, to be demonstrated. Prior examination of documents at the 56th hearing and the general restriction based on another case at the 90th hearing should be assessed against that standard. (Annexes 36, 37.)

9.3. Reports of international organisations and scholarly analysis

OHCHR's March 2018 report on Türkiye, covering January–December 2017, addresses the powers and practices of criminal peace judgeships, horizontal review and deficiencies in individualised reasoning. It identifies concerns regarding judicial independence and effective review. Its relevance to Tahşiye lies in considering the individual liberty issues

that arose in December 2014 and April 2015 together with structural concerns subsequently reflected in international monitoring. These general findings do not replace the records of individual acts in Annexes 11–12 and 26–32.

Paragraphs 71–72 of the Council of Europe Commissioner for Human Rights' report CommDH(2020)1, following the visit to Türkiye on 1–5 July 2019, highlight the difference between the aim of strengthening rights protection through specialist criminal peace judgeships and the observed practice regarding liberty and freedom of expression. Together with the Venice Commission and OHCHR reports, this assessment provides an international institutional foundation for the requests concerning effective objections, individualised reasons and judicial independence.

Kemal Gözler's scholarly article "Criminal Peace Judgeships and the Principle of the Natural Judge: An Explanation Concerning the Sahur Operation" was published on 29 August 2014 and appeared in the October 2014 issue of Güncel Hukuk. It discusses the guarantee of the natural judge against the creation, after a dispute has arisen, of a judicial authority tailored to a person or event. It is scholarly commentary explaining a constitutional objection at the time of establishment, not a judicial decision. Its application to Tahşiye turns on whether the defendants' specific recusal applications were effectively examined, rather than on repetition of a general position. (Annexes 26, 27, 28.)

These sources complement one another at three levels: UN interpretations and ECtHR case-law establish legal standards; Venice Commission, OHCHR and Council of Europe monitoring reports address institutional practice; and the scholarly analysis explains the natural-judge debate at the time of establishment. A specific allegation of a violation must be grounded in the individual, the act and the case document concerned. The actual operation of appointments, allocation of work and recusal review must be examined, rather than treating the court's date of establishment alone as proof of a violation.

10. Matters submitted for the Special Rapporteur's examination

SRL Swiss submits the following matters for consideration within the Special Rapporteur's mandate and for discussion in communications with the Turkish authorities.

10.1. Judicial assignments and case allocation

How were the safeguards concerning general case allocation and pending cases in the specialisation notice of 12 February 2015 applied in the Tahşiye proceedings? What objective rules governed the formation of the second bench and assignment of the case to it?

10.2. Continuity of the bench

What is the record of judges sitting at the hearings in 2015–2017, and what were the reasons for changes? In particular, what compensatory safeguards addressed the difference between the benches hearing the substantive defence on 18–22 September 2017 and the bench delivering judgment?

10.3. External influence and security of tenure

What were the dates, competent authorities and legal reasons for the trial prosecutor's reassignment and the measure concerning the bench member? How did review mechanisms operate to protect judges from pressure arising from their judicial views?

10.4. The 2015 recusal and release proceedings

In light of the decision of 25 April 2015, Miscellaneous Proceedings no.2015/146, and the subsequent return of the warrants, how was access to impartial and competent detention review secured after recusal? What caused the UYAP interruption, and what was its effect on judicial acts? What redress has been provided for the relevant violations found in Karaca and Başer and Özçelik?

10.5. Independent examination of recusal applications

Through which independent judicial examination were the substantive grounds of the objection rejected by general reasoning in the decision of 15 June 2021, Miscellaneous Proceedings no.2021/385, addressed? What was the outcome of the further objection procedure indicated in that decision?

10.6. Criticism of impartiality and sentencing

Why was criticism of impartiality treated adversely under Article 62 of the Criminal Code in the 2022 judgment? What specific conduct exceeded defence rights, and how was that reasoning examined through an independent appellate remedy?

10.7. Lawyers' professional independence

What individualised and concrete necessity justified prior scrutiny of counsel–defendant document exchanges at the 56th hearing and the three-month restriction based on another case at the 90th hearing? What were the actual scope and duration of the restrictions and the outcomes of independent review on objection?

