Irregular Proceedings of the Panel of Judges in the Adnan Oktar Case

Foreword

Adnan Oktar is a worldly renowned Turkish author who has penned more than 300 books, translated into 73 languages. In his books, articles and daily TV shows on A9 television, he advocated human rights, the superiority of democracy, freedom of speech and faith. He advised women to be active in social life, and supported them in their free choices as to their clothing and lifestyle. He, as a Muslim, hosted prominent figures of Christian and Jewish faiths in his live TV show, where he intellectually struggled against anti-Semitism in the Islamic world. He stood against radicalism and terrorism, as a result of which he became a target of radical terror organizations including al-Qaeda and ISIS which have threatened him several times.

Mr. Oktar's and his friends' devout but also libertarian, modern stance, the way they advocate freedom of thought and faith, that they defend the rights of the secular segment too, that they make friends with the members of other faiths have in time drawn reaction from orthodox groups who have a profound influence on politicians in Turkey. Disapproving the stance of Mr. Oktar and his friends, this orthodox group initiated a black propaganda to halt Mr. Oktar's works and stop his A9 TV broadcasts. Consequently, in order to put this into play, some adverse parties set up a plot against Mr. Oktar and his friends, and a police raid came along on July 11, 2018.

Through this scheme, Adnan Oktar and 200 of his friends, men and women who have no past convictions, and are well-educated and successful people from respectable families, were collected from their homes in totality, kept in police custody for eight days under very harsh circumstances and then sent to prison.

The TV channel where the group's views were broadcast, the publishing house that printed Mr. Oktar's books, and all the websites containing Oktar's works were shut down without any legal basis. In summary, the whole case in question aims to halt the intellectual work of the group, and sadly the law is being abused to that end.

Since the police operation that took place against Adnan Oktar and his friends on July 11, 2018, unlawfulness and violation of international conventions and human rights have been taking place in every stage of the investigation, prosecution and proceedings of the trial.

In violation of the principle of "natural judge" and "prohibition of discrimination", a panel of judges was specially formed and dedicated to hearing this particular case of Adnan Oktar and his friends, as well as the case of Osman Kavala. Soon after sentencing Adnan Oktar and his friends to thousands of years of jail penalty on January 11, 2021, the panel was dissolved.

Throughout the hearings, the defendants were exposed to discrimination on the basis of their beliefs. They have been arrested for fabricated reasons and convicted on fictional grounds as a result of the provocations inflicted by orthodox groups who react to their faith and lifestyle for religious and political reasons.

Having resorted to all lawful means to seek justice and fairness, within the legal system and by means of the appeals that have been made to the higher court, the defendants are still seeking that their voice is heard by an impartial court, an impartial judge and an impartial jurisdiction.

Since defendants have not been treated in a fair and lawful way in the last 3 years, and many of them have been imprisoned and are still in prison despite their innocence and even though they have provided all the evidence to surface the material truth, their efforts have been suppressed through illegality and unlawfulness that was put to use by various parties involved in the process.

The lawyers of the defendants who have been trying to give legal assistance throughout this term have been subjected to the same unfairness and some of them have also been interrogated, investigated, prosecuted and imprisoned in the end. The defense counsels were subjected to unethical and unlawful conduct by preventing them from defending their clients, depriving them of their right to pose direct questions, not allowing them to raise their objections, having their microphones turned off and having them taken out of the courtroom by the gendarmerie with the arbitrary directives of the presiding judge. These intimidation methods implemented on the lawyers are intended to raise concerns in them, make them refrain from making an effective defense and even withdraw from the case, and in the end deprive the defendants from receiving any legal assistance from their lawyers. All this setup loaded heavily with burdens of illegality, violations of law, and breaches of human rights is aiming at preventing the acquittal of defendants and the truths from surfacing.

The below details are providing the evidence on how the defendants have been persecuted in a so-called prosecution and trial mechanism that have in fact turned out to be a clutch of unfairness and illegality, which is a shame on the counterparts and perpetrators of this unlawfulness. Violations of law, violations of international treaties, violations of human rights have regrettably become the foundation of this trial that has turned out to be torment and oppression for the innocent defendants and their lawyers, and all involved on the side of the defendants.

In summary;

The assigned panel of judges has not considered any of the evidence favorable for the defendants during the whole trial, and rejected hearing the testimonies of the witnesses that would testify for them. The court has not referred to the expertise of the Forensic Medicine Institute that would overturn the unsubstantiated defamation against the defendants. The court has not taken into consideration the expert opinions submitted by the defendants. Thus, the court has never intended to reach the material truth. It speeded up the trial to such a haste that the defendants could not make their defenses, the evidence was not discussed, the witnesses were not heard for unearthing the truths.

Besides, the conduct against the defendants was unacceptable at court. Having a very harsh and aggressive attitude throughout the trial process, the defenses were interrupted, the defendants were sarcastically insulted sometimes by shouting or using various gestures or facial expressions. Not to mention the lynch campaign they have been subjected to in the media, as well as the social media accounts of the complainants right from the beginning and even before. This black propaganda is pursued on all grounds, and no legal action is taken against the perpetrators making them invisible before law despite their obvious breaches of law.

As a conclusion;

In this compilation, historical and statistical information is provided that will be beneficial to have a better understanding of the unfairness and unlawfulness the defendants have been subjected to during the prosecution. These are the concrete basis and the full evidence that entail the defendants to seek for fairness and impartiality in their trial on all grounds including all international bodies that represent justice and human rights based on international law, treaties and human rights conventions that Turkey is a signatory of.

Hundreds of women and men, highly educated and conscientious, with no single element of crime in their lives, with clear records of being decent citizens, are being discriminated and treated in a way reminding the inquisition of the past, yet there is still belief that fairness and justice will definitely prevail.

If you as an individual or your organization may support in any means please contact using the following email address @

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INTRODUCTION

Starting from the first day of the trial, the judges Galip Mehmet Perk, Ahmet Tarık Çiftçioğlu and Talip Ergen, members of the panel of judges assigned to hear our case file numbered 2019/313 E, registered in Istanbul 30th High Criminal Court, carried out the proceedings in a tearing rush. During this process, **THE PANEL OF JUDGES WHO DIDN'T EVEN FIND IT NECESSARY TO TAKE ANY ACTION OR TO DEAL WITH THE MERITS OF THE CASE FILE,** considered all the requests placed by the complainant party without exception and decided in favor of their requests **WHILE THEY IGNORED OR REJECTED ALL THE REQUESTS PLACED BY THE DEFENDANTS OR THEIR LAWYERS.**

THE REASONED DECISION OF THE PANEL OF JUDGES PUBLISHED ON FEBRUARY 12, 2021 IS THE CONFIRMATION THAT THE COURT IN FACT DID NOT TAKE ANY ACTION. IT IS TO SUCH AN EXTENT THAT, EVEN THE TECHNICAL ERRORS IN THE INDICTMENT THAT WERE CONSIDERED AS A MISTAKE AND CORRECTED BY THE DEFENDANTS DURING THE HEARINGS WITH FACTS AND EVIDENCE WERE COPIED EXACTLY THE SAME WAY IN THE REASONED DECISION. THIS PROVES THAT THE PANEL OF JUDGES DID NOT LISTEN TO ANYTHING DURING THE HEARINGS THAT LASTED FOR 1.5 YEARS, DID NOT TAKE ANY ACTION, AND DID NOT EVALUATE ANY DOCUMENT, EVIDENCE OR FACT.

As the details are explained below;

- The panel of judges hearing the case, **didn't even investigate a single shred of evidence during the whole trial, rejected all requests of the defendants and their attorneys in interlocutory decisions, did not ask the parties if they have any requests for extension of inquiry and rejected all demands for summoning witnesses to court on unfair grounds.**
- The panel of judges even rejected hearing the testimonies of the witnesses that were in presence.
- The panel of judges **did not refer any of the women who supposedly claimed to be injured of sexual assault to the Forensic Medicine Institute**. During the preparatory stage, neither internal physical examination nor psychological examination was performed for any of the complainants, except for a few, whom we could not understand as to which distinction they were selected and referred.
- **Even a single evidence investigation was not conducted by the panel of judges regarding the firearm incident alleged to have taken place** after the police operation dated July 11, 2018. However, the defendants and lawyers made many demands to reveal the dark spots and the material truth in the incident.
- There have been concrete allegations that the confiscated digital materials are unlawful, that they may have been tampered with, and that unlawful acts were committed during police operations, and a number of justified requests were made, including requesting camera recordings to clarify these. However, the court did not accept any of these requests.
- Concrete evidence was presented that the hostile complainants and some police officers whose names were submitted in the file forced those who were familiar with Adnan Oktar and his friends to complain with pressure, threats and inculcations, and these issues were

requested to be investigated. **In addition, concrete evidence has been presented in the file that a few police officers whose names are submitted to the casefile have been involved in all kinds of unfair and unlawful practices since the first day and that they have been in contact with hostile complainants in the file with their names and registration numbers. In accordance with precedent Supreme Court case law (e.g. Ergenekon reversal decision), it was accentuated that this situation should be considered suspicious by the panel of judges and definitely investigated, and requests were made in this direction. However, the panel of judges also rejected these demands.**

- **The file of Özkan Mamati, who is the principal perpetrator** of the so-called fraud, money laundering, etc. attributed to defendant Adnan Oktar, **was dissected at the preparation stage, and the file in question was summoned and requested to be examined before the decision was made in terms of this allegation, and even if there is a crime, they should be seen together.** However, the panel of judges did not investigate a single evidence in terms of this criminal charge and even rejected these requests.
- It is possible to reproduce these examples and since all these demands are submitted in the file, we do not repeat them here in order not to reiterate; however, we want to emphasize that **THE PANEL OF JUDGES HAS NEVER INTENDED TO REACH THE MATERIAL TRUTH DURING THE TRIAL THAT IT PERFORMED AT GREAT SPEED. THE PANEL OF JUDGES HAS NOT COLLECTED A SINGLE EVIDENCE NEITHER ON REQUEST NOR ON ITS OWN DURING THE ENTIRE PROCESS.**
- It was also explained with the justifications that the decision to confiscate all the assets of the defendants and the transfer of the management of their companies to the SDIF's trusteeship was unlawful.
- However, **despite all the demands and objections in this regard, the court did not make a decision**, allowed questions to be raised over them and made them subject to trial.
- When the statements of the defendants were first taken, the defendants were not given the right to answer the allegations in the indictment, and their words were interrupted by saying "you will not enter the merits now". **The defendants, whose defense rights were restricted being told they should only “say I did or I did not”, were not allowed to use any of their rights to provide their evidence for defense, to respond to complainants’ statements or to clarify the accusations because when the time came for their defense this time they were told “you can only speak on the opinion as to the accusations, and not in scope of the file” in return.**
- **The panel of judges gave up the hearing of the police officers** named İbrahim Halil Aygüner, Baybars Düzdemir, Ayhan Bedir **and the lawyer named Fatma Arslan and the hearing of many injured parties / complainants, whom they had ex officio requested to be heard as witnesses, without any reasoning. And they made their ruling without discussing the documents, submitted to the casefile at the interrogation stage or afterwards, related to these persons before the court.**
- **The panel of judges assumed a very harsh and aggressive attitude towards the defendants and their lawyers throughout whole trial process. They interrupted their words sometimes in a sarcastic manner, sometimes by shouting and getting cross with them, they did not allow them to speak and imposed psychological pressure on the defendants by using various gestures and facial expressions.**

- The presiding judge **Galip Mehmet Perk did not allow the defense lawyers to speak by turning off their microphones during their statements or objections; he then had the minutes of the hearings record these statements as ever he liked.**
- The panel of judges abused Article 201 of the Code of Criminal Procedure. Furthermore, **they intervened the questions of the defense lawyers addressed to the complainants, witnesses and the defendants who wanted to benefit from effective remorse law, on unfair grounds and did not allow many questions to be asked - even without any objection by the intervening attorneys of the complainants.** Moreover, the microphones of the defense counsels were turned off to prevent them from asking questions. Nevertheless, the panel of the court did not ask any questions on its own motion on matters that essentially need to be answered.
- **Hiding behind the abstract and random, rambling reasonings, the panel of judges TOOK THE STATEMENTS OF ALL THE COMPLAINANTS, VICTIMS, WITNESSES AND DEFENDANTS WHO BENEFITTED FROM EFFECTIVE REMORSE LAW IN THE ABSENCE OF THE DEFENDANTS, THE DEFENDANTS WERE NOT BROUGHT IN TO THE HEARINGS AT ALL AND THEREFORE THE RIGHT OF THE DEFENDANTS TO POSE QUESTIONS pursuant to Article 200/1 of the Criminal Procedure Code WERE VIOLATED.**
- **The trial was made without the defendants even being aware of the content of the casefile, and the prosecution was asked to deliver opinion on the merits of the case**. In the hearing dated November 2, 2020, it was stated, *"Because the hearing was made in a closed session due to the interlocutory decision, it was seen that the SEGBIS [the system called Sound and Video Information System by which hearings are videotaped] transcripts of the statements of all the complainants and witnesses who were heard without the presence of the defendants were **served to the defendants and their counsels."*** **However, just 4 days after this, on November 6, 2020 the SEGBIS hearing transcripts of the complainants Mehmet Yılmaz Erdoğan, Murat Kurtoğlu, Ahmet Keser ve Ertuğrul Karatay were submitted to the casefile anew.** Therefore, **the file was delivered to the prosecution for opinion on the merits without the maturation of the file, not having sent the entire SEGBIS transcripts of the complainants' statements to the defendants.**
- **Moreover, the defendants did not even have time to examine the transcription of the minutes of the few complainant statements communicated to them, the defendants and their counsels "without being asked for their defense against the statements of the complainants and witnesses", and without any evidence discussion,** the prosecution was urgently asked to give its opinion on the merits and the final defenses were taken with the same speed and a decision was made on the merits of the case.
- Ignoring the precautions taken because of the COVID19 Pandemic- the panel of judges went on with the trial and the prosecution in a haste although they were well aware of the fact that especially the defendants in prison could not benefit from the support of their lawyers. **The statements of the defendants and their lawyers have been compulsorily taken without giving them sufficient time.**
- **The presiding judge frequently made harsh and aggressive interruptions to the defendants and their lawyers during their defense. For instance, Yeliz Sucu, one of the defendants who was making her final defense, asked for continuing her defense after the prayer time that was about to pass, but her request was rejected in a meaninglessly aggressive and hasty attitude.** He did not let them plead their case regarding majority of

the claims, limited their defense within defined minutes, **interrupted the defense of many defendants half way through and made them sit down without properly pleading their cases. The presiding judge even had some of the defendants leave the hall by force of the gendarmerie.**

- **The panel of judges was assigned to hear the case of Att. Eşref Nuri Yakışan, the attorney of some defendants, to whom they had filed a criminal complaint. The same court panel heard his case and decided to ban him from performing his profession as a lawyer, and in the end ruled for a penalty.**
- We are of the opinion that the court committee aims to put pressure on other lawyers working in the file by using its public power and thus to prevent the defendants from benefiting from the defense assistance effectively.
- **Although the indictment was 4100 pages, the prosecutor's opinion on the merits was 499 pages, and in total the file was amounting to 50 thousand pages of statements of the complainants, interrogations, digital materials etc., the defendants were strictly limited to "only responding to public prosecutor's opinion on the merits of the case" while they were pleading their cases for the last time.** The defendants' demands about making their defense in regard to the content of the whole file were unlawfully declined. **The presiding judge "rebuffed" the defendants who wanted to continue with their defense and had them leave their stand. What is worse is that the presiding judge distorted the facts and did not let this situation be mentioned in the protocol of the trial.**

All these unlawful acts and even more of them will be very clearly seen when the transcripts of the trials are read and the videos are watched. However, despite all the objections and demands, the court has acted in violation of Article 8/2 of the Regulation on the Use of Sound and Video Information System (SEGBIS) and did not have the relevant images watched by the person concerned.

We believe that presenting some historical and statistical information would be beneficial for understanding the explanations we will make below. **WE BELIEVE THAT IT WOULD THUS BE POSSIBLE FOR YOU TO UNDERSTAND THAT THE PANEL OF JUDGES CONDUCTED THE PROSECUTION IN LEAPS AND BOUNDS IN A FASHION DESCRIBED IN THE PHRASE THAT GOES "IN FREEWHEEL LIKE A TRUCK WITH FAILED BRAKES."**

STATISTICAL INFORMATION ABOUT THE CASE FILE

The case file is made up of merged 5 different indictments

First indictment dated July 12, 2019: Consists of **125 complainants, 22 witnesses, 25 defendants who wanted to benefit from the effective remorse law and 236 defendants and is 3908 pages in total.**

Second indictment dated August 7, 2019: In addition, the allegation of being a member of a criminal organization was added to **1 defendant**, and the alleged leaders of the organization were held responsible for this action by reference to Article 220/5 of the Turkish Penal Code.

Third indictment dated February 26, 2020: New claims from **8 additional complainants have been added for 16 defendants** in total and people who have been claimed to be the executives of the so-called organization have been held responsible from all these alleged acts in reference to Turkish Penal Code Article 220/5. **This indictment consists of 113 pages.**

Fourth indictment dated May 29, 2020 : New accusations have been made additionally for 9 defendants and people who have been claimed to be the executives of the so-called organization have been held responsible from all these alleged acts in reference to Turkish Penal Code Article 220/5. In addition, confiscation of some new items was requested. **This indictment consists of 49 pages.**

Fifth indictment dated August 7, 2020: **In addition, the new allegations of 3 complainants and new criminal charges against 1 defendant were added, and the alleged leaders of the organization were held responsible for all these alleged actions** in reference to Turkish Penal Code Article 220/5. In addition, the criminal nature of 2 defendants who were tried in accordance with TPC Art.220 / 2-3 was changed to TPC Art. 220/1-3 and they too were held responsible for all the alleged acts within the scope of the case file in reference to TPC 220/5. **This indictment consists of 29 pages.**

Besides, Att. Eşref Nuri Yakışan, who was serving as the defense counsel of some defendants in the same trial, was prevented from both his duty of advocacy and legal support to his clients with this indictment. In this way, one of the effective lawyers of the case, Av. Eşref Nuri Yakışan was wanted to be kept away from the case and the defendants were prevented from benefiting from the support of a lawyer**. On the other hand, the other lawyers of the defense were almost intimidated**, and the lawyers fulfilled their duties under the concern that they would be accused of "being an organization lawyer" if they made a strong defense.

Some concrete statistical information about the content of the case file

Along with the additional indictments added at the stages, **there are a total of 236 defendants, 26 witnesses, 27 defendants who benefitted from effective remorse law and 209 defendants who do not agree to regret effectively. D170 of these defendants were jailed pending trial for an average of 17 months, then 78 of them remained in jail,** 96 of them were placed under house arrest on the condition of not leaving the house, and 35 of them continued by signing at the relevant police stations on the specified days.

The total of the articles of crime attributed to the defendants are as follows: Turkish Penal Code Articles 220/1,2,7-3, TPC Art. 328, TPC Art. 102, TPC Art. 103, TPC Art. 112, TPC Art. 96, TPC Art. 106, TPC Art. 107, TPC Art. 109, TPC Art. 125, TPC Art. 282, TPC Art. 133, TPC Art. 158, TPC Art. 135, TPC Art. 82, TPC Art. 314/2, TPC Art. 205, TPC Art. 210, TPC Art. 283 and violation of laws numbered 6136, 3628 and 5607. The defendants tried under TPC Art. 220 / 1-3 were held responsible in terms of all these crimes in reference to TPC Art. 220/5.

Within the scope of the lawsuit, all the assets of 235 defendants were seized, the assets of 86 different companies were seized and their management was transferred to the SDIF's trusteeship. In addition, confiscation of 5 companies, 34 immovables, and 64 vehicles was demanded.

Contents and volumes of some important documents in the case file

- **There are two separate reports dated March 29, 2018 and June 5, 2018 prepared by Financial Crimes Investigation Board.** The first of these reports are 66 pages and the second 114 pages, **making it 180 pages in total.** In addition, there is a CD in the annex of both reports and these two CDs consist of 1100 pages of .pdf content in total as well as 87 excel, video and photograph files.
- There are around **90 "Tax Inspection Reports"** drafted about companies that have been seized and assigned to the SDIF's trusteeship, **and the total number of pages of these reports is around 6200.**
- Except for the police reports prepared by the Security Headquarters at intermediate stages, only **the main police report dated July 2018 is 2011 pages.** With many other police reports, the number of pages and their contents are much higher.
- There are **434 separate "Forensic Examination Reports"** prepared and submitted to the file regarding the confiscated digital materials and the **total number of pages of these reports is around 4426.** However, this number only belongs to the examination reports copies of which have been given to us. **The colored versions of these copies were given to intervening attorneys of the complainants, and despite insistent demands, no version of these were submitted to neither the defendants, nor their lawyers. Most of the digital examination reports known to be within the scope of the file and asked to the defendants as questions during their interrogation, have still not been given to us. During the hearings, some so-called digital reports were read by the intervening attorneys of the complainants without specifying where and how they were obtained.** The objections of the defendant lawyers that those read digitals did not exist in the casefile were not accepted and **these were not discussed by the panel of judges in accordance with Criminal Procedure Law Articles 215 and 261.**
- **There are 27 different scientific expert opinions taken by the defendants or their advocates, and the total number of pages is around 550.**
- In addition, the number of pages of petitions submitted to the file by all related parties reached 75 thousand pages.

Some historical and statistical information about the judicial process

Interrogation procedures of the defendants: The first indictment was accepted on 19.07.2019, **the first hearing was held on September 17, 2019 and the interrogation of the defendants started as of the first hearing.**

At this point, we must remind that the defendants and their attorneys were not aware of even a single page of documents in the file, since there was a confidentiality order on the investigation in the process until the bill of indictment was accepted.

As of the date the indictment was accepted, **the volume of the case file was over 50,000 pages, with the exception of the 3908-page indictment.** Therefore, the fact that the time given by the court is not sufficient is evident without a doubt.