10.8. Hearing records and the right to be heard

The original audiovisual recordings and transcripts of the identified hearings in 2016–2017 and of 25 February 2021 should be preserved. What are the reasoned outcomes of objections concerning correction of the record, removal from the courtroom, the final statement and counsel's participation?

10.9. Independent assessment of evidence

Which documents did the court request from the prosecution, why were any withheld, and what action did the court take? How were the rejection of requests to investigate exculpatory matters and the effect of the procedural defects acknowledged by the Court of Cassation assessed for each individual?

10.10. Impartial examination of witnesses

How was effective witness examination ensured at the hearings of 24 September, 22 October and 17 December 2021? What opportunity to ask questions was afforded to the defence, and what counterbalancing safeguard applied to the statement of the person who could not be heard?

10.11. Review of deprivation of liberty

What individualised grounds for extension justified continuing the detention of the six persons whose periods under Article 102 § 2 of the Code of Criminal Procedure were stated to have expired in the decision of 26 May 2017? How was the judicial supervision alternative identified in the dissent concerning Mustafa Altunbulak assessed? How were access to detention reasons and timely, effective objections ensured?

10.12. HSK complaints and conflicting judicial roles

What was the separate outcome of each complaint in 2017 and 2021? Which decisions and records of bench composition were used to assess the alleged overlap between an earlier preventive measure and the subsequent review function?

11. Requested measures and conclusion

The Special Rapporteur is requested to call on the Turkish authorities to preserve the integrity of hearing records and resolve discrepancies with the parties' participation. Acts whose impartiality is challenged on specific facts should undergo independent review addressing those facts. Exercise of the right to seek recusal must not be converted into an adverse indicator of conduct on behalf of an organisation.

Reasoning that uses criticism of impartiality adversely in sentencing should be re-examined by an independent authority. Objections falling within defence rights must be distinguished from specific breaches of courtroom order, and the exercise of a procedural right must not lead to a harsher sentencing assessment.

Lawyers' confidential consultations and document exchanges, effective participation in hearings and adequate preparation facilities should be guaranteed. Measures restricting the professional function of the defence must be justified by reference to each individual and event and remain open to independent challenge. Compliance with the court's orders

to obtain documents and reasoned answers to decisive defence objections should be secured.

Effective judicial redress should be provided for acts found to violate impartiality, safeguards governing bench composition or the defence's independent role. Where appropriate, re-examination or retrial should take place before an independent and impartial bench, and the consequences of unlawful restrictions on liberty should be remedied. Each individual's current liberty status must be determined from the decisions applicable to that person.

Judges should not face criminal or disciplinary pressure for their judicial interpretations and decisions without sufficient evidence of personal criminal conduct and the applicable legal safeguards. Assignments, promotions, transfers and disciplinary procedures should follow objective, reviewable criteria that preserve confidence in judicial independence. Lawyers must not be prevented from advancing procedural objections and international legal arguments on behalf of their clients.

The records of the 2015 recusal and release proceedings, particularly decision no.2015/146 in Miscellaneous Proceedings, enforcement correspondence and UYAP transaction logs, should be preserved. Redress for the violations found in the judges' initial detention and safeguards ensuring that jurisdictional disputes are resolved through ordinary judicial procedures should be monitored together.

SRL Swiss's comparison of the documents identifies directly recorded safeguard concerns: an accusatory response to an impartiality challenge and its adverse use in sentencing; general reasons given by the recusal review authority in response to specific objections; prior court scrutiny of defence documents; and general restrictions on lawyer consultations based on a finding in another case. Release and enforcement documents, hearing records and transcripts, the reasoned judgment and appellate decisions underpin the request for independent judicial examination and effective redress.

The Special Rapporteur is requested to seek individualised answers and supporting records from the Turkish authorities and to monitor implementation of recommendations concerning impartial review, defence access and redress.

12. Documentary map of the principal findings

This map distinguishes findings based directly on official records from allegations requiring further original documentation. Full source details and selected pages appear in the sequential annex index.

Finding	Direct record	Legal significance
Court designation and case allocation	Annex 03; Annex 05; Annexes 33, 34	HSYK specialisation notice directly available; actual allocation and second-bench allegations examined separately.
Changes in bench composition	Annex 03; Annex 06	Figures advanced in applications, not independently recalculated.
External pressure and security of tenure	Annex 01; Annex 05; Annex 33	Connection alleged in applications; causation not treated as established.
Recusal, release and UYAP	Annexes 26–32; Annex 35	Contemporaneous official records; they do not identify who caused the interruption.
Allegation of acting on instructions when seeking recusal	Annexes 09, 10; Annex 17	Court-commissioned transcript and official hearing record.
Reasons given by the recusal review authority	Annex 05; Annex 08; Annexes 38, 39	Copies of decisions nos.2021/185 and 2021/385; general finding of legal compliance in response to specific objections.
Adverse use of criticism in sentencing	Annex 16	Directly recorded in the reasoned judgment.
Prejudgment / exclusion during hearings	Annex 03; Annex 21; Annex 33	Official transcripts for 2020–2021; earlier events recounted in applications.
Counsel's participation and record discrepancies	Annexes 09, 10; Annex 21; Annexes 24, 25	Comparison of the hearing record and transcript; applications for correction.

Finding	Direct record	Legal significance
Confidential consultation and appointment of counsel	Annexes 36, 37	Original hearing records: prior document examination and three-month restriction. Bar-appointed counsel present at the 56th hearing.
The court's access order	Annex 21	Interlocutory decision of 30 December 2020; actual implementation requires separate scrutiny.
Exculpatory evidence and documents sought from the prosecution	Annex 03; Annex 06; Annex 33	Application records; party account of difficulties in obtaining documents.
Acknowledged procedural defects	Annex 15	Court of Cassation judgment; assessment of their effect on the outcome examined.
Hearing of witnesses	Annex 16; Annex 03; Annex 33	2021 dates in the reasoned judgment; effective questioning cannot be established from that record alone.
Conflicting roles and HSK complaint	Annexes 04, 05; Annex 16; Annex 39	Reviewing bench identified in decision no.2021/385; earlier role and HSK complaint outcome require separate verification.
Abstract detention reasons	Annexes 19, 20; Annexes 22, 23; Annex 37	Official decisions; time-limit assessment for six individuals and dissent concerning Altunbulak at the 90th hearing.
Service and effectiveness of objections	Annex 22; Annex 33	Copies of 2017 decisions; the 2016 sequence is recounted in an application.

Finding	Direct record	Legal significance
2025 judgment and effective redress	Annex 18	Official judgment; reliance on the 2015 events and scope of review.

13. Abbreviations and terminology

Abbreviation / term	Explanation
ACM / Asliye CM	Assize Court / Criminal Court of First Instance (Turkish court abbreviations in the source documents)
ECtHR / ECHR	European Court of Human Rights / European Convention on Human Rights
AYM / BAM	Constitutional Court / Regional Court of Appeal (Turkish abbreviations)
UN / OHCHR	United Nations / Office of the United Nations High Commissioner for Human Rights
CD / CMK / TCK	Criminal Chamber / Code of Criminal Procedure / Criminal Code (Turkish abbreviations)
E. / K. / D.İş	Case number / decision number / miscellaneous proceedings number
HSK / HSYK	Council of Judges and Prosecutors / its former name, High Council of Judges and Prosecutors
ICCPR	International Covenant on Civil and Political Rights
SEGBİS / UYAP	Audio and Video Information System / National Judicial Information System
Recusal / release	Disqualification of a judge from hearing a case / termination of deprivation of liberty; distinct powers and assessments.

14. Sequential documentary annexes

The annexes are numbered consecutively from 01 to 39. The documentary bundle contains case records relevant to the assessment of judicial independence and impartiality. The page references below are to the original PDFs before selection. Divider pages identify the documents and do not form part of the evidence. Identified unnecessary personal identifiers and document access codes have been redacted in the public version; judicial reasoning and factual accounts have been preserved. Allegations in party submissions must be distinguished from the court's own findings.

Annex 01 — Defence submissions on the merits, 2 November 2017. Istanbul 14th Assize Court, case no.2015/281. Evidential, technical examination and legal objections before judgment. Selected original PDF pages: 1–6.

Annex 02 — Final statement, 3 November 2017. Hüseyin Nohut's written final statement for the hearing at which judgment was delivered on 3 November 2017. Complete document.