Moreover, as will be explained in the following sections, the file was notified to the defendants in CD environment, almost all of the detained defendants did not have the opportunity to examine these CDs in computer environment, and immediately after the notification, the defendants were gathered from different prisons to the Silivri Closed Prison. Since the right to use a computer was denied to the defendants who were guests in that prison, **their right to prepare defense was completely taken away.**

The hearing was suspended for 3 months due to the pandemic (March 10 - June 23, 2020)

Interrogation procedures of defendants benefiting from effective remorse law: The interrogation of the defendants benefiting from effective remorse law started in the absence of the other defendants on February 26, 2020 and was finalized on March 27, 2020. The SEGBIS [Sound and Video Information System] transcripts of these interrogation procedures reached the file on 27.03.2020 and these statements consisted of 958 pages in total.

Statements of the attorneys of the defendants benefiting from effective remorse law: After the interrogation of the defendants benefiting from the effective remorse law, their attorneys made their statements regarding the statements of their clients and the transcription of these statements consisted of 57 pages.

Statement procedures of complainants, victims and witnesses: The statements of the complainants, victims and witnesses started on 05.08.2020 in the absence of the defendants and ended on September 22, 2020. The SEGBIS [Sound and Video Information System] transcripts of these interrogation procedures reached the file on November 4, 2020 and these statements consisted of 1843 pages in total.

Statements of the attorneys of the complainants: After the statements of the complainants are finalized, their attorneys made their statements regarding the statements of their clients and the transcription of these statements consisted of 30 pages.

Prosecution's Opinion on the Merits of the Case: The prosecution submitted its opinion on the merits to the file on November 13, 2020. This opinion consists of 499 pages.

Statements of the accused against the Prosecution's opinion on the merits: Immediately after the announcement of the opinion, the statements of the defendants against the opinion on the merits were taken by force on November 30, 2020 before all the transcriptions of the statements given by the complainants, victims and witnesses reached the defendants and were examined.

While these statements were being taken, **the court constantly interrupted the defendants, made harsh interventions, prevented most of them from talking about the accusations, and despite the pandemic conditions (including curfew), they held hearings until late in the evening and received the statements of an average of 20-25 people per day.** The court started to hear the statements of 236 defendants in total, on November 30, 2020 and finalized it on December 22, 2020. A verdict was given before the SEGBIS [Sound and Video Information System] transcripts regarding these statements came to the case file. (Many of them are still not in the file)

Hearing the last defense of the defense counsel on the merits: The last statements of the defendants against the opinion on the merits ended at 16:15 at the hearing dated December 22, 2020 and the court committee promptly asked the defense attorneys to submit their final defense on the merits, although they did not notify them in advance or make an interim decision regarding the issue.

The defense lawyers' request to be granted additional time considering the size of the file and the fact that the statements of the defendants have just been completed, was denied by the panel of judges **and the procedures for hearing the last defenses of the lawyers started in the same session by force.**

The presiding judge frequently interrupted the lawyers' words as they did to the defendants, did not allow them to plead their defense for many allegations, and acted harshly and aggressively, even **had Att. Bahri Belen taken out of the hall by force of the gendarmerie.**

The last defenses made by 71 defense lawyers in total were started to be heard on December 22, 2020 and ended on December 29, 2020. A verdict was given before the SEGBIS [Sound and Video Information System] transcripts regarding these statements came to the case file.

The court hearing the last words of the defendants and announcing its verdict: At the hearing dated December 29, 2020, the last defenses of the defense lawyers were completed at around 18:35 and **the doors of the courtroom were closed and nobody was allowed to go out (not even for performing prayers or other needs, etc.)** Then the defendants were asked for their last words.

So much so that the Presiding Judge emphasized his point by **saying " this is the last word, not the last sentence" and attempted to silence the defendants by reprimanding them if the defendants spoke more than a few sentences even in their last words**.

On the same day, around 20:30 on December 29, 2020, the process of asking for the last words was completed and the panel of judges postponed the hearing to January 11, 2021, stating that it would make a decision.

In the decision hearing dated January 11, 2021, **the petitions filed between the hearings were recorded in the minutes of the hearing incompletely.** For example, some of the petitions submitted to the file by Att. Burak Temiz, attorney of some of the defendants were not appended in the hearing records.

In addition, the panel of judges **made a decision regarding the rejection of "requests for an extension of the prosecution" during the decision hearing on the same date**. However, although the court did not make this interim decision during the hearing, the court had it included in the minutes of the hearing. **Since the court board started the process of asking the last words of the defendants as of December 29, 2020, this decision taken on the basis of January 11, 2021 is against the Article 216/3 of the Criminal Procedure Code.** It is stated in article 216/3 of the CPC that *"the last word before the judgment is given to the defendant who is present"*. **However, after the last word, the court made an interlocutory decision on the merits and had this decision included in the minutes of the hearing, even though this decision was not ruled during the hearing.**

In addition to all of these, the course of the trial has continued in great uncertainty since the first day of the trial. The requests to be informed about the course of the trial, taking into account the other files of the defense lawyers, were left unanswered. Since neither the defendants nor

their counsels were informed about what to do at any stage of the proceedings, they were obliged, so to speak, to raid interrogations and raid defenses.

Since the trial started on September 17, 2019;

- The order in which to go,
- The order in which the statements of the defendants will be taken,
- When the defense lawyers will defend,
- The order in which the defenses of the defense counsels will be taken,
- The order in which effective remorse defendants will be heard,
- The order in which the statements of the complainants will be taken,
- The order in which the witnesses will testify

WERE UNKNOWN, THESE WERE ALMOST HIDDEN FROM THE DEFENDANTS AND THE DEFENSE COUNSELS; AND EVEN THE ANNOUNCED ORDER OF THE DEFENDANTS' INTERROGATION WAS CHANGED FREQUENTLY IN AN UNEXPECTED WAY;

The defendants were not allowed to prepare for their defense, and the defense lawyers were denied the right to ask questions to witnesses, to defendants who benefited from law on effective remorse and complainants, and to collect evidence for defense.

As will be explained in more detail in the following sections, by using the concept of "indivisibility of the interrogation", which is put forward contrary to the Criminal Procedure Code, the judgment has been accelerated extraordinarily. **From time to time, the defense counsels warned that the proceedings were hasted at such a speed in an unlawful, irregular and unhealthy pace.** For example; in the 5th session on 25 September, 2019, Att. Eşref Nuri Yakışan made the following request regarding the issue:

> **PRESIDING JUDGE:** You are constantly interrupting, objecting to every question and trying to prevent the **TRIAL FROM RUNNING FAST**, effectively and efficiently?
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** Dear **Presiding Judge, we are not trying to catch up.**
>
> **PRESIDING JUDGE:** Therefore?
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** The interrogations of the defendants here may take 1 year, **we are not trying to reach a place or decide in a hurry.**
>
> **PRESIDENT OF THE COURT:** I am saying in terms of the soundness of the trial, yes?
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS**: **I SPEED UP, YOU USED THIS WORD 3 TIMES TODAY, WE CANNOT GO FAST ON THE EXCUSE THAT TRIAL IS NOT MOVING FORWARD.**
>
> **PRESIDENT OF THE COURT:** Not fast, but healthy, yes go ahead?
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** This word is the right word, **I do not want to enter into an argument with you, what I am trying to say is that WE HAVE NOT YET MADE A DECISION SOMEWHERE, ALSO WE ARE NOT MAKING A JUDGMENT PROCEDURE HERE JUST OUT OF FORMALITY, WE ARE TRYING TO MAKE A JUDGMENT, please. Please make this a proper trial, following the procedure, and while**

acting in accordance to the procedure please give us the right to speak, so I can also object to any question.

However, all these and similar requests made by the defense counsels for the proper proceeding of the trial were ignored. **The court board made a rushing decision without conducting research on any allegation, without reading the statements within the content of the file, without reading expert reports, expert opinions, forensic reports on confiscated digital materials, without reading petitions submitted by the related parties, etc., without even waiting for the transcriptions of the hearings that were not submitted to the case file (In fact at least one member of the panel of judges was absent and represented by a judge on duty during the last defenses of the defendants; so they didn't even had the chance to hear or read the defendants' last defenses).**

THE FACT THAT 13 DAYS TIME – INCLUDING PUBLIC HOLIDAYS FOR THE NEW YEAR - PROVIDED BY THE PANEL OF JUDGES FOR THE SENTENCING HEARING WOULD NOT BE SUFFICIENT FOR SUCH A HIGH VOLUME CASE FILE AND FOR THAT MANY DEFENDANTS IS EVIDENT AND ALSO INDICATES THAT THE VERDICT THAT IS GIVEN WAS PREPARED AFOREHAND.

IN CONCLUSION; The panel of judges **DID NOT DO ANY THING OR TAKE ANY ACTION, except to take the statements of the parties and ask what they would say against the prosecutor's opinion on the merits** during the trial process that started on September 17, 2019 and ended on January 11, 2021, **AND EVEN RULED FOR A VERDICT WHILE THERE WAS STILL A DEFENDANT WHO HAD NOT BEEN INQUIRED YET** *(about the sexual assault accusation against Serdar Dayanık, a defendant who benefited from law on effective remorse, about the complainant Mihrace Seyrek as to the additional indictment)*.

In terms of investigating the criminal charges against the defendants, the court did not conduct even a single evidence search, either ex officio or on the request. **The court did not ask the defendants whether they had any request for an extended investigation,** and rejected the witnesses they wanted to listen to on unfair grounds. The court did not give them the documents that were missing in the case file and were requested by the defendants.

Despite the pandemic conditions prevailing throughout the country, the defendants and their attorneys had to plead their defense compulsorily, despite all kinds of objections they have raised, because the court conducted the trials in such a fashion that did not allow anyone to breathe -so to speak. The court did not allow the defendants and their lawyers to plead their defense against many allegations.

As a result of the trial process in which the court proceeded by making almost minute calculations, carried out many injustices and unlawfulness, and deliberately victimized the defendants, the panel of judges created countless reasons for cassation.

Some of these issues are as follows:

THE COURT'S DELEGATION IS CONTRARY TO THE PRINCIPLE OF "NATURAL JUDGE"

As it is known the principle of "Natural Judge" in other word "juez natural" constitutes a fundamental guarantee of the right to a fair trial and it is the main principle at the stafe of identifying the delegation and assignment of the courts. This principle means that no one can be

tried other than by an ordinary, pre-established, competent tribunal or judge that does not have any relation to the dispute that is the subject of the trial.

So any allegations of criminal act will be solved at the existing court. The cour will not be established after the criminal act has been allegedly committed. For example, for **a suspect who will be tried for** a terrorist act, **a new judge will not be appointed** and the trial will be held at the existing courts. **The Istiklal Courts and the High Court of Justice (commonly known as the 'Yassiada Trials') established as a result of the coup d'etat that took place on May 27, 1960, are the two well-known examples for the violation of this principle in Turkey.** Both of these trials were established before the birth of the dispute and both of their judges were apponited afterwards.

The purpose of the principle of the natural judge is to prevent the establishment of a court before the birth of a dispute. The full implementation of this purpose ensures that the prosecuted citizens have confidence in the justice system **as knowing that the judge of the court at which a person is tried, was not appointed as a direct outcome of the alledged criminal act would give the person confidence.**

As an example of this principle, the provisions of the Belgian Constitution "No one can be denied the judge for whom the law has been appointed without his consent" and the Italian Constitution "No one can be denied the natural judge previously determined by law" can be shown.

This principle is described in the Article 37 of our Constitution as such. ***"No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established."***

However, when we take a look at our case it is clearly seen that the court delegation was contrary to the principle of natural judge. The indictment was accepted by the delefation of the Istanbul 30th High Criminal Court on July 19, 2019 and on the same date a memorandum of approval was issued, a day for the trial was set and the trial began. **The judges who accepted the indictiment and issued the memorandum of approval were Mahmut Başbuğ, Ahmet Tarık Çiftçioğlu ve Hasibe Doğan.**

However, the Istanbul 30th Heavy Penalty Court was dissolved and divided into two separate delegations with the authorization decree issued by the HSK (Supreme Board of Judges) on July 29, 2019. A NEW COURT DELEGATION WAS SPECIALLY APPOINTED TO OUR CASE. After the so-called delegation made a ruling on our case, it was dissolved again and has not taken any new cases as of February 18, 2020. This is clearly against the principle of the natural judge.

We are of the opinion that this situation explains the unlawfulness during the trial and the totally biased verdict in the end. As a matter of fact, considering the news reflected in the press about and the investigation opened against the President of the Court following the verdict on the Gezi trial, we get the perception that it is highly probable that the court delegation has been specially hand-picked for our case by some hostile fronts.

THE COURT DELEGATION MADE AN UNLAWFUL JUDGMENT OF "INTERVENTION" AND ACTED AGAINST ARTICLE 201 OF THE CODE OF CRIMINAL PROCEDURE THROUGHOUT THE TRIAL

In the first hearing of the case dated September 17, 2019, the identities of the defendants, witnesses and complainants in the courtroom were not identified. The participation requests of the persons who were included in the indictment as complainants were not received and the

interrogation of the defendants was started directly in violation of Article 201 of the Criminal Procedure Code (CMK).

In addition, the intervening attorneys of the complainants were written down as "defense attorneys". At the very beginning of the trial, it was shown AS IF all identifications were confirmed in order and the defendants were reminded of their complete rights. But this was not the case. It was also written in the trial record that each defendant said "My attorney is here and I'm ready to plead" but again this was not the case.

IN THE TRIAL SEGBIS [Sound and Video Information System] TRANSCRIPTS IT IS SEEN THAT NO SUCH REMINDER WAS MADE AND ON THE CONTRARY THE DEFENDANTS DECLARED THAT THEY WERE NOT READY TO PLEAD, THEY REQUESTED MORE TIME AND THAT THE COURT DELEGATION MADE AN EVALUATION ON THESE REQUESTS FOR MORE TIME. As a result of the fact that the defendants were not provided with more time to prepare for their plead, a state of turmoil prevailed in the courtroom and **even though those who were likely to testify as witnesses in the later stages of the trial actually watched and listened to the trial and the pleads, no precautions were taken in this regard.**

The procedures to be carried out at the beginning of the trial and all prosecution procedures are clearly regulted in the Criminal Procedure Code. According to this;

> *Article 191/1: "Through establishing whether the accused and his defense counsel are present, if the witnesses and experts who had been summoned have appeared, the main hearing shall start. The accused shall not be handcuffed at the main hearing. The presiding judge or trial judge declares the beginning of the main hearing* ***through reading out the decision on the admissibility of the indictment."***
>
> *Article 191/3: "In the main trial the following interactions shall be conducted in the listed order: a) The open identity of the accused shall be determined and knowledge about his personal and economic situation shall be obtained from him,"*

AS CONTRARY TO THE REGULATIONS IN THE LAW, THE DECISION ON THE ADMISSIBILITY OF THE INDICTMENT WERE NOT READ FOR NONE OF THE 5 SEPARATE INDICTMENTS. Article 238 of the Criminal Procedure Code titled "The Procedure of Intervening" is as such: *Article 238- (1) Intervening shall be accomplished through giving a written application to the court after the public prosecution has been opened, or including the oral request of intervening in the records of the main trial.*

(2) Upon a declaration explaining the claim during the main hearing, the individual who has been damaged by the crime shall be asked if he is willing to intervene the prosecution or not.

(3) After hearing the public prosecutor, the accused, and if there is a defense counsel, after hearing the defense counsel, a decision shall be rendered on whether the request of intervening the prosecution is suitable or not.

Additionally the open provisions of the Criminal Procedure Code have not been complied with. The identities of the complainants within the scope of the indictment, were not confirmed, their written and verbal requests to intervene were not received, the complainants or their attorneys were not asked about which defendants they requested to intervene in, but their attorneys were accepted as party counsel and they were given the right to ask questions directly to the defendants. In addition, the decision on "intervention" was made urgently without even hearing the public prosecutor, the defendants or their attorneys, contrary to the procedure and the law.

Moreover NO DECISION OF INTERVENTION WAS MADE CONCERNING ATTORNEY ESER ÇÖMLEKÇİOĞLU.

To summarize the court delegation MADE A DECISION ON INTERVENTION FIRST as a violation of the open provisions of Article 218 of the Criminal Procedure Code and ACCEPTED ALL COMPLAINANTS AS INTERVENING PARTIES OF THE CASE AND THEN RECEIVED THEIR REQUESTS FOR INTERVENTION. From the beginning of the trial, despite all objections, the court delefation sought to create a perception -so to speak- "I will do it and it will go as I say" and made its biased approach towards the case very clear.

When the articles of referral included in the indictment are examined, it will be seen that the prosecution of some of the charged crimes is subject to complaint, but the right to complain is not used within 6 months. Again, in terms of sexual crimes, although the parents of many complainants did not have the right to participate in the case in terms of their adult children, a decision was made for all complainants without any exceptions.

None of these situations were determined by the court committee and it was allowed to ask questions to the defendants in the capacity of the attorney of the complainant. Those who have the right to ask direct questions to the defendant during the hearing are regulated in Article 201 of the CMK. Accordingly;

> *Criminal Procedure Code- Article 201/1: "The public prosecutor, defense counsel or the lawyer who participates at the mean hearing as a representative may ask direct questions to the accused, to the intervening party, to the witnesses, to experts, and to other summoned individuals, adhering to the rules of discipline at the main hearing. The accused and the intervening party may also direct questions with the help of the chief justice or judge. If there is an objection against the directed questions, then the president of the court renders a decision if the question may be asked or not. Related persons may re-ask questions, if necessary."*

As it can be understood from the clear wording of the law, **the complainant or his/her attorney has not been granted such a right,** and **the questions asked to the defendants as the attorney of the complainant during the hearing and the answers given by the defendants to these questions are <u>completely null and void.</u>**

In the hearing dated October 3, 20019, the defendant Kartal İş, stated that the attorneys of the complainants abused their right to ask questions, therefore the court should make a decision to firstly intervene, and that he would only accept the questions regarding the allegations against him in accordance with Article 102 and Article 103 of the Turkish Crimal Code, that it was not possible to participate since Article 220 of the Turkish Criminal Code covers the crime of danger, and therefore, it was not legally correct to ask questions by the complainants and their attorneys who did not have the right to intervene in terms of this crime.

Here there is a matter that we would like to draw attention. This demand of the defendant Kartal İş was made **<u>approximately 3 weeks after the hearings began and the attorneys of the complainants asked their questions. In other words, the court did not heed the demands of the other defendants and their attorneys in this regard for 3 weeks, ignored them and therefore did not make any decision.</u>**

<u>However, when the defendant Kartal İş **refused to answer the questions** at the hearing dated October 3, 2019,</u> upon the demand of Attorney Ali Tizik -one of the attorneys of the complainants- present at court, the Presiding Judge received an opinion from the prosecution in

a manner contrary to Articles 238/1-2-3 of the Criminal Procedure Code and in a dubious manner, the prosecution gave an opinion that everyone who is qualified as a complainant in the indictment should be a intervening party. Following this, the court delegation, which also gave the defense attorneys permission to speak, decided to consider all the complainants of the case as a intervening parties as a whole without any exceptions, in an unfair and unlawful manner.

What happened at the hearing held on October 3, 2019 was reflected in the SEGBIS (Sound and Video Information System) hearing transcript as follows. After making his statement before the court, the defendant Kartal İş made the following request regarding the questions directed to him:

DEFENDANT KARTAL İŞ: I have a request, a demand about the questions being asked.

PRESIDING JUDGE: Yes.

DEFENDANT KARTAL İŞ: Sir, yes this subject has been told a lot but if you see as appropriate, I'd like to answer in this way; as you well know the indictment was prepared within the context of 103, 102 and 220. In terms of the Articles 103 and 102, my lawyers told me that the attorneys representing Hanife AKALIN, Handenur ÜNAL, Neval AVCI, Nilgün SAĞLAM, Piraye YÜCE and Asiye SANDIKÇI can direct questions to me as you will make a decision for their intervention in the trial, however since in terms of the Article 220 a party cannot intervene in the trial, I would like not to answer the questions asked in relation to the claims of "crime organization." You have, with good intentions, let the attorneys of the complainants to ask questions but this has been misused as there is no option of becoming an intervening party with regard to the charges of "organization" as my lawyers have told me… So I do not want to answer questions within that context but if you decide in the future that they can become intervening parties…

PRESIDING JUDGE: So you do not want any questions to be asked at the moment; alright…

DEFENDANT KARTAL İŞ: I'd like to be asked from Articles 103, 201 sir…

PRESIDING JUDGE: Okay understood.

DEFENDANT KARTAL İŞ: I'd like the questions to be related to 103, 102 sir, related to sexual offences.

PRESIDING JUDGE: Like that...

DEFENDANT KARTAL İŞ: Because this is what my lawyers have told me, don't get me wrong…

Thereupon, the attorney of some of the complainants Att. Ali Tizik asked the court to make a decision in this direction and his request was accepted immediately.

ATT. ALİ TİZİK, ATTORNEY TO SOME COMPLAINANTS: Honorable Judge, this is the 2nd time that this has happened and probably this will go on in this manner. We, and the attorneys of the defendants have demands in that regard; we ask that you make a decision about our intervention to the trial. As fas as I understand anyone who is a little troubled tries to come up with this excuse. With regard to our demands to intervention…

ATT. ALİ TİZİK, ATTORNEY TO SOME COMPLAINANTS: We ask for a decision of the court sir.

PRESIDING JUDGE: Understood. Alright. We received your request. Yes, now are you going to answer to the questions directed to you during the questioning phase, or not?

DEFENDANT KARTAL İŞ: Sir as my lawyers have told me, I'll answer to questions asked with regard to the Articles 103, 102 of the law but not Article 220 but then…

PRESIDING JUDGE: Okay. We received the lawyer's demand. Let's ask for the opinion of the public prosecutor about this issue. What is your demand about intervention Mr. Lawyer, eer Mr. Prosecutor?

The public prosecutor Caner Babaloğlu, who was present at the hearing, immediately submitted his opinion **without making any evaluation or asking for time to evaluate the request.** Prosecutor Caner Babaloğlu stated that everyone who is shown as a complainant in the indictment and who also submitted a petition to the file should be admitted to the case as the intervening party, and their attorneys should be admitted to the case:

PUBLIC PROSECUTOR CANER BABALOĞLU: Now first of all Honorable Presiding Judge, he claims that the complainants do not have a right to intervene with respect to the crime of "organization" but I do not know how he can make a comment like this without even the court decides on the matter.

PRESIDING JUDGE: Alright.

PUBLIC PROSECUTOR CANER BABALOĞLU: Therefore...

PRESIDING JUDGE: Do not speak without permission. You can speak when given the permission. Yes, go on.

PUBLIC PROSECUTOR CANER BABALOĞLU: Therefore, I do not find this procedure to be right but with regard to the complainants' demand to intervene in the trial and the hearings, our conviction is that those individuals who are determined as complainants in the indictment as well as the complainants and their attorneys who have submitted a petition to the case should be accepted as "intervening parties" to attend the trial and hearings due to the possibility of being affected by the crime, and their attorneys should be accepted as the attorneys of intervening parties. This is our demand.

Upon this opinion presented by the prosecutor, the court paused for 15 minutes and then decided to give the attorneys of the defendants permission to speak on the matter of "intervention." The defense attorneys present at the hearing conveyed their opinions and demands on this matter to the court delegation. Some of the opinions and requests reflected in the hearing minutes are as follows:

ATT. İBRAHİM TOKAN, ATTORNEY OF SOME OF THE DEFENDANTS: This is the attorney of Mr. Ahmet Oktar BABUNA and some of the defendants Att. İbrahim TOKAN. Honorable Presiding Judge, first of all, I'd like to mention a little about procedural matters with regard to the demand of intervention. As we very well know, the Articles of 237 and the following

of the Criminal Procedure Code are issued about intervention. Here a decision of intervention made by the court delegation would turn some of the complainants into individual counsels for prosecution, and as a result of this, the complaints would have many rights including the right to object to the verdicts of this court and to take legal action as they become intervening parties. Therefore, we disagree with making a collective decision at this point. We think that here the attorneys of the complainants should clarify who they represent one by one and explain how their clients have been directly affected or victimized by which aspects of what crime committed by whom, and we believe that their individual demands on intervening must be taken. In addition, this morning you asked whether our colleague here (representing the defendants) has the power of attorney or not. As it is known, the right to intervene in a public prosecution as held with the decisions of the Supreme Court: "It is a right that is strictly attached to the person and special authority is needed for this right to be exercised by the attorney" and thus by taking all these measures into account, we demand that the demands of the attorneys of the complainants are taken separately and in a way that includes their justifications and then both the defendants and their attorneys are called upon to speak individually.

ATT. ENES AKBAŞ, ATTORNEY TO SOME DEFENDANTS: This is the defense counsel of the defendant Adnan OKTAR Att. Enes AKBAŞ. Now, Honorable Prosecutor has approached the subject in with so much practicality and as a solution he said, "We demand all of the complainants in the indictment to become intervening parties" but unfortunately the regulations of the PROCEDURAL LAW do not allow this. This is a nice and practical solution but yet again here this should be like this; if all of the complainants in the indictment are to become intervening parties of the trial during the prosecution phase, it needs to be reminded that the phases of investigation and prosecution are precisely divided with the Criminal Procedure Code. On the contrary, we should be accepting every crime written in the indictment. This is a way of thinking that abolishes and undermines the discretionary power of the court; this should not be so. The procedure is clear for this. Every complainant will explain why s/he requests to intervene in the trial, on what grounds and how s/he has been affected by the so-called crime, whether s/he has been directly affected or financially. So s/he is to point out how s/he has been affected and then the Public Prosecutor will give an opinion on the matter one by one and then the defendants and their attorneys will speak. This is procedure. And this is not subject to any interpretation. This is the ruling Article 237 and 238 of the Criminal Procedure Code. Therefore, first the complainants must make a statement one by one. My colleague has just mentioned a little but here there should be a special power identified in the attorney of power for this, saying that "one can make a request of intervention in the court." We demand from your court that this should be investigated, whether or not the attorneys have such power. Secondly, we would like your court to place importance on the fact: how the complainants were affected, which applicable articles were given in the indictment and how they have been affected. Since the Article 220 is about "crimes that pose a threat/danger to the public in general" and no individual could be harmed by this crime. The Public Prosecutor is already here representing the public in this trial. How could you turn the complainants into intervening parties, these people… This is an offense of danger. The Supreme Court General Assembly of Crime and different crime assemblies of the Supreme Court has hundreds of verdicts on

the matter. Therefore, we demand that your court take these into account for consideration.

ATT. BURAK AKIN, ATTORNEY OF DEFENDANT BORA YILDIZ: From your court… Because first of all their requests must be taken and then we should take the pledge. I would like to make the following statement concerning the request of intervention regarding my own client; for those who have made a written request for intervention before. In the indictment, it is alleged that the client is the manager of the crime organization and that he has committed some sexual crimes. The names of the people to whom he has allegedly committed the sexual offense is in the indictment. I can mention these: Exgi ÇELENLİOĞLU, Çağla ÇELENLİOĞLU, Başak BALLICA, Bengisu GÜLER, Deniz ŞAKAK, Ecenaz ÜÇER, Funda YILDIZ, İffet Piraye YÜCE, Yaren GÜLDİKEN, Beril KONCAGÜL and Bilge TOK. In terms of these persons, discretion is in your court, but if these complainants request an intervention in terms of Article 220, just like my colleague pointed out, this is an offense of danger and it is among the offenses committed against the public (society) in general. Could someone be directly affected by an offense? One could. Those who claim that the crime of sexual assault was committed against them here also claim that they were directly harmed. In this regard, too, the discretion is in your court. For example, in a crime of deliberately endangering traffic safety; if you drink and drive it is among the crimes against the public. If there is no harm caused, then there is no one directly affected or harmed and the same is true in terms of the crime of forgery of the document. Therefore, in terms of my client, the discretion is in your court only for the persons whose name I have just mentioned, if there is a request to participate because of being a manager, I request that the attorneys of the parties who claim to be harmed by the crime be ruled to refuse the request on the grounds I have mentioned.

ATT. ARZU GÜL, ATTORNEY TO SOME DEFENDANTS: This is the attorney of Tarkan YAVAŞ Attorney Arzu GÜL. Now Honorable Judge, I also stated this in the first days, I have a demand as follows, not about “intervention” but another request. When the indictment is examined, we see the names Özkan MAMATİ, Ceylan Özgül KURUCA, Ümit KURUCA, Yılmaz KURUCA, Uğur ŞAHİN... Now these individuals are here as complainants, now when we look at the statements of these people we see that they are actually confessing to crimes. They say, “We were a crime organization…” or they say, “We were frauds.” Or they say that they were together with such and such… They say that they committed crimes. Now even when we consider these in the context of “crime organization” even if these people benefit from effective regret, that is, even if they leave with their own freewill before the investigation, even if they are to be acquitted, the Prosecutor's Office cannot qualify them. The Prosecutor's Office can open a case against them as well, it is the court that will make a judgment on that issue, even if it is being acquitted ... These persons cannot be complainants in this position. First of all, I request that the titles of these persons be determined.

ATT. ŞULE AKYOL, ATTORNEY OF SOME DEFENDANTS: This is the attorney of Ediz ÇALIKOĞLU, Mustafa ÇALIKOĞLU Att. Şule AKYOL. Now Honorable Presiding Judge, In fact, these were our statements on the first day, but there is the need to sum up, I will make a statement in general terms. There are now 4 categories of intervention requests in the petitions filed up to this stage in the case, these are statements that will also help in your court. At the same time, while making an assessment, there are women who claim to be victims of organization crime under Articles 102 and 103, and those who claim to be victims under Article 220 and who were involved in the investigation at the beginning of the investigation with a petition of complaint. Subsequently, our hearing started on 17th of September. I have seen petitions in the UYAP system even one day before September 17 demanding that the defendants who benefited from effective regret and their attorneys should become intervening parties of the trial as well and that they should have the title of aggrieved defendant. Apart from this, there are requests for intervention by families, journalists, people who are hostile due to the previous operation. So their demands can be grouped into 4 categories. Now my colleagues have said many times and I will not repeat them not to take your time. They have all stated very well but some people who have given petitions as complainants; did they benefit from effective regret at the beginning of the investigation, under Article 220; Or did the Prosecutor's Office count this as a voluntary waiver under TCK 36; why there was no investigation into these crimes? Because if you look at the investigations made about these people, individually qualified fraud, fraudulent bankruptcy ... We see that the accusations and investigations are continuing regarding their acts of this kind and their confessions, but apart from that, there is no investigation decision or a discriminatory decision regarding these persons under the TCK 220. First of all, this issue should be clarified and these complainants should come before the court and they should be heard and this title should be determined by the court or an indictment should be prepared. If there is voluntary renunciation, they must take their titles under the Article 36. Except for this, it is very clear that those who benefit from effective regret and also claim to be a victim at the stage of prosecution, could not have the capacity to intervene in the trial. There was even a dialogue between us, I corrected it, I guess Beril KONCAGÜL. You said that she was the victim and the defendant, I said that she was the defendant who benefited from effective regret, we had such a conversation with you while asking a question. Therefore, we will make a separate declaration if they claim that they have such a grievance in their capacity to intervene. Apart from that, some journalists in the 4th Category… Honorable Presiding Judge, we have a problem; there are people saying that they were working in the companies of this organization and they demanded to intervene in the trial because they claim that they were not able to collect their receivables. So this puts a lot of burden on your court, this puts a lot of weight on your shoulders. These are acts that have nothing to do with the crimes charged in the indictment, and that have nothing to do with legal qualification. Therefore, these people do not have the status of taking the title of intervening party. Finally, there are families, Honorable Judge, claiming that their children of legal age are the victims of this crime, but these people are also detained defendants here. Families of the defendants have requests for intervention, these people are of legal age, now these families need to be heard before the court. Are you complaining about your child? In this case, the extent of the complaint waiver should be evaluated. Therefore, as my other colleagues have said, the complainants have to embody the claims of direct damage. Finally, I will sum up as follows, when these minutes are read,

at your right side there are lawyers, at your left side there are lawyers, you are a man of law, and at the prosecution stage and since the acceptance of the indictment, there is the phrase "the attorney of the complainant was asked" being repeated. I do not know for us what they will think in the Appeal and the Supreme Court, Honorable Judge, but we are at the prosecution stage. “The attorney of the complainant cannot be asked.” Do you know what this has caused? Since the beginning of the trial, this was like a personal problem of the defense attorneys. But Honorable Presiding Judge, the complainants are sitting there, maybe if the complainant is really the victim of this crime, the attorneys of the complainant did not make any statements in this regard and maybe they have a question to the defendant as they also have a right to a fair trial. We asked the questions so that this right is exercised but because of this PROCEDURE exercised here in this court, the questions came first. And this is what this procedure has caused. They had to carry question papers to their attorneys directly before the court or send questions using their mobile phones. These were, of course, very damaging in terms of the seriousness of the trial, the weight of the court and our belief that our right to a fair trial was established for us. But if our demands were not perceived as “personal demands” at the beginning, if we could explain that they were due to procedural reasons but we could not, maybe it would not be like this. Honorable Judge, PROCEDURE precedes principle, so this is not our personal request ...

PRESIDING JUDGE: Alright we understand this Ms. Attorney, we take this request, okay.

ATT. ŞULE AKYOL, ATTORNEY OF SOME DEFENDANTS: For this reason, we demand, as my colleagues have said, the complainants to materialize their demands to intervene and, based on this, we as the defendants and their attorneys demand to be promised again against such demands.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: This is the attorney of Mehmet Noyan ORCAN Att. Eşref Nuri YAKIŞAN. Honorable Judge, first of all, thank you for your promise, but from the beginning of the hearing, we made requests concerning intervention before, we demanded that a decision be made in terms of intervention of the complainants but you have always rejected our requests. However when the complainant's representatives make a single request in this direction, this request is at the point of evaluation ...

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: Alright. And we think, at least for myself; I believe that it would be healthier if you had listened to us after receiving the opinion from the Prosecutor's Office and took a break later. And Ali TİZİK, one of the attorneys of the complainants, made a request without specifying whom he represents or from which crime the person he represents was affected in what way, and the situation at the moment is a result of this request. Therefore, we think that at this point making a decision on intervention would be wrong at this point before listening to the complainants themselves here at court, because it is not clear how they will intervene, due to being directly harmed by the crime, due to a financial responsibility or some other reason, and may be complainants will come here themselves and ask not to intervene in the trial. In addition to this, even though there seems to be just one file, we have 230 separate files and this is a huge workload due to over 230 defendants, we are aware of this. For this reason, we believe that Honorable Judge, that is, who was harmed by which crime and

how, this request should be taken and a decision should be made following that. Finally, I would like to submit a decision of the 2nd Criminal Chamber of the Supreme Court of Appeals to the file. The Supreme Court states that if you are going to establish a decision in terms of participation at this stage, the title of intervening party cannot be given in the trial made due to the accusation of the "crime of organization". We refer to the decisions of the General Penal Board and demand that this decision be taken into consideration.

ATT. ERCAN BOZKURT, ATTORNEY OF THE DEFENDANT TÜLİN IŞILDAR MARANGOZOĞLU: This is the defense attorney of Tülin Işıldar MARANGOZOĞLU, Att. Ercan BOZKURT. Honorable Presiding Judge, the Prosecutors who prepared the indictment are also the Prosecution Authority here at court. We see a crowded case here with many defendants, this is a multi-complainant file and at this point, any request from your esteemed delegation concerning "intervention to the trial" in this multi-folder case about the complainants altogether would lead this trial to the wrong path. I will give a simple example; Çağla TEZCAN, please Honorable Judge, the Honorable Public Prosecutor can also examine this. What does Çağla TEZCAN have in this case that could allow her to become a complainant? Look, this is a concrete example, I will not even go into the others. Why do we persistently say as the lawyers of the defendants: Are the complainants directly harmed by the crime; Is there any way to question this? In what capacity is this person here as a complainant? In what capacity is he referred to as a complainant? His statement is 2 pages; and it has no allegations neither about a criminal organization, nor about the individual crimes mentioned here. He says I worked in a company, I have no business with these, I just didn't get my compensation, now ..

ATT. ERCAN BOZKURT, ATTORNEY OF THE DEFENDANT TÜLİN IŞILDAR MARANGOZOĞLU: Therefore, even when we examine Çağla TEZCAN's statement today, although it has nothing to do with the incident, the case, the subject matter of the case, the defendants in the case, it is included in the accusation record as a complainant, as a complainant at the law enforcement stage, and for all these reasons, since even people in the case that normally would not have any title are accepted as complainants, the demands of the attorneys of the complainants should not be accepted at this point, first it should be explained and clearly stated why the complainants were harmed by the crime, then these requests should be accepted, therefore, in this respect, we demand that these demands are not accepted.

ATT. ELİF ESRA KIRIMLI, ATTORNEY OF SOME DEFENDANTS: Honorable Presiding Judge, I waited for the demands of my colleagues to end, I have a small point to add; I totally agree with all requests…

PRESIDING JUDGE: Yes, go on.

ATT. ELİF ESRA KIRIMLI, ATTORNEY OF SOME DEFENDANTS: Now as you all know that we have a case file opened from the Article 220, however despite how hard we try we cannot find a "purpose of the crime" definition in the indictment, whether it is sexuality or mahdi issue; concepts come and go… Now intervention can only be requested in this file in terms

of instrumental crimes that have a functional effect on the purpose crime. Therefore, if we accept sexuality as the crime of purpose of this organization, and I don't even discuss it at all as it is obviously like a pre-acceptance of the court, then what kind of functional effect does the aim have towards the crime, for example, the offense of defamation? So what my colleagues said is so true; because intervention could be requested on vehicle crimes; the subject of victimization is really important because a colleague of mine gave an example; Adil Serdar SAÇAN, how was he affected/harmed? I look at the crimes identified in the case file; I think not 102, not 103 and then comes the subject of "organization" and I do not agree with the Public Prosecutor on the matter; there is no intervention in the general roof crime in organization crime. First of all, I would recommend the book "Criminal Organizations" by İzzet ÖZGENÇ, the author of our law, he really explained everything very clearly. Therefore, which crimes are accepted as vehicle crimes, which vehicle is considered a crime; how someone is a victim of the crime, we do not accept any intervention without an explanation one by one. We present our objection to this on behalf of all clients. By the way, I do not count one by one because my clients are numerous, I do not want to be in the position of the other party, but I am acting as the advocate of Ahmet Oktar BABUNA and some, 19 people, and my name is Elif Esra KIRIMLI.

Following these requests conveyed by the defense attorneys, **THE COURT DELEGATION IMMEDIATELY MADE A DECISION WITHOUT THE NEED TO GIVE A BREAK OR TO NEGOTIATE THE MATTER AS A DELEGATION EVEN THOUGH IT IS A PROCEDURAL REQUIREMENT** and as a result rejected the demands of the defense attorney, accepting all the complainants as a 'collective intervening party' and the trial continued in this way. At this point, Articles 237 and 238 of the Criminal Procedure Code have been clearly violated.

PRESIDING JUDGE: Okay there is no one else. Wait. Yes, it is considered by the court; after the interrogation of some of the defendants, it is seen that they did not want to answer the questions on the grounds that a decision was not made about the complainants and their attorneys on their intervention in the trial. In addition, since the complainants and their attorneys submitted the petitions that stated their request to intervene, and they made a request on this issue again in the previous session, it is decided that the complainants who made a demand and gave a petition and requested to intervene in the trial, be accepted as intervening parties and their attorneys be accepted as the attorneys of intervening parties, and it was unanimously decided that the requests of the defense counsels, be rejected as they were against the Procedure and the law; and the open trial continued with my notion. Now defendant, complainant… asking to the intervening attorney; Do you have any questions for the accused; Come on, come on, yes go ahead, ask.

However, **as of the date of the decision, 'the requests to intervene' in the file are limited to only to the following**. Namely;

On September 16, 2019, Kurtcebe Tarık Işık requested to intervene with his statement at the Ankara 21st High Criminal Court. **BÜŞRA BÜRKE AND UĞUR COŞKUN, who gave a statement in the same court on the same day, declared that they are not complainants and did not request to intervene in the case.**

With the petition submitted on September 15, 2019 by Att. Fuat Selvi, the effective repentant defendants Burak Abacı, Murat Terkoğlu, Mehmet Murat Develioğlu, Emre Teker, Mustafa Arular, and Emre Kutlu were asked to intervene in the case as "complainant-defendants".

On 17.09.2019, Ecenaz Üçer requested to intervene with her statement of instruction at the Eskişehir 2nd High Criminal Court.

On September 17, 2019, the complainant Elmas Hilal Kahraman stated that she did not have any complaints from Adnan Oktar, Sibel Yılmaztürk and all the persons mentioned in her previous testimony with the petition she submitted to the court, and **she waived all the requests related to her complaint**.

On September 22, 2019, Att. Andaç Maraşlıoğlu requested intervention to the case on behalf of Ebru Alkan, Nimet Aylin Kızılçeç, Nilgün Sağlam, Aslı Bektaş, Gönül Duyar, Deniz Şakak, Asiye Sandıkçı, Şengül Sandıkçı, Başak Ballıca, Bahar Kuştepe, Neval Avcı.

On July 23, 2017, Att. Emine Rezzan Aydınoğlu submitted a petition requesting intervention to the case on behalf of Fatma Emel Tezipar, Gülay Akpolat, L.Semin Babuna and Z.Türkan Akyüzalp, and on September 18, 2019 on behalf of Tülay Aslan.

On September 30, 2019, Av. Eser Çömlekçioğlu requested intervention in the case on behalf of Serpil Ekşioğlu with the petition submitted.

As can be seen, as of the date of the decision, only 19 complainants and 6 effective repentant-defendants requested to intervene in writing, but these petitions did not provide sufficient explanations regarding the reasons for the requests. In addition, **3 complainants clearly stated that they are not complainants and that they did not request to intervene**. However, despite this fact, the court delegation accepted the complainants who did not even have a request to intervene in the case, as among the intervening parties. **EVEN THIS ISSUE ALONE INDICATES THAT THE COURT DELEGATION IS UNAWARE OF THE CONTENT OF THE FILE.**

Contrary to the Article 238/2 of the Criminal Procedure Code, **"Upon a declaration explaining the claim during the main hearing, the individual who has been damaged by the crime shall be asked if he is willing to intervene the prosecution or not"**, no complaints were taken during the trial, and as identified with the Article 238/3 of the Criminal Procedure Code, **"After hearing the public prosecutor, the accused, and if there is a defense counsel, after hearing the defense counsel, a decision shall be rendered on whether the request of intervening the prosecution is suitable or not"** was breached and a decision was made without listening to the defendants or asking the defendants if they have anything to say on the matter.

AS A MATTER OF FACT, WITHOUT CLARIFYING WHO WAS THE REPRESENTATIVE OF WHICH COMPLAINANT, WITHOUT TAKING THE STATEMENTS AND DEMANDS OF WHICH COMPLAINANT REQUESTED TO INTERVENE IN THE TRIAL IN TERMS OF WHICH CRIME AND WHICH DEFENDANT, AND WITHOUT BEING PROMISED TO THE DEFENDANTS IN ACCORDANCE WITH THE ARTICLE 238 OF THE CRIMINAL PROCEDURE CODE, THE COURT MADE A DECISION THAT ALL THE COMPLAINANTS WERE THE INTERVENING PARTIES WITH A 'WHOLESALE' APPROACH. With this interim decision given by the court delegation, all complainants were qualified as intervening parties in terms of all crimes and defendants. Even those complainants who did not make a request to interve were accepted as intervening parties. **In terms of additional indictments written during the trial, requests to intervene should be received and accepted individually, but this was not done for any of the additional indictments.**

In the current situation, for example, a complainant who complained about the crime of restraint of liberty had the status of intervening in terms of both terrorism and sexual crimes, and all the defendants were directly questioned according to Article 201 of the Criminal Procedure Code by their attorneys.

As the attorneys verbally stated at the hearing, among the crimes subject to trial, especially **Articles 220, 282, 328 of the Turkish Criminal Code and many other crimes are crimes in which it is not possible to participate because they are danger crimes in nature. However, with its unlawful decision to participate, the panel of judges deemed the complainants as intervening parties in terms of these crimes and turned them into individual prosecution authorities.** As a result of this decision that was not in accordance with the procedure and the law, for example, a person who was an employee of one of the companies seized by the decision of the Criminal Court of Peace and became a complainant because he could not receive the severance pay gained the right to apply for legal remedies against the decision and decision of the court committee on any defendant.