Annex 03 — Appeal, 10 January 2018. Istanbul 14th Assize Court, case no.2015/281. Sections on jurisdiction, composition of the bench, impartiality, legal assistance, witness examination and detention review. Selected original PDF pages: 58–100, 106–134, 192–195.

Annex 04 — HSK complaint and annexes, 22 March 2021. Application to the Council of Judges and Prosecutors of 22 March 2021 and copies of supporting documents. Selected original PDF pages: 1–8.

Annex 05 — Written application and official documentary annexes, 22 September 2021. Istanbul 14th Assize Court, case no.2020/90. Judicial assignments, conduct of hearings, conflicting roles, a copy of decision no.2021/185 in Miscellaneous Proceedings and an earlier HSK measure. Selected original PDF pages: 8–15, 69–70, 136, 180–184, 281.

Annex 06 — Post-remittal submissions, 28 May 2021. Scope of the quashing decision, individualised proof and requests for inquiries in case no.2021/53. Complete document.

Annex 07 — Written submissions on the merits, 1 June 2022. Istanbul 14th Assize Court, case no.2021/123. Objections concerning judicial assignments, recusal, detention review and defence participation. Selected original PDF pages: 22–42.

Annex 08 — Recusal application, 26 May 2021. Istanbul 14th Assize Court, case no.2021/53. Institution-certified application raising objections concerning impartiality, record discrepancies and the bench. Complete document, 4 pages.

Annex 09 — Official hearing record, 25 February 2021. Case no.2020/90, 4th hearing. Attendance, procedural acts and rejection of the recusal application: pp.1, 3–4. Complete document.

Annex 10 — Expert transcript of the recording of 25 February 2021. Court-commissioned SEGBİS transcript and covering submission of 8 March 2021. Counsel's participation: pp.2–13; Nohut's objections: pp.13–19. Complete document.

Annex 11 — Restriction order, 13 December 2014. Istanbul 3rd Criminal Peace Judgeship, Miscellaneous Proceedings no.2014/3044. Restriction on file inspection and the taking of copies. Complete document.

Annex 12 — Request for a restriction, 13 December 2014. Prosecution request underlying the restriction in Annex 11. Complete document.

Annex 13 — Reasoned judgment, 3 November 2017. Istanbul 14th Assize Court, case no.2015/281, decision no.2017/172. Court details and reproduction of procedural objections raised during the proceedings. Reproduction does not establish that an allegation was substantiated. Selected original PDF pages: 1, 1420–1421.

Annex 14 — Appellate judgment, 21 September 2018. Third Criminal Chamber of the Istanbul Regional Court of Appeal, case no.2018/707, decision no.2018/1102. Review of the first judgment on appeal. Complete document.

Annex 15 — Court of Cassation judgment, 31 December 2020. Sixteenth Criminal Chamber, case no.2019/4737, decision no.2020/6918. Evidential/procedural defects: p.11; quashing in respect of particular individuals and offences: pp.12–13. Complete document.

Annex 16 — Reasoned judgment, 10 June 2022. Istanbul 14th Assize Court, case no.2021/123, decision no.2022/172. Bench composition, reproduction of procedural objections, witness hearing dates, reasoning under Article 62 of the Criminal Code and determination of the joined case. Selected original PDF pages: 1, 273, 347, 602, 691–692, 700.

Annex 17 — Expert appointment, 3 March 2021. Record of appointment and handover for transcription of the hearing recording of 25 February 2021. Complete document.

Annex 18 — Court of Cassation judgment, 21 April 2025. Third Criminal Chamber, case no.2025/2143, decision no.2025/11659. Reference to Başer and Özçelik: p.7; individual assessment and disposition: pp.8–9. Complete document.

Annex 19 — Constitutional Court application and annexes, 2017. Nohut's 2017 application to the Constitutional Court and annexes. Extract from the hearing of 23 February 2017: p.31. Selected original PDF pages: 1–4, 31.

Annex 20 — ECtHR application and annexes. Application form and annexes submitted on behalf of Hüseyin Nohut. Constitutional Court application details: p.10; annex list: p.12; Istanbul 14th Assize Court hearing record of 23 February 2017: p.53. Selected original PDF pages: 1–2, 10–12, 53.