Or, with another example, Att. Eser Çömlekçioğlu appears to be registered in the UYAP system in terms of Özkan Mamati, Fırat Develioğlu and Serpil Ekşioğlu. The decision of "intervention" was given by the court for all these person as in accordance with Article 220 of the Criminal Procedure Code. In addition to this erroneous decision, the court delegation gave these intervening parties and their attorneys the right to ask questions in terms of other criminal charges.

SINCE THE TIME BETWEEN THE NOTIFICATION OF THE INDICTMENT TO THE DEFENDANTS AND THE TRIAL DAY WAS SHORT, NEITHER THE DEFENDANTS NOT THEIR ATTORNEYS HAD THE NECESSARY TIME OR THE MEANS TO PREPARE FOR DEFENSE

The indictment issued by the Istanbul Chief Public Prosecutor's Office was accepted on July 19, 2019, and the first hearing began on September 17, 2019. The 3908-page indictment was notified to the majority of the defendants on CD between August 20-30, 2019, when they were under arrest and imprisoned.

Some of the defense counsels stated that their clients could not prepare their defense because they did not have the opportunity to examine the file on the computer, and requested the file to be delivered to the defendants as hard copy, and this request was not even taken into consideration, like all other requests of the defense counsels.

The 50,000-page documents attached to the indictment were not notified to the defendants ex officio, some of them were sent to the defendants on CD, upon the request of the defendants and only on the dates of September 10, 2019 and the following. The CDs sent reached some of the defendants at the Silivri No.1 Closed Prison, where they were taken to the hearing after the trials started and where they were present as guest prisoners. Since the prisoners who are in the position of guests do not have the right to use a computer, these defendants had to go out to testify without looking at the file. Since the prisoners who are in the position of guests do not have the right to use a computer, these defendants had to go out to testify without looking at the file.

Considering that the defendants have the right to use computers only during working hours and a total of 3 hours a week in prisons where they are detained, and **that this right has never been exercised due to the crowd in many prisons**, it is clear that they did not have enough time and

opportunity to prepare a defense under the current file and conditions. For the aforementioned reasons, some of the defendants requested additional time from the court committee to prepare a defense.

The court delegation accepted this request and decided that the defendants would prepare their defense during the ongoing hearings. However, defendants staying **in Silivri Prison during the hearings are released from the prison at around 07:00 in the morning to be brought to the hearing (for this they are taken from their rooms as of 06:00), their return to the prison is 20:00 after the end of the hearing**, and they can enter their wards at 22:30 after being held in small rooms where they wait for the official counting process. After this time, the prison administration does not allow the defendants to use the computer room, and they do not have the opportunity to meet with their lawyers.

Most of the defendants (about 110 people) stay in the Silivri No 1 Closed Penal Institution, where 500 prisoners and convicts are staying, and there are 11 cabins in total (which are usually full due to the high number of detainees / convicts) to meet with lawyers. The lawyer visit hour, which starts at 21:00 after the count, ends at 23:45 by the prison administration. The defendants were prohibited from meeting with their lawyers during and in between the hearings. In addition to all these, the defense documents that the defendants take with them on their way to the court are taken from them by the prison officers on their return, and they are prevented from reaching even the documents of their defense the next morning.

As a result, during the 91-day uninterrupted testimony process of the defendants, **their health deteriorated due to insufficient sleep and malnutrition, many of them had bronchitis, and an ambulance was required to come to the courtroom frequently during the trial. They were forced to testify without defense documents, without seeing their lawyers, and without using a computer and looking at the contents of the file.** These conditions have been aggravated by the spread of the pandemic and the introduction of restrictions.

Considering all these reasons, it is virtually impossible for the defendants to prepare their defense during the ongoing hearings. In this regard, despite the request from the court delegation for the defendants to be kept on standstill from the hearings and to prepare their defense in this way, the delegation decided that the defendants would be deemed to have exercised their right to remain silent **if they demand time again for the defense, let alone providing the necessary facilities and facilities for the defendants to prepare their defense.**

DUE TO THE VOLUME OF THE FILE, THE LARGE NUMBER OF CRIMINAL CHARGES, THE LATE AND INCOMPLETE NOTIFICATION OF THE INDICTMENT, THE INSUFFICIENCY OF THE PHYSICAL FACILITIES REQUIRED TO PREPARE A DEFENSE, THE DENIAL OF THE RIGHT OF THE DEFENDANTS TO BENEFIT FROM THEIR ATTORNEYS, AND IN ADDITION TO ALL THESE, THE ARTICLE 6/3-B OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR) AND IN THIS CONTEXT THE RIGHT TO A FAIR TRIAL HAVE BEEN CLEARLY VIOLATED.

As a matter of fact, in the decision of the European Court of Human Rights numbered 46221 and dated May 12, 2005 determined as follows:

> *"The applicant had not had the assistance of his lawyers during the interrogation, had no direct access to the case file until a very later stage of the proceedings, restrictions were placed on the number and duration of his lawyer's visits; finally, lawyers also could not access the case file until the date had advanced considerably. The ECHR concluded that the difficulties in question had limited the right to defense as a whole and thereby violated*

the fair trial principle envisaged in Article 6. Therefore, Articles 6/3-b and c of the Convention and Article 6/1 have been violated."

On the other hand, as we briefly mentioned above, the defendants have suffered greatly due to the hearings that continue every weekday from morning to evening. Most of the time, they were taken out of the ward without breakfast, very insufficient food was given in the courthouse custody, and their immune system collapsed when insomnia was added. Many of the defendants who had severe flu turned the disease into bronchitis, and an ambulance had to be called many times due to diseases such as heart, diabetes, blood pressure, fainting.

The canteen order facilities of the defendants, who were present in the courtroom all day, were taken away, and their telephone rights and open / closed visitation rights became unavailable. In the process after the announcement of the opinion on the merits, although there was a pandemic, the defendants were not given a second mask to change during the day, water was not given to them, basic hygiene materials such as soap and toilet paper were not put in the custody room toilets, cleaning was not done, the defendants were made open to the epidemic, and even the 20-minute break for lunch was suspended, and the trial was conducted "with jet speed" without even allowing the detained and non-arrested defendants to eat.

'EVALUATION OF THE EVIDENCE' STAGE BEGAN BEFORE THE INQUIRY PROCESS HAS FINISHED

The procedural procedures and order to be carried out in the prosecution phase of the criminal procedure are clearly arranged in the 3rd Book of the Criminal Procedure Code titled "Prosecution Phase". Accordingly, following the identification and reading of the indictment, the interrogation of the defendant should be initiated, and then the evidence should be substituted and discussed. However, in the current trial, **as many procedural procedures were made completely wrong, the evidence was evaluated before the query process was completed and another mistake was signed.**

According to Article 206/1 of the Criminal Procedure Code: "After the accused has been interrogated presentation of evidence shall start. (Additional sentences: 25/05 /2005-5353 SK / Article 29) However, the absence of the accused shall not bar the presentation of evidence, if he had been notified and did not come without an excuse. The accused who appears later, shall be informed about the presented evidence."

As can be understood from the open article text, the evidence should be substituted after the defendant is questioned. **However, during the interrogation, the panel of judges read the digital material examination results, evaluated the HTS analysis reports, read the tapes and revealed many other evidences.** This situation constitutes a serious procedural error and violates the right to a fair trial. **In the meantime, the defense counsels could not even use their right to appeal that these "evidence" were obtained unlawfully, since they were not mentioned except for the objections under Article 201 of the Criminal Procedure Code.**

In addition, a concept, which is not a method used in the doctrine or the Criminal Procedure Code, called the "indivisibility of the query" was proposed by the court and in this way, any legal interventions to the style of the questioning were prevented. Lawyers exercising their legal right in this direction were threatened with being thrown out of the courthall, and some were even taken out by the gendarme.

For example; at the hearing held on September 25, 2019, **the attorneys of the intervening parties attending the hearing were asked to ask questions to the defendants by reading a section of a**

digital material, the source of which or whether it is included in the file or not is unknown and which was obtained by illegal methods. Upon Att. Elif Esra Kırımlı's request to intervene, the Presiding Judge decided to take the lawyer out of the court hall accompanied by the gendarmerie officers:

September 25, 2019 – 4th Session:

ATT. ESER ÇÖMLEKÇİOĞLU ON BEHALF OF SOME OF THE COMPLAINANTS SPEAKING: *Bülent Sezgin said, "..We can convince anyone, if you do a new girl, you can consider that day finalized in your mind."*

PRESIDING JUDGE: *Do not speak without permission,* ***Ms. Attorney, please, YES LET'S REMOVE THE LAWYER FROM THE COURTHALL, LET'S TAKE THAT LAWYER OUTSIDE.***

ATT. ESER ÇÖMLEKÇİOĞLU ON BEHALF OF SOME OF THE COMPLAINANTS SPEAKING: *Only if they don't…*

PRESIDING JUDGE: *Quickly, we cannot hold a hearing like this, please in accordance with the procedure, please,* ***the lawyer lady, out please, the decision has been made, we have a break for 5 minutes, TAKE THE LAWYER OUT QUICKLY,***

September 25, 2019 – 5th Session:

PRESIDING JUDGE: *Yes Mr. Attorney?*

ATT. EŞREF NURİ YAKIŞAN ON BEHALF OF SOME OF THE DEFENDANTS SPEAKING: *First of all, honorable judge, there is a situation like this, the atmosphere is getting tense here, everyone is disturbed by this tension, and the defendants are also uncomfortable. This is what we kindly ask of you; my lawyer co-workers here have tried to explain from the beginning of the morning, but you stated that a decision was made before, and you made the decision that there is no room for another decision. Maybe we could not express ourselves correctly, maybe you did not understand, I want to express this point again. You have already made a decision regarding at what stage the "intervening" title will be given to the complainants, you also stated that there is no regulation in the Criminal Procedure Code regarding this and therefore you have decided that they can ask questions; there is an order her and we do not object to this order as you may continue to hold this decision, we are not saying something regarding this.* ***HOWEVER WE ASK THAT WHEN THE COMPLAINANTS ASK THEIR QUESTIONS – AND YOU DID NOT MAKE A DECISION REGARDING THIS- WE ASK THAT THE ATTORNEYS OF THE COMPLAINANTS CLARIFY THE COMPLAINANTS WHOM THEY ARE REPRESENTING AND THEN DIRECT THEIR QUESTIONS SO THAT WE CAN MAKE OUR OBJECTIONS ACCORDINGLY.***

THE PRESIDING JUDGE: *Yes understood?*

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS*: In other words, we want the complainant attorneys to indicate who they represent, Att. Esra's objection was within this context and secondly Att. Esra is right on the matter,* ***WHEN ATT. ESRA MADE AN OBJECTION TO THE QUESTION SAYING "THERE IS AN UNLAWFUL EVIDENCE AND THE QUESTION IS ASKED BASED ON THIS UNLAWFUL EVIDENCE" EVEN THOUGH***

THIS WAS NOT REGARDING THE COURT'S ADMINISTRATION, YOU HAVE MADE A DECISION IN YOUR CAPACITY SOLELY AS THE PRESIDING JUDGE WITOUT RECEIVING AN OPINION FROM THE COURT DELEGATION, ALSO YOU DID NOT ASK FOR A CONSIDERATION FROM THE PROSECUTOR'S AUTHORITY, PLEASE.

THE PRESIDING JUDGE: *Yes, understood?*

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: *We want a decision to be made by the delegation and by asking for opinion and by asking if we have anything to say against the opinion, and* ***the lawyer can only be taken ourside the courtroom untill the hearing is on a break, now Mr. Bulent (the defendant) does not have his attorney present, you asked Att. Esra to be removed from the courtroom, so the interrogation of the defendant Mr. Bülent cannot be resumed now during this situation, therefore since you have decided to give break to the hearing, if you please tell the gendarme officers that Att. Esra can come back inside the courtroom. Att. Esra should come back to the court.*** *This is our request and please make a decision on our such requests. Thank you.*

THE PRESIDING JUDGE: *Yes understood, now first of all, okay we have taken your request, wait now, let's see yes Attorney you may speak?*

ATT. İBRAHIM ALPER, ATTORNEY OF SOME DEFENDANTS: *Honorable Judge, as my colleaguse have just stated,* ***you have unfairly decided to take Attorney Esra out of the courtroom, both against the basis and the procedure. In other words, you did not take this decision in consultation, that is, we directly assess that you made an aggressive manner, that is, this decision is not revoked, we think that Attorney Esra's right to speak and her request after taking the floor are in accordance with basic and procedural regulations. So you said "attorney of the intervening party"; they are not attorneys of the intervening parties, we do not know in what capacity they are here.***

THE PRESIDING JUDGE: *Alright understood?*

ATT. İBRAHIM ALPER CAN, ATTORNEY OF SOME DEFENDANTS: *Unlawfully, let me explain with your permission Sir, give me a minute,* ***THEY REPORT THE UNLAWFULLY ACQUIRED VOICE RECORDS AS EVIDENCE HERE, IT IS NOT YET CLEAR WHO THEY ARE, MEANING IF THEY CLAIM THAT THEY ARE AT DISCOMFORT DUE TO THE ACTIONS OF ADNAN OKTAR AND HIS FRIENDS AND THEY WANT TO INTERVENE BECAUSE OF THAT AND IF THEY SAY THAT THEY REPRESENT THE COMPLAINANTS AT THIS CAPACITY, THERE IS A PUBLIC PROSECUTOR TO DO THIS PROCEDURE ON BEHALF OF THE PUBLIC, DIRECTLY, AND THIS HAS BEEN DONE BOTH THE INVESTIGATION PHASE AND THE PROSECUTION PHASE, SO THERE IS NO NEED FOR THE ATTORNEYS OF THE COMPLAINANTS OR INTERVENING PARTIES AT THIS POINT.*** *If the Court does not revoke its decision, that is, as some of the defendants' attorneys, we inform you that we will leave the courtroom together with Attorney Esra.*

DEFENDANTS WERE DIRECTED QUESTIONS IN VIOLATION OF ARTICLES 20, 22, 23, 24, 25, 34, 36 OF THE TURKISH CONSTITUTION DURING THE HEARING WHICH WERE ALL AGAINST PRIVACY OF PRIVATE LIFE

Another unlawful situation during the trial is the questioning of the defendants by the attorneys of the complainants, the prosecution and the court committee, who asked questions that exceed

the scope of the indictment and violate the privacy of private life, and these questions are also reflected in the court proceedings.

Many **questions that violate the freedom of religion and conscience and the right to privacy** were asked to the defendants, such as: **"How many times a day do you pray? How do you take ablution? Why do you wear the decollete? What is a hypocrite? Who do you describe as hypocrites? Are you the Mahdi? Do you think Adnan Oktar is the Mahdi? What do you think about Abdulhamid? Why did you not give birth to a child? Did you breastfeed your child? How do you apply birth control? Why did you take a photo in a bikini? Why did you take off your headscarf? Why did you start wearing a headscarf? Why didn't you vote in the presidential election?**". The principle of right to respect for private life and right to privacy are protected both in our Constitution and under Article 8 of the ECHR.

Article 8 of ECHR reads: *"Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

Article 20 of Turkish Constitution reads: *"Everyone has the right to demand respect for his/her private and family life. Privacy of private or family life shall not be violated."*

Article 24/3 reads: *"No one shall be compelled to worship, or to participate in religious rites and ceremonies, or to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions."*

Questions asked by the Presiding Judge, the prosecution and the attorneys of the intervening parties to the defendants, such as, "Why don't you have any children, is it normal for a married woman to dance, why do you not live with your spouse, how many times do you pray, why did you start to wear low-cut clothes when you were wearing a headscarf before, etc.," have violated the defendants' right to respect for private and family life guaranteed by Article 20 of our Constitution and Article 8 of the ECHR, and the freedom of religion and conscience guaranteed by Article 24 of our Constitution and Article 9 of the ECHR.

Likewise, some of the thoughts and opinion of some defendants about their religious beliefs and duties were subject to judgment in the videos shown by the attorneys of the intervening parties at the hearing. **All objections made by the defense counsels for not giving allowance to questions according to Article 201 of the Criminal Procedure Code (CPC) were rejected on the grounds that the questions were within the scope of the indictment.** The rejection of all the demands and objections of the defense on stereotypical and abstract grounds is a reason for reversal according to the Supreme Court case law. (Supreme Court 16th Criminal Chamber; 2015/4672 M, 2016/2330 K.) Since only acts that constitute a crime in the criminal proceedings can be judged, when the questions asked to the defendants are taken into consideration, the impression emerged that the thoughts and lifestyles of the defendants were judged, and the intent was an attempt to supposedly embarrass the defendants as they were seemingly acting with a culture of lynch.

ALTHOUGH SOME DEFENDANTS STATED THAT THEY WILL USE THE RIGHT OF SILENCE AGAINST THE QUESTIONS OF THE INTERVENING ATTORNEYS OF THE COMPLAINANTS, QUESTIONS WERE DIRECTED TO THEM INSISTENTLY AND THE DEFENDANTS WERE INSTIGATED

Although some of the defendants who were questioned before the court stated that they would not answer the questions of the attorneys of the intervening parties and that they would therefore exercise their right of temporary silence, the attorneys of the intervening parties were allowed to ask questions persistently and in a dominant manner, and all the objections of attorneys of the defendants in this regard were rejected insistently. **This situation constitutes an ill-treatment regulated in Article 148 of the Turkish Criminal Procedure Code (CPC) and is qualified as a procedure forbidden during the interview and interrogation.** It is stated in the CPC Article 148 that the statements taken as a result of misconduct, exhausting and falsification are considered as prohibited evidence and in accordance with Article 148/3, even if these statements are given with consent, they cannot be considered as evidence.

The right to silence is not only guaranteed by the ECHR and international conventions, but also protected by the Constitution and related legislation. Again, the Court of Appeal's case law has taken decisions that are in line with the Constitution and the CPC in general and protect the right to remain silent. The right to silence can be used both in the investigation and prosecution stages, due to its nature in terms of criminal law. In other words, it is possible to use the right to remain silent in all instances at the police station, the prosecutor's office and the court.

Freedom of expression of the defendant lies at the heart of this right. The suspect or the accused has a "legal" right not to make any explanation about the crime. The suspect or the accused, who uses his right to silence, is not deemed to have accepted the guilt, but continues to benefit from the presumption of innocence. The consequences of the presumption of innocence are that the burden of proof falls on the claimant, that the accused has the right to remain silent, that the defendant will benefit from suspicion (in dubio pro reo), that the reasonable period cannot be exceeded in detention, and that the evidence obtained by using prohibited interrogation methods cannot be used in the trial. *(Üzülmez İlhan, Presumption of Innocence in Turkish Law and Its Results TBB Magazine, Issue 58, 2005)*

However, taking one's statement by carrying out procedures such as to affect the use of a person's free will, to cripple this will, etc. violates the right to remain silent. In order for the statement, testimony and defense of the suspect or defendant to be credible and accurate, one's free and independent will is needed. However, such way of conduct, **any act, procedure or treatment that prevent a person from giving his/ her free expression are unreliable and cannot be used as evidence since it is obtained in a way contrary to human rights, and the honor and dignity of the person as per the legislation and universal rules.** *(Şahin Cumhur, Interrogation of the Accused by Law Enforcement, Yetkin Publications, Ankara)*

In the same way, the fact that the accused who uses his right to remain silent by stating that he will not answer the questions is asked questions insistently and in a dominant manner in a way that would put pressure on him/her and make him/her feel guilty and is forced to answer them is a clear violation of the right against self-incrimination and not to make incriminating statements against oneself which is regualted in Article 38/5 of our Constitution.

The attorneys of the intervening parties have directed questions apart from the subjects of the ongoing criminal case, and posed insulting and defamating questions made up of intentional words affronting the private lives and personal preferences of the defendants, and **as a result of these consecutive provocations, many defendants who wanted to use their right to silence**

were obliged to make statements. As a matter of fact, the Presiding Judge, being aware of this situation, often said to the defendants, "You say we will not answer, but you cannot stand it." The Presiding Judge of the court even allowed the same questions to be asked repeatedly to the defendants who stated that they would exercise their right to remain silent against questions unrelated to the case. Below are a few examples of all these, which are also reflected in the hearing minutes.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: Dear Presiding Judge, he said that he will not answer. We can ask the defendant whether he has exercised his right to remain silent, I am Att. Eşref Nuri Yakışan, the attorney of defendant Mehmet Noyan Orcan. If he is using his right to silence, there is no longer any point in asking questions at this stage. Because on the basis of questions…

PRESIDING JUDGE: Are you the attorney to the defendant? The counsel is already here and he said this.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: Dear Presiding Judge, within the scope of 220/5, Berkay Kayabay's…

PRESIDING JUDGE: You can tell this when you are allowed to speak, when you are asked, that is, when I ask the lawyers if they have any questions.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: I have a word to say about the procedure.

PRESIDING JUDGE: The defendant's attorney, the defendant's lawyer has already stated his opinion. Yes.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: May I finish, Mr. Presiding Judge.

PRESIDING JUDGE: No.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: That is...

PRESIDING JUDGE: Don't go on, don't go on. Turn off [the microphone], end his right to speak, yes. The defendant's attorney has already spoken. We have received the statement of the defendant's counsel. Yes, now you should stop Mr. Lawyer. Okay yes. If it is in that scope, go ahead.

ATT. SERKAN TEMEL, THE ATTORNEY OF DEFENDANT ALKAS ÇAKMAK AND SOME OTHER DEFENDANTS: Yes, in that scope. I am Serkan Temel, the attorney of Alkas Çakmak and some of the defendants. Mr. Presiding Judge, we have been saying this for a long time. My colleagues, the attorneys of the complainants persistently violate this. They ask questions about private life or questions that do not concern the file. My client's age or with whom he lives and how he lives are not relevant.

PRESIDING JUDGE: Okay, you object to whether this question should be asked or not, we will evaluate it.

ATT. SERKAN TEMEL, THE ATTORNEY OF DEFENDANT ALKAS ÇAKMAK AND SOME OTHER DEFENDANTS: Yes, I object. I will say one more point, Mr. Presiding Judge, please. Now, you are saying that the trial order is broken because you did not give us a word to speak when we intervened. You are right. But we would appreciate if you intervene before we intervene. This is our request.

PRESIDING JUDGE: Okay, okay. Okay, so the request has been received. Yes, do you want to answer all the questions that will be asked from now on? Do you want to answer all the questions?

DEFENDANT BERKAY KAYABAY IN HIS DEFENSE: Sir, I have told this at the beginning, I do not want to answer the questions because we have seen their content, yes.

PRESIDING JUDGE: Then, you say, 'I will not answer the questions asked by the attorneys of the complainants', right?

DEFENDANT BERKAY KAYABAY IN HIS DEFENSE: Yes, but I do not respond, because that is definitely an unrelated question.

PRESIDING JUDGE: Well, in this context, the defendant said that he will not answer the questions.

DEFENDANT BERKAY KAYABAY IN HIS DEFENSE: No, I don't want to, I don't want to answer. Completely. I will not.

PRESIDING JUDGE: Yes, please ask your question within the scope of the right to ask questions directly, and he will not answer.

As can be seen, although both the attorneys of the defendants and the defendant Berkay Kayabay stated that the questions posed were unrelated to the case and that he would therefore exercise his right to temporary silence, **the court board continued to turn off the defense counsels' microphones and allowed those questions to be asked despite all these objections and requests.**

ATT. İBRAHİM ALPER CAN, THE ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge, we will also have a procedural objection and a reminder. As you can see, some of the defendants are using their right to silence. Notifying that they will not answer the questions of the attorneys of the complainants. In other words, they are using their rights, which we call the right of temporary silence. But still questions are asked insistently, and we request you to intervene in this situation caused by the complainants' attorneys. As a matter of fact, asking a question to a suspect or an accused person who uses his right to remain silent, even temporarily, is clearly contrary to the principle of fair trial and the principle of honest treatment, which is regulated in Article 6 of the European Convention on Human Rights. In other words, if the defendant exercised his right to remain silent in this way or somehow, the process of interrogation and questioning should be stopped immediately and any treatment that could change the opinion of the defendant should be avoided. There are many regulations and decisions made in this regard both in our domestic law and in international law. We demand that necessary action be taken in this regard.

PRESIDING JUDGE: Okay, you can sit in your place right now, thank you.

Despite the insistent questions asked during the statement of the defendant Ayşe Pınar Akkaş, her defense counsel Av. İbrahim Alper Can took the floor and stated that this situation was contrary to Article 6 of the ECHR and the principle of fair dealing. However, the court did not consider this request.

ATT. İBRAHİM TOKAN, THE ATTORNEY OF SOME DEFENDANTS: Dear Presiding Judge, I will not ask a question but will be making a request regarding the procedure, I have already made a claim in the morning with my colleague.

PRESIDING JUDGE: No, we will come to that in a second. Did anyone have another question? Yes, you may proceed Mr. Attorney.

ATT. İBRAHİM TOKAN, THE ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge, as it is well known, the right to silence is a constitutional right. And it is an extension of the right not to self-incriminate. At this point, my request is as follows. Although the defendants use their right to silence, you allow the attorneys of the complainants here to persistently ask questions. In our opinion, this constitutes maltreatment. At this point, I want to state the following. As it is known, the defendants have the right to silence before the questions directed by the attorneys of complainants, defense counsels or your questions. For example, when you ask questions, once the defendants declare that they use their right to remain silent, then you do not persistently repeat these questions. But when asked by the attorneys of the complainants, these questions are renewed for reasons we don't understand. Likewise, when the defendant or the suspect uses his / her right to remain silent at the police security, I assume that the police officers will not ask these questions persistently. Moreover, in consideration of this fact, the order of the hearing is distorted, this should have attracted attention. Because the attorneys of the complainants are asking questions, while in return the defendant does not answer. Different questions are understood differently. There is a reaction to this from the defendants' lawyers. Therefore, I would like to point out that there may be a possibility that the defendants have contradictions in their statements. In fact, we all know that the accused has a right to lie. For that reason, at this point, if the attorneys of the complainants have detected a contradiction, they can report the contradictions in the defense of the defendants in writing or verbally to your court at a later stage. Based on all these, we demand that no questions should be taken from the attorneys of the complainants in terms of the defendants who use the right to silence.

PRESIDING JUDGE: Okay. Do you have the same request, Mr. Attorney? Oh, give the Lawyer the right to speak. Just press the button.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge, now I was going to say something similar to my colleague, but I will say it a little differently. Now, due to the physical structure of the courtroom, none of us have a screen in front of us. The statements of the defendants are recorded with audio and video and we cannot see them either. In particular, the attorneys of the complainants ask questions to the defendants who say they will remain because you said so in your inquiry. But there are definitely those I can detect, but I cannot prove it. They ask questions as if the defendants said things that they have definitely not stated. You must absolutely intervene in this matter, but because you do not intervene, we have to object. You deny that the objection and say that the

question is related to the indictment. We are at an impasse, too. I have a request regarding this. In fact, we cannot even see exactly what the defendant said during his query from start to finish.

PRESIDING JUDGE: It is understood, and the request has been received.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: Okay, Mr. Presiding Judge.

PRESIDING JUDGE: In response to the requests of defendant Ülviye Didem Ürer's Att. Ibrahim Tokan and of some of the defendants' Att. Serkan Temel, in accordance with Article 201 of the Criminal Procedure Code numbered 5271, the questions were asked within the scope of the right to ask direct questions of the attorneys of the complainants in the hearing, and the defendants were reminded that they may not answer these questions within the framework of their right to silence, and based on the use of this right, the requests are rejected. Now, you can go back to your place, thank you.

While receiving the statement of the defendant Ebru Fişek, some of the defendants' attorneys, Att. İbrahim Tokan and Att. Serkan Temel, declared that the panel of judges **discriminated between the complainants and the defendants, did not allow the defendants to exercise their right to temporary silence, and that the attorneys of the complainants asked questions pretending as if the defendants had spoken certain words which in fact were not uttered by defendants at all**, and demanded that all these unlawfulnesses should not be allowed. However, the PRESIDING JUDGE decided to dismiss the requests without a break without negotiating with the other member judges in the panel.

ATT. İBRAHİM ALPERCAN, THE ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge the defendant uses his right to remain silent, the right to temporary silence, but questions are asked one after another. Knowing that the defendant will not answer, asking questions over and over, is a mistreatment. At the same time, it creates perception and orientation that can lead to the impartiality of the court. We demand that questions are not asked one after the other.

PRESIDING JUDGE: This issue has been decided before. There is no inconvenience in asking. You don't answer, okay. Any other question?

Speaking during the statement of the defendant Elif Kıral, Att. İbrahim Alper Can stated that the attorney of the complainants raised questions one after another, knowing that the defendant who exercised her right to temporary silence would not answer, and demanded that this situation should not be allowed. However, the panel of judges denied this request.

ATT. İBRAHİM TOKAN, THE ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge, I am making this request because it has been a little more obvious in the last 2 hours. Even though the defendants have exercised their right to remain silent, asking the questions one after the other, even they have declared themselves, and you have even said. They respond by saying, 'I cannot stand it, and therefore I have to answer', and so on. As you know, the right to silence is a right protected both in the constitutional level and in the international convention. We think that questioning the defendants who use the right to silence in this

way consitutes (** ?? 01:23:59) and we demand that the practice be abandoned. Secondly, I made a statement and request on this issue last week. As you know, there are colleagues who come to the hearing from outside of the city, and as lawyers, defense counsels, we have other files and court hearings. Therefore, at this point, we think that if you inform us about the execution of the hearing, whether it will be postponed or not, then we will have a more clear perception and perform our duty better.

PRESIDING JUDGE: Yes, another one, here you are Ms Attorney.

ATT. SİNEM MOLLAHASANOĞLU, THE ATTORNEY OF SOME DEFENDANTS: There are decisions regarding the allegations of the enforced detention of Koçak siblings and Tuğba Bozkurt, which were mentioned in the questions of the attorneys of the complainants, that there is no need for prosecution. At the same time in relation to the statement made by client Adnan Oktar in response thereto the Head of Religious Affairs, number of the Religious Affairs staff and citizens have carried out complaints in Turkey's various regions. Since the statement made by the client was based on objective facts and had no instigation to defamation, humiliation or violence, the announced decision was of non-prosecution. This again, such issues should not be a subject of retrial, we demand that these questions are not asked. We also present the relevant decisions.

Speaking during the statement of the defendant Esin Daban, Att. İbrahim Tokan and Att. Sinem Mollahasanoğlu stated that insistent questions were asked to the defendants who wanted to exercise their right to temporary silence and that these questions were related to the issues for which the decision of non-prosecution was made before and they demanded that this situation should not be allowed. However, the court did not accept these requests.

ATT. İBRAHİM TOKAN, THE ATTORNEY OF SOME DEFENDANTS: İbrahim Tokan, I am the lawyer of some of the defendants. Dear Presiding Judge, we have repeatedly objected in regard to the condition of defendants using the right to silence, but I want to reiterate our objection. Although the accused has exercised his right of temporary silence, the attorneys of the complainants are allowed to ask questions one after the other and the defendant is insulted, provoked and forced to answer this way. This is abolishing the right to remain silent. We request a new decision from your court on this matter.

PRESIDING JUDGE: Yes. Since this issue has been decided before, it is decided that there is no room for a decision. Yes, you may go on Ms Attorney.

DEFENDANT GÜLŞAH GÜÇYETMEZ: I did not make these posts, Sir.

PRESIDING JUDGE: Well, there is an objection to the question. Let's get it. Mr. Lawyer.

ATT. İBRAHİM ALPER CAN, THE ATTORNEY OF DEFENDANT GÜLŞAH GÜÇYETMEZ: As you can see, Mr. Presiding Judge, my client is using her right of temporary silence. But questions are asked insistently by the attorneys involved. In other words, when we look at the content of the questions, we see that these have insulting and humiliating nature. Questions are also directed about people who are not one of the parties in this casefile, so these constitute an offense of libel at least for those ones. We are of the opinion that it is

maltreatment. At the same time, the client's not responding to questions does not mean that she admits. For this reason, I demand from you to intervene in these insistent questions to the accused who uses her right to remain silent.

PRESIDING JUDGE: Okay. As per Article 271 of the Criminal Procedure Code number 5271, the attorney of the complainants has the right to ask direct questions within the scope of the right to ask questions. In addition, when there is an insulting or humiliating question, the PRESIDING JUDGE intervenes and gives the necessary warning. Yes, here you are. No wait, then. Yes, please go ahead, Ms Lawyer. Any other questions?

ATT. İBRAHİM ALPER CAN, THE ATTORNEY OF NURŞAH AKSOY: Sir, our request is as follows: My client uses her right to silence. We call this the temporary right to remain silent. But despite this, questions come repeatedly by the participating attorneys of the complainants. I request you to intervene in this situation. Because asking questions one after the other should be regarded as ill-treatment to the accused who uses her right to silence. There are also doctrines on this subject. We also submitted them to the file between the sessions. In other words, other defendants will also make their defense. Please, this is our kind request. If we aim to reveal the material truth and to have a fair trial, I request that you do interfere with the insistently asked questions directed with remarks and insulting content, expecially to create percetion to the defendants who exercise their right of temporary silence.

PRESIDING JUDGE: This issue is already being evaluated within the scope of the objection. Any other questions? Yes, Ms Attorney, please.

ATT. ANDAÇ MARAŞLIOĞLU, THE ATTORNEY OF SOME PARTICIPANTS: Sir, if we give the images to the defendant, we will ask questions about them, their shares.

PRESIDING JUDGE: There is an objection to the question.

ATT. AYNUR TUNCEL YAZGAN, THE ATTORNEY OF SOME DEFENDANTS: According to CPC (Criminal Procedure Code), displaying images in the courtroom is an in-trial exploration. We are not yet at the stage of substituting evidence. In fact, at a hearing I attended, Ümit Kocasakal came and said that first the listening is completed, then questions are asked after listening, he said these are two separate things. It is correct. But since our CPC is organized for one or two defendants, such a de facto situation happens because this is not foreseen. I understand you, too. After you listen, you ask questions. You even make it very interactive. When I look at it, I see that you speak as much as the defendant. It's getting interactive. It's like chatting. You ask the question you want and get the answer. Now, once, my respectable colleagues cannot ask my client about the crimes in which the persons they provided legal aid were harmed, because only legal aid was attributed to my client. They cannot ask either as a suspect. They can ask questions as witnesses, but then, according to Article 48, my client already has the right to remain silent as you said. But here it is called an image. The evidence substitution has not yet been reached. I saw it in this case. You did it at the Gezi trial, too. I am in awe. So if the query is finished, the query is not actually the query. It is defense, it is listening. Then the questions should follow. Now here questions are constantly being asked without listening. So this is in fact an interrogation. Like a police interrogation. I pass this. Now my Respectable Colleague says he will display an image.

Since there is a dialectical judgment here, my dear colleague, since we have to adhere to the principle of collectivity of the judgment, has he submitted a sample of this beforehand? Have I seen it? Have I studied? Where did this come from? Is it legal? Is it related to the criminal charge? I don't know about these. Is there such a reasoning, Mr. Presiding Judge. Where's the contradiction?

PRESIDING JUDGE: Yes, understood. Do not ask questions to the court. Your request, your objection to the question has been received. OK. We got your objection to the question, Ms Attorney.

ATT. AYNUR TUNCEL YAZGAN, THE ATTORNEY OF SOME DEFENDANTS: Therefore, for such reasons... I do not ask questions Sir. I explain the reasons for my objection. There is a wrong implementation here. Something that my client and I had not seen before is actually substituted for evidence here. I object to it being shown. It is not relevant to the indictment. It is excluded from the indictment. In accordance with CPC 225, we are bound by the act and the perpetrator, by indictment. An act other than the indictment cannot be attributed. No questions can be asked to my client. Thank you.

PRESIDING JUDGE: OK, your request has been received. It has been taken. Yes. Since it is within the scope of the allegations of membership to a criminal organization, there is no harm in asking these questions. To the defendant ... Show it to the defendant. The posts. Yes.

ATT. ENES AKBAŞ, THE ATTORNEY OF SOME DEFENDANTS: Okay. As a second request, I have the following demand, Mr. Presiding Judge, I believe that your court is making a wrong practice, which is that the defendant here does not want to answer the questions of the attorneys of the complainants. In other words, the right to temporary silence is used here, and while the right to remain silent is currently being used, the attorneys of the complainants here are asking questions one after another which transforms the defendant’s psychology into a form that makes the him / her guilty. And they are already using the right to remain silent and the attorneys continue to ask questions. In this respect, we believe that this practice is against law according to Article 38 of the Constitution and 48 of the CPC (Criminal Procedure Code). Besides, if your court will continue this practice, as you allow them to ask questions, in return you should allow us to appeal to these questions, and grant us this right because those are recorded in the minutes. As a third request, I have to say that, yesterday, at the end of the session, I could not take a word because the session ended immediately. You made a decision to continue the detention period. There is a close cooperation in the criminal procedure in the prosecution phase, and, as defense counsels, we are the subject of this cooperation in this trial. Here you are allowing the prosecutor, but you do not give us the right to speak as per the principle of equality of arms. In a case that is currently being heard, the review of detention or a decision for the continuation of the detenaion cannot be made without allowing the defense counsels to speak. If there is an intermission between the sessions, then prosecutor's opinion was received that way yesterday and we have nothing to say this. But there is already an ongoing hearing , the trial is continuing, so in that regard, you are allowing the prosecutor to speak, but not permitting the attorneys of the defendants to

speak. For that reason, we think that this decision is against the law, these are our demands. We will appreciate if your panel considers these points.

It is possible to increase these examples. However, as can be clearly seen from some of the examples above, **the intervening party tried to insult the defendants with questions unrelated to the case, yet they provoked the defendants who wanted to use their right to silence with insistent questions and forced them to answer by force. Despite all the objections and demands, the court board allowed this situation and violated the right of the defendants to a fair trial.** These statements made by the defendants under pressure and coercion cannot be evaluated as evidence in accordance with Article 148/3 of the Criminal Procedure Code (CPC).

DEFENDANTS WERE NOT ALLOWED TO MAKE STATEMENTS IN THEIR DEFENSES AND INTERROGATED IN A QUESTION – ANSWER SESSION WHILE THE DEFENSE COUNSEL WAS PREVENTED FROM PROVIDING ASSISTANCE

Asking questions from different parts of the indictment and on different issues, **without allowing the defendants to comply with the order and narrative sequence they had determined for their defense, the panel of judges disrupted the coherence of the defendants' defenses** and thus, the majority of the defendants who were under psychological tension because they appeared in a court for the first time in their life were prevented from making their defense in the way they intended.

Many defendants addressed the presiding judge saying that they had a sequence and an order of logic for their defense and therefore wanted to respond to the allegations against them in integrity, and could answer all the questions of the court board after their statements were completed. Despite this demand made by the defendants to follow a certain procedure, **these requests were rejected by the presiding judge and the interrogation at court was transformed into questions and answers, and the defendants were not given the necessary opportunity to defend themselves and make their statements.**

This practice prevented the defendants, who were detained for 15 months, from making statements about the charges against them in front of the court where they were brought for the first time and thus clearly restricted their right to defense.

On the other hand, during the interrogation of the defendants, they were not allowed to benefit from the help of their counsels, and the attorneys to remind the defendants of their rights, on the grounds that there is a principle in the form of "indivisibility of interrogation", **which is not in the** Criminal Procedure Code and the doctrine. However, according to Article 149/3 of the CPC, *"During the investigation or prosecution for crimes that carry a punishment of imprisonment at the lower level of more than five years, the provision of subparagraph two shall be applied."*

As can be understood from the clear wording of the provision, it is an absolute right for the accused to benefit from the assistance of the defense counsel at all stages of the investigation and prosecution, including the interrogation, and the violation of this right is a clear violation of the right to defense and the Right to Fair Trial regulated in Article 6 of the ECHR.

AUDIO RECORDINGS OBTAINED IN UNLAWFUL METHODS AND LISTENED TO DURING THE TRIAL BY INTERVENING ATTORNEYS OF COMPLAINANTS ARE IN VIOLATION OF ARTICLES 134, 135 AND 140 OF CPC (CRIMINAL PROCEDURE CODE)

During the interrogation of some of the defendants, **scheduled audio recordings,** which were claimed to belong to some of the defendants **but were obviously obtained by secret recording methods as claimed by some complainants, were listened to by their attorneys and questions were asked to the defendants through these recordings.** The objections that **these recordings were obtained unlawfully**, so that they should not be listened to at court and no questions should be allowed based on these recordings were rejected on the grounds that "the questions are covered by the indictment" on a stereotypical and abstract ground.

According to Article 206 of the Criminal Procedure Code under the title of presentation of evidence and its rejection, considering that the evidence will be denied if it has been obtained unlawfully, the audio recordings obtained by the secret recording method are against the law and **this method constitutes a crime**. **However, the hearing of such audio recordings at court based on the court's stereotypical explanation that these are within the scope of the indictment, therefore the acceptance of the court, and directing questions to defendants on these recordings are against the law.**

In addition, the defendants have stated that these audio recordings did not belong to them. Nevertheless, the evaluation of such audio recordings obtained through unlawful means as negative evidence constitutes a violation of Article 38 of our Constitution, which includes the provision that the findings obtained illegally cannot be accepted as evidence.

Again, within the scope of the file, intense and dominant questions were asked by the attorneys of the complainants based on materials that were obtained by methods contrary to Articles 134 and 135 of the CPC and that bear no value of evidence. Although the defendants and their attorneys stated each time that these were unlawful and therefore would not be responded, **the court board allowed questions to be asked to the defendants despite all objections without taking a decision on the legality of these materials. Just a few examples of this issue, of which there are hundreds of examples in the hearing minutes, are as follows:**

> **PRESIDING JUDGE:** There is an objection to the question. Go on.
>
> **ATT. BURAK TEMİZ, THE ATTORNEY OF SOME DEFENDANTS:** Burak Temiz, the attorney of some of the defendants. Mr. Presiding Judge, we request that this question is not asked as digital materials are not duly obtained.
>
> **PRESIDING JUDGE:** Yes, since it is covered by the allegations in the indictment, there is no harm in asking. Do you answer? You don't. Fine.

> **ATT. ESER ÇÖMLEKÇİOĞLU, THE ATTORNEY OF SOME COMPLAINANTS:** There is a note seized from digital materials. In the form of siblings who do not have a debt situation, and whose family is also wealthy and we can ensure that they remain with us from their spouse status if inherited; Ufuk Saral had a normal credit card debt of 8500 Lira and a note was obtained including Ataköy Fatih, Murat Develi, Lorke Salih, Oben, Cenk, Pasha Mustafa, Ediz, Emre Çalıkoğlu. Your mother, your father, as far as I understand, are alive as you

indicated in your statement. Have you received such requests or instructions from the group to marry someone in this way?

PRESIDING JUDGE: There is an objection to the question. Go on.

ATT. ŞULE AKYOL, THE ATTORNEY OF DEFENDANT EDİZ ÇALIKOĞLU: Mr. Presiding Judge, the legal validity of it is controversial, and we do not consent to asking questions by directing my client on the basis of a document whose legal validity is controversial, and which is allegedly a digital material that was not proven to belong by my client. Thank you.

PRESIDING JUDGE: Okay. As it is within the scope of being a member of a criminal organization, there was nothing wrong in asking. Go on.

ATT. ANDAÇ MARAŞLIOĞLU, THE ATTORNEY OF SOME COMPLAINANTS: In the recording you listened to, Adnan Oktar calls out to women saying, don't give me advice, stop being stupid and stop being foolish. Have you witnessed such a speech by Adnan Oktar?

PRESIDING JUDGE: There is an objection to the question, yes.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge, it is not clear where the sound recording was obtained from and the methods that were used to obtain it. There has been no discussion on the evidence yet for the casefile. For this reason, it is not clear whether that constitutes the value of being evidence. It is also unclear whether the recorded voice recording belongs to Adnan Oktar, or not. In this sense, we object to the question and we want it not to be directed.