Annex 21 — Hearing records and transcripts. Istanbul 14th Assize Court hearing records and SEGBİS transcripts. Access order of 30 December 2020: p.15; signature examination

order of 19 March 2021: p.115; hearing records: pp.27–28, 150, 207–208; document requests and interlocutory decisions of 21 January 2022: pp.211–215. Selected original PDF pages: 1–28, 115, 150, 207–215.

Annex 22 — Detention decisions, 2017. Decisions continuing detention and determining objections in 2017; partly overlap with copies in Annexes 19 and 20. Complete document.

Annex 23 — Preventive measure records, July 2015. Record of voluntary attendance and police custody of 10 July 2015; Istanbul 1st Criminal Peace Judgeship, questioning no.2015/336 of 11 July 2015; Istanbul 8th Criminal Peace Judgeship, questioning and detention decision of 15 July 2015, Miscellaneous Proceedings no.2015/1922. Complete document.

Annex 24 — Applications of 6 January and 4 March 2021. Nohut's participation application of 6 January and application to correct the hearing record of 4 March 2021. Complete document.

Annex 25 — Comparison of the hearing record and transcript. Comparison of the official record of 25 February 2021 and the court-commissioned transcript. Complete document.

Annex 26 — Recusal application, 20 April 2015. Application by lawyer Ömer Turanlı on behalf of Ertan Erçıktı in investigation no.2014/133596. Complete document.

Annex 27 — Ertan Erçıktı's release application, 20 April 2015. Application for release/judicial supervision on his behalf in the same investigation. Complete document.

Annex 28 — Recusal decision, 24 April 2015. Istanbul 29th Criminal Court of First Instance, Miscellaneous Proceedings no.2015/92. Tahşiye connection: p.3; operative part: pp.17–19. Complete document.

Annex 29 — UYAP access record and criminal complaint. Istanbul 32nd Criminal Court of First Instance, letter of 27 April 2015, correspondence no.2015/182, and record of the interruption of access. Complete document.

Annex 30 — Enforcement direction, 27 April 2015. Istanbul 32nd Criminal Court of First Instance, correspondence no.2015/177. Direction to enforce release decisions nos.2015/143–149 in seven investigations. Complete document.

Annex 31 — Return of warrants, 27 April 2015. Enforcement and Judgments Office of the Istanbul Chief Public Prosecutor's Office, correspondence no.2015/1158. Return of warrants on grounds of competence/jurisdiction. Complete document.

Annex 32 — Criminal complaint concerning non-enforcement. Istanbul 32nd Criminal Court of First Instance, correspondence no.2015/188. Criminal complaint concerning enforcement acts. Complete document.

Annex 33 — Sections of the initial 2017 defence submissions concerning judicial independence. Hüseyin Nohut, Istanbul 14th Assize Court, case no.2015/281; extracts from the original 760-page PDF entitled Questioning and Defence. A party submission;

quoted hearing records require separate verification against the originals. Selected original PDF pages: 560–562, 665–674, 686, 721–737.

Annex 34 — Specialisation notice, 12 February 2015. First Chamber of the HSYK, specialisation in certain offences within assize court jurisdiction; designation of the Istanbul 13th and 14th Assize Courts, pending cases and general allocation rules. Publication stated in the notice: 17 February 2015, Official Gazette no.29270. Complete document, 2 pages.

Annex 35 — Tahşiye release decision, 25 April 2015. Istanbul 32nd Criminal Court of First Instance, Miscellaneous Proceedings no.2015/146; investigation no.2014/133596, Judge Mustafa Başer. Release order for nine persons, subject to detention in another case, material examined and reasons. Complete document, 4 pages.

Annex 36 — Record of the 56th hearing, 27 December 2016. Istanbul 14th Assize Court, case no.2015/281. Counsel's participation: p.1; fifteen-minute consultations, gendarmerie supervision and prior document examination: p.3. Complete document, 3 pages.

Annex 37 — Record of the 90th hearing and service covering letter, 26 May 2017. Istanbul 14th Assize Court, case no.2015/281. Covering letter: p.1; time limits and detention: pp.5–6; three-month restriction on lawyer consultations: p.7; dissent: p.8. Complete document, 8 pages.