PRESIDING JUDGE: There is no harm seen as it is within the scope of the claim in the indictment. There is nothing wrong in asking the defendants because that is considered to be a voice recording submitted to the file by the complainants. Will you answer that now?

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: My dear Presiding Judge, they do this especially, they are doing this to make it appear as news in the press and the reality…

PRESIDING JUDGE: For news in the press?

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: Yes, this has appeared as news in the press, and indeed, this issue is especially brought to the agenda and issues that are incompatible with any concrete reality are asked about it. And like the merging of three Supreme Court decisions, they prepare a video in their own right, it is not clear where the content of the video was received from, it is not clear who prepared such a video. They make a statement, put pictures behind the statement. As if Mr. Adnan was referring to the people in those photographs, they say there is, sketching with cuts and fragments. Therefore, we demand this not to be asked.

PRESIDING JUDGE: Okay. As it is within the scope of the smear activity, there is no harm in asking. Are you going to answer?

QUESTION WAS ASKED ABOUT EVIDENCE BROUGHT IN THE FILE RIGHT BEFORE THE INQUIRY OF THE DEFENDERS AND THERE WAS NO OPPORTUNITY FOR EXAMINATION

Digital material examination reports and some other evidence prepared about some of the defendants were entered into the file just before the interrogation of the defendant *(For example; Oğuzhan Sevinç, Berkay Kayabay),* and the defendants and their attorneys were questioned on these evidence without having the opportunity to examine these evidences. The rejection of the requests of the defendants and their attorneys for making a declaration after examining such evidence is contrary to the principle of fair dealing, and this situation is a clear violation of Article 6/3-b of the ECHR. **This method, which can be qualified as a dominant query, is also against the Article 148/1 of CPC (Criminal Procedure Code).**

COMPLAINANTS, WITNESSES AND THOSE DEFENDANTS BENEFITING FROM LAW ON EFFECTIVE REMORSE WERE HEARD WITHOUT PRESENCE OF DEFENDANTS

The court ruled with its interim decision dated February 25, 2020 that the defendants who benefit from law on effective remorse, and with an interim decision dated June 23, 2020 that the complainants and witnesses, give their statements at court in accordance with Article 236's directive and Article 200/1 of the CPC, in the absence of the defendants without having them brought to the hearing. Despite all the objections made against this, the panel of judges did not return from the aforementioned decision and completed all the statement procedures in the absence of the defendants. **ALSO DESPITE ALL THE REQUESTS AND PROCEDURAL OBJECTIONS, THE MINUTES OF THESE STATEMENTS WERE NOT READ, THE CONTENT WERE NOT EXPLAINED TO THE DEFENDANTS AND THE DEFENDANTS WERE NOT GIVEN ANY RIGHT TO SPEAK IN THIS REGARD. IN THIS SENSE, THE ARTICLE 200 OF THE CRIMINAL PROCEDURE CODE HAS BEEN CLEARLY VIOLATED.**

The court board allegedly claimed that the so-called organization had a frightening power, and showed Att. Eser Çömlekçioğlu's complaint about Att. Eşref Nuri Yakışan and the alleged act of threat attributed to Kübra Kartal as the reasons for it. However, there was no concrete evidence from neither the defendants who benefit from the law on effective remorse nor complainants that they were frightened because of the mentioned acts, and even more, they had no claims in that regard. In fact, while giving their testimonies, including all of the defendants benefiting from the law on effective remorse, and some of the complainants gave their testimonies in the presence of Att. Eşref Nuri Yakışan in the courtroom. Despite this, the parties or Att. Eser Çömlekçioğlu raised no concerns, claims or objections that they felt a bit of a fear or slightest disturbance or the obstruction of their statements.

Accordingly, this decision, which is justified as the so-called "terrifying power of the organization," **violates all criminal law principles, especially the presumption of innocence; and in terms of the concrete situation, there is no case that would require bending the principle of "no trial if there is no suspect."** In this sense, the court decision established upon the request of the prosecution, which is in no way concretized, abstract and contradicts with the basic principles of criminal law, is a violation of many rights that come into existence under the right to a fair trial, especially the right to defense.

The so-called "frightening power of the organization", which is applied collectively in the logic of a wholesaler, is far from explaination or rational and legal grounds in terms of the complainant police officers such as Abdullah Karadaş, Cihat Onur Aykaç, or people like Adil Serdar Saçan, Mine Kırıkkanat, or people such as Özkan Mamati, Fırat Develioğlu, Aykut Ayna, Alper Ünek, Uğur Şahin et al. **These people had no statements, testimonies or claims that they were supposedly frightened or hesitant. ON THE CONTRARY, THEY OPENLY SAY THAT THEY ARE NOT FRIGHTENED OR DO NOT FEAR AT EVERY OPPORTUNITY.**

Even, no concretization has been made among the defendants. Even the defendants who were not accused of any specific act or sexual assault were kept away from the hearings. The practice of the panel of judges is also extremely wrong in this aspect.

In addition, pursuant to the decision taken in reference to Article 236 of the CPC, the court board acknowledged that they heard the injured, whose testimonies were taken, as witnesses at court. However, despite this, the panel of judges acted contrary to Article 52 of the CPC, which regulates the provisions regarding the hearing of witnesses.

In reference to Article 236 of the CPC, the court board did not hear these persons heard as "witnesses" separately. All the victims were in the hall at the same time. The court did not take the witnesses who did not testify out of the courtroom and conducted a clearly unregulated trial against the criminal procedure. As a matter of fact, at the hearing dated 05.08.2020, defense counsel of some of the defendants, Att. Although Eşref Nuri Yakışan, reminded this situation to the court, but his reminder was not taken into consideration by the court board.

> **ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS:** Dear Presiding Judge, in accordance to Article 200 of the CPC, you have ruled that the complainants be heard in the absence of the defendants. Since the quality of complainants here is being a witness, you have given this decision. Yet, it is regulated in Article 52 of the CPC that the witnesses should be heard separately, in a way not allowing one witness to hear another. As per the provisions of Article 52/1 in regard to being a witness, we request that the witnesses should be heard without the presence of other witnesses.

Another violation of the law occurred at the hearing dated 26.08.2020, where the arrest warrant was given for the defendant Ozan Süer. The defendant Ozan Süer was taken to the presence during the hearing held on August 26, 2020, which was held in a close session, in the the absence of the defendants, he was briefly given the right to speak and then hastily arrested.

On the other hand, **the case of exception stipulated in Article 200 of the CPC does not coincide with the concrete event**. So that, in the mentioned Article it is exactly stated; *"(1) If there is a fear that one of the accomplices of the accused or a witness would not tell the truth in presence of the accused, then the court may decide to exclude that particular accused from courtroom during the interrogation and hearing. (2) When the accused is brought in again, the records shall be read out and, if necessary, the content of the records shall be explained." statements are included."*

However, during the trial, these minutes were not read to the defendants, and there were statements made by the complainants that were still not communicated to the defendants at the time the casefile was sent to the opinion on the merits.

Accordingly, the concern that the person who is touted as the accomplice of the defendant will not tell the truth against the face of the accused should be stated with concrete reasons. **On the other hand, the fact that each of the more than two hundred defendants tried within the scope of the file was removed from the hearing during all the complainant statements reveals that no concrete and justified decision was made.**

Indeed, the statements of all the complainants do not concern all the defendants, and the prosecution and the Court must also explain and concretize for what reason the complainants are concerned to tell the truth before the presence of other defendants. However, the decision given by the court reveals that the principle of "no trial without defendant" is violated due to wholesale approach and with unsubstantiated reasonings.

In addition, the fact that this request, which is based on a reason that violates the presumption of innocence and has not been concretely justified, has been approved by the court for the reasons explained above, reveals the opinion of the court about the defendants and is suitable to be interpreted as comments reflecting bias.

We would like to point out that the court board is capable of maintaining the order of the trial and has the power to provide a fair trial environment for both the defendants, who benefit from effective remorse and the other defendants, as well as the complainants while they are being heard. It is an indispensable and fundamental demand that the court does not distort the rights of defense and fair trial in the face of a request, which is unrealistic and is not based on a substantiated reason. However, the court did not act like that.

Another dimension of the aforementioned decision given by the court is that the **right of the defendants to ask questions, which is stipulated in Article 201 of the CPC, was prohibited.** So much so that, in Article 201 of the Criminal Procedure Code it exactly reads; *"The public prosecutor, defense counsel or the lawyer who participates at the mean hearing as a representative may ask direct questions to the accused, to the intervening party, to the witnesses, to experts, and to other summoned individuals, adhering to the rules of discipline at the main hearing.* ***The accused and the intervening party may also direct questions with the help of the chief justice or judge.*** *If there is an objection against the directed questions, then the PRESIDING JUDGE renders a decision if the question may be asked or not. Related persons may re-ask questions, if necessary."* **It has been stated that the accused has the right to ask questions to the other defendant and the complainant through the Court**. Particularly, as in our file, in trials where the accusations are based on the statements of the parties about each other, the right to ask questions directly and the accused to ask questions to the other defendant is of great importance in order to reach the material truth.

So much so that people who are the protagonists of the alleged events and who have experienced the events themselves can ask questions with all the details; the answers given by the other person to these questions, and even the mood, gestures and mimics that he / she will enter in the meantime can give very important clues to the court seeking the material truth. These are the issues that will essentially constitute the final opinion of the court. This right, which was granted to the clients due to the fact that they were dismissed from the hearing, was also ignored and one of the most important judgment tools in reaching the material truth was rendered useless. Moreover, this decision does not rely on a solid legal basis, as explained above.

In the practice of the ECHR, the right to be present at the hearing for the defendant who is charged with a criminal allegation is accepted as a requirement of a fair trial. Considering Article 6 of the ECHR in its entirety, it must be accepted that the defendant has the right to attend the

hearings of the case in person for a fair trial. **Also in Article 6/3-c, d, it is clearly stated that the accused has the right to defend himself and to question or have the witnesses of the allegation questioned.**

The precondition for the exercise of these rights is the defendant's right to be present at the hearing in person. The ECHR (Barbera v. Spain, December 6, 1988) emphasized that the defendant's right to be present at the hearing could be restricted on reasonable grounds and without arbitrariness. In the aforementioned decision, the ECHR stated, *"Although the right of the defendant to be present at the hearing is not an absolute right, the necessary conditions must be fulfilled in order to limit these rights. It may be deemed appropriate to deviate from this right in case of disturbing the order of the hearing of the accused, intimidation of the witness, or hearing the witness whose identity is kept secret. The limitations on this matter should be to the extent required by the situation and not to cause arbitrariness."*

However, as explained above, **the reason for limitation in the present case is rather ambiguous, abstract and groundless. This means that the right to defense is arbitrarily limited.**

FURTHER, THE COURT DELEGATION DISCLAIMS NOT ONLY THE DEFENDANTS BUT ALSO THE DEFENSE COUNSELS TO ASK DIRECT INQUIRIES AND HAS THUS VIOLATED ARTICLE 201 OF THE CRIMINAL PROCEDURE CODE. As stated above, Article 201/1 of the CPC gives the right to direct questions to the defense lawyers, the accused, the witness and the expert. **However, the PRESIDING JUDGE was very harsh and aggressive in this regard and did not allow counsels to directly ask questions to injured ones and witnesses who testified.**

The objections made by the defense counsels, that their questions could not be interrupted was also not taken into account and the judgment continued to proceed with the same approach. In Article 192/2 of the CPC, it is stated that *"If one of the related parties objects on the grounds that the presiding judge's order related to a measure concerning the administration of the main hearing is legally inadmissible, the court issues a ruling upon this point."* However, the court continued the hearing, not taking a decision by the committee about the objections made in violation of the clear provisions of the law.

In addition to all of these, all of the statements of victims, complainants, witnesses and defendants who benefit from the law on effective remorse taken from the absence of the defendants are 2758 pages. Neither the defendants, nor their attorneys had the opportunity to examine these minutes, and **the necessary discussion was not made about them, and a final opinion was prepared which followed with receiving final defenses**. According to the established jurisprudence of the Supreme Court, it is considered a violation of the right to defense in accordance with Article 215 and Article 26 of the Criminal Procedure Code to ask the defendants questions about statements given by the complainants, witnesses and those defendants who benefit from law on effective remorse and to discuss them, while there is still evidence that has not yet been discussed, and to send the casefile to opinion on the merits right afterwards. It is obvious that all of these things are unfair, unlawful and distant to any rightfulness.

At the hearing dated February 25, 2020, when this decision, which restricts the defense rights of the defendants and the right to a fair trial and thus constitutes a reason for the reversal, was made, the defense counsel of the defendants made detailed objections, but the court board rejected all the requests. Some of the objections and demands made at the hearing on February 25, 2020 are as follows:

ATT. ŞULE AKYOL, THE ATTORNEY OF SOME DEFENDANTS: I am Att. Şule Akyol, the defense counsel of Mustafa Çalıkoğlu and Ediz Çalıkoğlu. Mr. Presiding Judge, first of all, this is a request that does not meet the procedural conditions in the CPC. I will ask for your patience for a few minutes. There is a point that is misled, which is that if the witness statement is a fundamental element in the trial and is the only and main evidence for the alleged act, the witness must be present at the hearing and questioned by the defendants and their counsel, as the Supreme Court has consistently stated in all its decisions. Here, a request was made for the defendants that benefit from effective remorse law and the injured ones. I think this is also based on the amendment introduced in the Law No. 7188 in October, but it is not possible for this to be within the scope of this file. It cannot be shown as a reason. First of all, when you examine the Law No. 7188, you will see that the first point is that this is possible for the victims whose psychology has been severely damaged as a result of the committed crime. When you look at the CFM (Council of Forensic Medicine) reports in the file, it is stated by the CFM that these girls are in a suitable state of legal resistance in terms of the alleged crime committed that they claim to be injured of, and that they do not have any mental damage as a result of the alleged crime. This is the first point notified as an opinion by the CFM.

The second point is, if you examine the joint evidence section on page 185 of the indictment in the file, the only evidence presented to us by the prosecution as a result of the 3-year investigation is witness statements in terms of sexual accusations, statements of the defendants who claim that they want to benefit from law on effective remorse and CFM reports. Apart from that, the task of concretizing the claim is the responsibility of the prosecution. Here, during their defense, the defendants were obliged to both embody the accusations against them and to answer these accusations. Therefore, in the joint evidence section of the indictment, the only evidence in the file in terms of sexual accusations is witness statements, and the alleged accusation is only based on what has been experienced between the defendants and the women who are claimed to be injured, which have not had any other witnesses. We, as the lawyers, are unlikely to know the content of these charges. This is the second point. Third, when the injured parties come here or the defendants who want to take advantage of effective remorse, there is a possibility to present a new evidence, to tell a new case.

We do not have the opportunity to intervene in these cases immediately. In opposition to the prosecution's request, I demand that my client be seated next to me while the defendants who want to benefit from effective repentance within the scope of Article 149 of the CPC and women who are allegedly the injured are listened to. Because when there is the possibility of introducing a new evidence, explaining a new case, and changing the legal nature of the act attributed to the defendant in the sense of CPC 225, it is unlikely that we, as advocates, will have the opportunity to affect this. The Article 6 of the ECHR is clear, the judgment must be face to face, direct. In addition, if the injured parties are heard without the defendants, etc., if your conscience opinion has not been formed yet, we have completed the interrogation phase, we are moving to the stage of discussing the evidence. The answers they will give to the evidence we will present here, the answers they will give to the questions you will ask based on the contradictions you see, the body language they will use, the

tone of voice they will use are essentially effective in the formation of your conscience opinion. If there is no statement other than the witness statements in a file, especially in a file with such heavy accusations, when the defendant's right to ask questions is denied against these statements, the judgment given is the cause of absolute reversal. I will beg your patience for a few more minutes. The Court of Cassation and the European Court of Human Rights have not considered the open hearing at court a reason of reversal when it should have been held in a closed session, because it is not possible to compensate. However, it is considered an absolute cause of reversal when the hearing is held in a closed session while it should have been made as an open hearing, due to the fact that damage is compensable and the defense is not performed effectively within the scope of CPC 286. Mr. Presiding Judge spoke of the claim of frightening power. Prosecution and my colleagues here relied on two things when the defendants made their defense. The first is the truth in what they tell, the second is the just procedure your court applies. We are now recommending the same thing to them. Let them trust two things, the truthfulness and sincerity in what they tell and the way your court proceeds. If they think that they will have any difficulties with the questions asked to them by the defense counsel here, on behalf of my colleagues, I can say that we will never resort to presenting any evidence that is not directly related to the file, that does not serve to enlighten the material event, and that can interfere with their dignity or personal preferences. Let them do what we do. Let them trust in the truth of what they are telling, let them trust your judgment. You are the guarantees, not us. Let them come here and give their testimonies. This request that does not meet the conditions specified in the CPC must be strictly rejected. In case of a penalty against the accused, this is the absolute reason for the reversal by the Supreme Court. Otherwise, an acquittal verdict should be given. Well, if the verdict of acquittal is to be given, why do we insist so much on the open hearing. Because here we think our clients are slandered. We do not want an acquittal due to insufficient evidence. Mr. Presiding Judge, this decision should definitely be rejected for the sake of our clients' reputation and respectability in the society, in order for the prosecution that violated the right against self-incrimination to recover the defendants' right against self-incrimination, in terms of the formation of data that can legally be questioned for its legal account in context of the libel we suffered as a result of the trial. Thank you.

Att. Şule Akyol, the attorney of some of the defendants reminded that the findings of the forensic medicine reports showed that the complainants possess the capacity to resist acts they are exposed to and **stated that the presence of the defendants at the hearings would be fair, as there was no concrete evidence that the complainants were frightened, otherwise the situation would be an absolute cause of reversal.**

ATT. EZEL ENGIN, ATTORNEY OF SOME OF THE DEFENDANTS: I am the defense counsel of Onur Batu Yıldız and Nuri Özbudak's, Mr. Presiding Judge, as stated by my colleague, the reason for the introduction of this provision in Law No. 7188 is clearly stated. It was a work that was already being prepared, as there is a possibility that people who have been sexually assaulted will experience trauma at a time if they face the perpetrators of this attack. Making this law was an issue that has been debated for many years. Although I am

already in support of this, the content of this file is completely different. Until now, there are no complainants or defendants benefiting from law on effective remorse who could show any concrete evidence that they were sexually assaulted by anyone here. You know that there is no such forensic report. In some of the reports, it has been found that people who claim to have been assaulted anally and orally even had sexual intercourse in a normal way. As required by CPC 216 and 217, the fact that the evidence is collective is clearly stated, that no evidence that is not discussed before can be taken as a basis for the verdict. The issues told by the complainants and defendants who benefit from effective remorse are not one-off. Each file should be evaluated on its own. In any sexual crime file, you may decide once that person describes the incident that he / she committed, but in this file there are people who say that they were subjected to these acts for 5 years 10 years 15 years. I do not know what my client has done or not, what he lived and how much he was acquainted with these persons. It is not possible. It is even necessary to say that there are ones who say that they were under the age of 18. So, these questions should be asked and confrontation should be made at the point of determining the dates they met with our clients. The evidence is direct and the most important principle of the criminal law is the principle of immediateness. If we cannot listen to these people here, it is not even possible to enlighten this file in terms of sexual crimes. Here we need to compare the benefit we want to provide with the potential damage and put it on a balance. As a matter of fact, we have already stated what the purpose of this Law No. 7188 is. My Presiding Judge, I examine the Twitter accounts of the complainants from time to time. It was argued that they should not experience a trauma, they should not fear. They are really not afraid at all. You can check it out too. In social media accounts of complainants, they all write the same thing. They say, "We will come there, they claim that we testified because we are worried. We have no concern. We will come there and tell everything very comfortably. We want to tell them in person." When there are complainants who say these words, it is obvious that the relevant article of the law does not cover our situation, we request the rejection of the prosecution’s demand on this.

ATT. SAMET TOPÇU, ATTORNEY OF SOME OF THE DEFENDANTS: I am the defense counsel of Kartal Iş and some other defendants, Sir, it is not possible to agree with the statement of the Prosecutor. First of all, this request is made with a very fictitious and abstract reason. There is an allegation that the organization has frightening power, but as of the stage we have come, there is no judicial decision stating that the persons on trial are members of a criminal organization or that there is a criminal organization at all. Therefore, based on the claim of a frightening power, which is only fictitious and abstract, the decision that statements of the complainants should not be given in the presence of defendants is not an acceptable justification. Why not, because complainants have no privilege in this trial. The complainants have made their own allegations. They have claimed that they have been injured. There are about 200 people who are being tried on these allegations. You are the party to evaluate whether these people actually committed these allegations. Therefore, if the privileges are granted to the beneficiaries, we think that if their statements are not taken in the presence of the defendants, the principle of face-to-face, the principle of straightforwardness, which should be in a fair trial in this hearing, will be damaged. Again,

as our colleagues have said, the people who actually experienced these events one-on-one, more precisely, the alleged ones are the defendants.

It is not possible for us to be aware of the experiences of the defendants directly or with all the details. Moreover, if the claimants are worried about what they said, and these are slanders, you can form your opinion only if they are in the same setting with the defendants and testify in this way. Otherwise, the statements of the complainants that they give without the presence of the defendants will not go beyond the statements they give in writing at the police station or at the Prosecutor's Office. Therefore, we request you to ensure that the principle of face-to-face, which is a very important issue in terms of revealing the material reality, is ensured in this trial. Therefore, taking into account that there is no other evidence regarding the allegations in question, we demand that the Prosecutor's request be rejected, which is abstract and not based on any logical justification, and that the complainants and the defendants who benefit from the law on effective remorse be heard before both the defendants and us together. Only, in this way, in terms of Article 201 of CPC, both our right to ask questions directly and the right of the defendants to ask questions to the complainants as well as the defendants who benefit from law on effective remorse will be used. Material truth can only be reached in this way. The defendants tried in this file, my clients do not have any difficulties in terms of being judged. Of course, they also want to be judged. Because they have been slandered, and only by giving them the right to acquit themselves, which means only by means of a correct and fair trial, they may use their right to acquittal. This can only be achieved in this way, so yes, to be tried, but it is our request that this is done in accordance with the CPC and the principles of fair trial which is a universally accepted rule.

ATT. ESREF NURİ YAKISAN, ATTORNEY OF SOME OF THE DEFENDANTS: I am the defense counsel of Mehmet Noyan Orcan. Mr. Presiding Judge, first of all, he [the Public Prosecutor] just gave an opinion. We do not agree with this opinion, but the opinion has been given incompletely. We want the opinion to be explained. Let me explain, our Public Prosecutor should clarify which defendants will stay in the courtroom while which defendants will be heard, and which defendants will remain in the courtroom on which and whose grounds, and while the defendants who benefit from the law on effective remorse are in the courtroom, which other ones will be heard, and will the others be in the courtroom at the same time? If he could give his opinion by giving details on these aspects, then we would like to speak If you decide on this matter, I would like to continue with my word.

PRESIDING JUDGE: No, go ahead with your words.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME OF THE DEFENDANTS: Right, Mr. Presiding Judge, in Article 33 of the CPC, it is stated that the decision will be made after the Public Prosecutor, the attorney present at the hearing, the client and other concerned parties have been heard. As to Article 33 of the CPC, the defendants who are in attendance should be given the right to speak separately and their opinions should be taken and their views should be asked for.

After reminding this procedure, there are some issues reflected in the minutes of the hearing, Mr. Presiding Judge. Here are the issues reflected in the minutes of the hearing; "While the trial was going on, some of the complainants as well as the injured parties and

also the defendants who benefited from the law on effective remorse participated in the hearing. For this reason, while they were here, they came here to watch the hearing with their own will, and here they laughed. It was reflected in some of the minutes of the hearing, and it does not seem lawful to me, to speak about the measures for their protection here, despite their insulting expressions to the defendants and certain moves with their body language. So, I would like to draw attention to this aspect in the decision making, that this aspect should be taken into account while making the decision. This should be found in the minutes of the hearing. And the point that attracts my attention is they have come as a group, and left as a group. They give the impression of acting together, therefore, if the defendants who benefit from law on effective remorse will be heard without the presence of the defendants, then there is the possibility and the likelihood for them to be subjected to pressure from other defendants benefiting from the law on effective remorse or the complainants, as explained in the testimonies of the defendants. This should also be considered. You made a judicial control decision here, while deciding for release orders, Mr. Presiding Judge. You have stated the justification of those judicial control decisions in the following way by saying; "putting pressure on complainants and injured ones as well as defendants who benefit from law on effective remorse". You are applying the strictest precaution in the Criminal Procedure Code and you find that measure to be insufficient in relation to the current stage and the measure to be taken for that pressure. Despite this, the opinion presented claims that this measure is even insufficient. Opinion is asked from the attorneys of the witnesses; this is another unlawfulness in our regards Mr. Presiding Judge. Moreover, the attorney lady has mentioned here that you have already taken precautions regarding the situation outside. People are under house arrest and do not establish any connection with the complainants. The whole event will take place here in your presence. It will take place in the presence of the Honorable Prosecutor. For this reason, the Esteemed Panel of Judges will not allow any insult to anyone here, and until now, no defendant has been warned by your esteemed committee throughout the court proceedings of any one of their acts that would be to the extent of disturbing the defendants who benefit from law on effective remorse or the complainants. Nor has the Public Prosecutor made a statement that could be found in the court proceedings to date. All of these points need to be addressed, and you gave a very polite warning about the greeting, in the simplest of all warnings, the waving hand, and the defendants took this into consideration. In other words, these issues should be considered one after the other, and taken into account for the establishment of a decision. However, Mr. Presiding Judge, we are not aware if they have presented it to court, but some of the attorneys of the complainants stated that they gave petitions to the hearing about the defense counsels. But we have not yet seen any petitions within the case file that claim the defendants who benefit from the law on effective remorse, witnesses or other participants that attend the courtroom are likely to be pressured. These persons have not written any petitions asking you to make a decision for the possibility of their being oppressed, these do not exist in the casefile. In other words, it is not lawful to take such decisions in good faith on behalf of the witnesses and injured ones without them having such a request.

PRESIDING JUDGE: Is it done?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME OF THE DEFENDANTS: I am continuing, Mr. Presiding Judge. In Article 201 of the Criminal Procedure Code, the defendant is given the right to ask questions. You have facilitated the right to ask questions directly through you, Mr. Presiding Judge, and now the defendants also have a right in this direction. For

this reason, these rights of the defendants should not be lost. And my Respectable Prosecutor used a very general term, the accomplice, when mentioning of defendants, but he did not explain which one of them should be taken out while which witnesses are being heard. But who are the claimed accomplices of which defendants, in the worst case, those specific ones should only be taken out. The other defendants should still be present, the principle of righteousness requires this. The defense statements of the defendants were heard here, Mr. Presiding Judge, by your panel of judges. There have been no statements aiming at anyone except a certain few in the defense of the accused. Especially it has been avoided. Within the scope of our defense, there are statements to protect them, to take care of them and mentioning that they are under pressure. This means that if such a decision is taken, we have the opinion that this pressure will continue. This decision needs to be personalized. And finally, my Presiding Judge, I want to declare with regret that you came to this courtroom and gave the word to the Public Prosecutor claiming he wanted to speak, even though he had not asked for it. We demand it to be recorded in the minutes. I have to say this with regret that this gives the impression that there was a consultation outside, and coming here, a planned decision will be implemented. We ask for this to be a part of the minutes. For days, Özkan Mamati and others talked about this issue here for days saying that the defendants will not be here and there will be a closed hearing during their defense, and this is being talked about at the point reached. We believe that this issue will be broken with your fair and conscientious decision. Thank you.

Att. Eşref Nuri Yakışan, attorney of some of the defendants, stated that the complainants and defendants who benefit from the law on effective remorse do not have any fear, and on the contrary, they have participated in the ongoing court hearings. In addition, he has also emphasized that the presiding judge gave the word to the the prosecution without his asking to speak and this situation gave the impression of a prearranged decision.

ATT. SİNEM MOLLAHASANOĞLU, ATTORNEY OF DEFENDANT ADNAN OKTAR AND SOME OTHER DEFENDANTS: In accordance to the verbal quality of the principle of prosecution and the judgment to be made directly face-to-face, otherwise provided by law, any disposition made without the presence of the defendant violates Article 6 of the ECHR as well as the right to a fair trial as regulated in Article 36 of the Turkish Constitution. And as per the CPC (Criminal Procedure Code) 193/1 that stipulates the hearing shall not be conducted about the accused who fails to appear in order to prevent any limitation of the right to defense and to assure the individualization of the penalty, other than the special conditions provided clearly and exceptionally in law, is binding for any activity that is performed without the presence of the defendant that is not conforming to the fairness of the judgement. It is obvious that in this casefile there is no exceptional condition that the law would consider for absence. And as stated in Article 14/3, paragraph (d) of the International Covenant on the Civil and Political Rights of the United Nations, the defendant should be tried in presence to be informed and listen to the charges against him and to make his defense against these. The procedure named as the publicity of judgement is imperative for a fair trial because only this way the defendant has the right to make an impact on the decision of the court, to present evidence when necessary, to make recommendations to his attorney, in short to directly participate in the trial in an active way. The defendant has to be provided with the means to be present during the trial in

order for him to effectively participate in the judgement which is in direct connection with the principle of contradictory judgement.

ATT. MERAL KOÇHAN, ATTORNEY OF DEFENDANT ADNAN OKTAR AND SOME OTHER DEFENDANTS:

Besides, my clients, in other words, the defendants have not carried out a single act that would disrupt the order of the trial, it is out of the question and there is not even a single trace of it. Because of the reasons my colleagues have explained in detail up until now, we are objecting to the requests of the prosecution and the attorneys of the complainants, thank you.

ATT. HACI İBRAHİM TOKAN, ATTORNEY OF SOME DEFENDANTS: Dear Presiding Judge, we ask for the rejection of the prosecution's request. Now, it is proper to make a statement prior to that. The essential ones in the judgment are the defendants. And after that, the other elements are secondary and the purpose of the criminal prosecution here is not to protect the witnesses, complainants or defendants who benefit from law on effective remorse, but the aim is to bring forth the material reality. Therefore, in this casefile, reaching the material reality is not possible based on solely the testimonies of the witnesses and the alleged acts that occurred between the witnesses and the defendants, regardless of the defendants being present or not. Not to mention, the concern that the witness would not be telling the truth was mentioned here by the prosecution in scope of Article 200 of Criminal Procedure Code. But there is no justification as to what the concern is based on, and if that concern is supported with concrete evidence. Besides you interrogated each defendant here one by one. None of the made any statements disfavoring neither the complainants, nor defendants who benefit from the law on effective remorse. On the contrary, all of them stated that they loved the defendants who benefit from law on effective remorse and the complainants, and they are still good friends with them and in fact they are being misled. For that reason, it is not possible for these persons, the defendants here to implement any pressure over the defendants who benefit from the law on effective remorse, or the complainants. Besides, I have to mention that in terms of the principle of the equality of arms and the right to defense, it is a requisite for the defendants to be present here in the courtroom while these persons are heard. Even if the defense counsels here have endeavored to prepare defense or questions over these persons' statements, it should have attracted your attention and the attention of the panel of judges, that the complainants as well as the defendants who benefit from the law on effective remorse have given 5-6 statements in various stages of the prosecution. While they were not using even the word 'organization' in the beginning, at the end they have resorted to the word 'armed criminal organization', escalating and changing in intensity in stages in the course of time. In terms of ladies, while some were giving testimonies only for 20 people in the beginning for sexual assault, one month later they added 20 more, and the other month 20 more. Therefore, we do not know and we cannot assess if these

persons will give new or different statements when they are heard here at the presence of the court today or tomorrow. For that reason, we do not deem that a fair trial is likely here and the material reality could be achieved without the presence of defendants, when the allegations are in regard to acts with the defendants. In response to this, as justification to this, your panel has not reminded the defendants of their right to ask questions in accordance with Article 201 of CPC (Criminal Procedure Code). Contrary to excluding the defendants, we want the defendants to be reminded that they have the right to ask questions as per Article 201 of CPC at the stage following the interrogation of defendants who benefit from law on effective remorse. This is important because as we all know the hearings are recorded with the SEGBIS [Sound and Video Information System]. And the SEGBIS records can only be transcribed in about 4-5 months. If today you exclude the defendants and send them out of the court room, and decide for the defendants who benefit from law on effective remorse to be heard like that, these defendants will see the statements made by these defendants who benefit from law on effective remorse, only 4-5 months later at best. Therefore, only this matter will prevent an effective objection against detention, and will eliminate the right to defense. Based on all these we particularly want the defendants to be present in the courtroom, and the contrary requests to be rejected.

ATT. IBRAHIM ALPER CAN, ATTORNEY OF SOME DEFENDANTS: Mr. Presiding Judge, we are not consenting to the requests of the prosecution and the attorneys of the complainants. As you very well know, the essential principle of penal law and criminal procedure is that the prosecution should be carried out face to face and directly. These are the essential principles. Now, we are referring to the applicable articles and allegations in the casefile regarding the defendants. Many of the allegations are solely based on testimonies, there is no concrete evidence for the charges in question. We would like to remind you that particularly for the allegations of sexual crimes, the accusations are based solely on testimonies. The only way for us to refute the slanders against our clients as the defense counsels, is to direct questions to the defendants who benefit from the law on effective remorse, as well as complainants. We want to use our right to cross examination. We want to use our right to ask direct questions in scope of Article 201 of CPC (Criminal Procedure Code) and our right to hold a cross examination. Since the accusations are only based on testimonies, the defendants also have the right to ask questions by means of you. They will be capable of using their right to defense only this way, and the material reality can only appear clearly. But if our right to ask questions or the defendants' right to ask questions are taken away from them, while the only grounds for the allegations are the testimonies, then the judgement will not be made on a face-to-face basis which will prevent the material reality to appear, and restrict our right to defense, in the end this will impede a fair trial. In the meantime, I want to remind another point, dear Presiding Judge. We have stated this in every stage, since our requests for release in the Penal Court of Peace throughout the prosecution and right now in your presence. The statements of the defendants who benefit from the law on effective remorse were not received in a reliable fashion during the investigation as well as the preparatory stage. There have been very obvious inducements implemented on the suspects during the investigation who are the defendants that gave more than one testimony. There are so many contradictions in their

testimonies. Their statements turned out to be more unfavorable against the group of friends here. So, we believe there is an inducement there, we have submitted our evidence in that regards and will do that in the upcoming stages. In fact, if the defendants who benefit from law on effective remorse are in fear and have concerns, and if their testimonies are given under such concerns, then those statements are not acceptable. The statements they have given at police security are valid. Their coming face to face with the defendants will not give such an outcome, if the prosecutor or the attorneys of the complainants have any concerns in that respect, we see that they have, then they have to make it evidence with reasoning and concrete facts. If they cannot do it, then their requests should be rejected. Therefore, we demand the rejection of the request of the prosecutor so that our right to defense and right to a fair trial will not be violated.

ATT. SİBEL ÖZTÜRK, ATTORNEY TO DEFENDANTS MEHMET ENDER DABAN AND TIMUR AYAN: Sir, it is not possible for us to agree to the prosecutor's opinion. Since, justice is not distributed in secret, this cannot be done. There is not a single act, not a single word spoken or conduct, that would concretize the alleged fearsome power claims for the defendants. The violation of right to defense and right to equality of arms cannot be violated with abstract statements. According to Article 100 of Criminal Procedure Code, the principles of being verbal and discussion are accepted. The Article 6 of the European Court of Human Rights, the decisions of the Supreme Court of Appeal and Article 141 of the Turkish Constitution are clear. The public hearing is stipulated and that is definitely a requirement of a fair trial. As emphasized 04/10/2008 dated decision of the ECHR Article 6, paragraph 1, I have to remind that the public hearing is an essential principle. Also, the public hearing should protect the claimants of the court case against secret distribution of justice which is far from public monitoring. This is another requisite for the continuation of trust in courts. Court trials and in general distribution of justice base their legality in the public hearing, and this openness makes the establishment of justice visible. This is a requisite for a democratic community, based on all these reasons, we have the opinion that the prosecutor's request should be rejected Sir.

ATT. ENES AKBAŞ, ATTORNEY OF DEFENDANT ADNAN OKTAR: Mr. Presiding Judge, if our real intention here is to attain material truth, if this is the court's purpose, then the requests of the prosecutor and the attorneys of complainants should be rejected. The defense counsels have brought up these points one by one, I will not make an extension. In simple terms, Article 200/1 of the Criminal Procedure Code mentions of a fear concept. It raises the concept of fear, and as you know the decisions of courts, should be based on reasons. It has to be explained to us with reasoning why and how the witnesses and defendants who benefit from law on effective remorse will experience fear. This has to be justified. It is obvious that this cannot be practiced by taking all the defendants out of the courtroom collectively. This is a subject matter that could be decided only in principle of cooperation for each one of the individuals one by one and having a discussion with us for reaching a decision. Therefore, we request the rejection of the requests of the prosecution as well as the attorneys of complainants

ATT. LEMAN İÇER, ATTORNEY OF SOME DEFENDANTS: The accused is a party to the criminal proceedings and the conditions for his release from trial are clearly regulated in the Criminal Procedure Code. No concrete evidence was presented in the prosecutor's opinion and in the requests of the participating complainant attorneys. It is clear that even the demands cannot be decided without concrete evidence. As can be seen in the file, the only thing that we find are statements of defendants who benefit from law on effective remorse, even at this stage it is evident how contradictory they are. My colleagues have also stated that the elimination of this contradiction is the main purpose of this judgment. If the defendant clients are taken out of the courtroom, it will not be possible to mention the resolution of the conflict anyway. Then why should we do this trial? Therefore, we request the rejection of the requests by stating that we do not agree with the opinion so that the right to a fair trial is not violated and the right to defense is not restricted, as no evidence that is not discussed before their presence will be taken as basis.

ATT. RIDVAN ÇIDAM, ATTORNEY OF SOME DEFENDANTS: In this file, Mr. Presiding Judge, the majority of evidence in this file consist of statements made against my clients. And these are evidence based on testimonies, and when this is the case, the defendant should listen very carefully as to the words are spoken in which circumstances, and in what context. If there were evidence available, for example such as camera recordings, DNA reports, etc., the attorney could have the right to ask questions effectively, but here are dozens of pages of statements, each of which is mentioned in other circumstances with different feelings and different ideas. In this respect, it will be a serious problem if the defendant does not listen to these issues. In Article 58/3 of the Criminal Procedure Code, even though there are many obstacles to the witness and the witness to be heard free from the defendant, it is not clear whether the people who benefit from law on effective remorse are defendants or defendants who have benefited from law on effective remorse. It is not clear, and the reference may be a crime. In this respect, considering the fact that the majority of the file is based on evidence of statements, the defendant's failure to listen to these statements will seriously constitute a severe violation of the principle of equality of arms. Thank you.

ATT. BURAK AKIN, ATTORNEY OF DEFENDANT BORA YILDIZ: Dear Presiding Judge, the prosecution cited Article 200 of the Criminal Procedure Code as a basis, and in Article 200 it says that If there is a fear that one of the accomplices of the accused or a witness would not tell the truth. The persons who testified by saying that they want to benefit from the law on effective remorse here, besides carry the title of accomplice, and also are complainants. Therefore, Article 200 cannot be a legal basis here either. There is currently no provision in Turkish law regarding the removal of the defendant from the court room while the complainant is being heard. The relevant provision of the law numbered 7188 will enter into force on 1 September 2020. This will be seen in the relevant legal regulation.

In any case, the prosecution took Article 200 of the CPC as basis, not this one. In Article 200 there is only a regulation for accomplices, not for others. In addition, for example Beril Koncagül, Çağla Çelenlioğlu, Burak Abacı, who gave their statement saying that they wanted to benefit from effective remorse provisions, in terms of their accomplices, have they submitted petitions here? Have they made any claims saying 'I am worried that I will tell the truth', and showing the reasons of this, have they made any claims? The attorneys of complainants made a number of requests here, but they are the advocates of complainants. When we examine the file in this perspective, we see that they do not have their own claims. Secondly, if you establish a conviction order tomorrow, your verdict will be based on the statements of those individuals who are either complainants, or ones who testified by saying that they want to benefit from law on effective remorse. Here, according to Article 201 of the Criminal Procedure Code, the defendants have the right to pose direct questions. In this respect, if the defendants are removed from the courtroom, their right to ask questions will be denied to the other defendant or complainant, according to Article 201, and this will result in a violation of the right to a fair trial. The reason for the rejection of the third request is that the prosecution did not give a justification in its request. It was only stated that there were worries if the truth would be told, but they did not give a justification as to the concrete evidence and grounds for this. Fourth, it was requested that the audience be removed from the court room and the hearing be held closed. This was a request made in the beginning of the hearing on the grounds that the honor, dignity and reputation of the persons who will testify by saying that they want to benefit from the law on effective remorse will be harmed. Here, my client's honor, dignity and reputation are in question, everybody has been tried publicly in an open way and a lot of accusations have been made against him here, everything has been said in an open trial. We demand on open hearing, and that the request for a closed session should be rejected in accordance with the principle of equality of arms, thank you.

ATT. SELAHATTİN ERSOY, ATTORNEY OF DEFENDANT MURAT ÇAKIR: I am Att. Selahattin Ersoy, the defense counsel of defendant Murat Çakır.

PRESIDING JUDGE: You may go on please.

ATT. SELAHATTİN ERSOY, ATTORNEY OF DEFENDANT MURAT ÇAKIR: I just want to make a reminder. The prosecution has to take into account not only the issues against the accused, but also the matters in his favor. Here, it is not acceptable to unilaterally take into account only the matters unfavorable for the defendants, as my colleagues reminded, to go beyond the allegations and pronounce them as a criminal organization, intimidating organization or other expressions as if a verdict has been established. These statements also mean a surrender of authority or a surge of jurisdiction. In this sense, this request should be rejected, thank you.

THE COURT HAS NOT MADE A SINGLE EVIDENCE INVESTIGATION IN RESPECT OF ANY CHARGES AND REFUSED THE REQUESTS MADE BY THE DEFENDERS AND THEIR LAWYERS

Within the scope of our case file alongside accusations of violation of Laws no: 6136, 3628, 5607 and Turkish Criminal Code Article 220 / 1,2,7-3, Article 328, Article 102.103, Article 112, Article 96, Article 106, Article 107, Article 109, Article 125, Article 282, Article 133, Article 158, Article 135, Article 82, Article 314 / 2, Article 205, Article 210, Article 283 there are 126 complainants, 22 witnesses, 25 defendants, who allegedly accept effective remorse and 236 defendants, who didn't accept effective remorse.

NOT A SINGLE EVIDENCE INVESTIGATION OR RESEARCH WAS CARRIED OUT BY THE COURT DELEGATION IN LINE WITH THESE CRIMINAL CHARGES. THE ONLY THING THAT COURT DELEGATION DID SO FAR WAS FIRST TAKING THE STATEMENTS AND THEN THE DEFENSES OF THE PARTIES. NOT ANY OTHER ACTION OR PROCEEDING HAS BEEN DONE.

However, while there are dozens of separate procedures to be carried out in terms of all these criminal charges, **while there is evidence to be collected and witnesses to be heard**, the court delegation has not made even a single one. In this respect, it rejected all requests made during the intermediate and extension of inquiry stages.

In fact, **THE COURT DELEGATION DID NOT EVEN FULFILL ITS EX OFFICIO INTERLOCUTORY DECISIONS MADE AT THE HEARING ON December 13, 2019**. Again, the panel of judges summoned individuals named İbrahim Halil Aygüner, Bedri Ayhan and Fatma Arslan to testify as witnesses. Later, without a decision taken by the delegation, a decision to bring these people by force was taken, but the decision to listen to these people was revoked without any justification. Similarly, a person named Ayfer Ünlü was called as a witness without any justification, and then he was revoked from this decision without any justification.

The only evidence gathered by the court delegation so far has been the summons of the verdicts of previous trials on organization charges of defendants. However, this was also incompletely fulfilled, since the decision of acquittal number 2006/26, taken by 2nd High Criminal Court, is not included in the decisions summoned to the file. Moreover, the collecting of dozens of evidences, which details are submitted to the case file, and witnesses hearing request were rejected by the court taking refuge behind unjust and unlawful reasons.