Annex 38 — Objection to refusal of recusal, 3 June 2021. Istanbul 14th Assize Court, case no.2021/53; institution-certified objection to the rejection decision of 27 May 2021. Allegations of repeated reasoning and failure to address specific objections. Complete document, 2 pages.

Annex 39 — Decision on the recusal objection, 15 June 2021. Istanbul 15th Assize Court, Miscellaneous Proceedings no.2021/385; rejection of the objection of 3 June to the decision of 27 May 2021. General finding of legal compliance and seven-day objection procedure before the Istanbul 16th Assize Court. Complete document, 1 page.

15. Sources: case documents, legislation, case-law and literature

Case documents are identified below by court and institutional details; international legal sources are identified by judgment, report and publication details. International reports explain the institutional context, while case documents establish individual acts. Access date: 15 November 2026.

15.1. Court decisions and official records

Istanbul 14th Assize Court, 3 November 2017, case no.2015/281, decision no.2017/172, reasoned judgment (Annex 13); Third Criminal Chamber of the Istanbul Regional Court of Appeal, 21 September 2018, case no.2018/707, decision no.2018/1102 (Annex 14).

Sixteenth Criminal Chamber of the Court of Cassation, 31 December 2020, case no.2019/4737, decision no.2020/6918 (Annex 15); Istanbul 14th Assize Court, 10 June 2022,

case no.2021/123, decision no.2022/172 (Annex 16); Third Criminal Chamber of the Court of Cassation, 21 April 2025, case no.2025/2143, decision no.2025/11659 (Annex 18).

Court and institutional records are the primary sources for the date, scope and reasons of an act. Party applications document the objections advanced and their submission to the adjudicating authority.

Istanbul 14th Assize Court, case no.2020/90, hearing record of 25 February 2021 (Annex 09); expert appointment record of 3 March 2021 (Annex 17); SEGBİS transcript submitted with the covering document of 8 March 2021 (Annex 10); hearing records and interlocutory decisions (Annex 21). Istanbul 15th Assize Court, Miscellaneous Proceedings no.2021/185, copy of decision (Annex 05, p.183).

Istanbul 29th Criminal Court of First Instance, 24 April 2015, Miscellaneous Proceedings no.2015/92 (Annex 28); Istanbul 32nd Criminal Court of First Instance, 25 April 2015, Miscellaneous Proceedings no.2015/146 (Annex 35), UYAP record, enforcement letter and criminal complaint of 27 April 2015 (Annexes 29, 30, 32); Enforcement and Judgments Office of the Istanbul Chief Public Prosecutor's Office, 27 April 2015, correspondence no.2015/1158 (Annex 31).

Istanbul 3rd Criminal Peace Judgeship, 13 December 2014, Miscellaneous Proceedings no.2014/3044, and prosecution request (Annexes 11, 12); questioning and preventive measure decisions of July 2015 (Annex 23); detention review and objection decisions of 2017 (Annex 22); hearing record of 23 February 2017 (Annex 20, p.53).

First Chamber of the HSYK, specialisation notice of 12 February 2015 (Annex 34); Istanbul 14th Assize Court, case no.2015/281, records of the 56th hearing of 27 December 2016 and the 90th hearing of 26 May 2017 (Annexes 36, 37); Istanbul 15th Assize Court, 15 June 2021, Miscellaneous Proceedings no.2021/385 (Annex 39).

Defence submissions, appeals, recusal applications, HSK complaints and individual application documents submitted during the proceedings: Annexes 01, 02, 03, 04, 05, 06, 07, 08; Annexes 19, 20; Annex 24; Annexes 26, 27; Annex 33; Annex 38. Source details for the selected sections appear in the sequential annex index.

15.2. Legislation, relevant case-law and selected literature

International Covenant on Civil and Political Rights

In particular Articles 9 and 14 §§ 1 and 3 (b), (d), (e).
https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

UN Basic Principles on the Independence of the Judiciary

Judicial decision-making and disciplinary safeguards; in particular Principles 1–2, 4, 6, 17–20.
https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary

UN Basic Principles on the Role of Lawyers

In particular Principles 16, 18, 21–22.
https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers

Karaca v. Türkiye

Application no.25285/15; 20 June 2023, final on 20 September 2023. In particular §103, §§123–132, 143–150 and §164.
https://hudoc.echr.coe.int/eng?i=001-225310

Başer and Özçelik v. Türkiye

Applications nos.30694/15 and 30803/15; 13 September 2022, final on 30 January 2023. In particular §§148–159, §168, §§194–203.
https://hudoc.echr.coe.int/eng?i=001-219095

Law no.6545

Adopted on 18 June 2014; Official Gazette no.29044 of 28 June 2014. In particular Articles 48, 74, 83–84. Statutory text published by the Grand National Assembly of Türkiye.
https://cdn.tbmm.gov.tr/KKBSPublicFile/D24/Y4/T1/KanunMetni/ba594e11-93f9-4189-8349-7d80f1b912ea.html

Venice Commission — CDL-AD(2017)004

Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships. Adopted on 10–11 March 2017; published on 13 March 2017. In particular §§101–106.
https://docs-venice.coe.int/api/Document?pdffile=CDL-AD%282017%29004-e

OHCHR — Report on Türkiye, March 2018

Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East. Covers January–December 2017; in particular §§52–54.
https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

Council of Europe Commissioner for Human Rights — CommDH(2020)1

Report following the visit to Türkiye on 1–5 July 2019; in particular §§71–72 concerning criminal peace judgeships.
https://search.coe.int/commissioner?i=090000168099823e

Kemal Gözler — Criminal Peace Judgeships and the Principle of the Natural Judge

An Explanation Concerning the “Sahur Operation”. 29 August 2014; also Güncel Hukuk, October 2014, pp.46–49. Scholarly analysis.
https://www.anayasa.gen.tr/tabii-hakim.htm

Morice v. France [Grand Chamber]

No.29369/10, 23 April 2015, §§73–78. Objective impartiality and confidence in the courts.
https://hudoc.echr.coe.int/eng?i=001-154265

Ruiz Torija v. Spain

No.18390/91, 9 December 1994, §§29–30. A reasoned response to a decisive argument.
https://hudoc.echr.coe.int/eng?i=001-57909

Schatschaschwili v. Germany [Grand Chamber]

No.9154/10, 15 December 2015, §§107–131. Unavailable witnesses and counterbalancing safeguards.
https://hudoc.echr.coe.int/eng?i=001-159566

Buzadji v. the Republic of Moldova [Grand Chamber]

No.23755/07, 5 July 2016, §§87–102. Relevant and sufficient reasons for detention. https://hudoc.echr.coe.int/eng?i=001-164928

Salduz v. Turkey [Grand Chamber]

No.36391/02, 27 November 2008, §§54–55. Effective legal assistance. https://hudoc.echr.coe.int/eng?i=001-89893

UN Human Rights Committee — General Comment No.32

CCPR/C/GC/32, 23 August 2007, §§21, 32–33. Impartiality, preparation of the defence and access to evidence. https://docs.un.org/en/CCPR/C/GC/32

UN Human Rights Committee — General Comment No.35

CCPR/C/GC/35, 16 December 2014, §38. The exceptional nature of detention and individualised assessment of necessity. https://docs.un.org/en/CCPR/C/GC/35

Moiseyev v. Russia

No.62936/00, 9 October 2008; final on 6 April 2009. In particular §§173–185: changes in bench composition, objective assignment safeguards and impartiality. https://hudoc.echr.coe.int/eng?i=001-88780

Altay v. Turkey (No.2)

No.11236/09, 9 April 2019; final on 9 July 2019. In particular §§49–59: confidential communication with counsel and legal safeguards governing restrictions. https://hudoc.echr.coe.int/eng?i=001-192210
Accessed: 22 November 2026.

ECtHR — Practical Guide on Admissibility Criteria

Article 35 § 2 (b) ECHR: another procedure of international investigation or settlement; the persons, facts and complaints covered and the nature of the mechanism concerned. https://www.echr.coe.int/documents/d/echr/admissibility_guide_eng

OHCHR — Special Procedures Submission Portal

The communications and recommendations mandate of Special Procedures; consent, disclosure of names to the relevant authorities and use in public reports. https://spsubmission.ohchr.org/en