In addition, the court revoked from the decision of hearing some complainants and witnesses and did not provide any justification for this recourse. However, the previous statements of these individuals were not read and discussed before the court, but eventually a sentence was ordered on the evidence of statements, that were not discussed before court.

Despite this, without serve proceedings the court delegation has sentenced the maximum penalty for the accusations, for which it did not collect any evidence. Obviously, this is incompatible with equity and law, and is a very clear manifestation of the effort to conclude the hearing in a mad rush and sentence the penalty.

THE COURT HAS NOT ASKED THE PARTIES WHETHER THEY HAVE REQUESTS FOR EXTENSION OF INQUIRY, REFUSED THE CALL TO WITNESSES REQUESTS WITHOUT ANY JUSTIFICATION, NOT EVEN LISTENED TO THE WITNESSES COMING TO PLACE

As we have stated above, the court delegation did not feel the need to do any research in terms of the dozens of accusations for which sentenced the maximum penalty, and even ignored and unfairly rejected the requests made by the defendants and their defense counselors.

THE COURT DELEGATION DID NOT ASK THE PARTIES WHETHER THEY HAVE ANY REQUESTS FOR EXTENSION OF THE PROSECUTION OR NOT, DID NOT ISSUE ANY INTERLOCUTORY SENTENCE

SO THEY CAN SUBMIT THEIR REQUESTS AND HAD NOT MADE ANY DECISION IN THIS DIRECTION.

In addition, the court delegation did not accept any request for witness hearing, nor did it hear any witnesses of its own motion. Despite the insistent demands of the defense counsels on whether the witnesses will be heard or not, and if they will be heard, then on what date will be the hearing, in defiance of Code of Criminal Procedure Article 181 the court "did not notify the counsels of the day the witnesses will be heard". It ignored the program malfunctions that may occur due to the other trials followed by the defendant counsels.

On hearing dated September 22, 2020 the court requested parties to present the witnesses they want to be heard and their reasons in written form, despite the numerous requests of defendant counsels for hearing of the witnesses they made before. **Although the verbal declaration, defense and requests are essential in the criminal proceedings, the verbal demands of the defendants' attorneys were passed through on unlawful grounds such as "give your defense in writing, we will read it", and eventually it was rejected.** Between the sessions in accordance with the interlocutory sentence the defense counsel presented the witnesses they want to be heard and their reasons.

However, at the hearing dated October 15, 2020, by making **the decision to reject each witness hearing individually and without any reasoning** on the grounds that "they would not contribute to and would retard the trial" the court delegation decided to submit the file to the Prosecution for preparation of its opinion on the merits.

The court delegation did not mention which request would not benefit the case. In addition, **it remained unanswered how these demands, which had been made for the first time, would retard the case**. Moreover, the court delegation refused hearing even the witnesses who presented in front of the courtroom in accordance with **Code of Criminal Procedure Article 178 at the hearing dated October 15, 2016 and the earlier ones.**

For example, Adnan Oktar's defense counsel, Att. Sinem Mollahasanoğlu, and Hüsnü Erel Aksoy's defense counsel Att. Haluk Ilgın submitted their request in writing together with their reasons to have witnesses heard at court, and at the hearing dated November 2, 2020, they **HAD REQUESTED FOR THE PRESENT WITNESSES TO BE HEARD AS TO ARTICLE 178 OF CRIMINAL PROCEDURE CODE. YET, THE PANEL OF JUDGES DID NOT HEAR THE PRESENT WITNESSES.**

> **ATT. HALUK ILGIN, ATTORNEY OF DEFENDANT HÜSNÜ EREL AKSOY:** We have made our witnesses ready, and we demand them to be taken to the presence and heard according to Article 178 of the Criminal Procedure Code.
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> **ATT. SINEM MOLLAHASANOĞLU, ATTORNEY OF DEFENDANT ADNAN OKTAR:** I am Att. Sinem Mollahasanoğlu, the defense counsel of Adnan Oktar. We had submitted the list of our witnesses before with reasoned explanations, but this was rejected. We demand our witnesses who are ready at this stage and ready to be heard, to be taken to the presence and heard according to Article 178 of the Criminal Procedure Code.

In addition to all these, the court delegation gave up listening to the police officers named İbrahim Halil Ayguner and Ayhan Bedri, the lawyer Fatma Arslan and the woman named Ayfer Unlu, whom earlier was sent a subpoena for witness testimony. While it is very easy to reach these people whose workplaces and addresses (phone numbers) are well-known, the court

sent subpoena to different addresses and then suddenly give up hearing these people without any reasonable justification.

As we have said above, since the court delegation tried to make one quick and careless trial, as we say “like a brake blown truck”, it acted as it had no choice but to explain a decision that had already been made and like it was determined not to accept any request or to investigate any evidence.

THE COURT DELEGATION GAVE THE DEFENDERS HALF THE TIME IT GAVE TO PROSECUTION FOR PREPARATION OF ITS OPINION ON THE MERITS TO SUBMIT THEIR STATEMENTS AGAINST IT, CONTINUOUSLY INTERFERED THEIR DECLARATIONS, EXHIBITED HARSH AND AGGRESSIVE ATTITUDE

On November 13, 2020, the Prosecution announced its 499-page opinion on the merits. On the hearing dated November 16, 2020 court delegation assigned next court session on November 30, 2020 and **gave only 16 days for defendants to prepare their statements against the opinion on the merits**.

However, in the meantime, **not all of the written proceedings of Audio and Video Information System (AVIS) regarding the statements of the complainants and their attorneys had reached the case file**. It is doubtlessly a very limited and insufficient time for court delegation to give only 16 days for hundreds of defendants in such a voluminous file.

The court delegation has prevented the defendants from making a healthy defense from the very first day of the trial, as you can see from the evidences we present in the appendix. **During the taking of the first statements, the court did not want the defendants to give explanatory answers to the questions and prevented them from laying out the evidences in favor by saying "say yes or no", "I did or I did not do it".** By allowing the defendants to respond not to the dozens of pages of allegations from the indictment, but **only to a paragraph included in the legal evaluation, the court completely took away their rights of defense**. During these statements, the court interpose the defendants who wanted to respond to the statements of **complainants and defendants, who allegedly accept effective remorse, by saying “this later” and prevented their rights of defense.**

When the defendants were allowed to make their statements against the opinion on the merits, they were warned to “give answers only limited with opinion on the merits” and were not allowed to make any defense against the allegations from the whole file. During their initial statements, the defendants were told that they will be able to respond to the allegations within the whole file during the defense on the merits, but when this time came they were again not allowed to speak. **The interesting thing is that while this situation was recorded in the report as “the defendant was asked about allegations from the whole file and the opinion on the merits” in practice the situation was totally the opposite.** The defendants who wanted to present defense evidence and to reveal concrete data were sent to their places by being shouted and scolded.

While these unlawful practices were being carried out, **no verbal requests of the defense counsels were allowed, it was said “I do not receive requests in this period, submit your requests in written form”**, and not even one of these written requests was answered. **Although rare, when the verbal request was accepted it was not made any decision about it.**

IN CONCLUSION, THE COURT DELEGATION WANTED TO MOVE FORWARD AT A SUPERIOR SPEED AND TRIED TO HEAR THE STATEMENTS OF AN AVERAGE 20-25 DEFENDANTS PER DAY. BECAUSE OF THIS HASTY ATTITUDE, MANY TIMES IT INTERFERED THE STATEMENTS OF THE DEFENDANTS, KEPT THEM FROM TALKING, CUT IN THEIR SPEECH AND EVEN TOTALLY CUT OFF THE STATEMENTS OF MANY DEFENDANTS AND SENT THEM DIRECTLY TO THEIR PLACES. FURTHERMORE, IT GAVE DEFENDANTS VERY SHORT TIME AND WANTED THEM TO FINISH THEIR STATEMENTS RIGHT AWAY, IF THEY USE THE SAME WORD TWICE IT MADE A HARSH INTERVENTION. WHILE THOSE WHO WERE JUDGED AS LEADERS OF ORGANIZATION WERE GIVEN ABOUT 1 HOUR FOR STATEMENTS, THOSE WHO WERE JUDGED AS MEMBERS MAXIMUM 20-30 MINUTES. EVEN THE COUNSELORS WERE LIMITED IN TIME IN THEIR DEFENSE.

The panel of judges revealed the same harsh and aggressive attitude it had revealed during the judgement process, during the sessions of taking statements about opinion on the merits too. **It shouted loudly at the defendants, spoke harshly, and created psychological pressure on the defendants with arm movements and facial expressions.** As it is known, the 16th Criminal Chamber of Supreme Court of Cassation stated these issues as the grounds for the reversal decision on Ergenekon Case, numbered 2015/4672 E., 2016/2330 K:

> *"…the defendants who were asked to be punished for membership in an armed terrorist organization and their defense counsels were given **totally one hour**, the defendants who were asked to be punished for membership in an armed terrorist organization and other crimes and their defense counsels were given **totally two hours for verbal statements against the opinion on the merits**…*
>
> *… Taking into account the nature of the events subject to the trial, the indictment, the opinion on the merits and the combined files, together with the scope of the whole file, disregarding the reasonable amount of time required for making statements, considering the individual situation of each defendant, in the case file uniting all the defendants **it was determined that the defense rights were restricted by limiting the defense to 1 or 2 full hearing days, the defense on the opinion on the merits to 1 or 2 hours, and verbal requests to 15 minutes…***
>
> *… In the Code of Criminal Procedure Article 216/1. is made the following regulation: "In the discussion regarding the evidence that has been presented, the permission to speak in the following order shall be granted to the intervening party or his representative, the public prosecutor, the accused and his defense counsel or his legal representative." No time limit is stipulated in the aforementioned Law articles for the suspect or the accused to make their defense and the right " to have adequate time and the facilities for the preparation of his defense", stated in Article 6 (b) of the European Convention on Human Rights, also contains the right "to have the necessary time and facilities to make his defense" at the hearing. In accordance with the verbal principle of the criminal procedure, it is **essential that the accused and the other parties of the trial be given the right to speak in a sufficient time at the hearing.**"*

Moreover, during this process pandemic conditions prevailed and from November 30, 2020, when the hearings started, had been made a decision for weekend curfew and nightly curfew between 9 p.m. and 5 a.m., Monday through Friday. As it is known, for a long time lawyers were not exempted from this prohibition. Therefore, **in the most critical period of the case in which the defenses were taken, all of the detained defendants were deprived of counsel support.** The court delegation ignored all the written and verbal requests made on this matter.

In addition, the court delegation continued the hearings, which started at 9.30 a.m. in the morning until 7 p.m. – 8 p.m. in the evening, and sometimes even continue until 8.30 p.m. – 9 p.m. **During this period, the detainees, who were taken from their ward at 6 a.m. and brought to the hall, were brought back to their wards at 10.30 p.m. – 11 p.m. in the evening.** It is obvious that these people do not have the means to stay healthy and fit and at the same time to prepare their defenses in a fair manner in such an environment. **However, the court delegation ignored and rejected all of the written and verbal requests for making arrangements of the hearing hours by explaining these difficulties.**

THE COURT DELEGATION DID NOT GIVE ANY TIME TO DEFENCE COUNSELS FOR SUBMITTING THEIR STATEMENTS ABOUT OPINION ON THE MERITS, VERY FREQUENTLY INTERVENTED THEIR DEFENCES AND EVEN MADE SOME OF THE COUNSELS THROWN OUT OF THE COURTROOM BY GENDARME FORCE. FURTHERMORE, IT ACTED AGAINST CODE OF CRIMINAL PROCEDURE ARTICLE 216

At the hearing on December 22, 2020, at 4:15 p.m. in the afternoon, the court delegation has finished the process of hearing the statements of defendants against the opinion on the merits and without any break promptly asked the defense counsels to make their final defense on the opinion on the merits - even though they were not previously notified or has not been constituted any interim decision.

The defense counsels demanded an extension of time from the court, stating that the file was too crowded, that even the defendants' statements were recently finished and they were not given enough time to examine the file. Some defense counsels made their excuses that they were in different provinces, others that were attending other hearings, but **the court delegation rejected all these excuses and requests and stated that would read the lawyers' names from the list in front of them and if the called lawyers were not ready, they wouldn't been given extra time and then court would pass to the "last word" stage.**

Therefore, **although there was not set any listening order for defense counsels, they forcibly had to present their last defenses**. However, just as we have stated above, the court delegation frequently intervened the defense counsels during this course, asked them to keep their statements short and interrupted them mostly with harsh and aggressive interventions. **NONE OF THE DEFENDANT COUNSELS COULDN'T MAKE A DEFENCE REGARDING ALL OF THE ALLEGATIONS MADE ABOUT THEIR CLIENTS. THE COURT DELEGATION SHOW A GREAT SPEED PERFORMANCE OF HEARİNG, BY TAKİNG AVERAGE 10 – 15 AND SOMETIMES EVEN UP TO 20 DECLARATIONS OF THE DEFENDERS PER DAY.**

Even the defense counsel of the defendants who were judged as leaders of organization and held responsible for all crimes in the file were not given more than 1-2 hours. For example, even lawyers named Att. Enes Akbaş, Att. Arzu Gül and Att. Elif Esra Kırımlı (counsels of persons prosecuted for being administrators or many other with membership allegations) were asked to keep their defenses brief and therefore the defense lawyers could not present their defenses against many criminal charges.

In addition, the words of Att. Bahri Belen, the defense counsel of defendant Att. Ayfer Bayer, were aggressively interrupted by the court president and Att. Bahri Belen was thrown out of the courtroom by gendarme force. **In summary, the defense counsels could not present their final defense against the opinion on the merits in a healthy environment due to rejection of time extension and the pointless and non-proportional interventions made by the court delegation.**

TOGETHER WITH THESE, THE COURT DELEGATION TAKE THE DEFENSES AGAİNST THE OPİNİON ON THE MERİTS CONTRADİCTORY TO THE ORDER FROM CODE OF CRİMİNAL PROCEDURE ARTİCLE 216. As it is known, Code of Criminal Procedure Article 216: "(1) *In the discussion regarding the evidence that has been presented, the permission to speak in* ***the following order shall be granted to the intervening party or his reperesentative, the public prosecutor, the accused and his defense counsel or his legal representative***. (2) *The public prosecutor, the intervening party or his representative may respond to the explanations of the accused, his defense counsel or his legal representative; the accused and his defense counsel or his legal representative also may respond to the explanations of the public prosecutor and the intervening party or his reperesentative.*" is the governing law. As a matter of fact, in the decision numbered 2017/1904 E. 2017/1987 K. of the 6th Criminal Chamber of the Istanbul Regional Court of Justice, are explained very clearly and in detail the procedures to be carried out during the hearing.

> *"… Between the law guard Code of Criminal Procedure Article 182-218 it is arranged the manner and procedure of the hearing, accordingly, after the hearing has started the arrival of the defendant, the complainant, the defense counsel and the representatives will be determined, followed by making a decision for ensuring the clarity of the public case, which should be seen as clear and holding close the hearings of the public case, that should be considered closed, according to the nature of the public case pending; thus, after the hearings have started, the decision of acceptance of the indictment will be read as the first legal action, followed by roll call of witnesses and experts, then the present witness(es) will be taken away from the courtroom, the identities of the defendant(s) and the complainant / complainant will be determined consecutively without any other legal action, the indictment will be explained to the defendant and her/his attendant in general terms, the defendant will be reminded of her/his rights, the complainant will be reminded of their rights, if the complainant has a request to participate then making a decision for his/her participation, taking the defense of the defendant(s) according to the crime described in the indictment, clearly stating the names and reading the contents of the civil criminal record and the other documents that are effective evidence of the substance, if the complainant has participated and have any questions to be directed to the defendant, then listen to the complainant, asking for complaints and evidences, if the complainant has taken the title of participant, then reading the effective evidence on the merits and asking what they will say, if the defendant has any question for complainant then ask him/her to answer them, after that taking the witness into the courtroom and after the identification and notification of his/her rights and obligations to be asked for his/her knowledge and experience, after the hearing of the witness, in line with the order in Code of Criminal Procedure Article 216. the public trial witnesses are asked questions if any by the parties, and after hearing the statement of the witness, the parties of the public trial are also asked what they will say against these statements of the witness, during the hearing of the witness, the parties of the public case can ask their questions in sign of court judge and the defense counsels and representatives can direct their questions directly to the listener within the court discipline, if an expert is called to the hearing, he/she is brought to the presence after the witness and asked for identification, he/she is reminded of his/her rights and obligations, and asked for his/her opinion and consideration, parties can question the expert, if the expert is one of the persons who must be present from the beginning to the end of the hearing, such as a translator or pedagogue, the defendant should be identified after the identification of the defendant and should be reminded of the work to be done and the oath should be made or the commission oath should be*

reminded and should be asked for his/her opinion and consideration, thus, completing the collection of evidence based on human interception, and then clearly mention the names and reading the protocols, reports, warrants with replies, population and criminal records and all evidence affecting the merits drawn up in the investigation and prosecution phase and asking the parties for their statements, if the hearing cannot be concluded in a single session, making an interim decision for the evidence to be collected, otherwise asking again for extension investigation requests from the participant, the prosecution authority, the accused and the defense counsel, meeting the demands, if any, extending the prosecution for the accepted requests, taking an interim decision regarding the rejection of the requests, after the interim decision regarding the rejection of the requests, again in the same order receiving statements on merits, opinions and defenses and finally asking the defendant for his last word, registry the ending of the hearing and thus ending the case, but instead of this during the determination of the identities by the court of first instance and during the reminder of the rights, the determination of the identities without any other legal action, and also the fact that the hearings were held without respecting the necessity of making the reminder of the rights one after the other, thus without observing the coherence of the hearing ..."

However, despite this, the court delegation first listened to the defendants, then defense counsels and then representatives. In spite of statements and requests of defense counsels reminding this order, written in Code of Criminal Procedure Article 216, they were not taken into account.

COURT DELEGATION FILED A CRIMINAL COMPLAINT AGAINST ATT. ESREF NURI YAKISAN, DEFENSE COUNSEL OF SOME DEFENDANTS, AND COMBINED THE OPENED CASE WITH THE CURRENT ONE. BY THIS IT WAS AIMED PUTTING PRESSURE ON OTHER DEFENSE COUNSELS

The court delegation **filed a criminal complaint** against Att. Esref Nuri Yakisan, defense counsel of some defendants, on the grounds of threatening representative Att. Eser Comlekcioglu and **decided to combine the indictment** dated August 7, 2020, which was prepared by the Istanbul Chief Public Prosecutor's Office, **with the present case**. **SO, THE COURT DELEGATION RULED THE CASE AGAINST THE PERSON, THAT IT PERSONALY FILED A CRIMINAL COMPLAINTS.**

At the session dated October 1, 2020, Att. Esref Nuri Yakisan gave a statement before the court as a defendant and then **the court delegation prohibited him from working as lawyer within the scope of this case and from visiting his clients in prison for a period of 1 year**. Right at that moment, the defense counsels, along with their names and pictures, have been threatened openly and claimed that they will be put on trial as members of the organization through social media accounts managed by the hostile complainants of the case. **Experiencing these developments immediately after these shares showed the impartiality and prejudiced view about the defendants to the extent that the court board can be regarded as having an insinuate opinion.**

We think that another purpose of this unfair practice applied by the court delegation is to put pressure on other defendant's counsels working on this case and try to intimidate them with the public power it have. As a matter of fact, **Att. Enes Akbas, defense counsel of some defendants**, took the floor at the hearing on October 1, 2020 where his colleague Att. Esref Nuri

Yakisan was interrogated by the court and **expressed his and other colleagues' concerns about this issue and demanded that the court delegation recourse from this erroneous practice.**

> **ATT. ENES AKBAŞ, ATTORNEY OF DEFENDAN ADNAN OKTAR:** I am Att. Enes Akbaş, defense counsel of some defendants. Honorable President, Valuable Members, I would advise you to read the European Court of Human Rights in Kyprianou, the Kyprianou decision. It is against law and also against the principle of equality of arms that Eşref Nuri Yakışan was taken from the tribune while he was acting as a defense counsel here. And you were the one who filed a complaint against him. If a person is filing a complaint aboat a person, then he/she is suspicious that the person committing a crime. You are judging the person who you think is committing a crime, this is certainly not an acceptable situation. Please review this decision you have made. There is the notion of reverting the operation made in Criminal Procedure Code. Please implement this, these circumstances really are a great concern for the defense counsels here, including me. I am speaking on behalf of my friends, colleagues here who are at the defense tribune. And I am also speaking on behalf of the other defense counsels who are not here…
>
> **PRESIDING JUDGE:** Fine…
>
> **ATT. ENES AKBAŞ, ATTORNEY OF DEFENDAN ADNAN OKTAR:** Please allow me to finish. We are speaking of this matter in the bar room, when we are outside, and eating. See that we are not capable of performing our right to defense as we like. We consider, if any complainant or anyone says something about us, will we encounter any trouble, believe that we are unsettled here. Please take this matter into account, because we are not capable of making an effective defense, I present this to your appreciation.

Att. Enes Akbaş, referring to the decision of the European Court of Human Rights - case of Kyprianou, stated that this practice was erroneous, that the court had already suspected that the person had committed a crime by filing a criminal complaint and therefore it would not be appropriate for it to hear the same case. At the same time, **stating that this oppressive style disturbs him and all his colleagues working on this case,** and by noting that this situation will be an interference with the right of the accused to a fair trial and their right to benefit effectively from the support of their defense counsel he requested a reversal of the decision. But the court has rejected this request.

Hence, the court delegation decided that Att. Esref Nuri Yakisan, who was later included in the case as a defendant, be punished for membership in the organization and offense of threat, and he was arrested with the announcement of the verdict. In other words, it has been made a decision confirming the anxiety of the defense counsels. It is clear that all these actions aim preventing the defendants from benefiting defense counsel support during the process of the trial and ensuring that the other defendants' counsels withdraw from the case in fear.

COURT ACTED AGAINST CODE OF CRIMINAL PROCEDURE ARTICLE 226

Additional defense in criminal law; It is a right granted to the accused in the event of a change in the character of the crime regarding the incident, which is the subject of the indictment, or a situation requiring the increase of the punishment of the defendant or imposition of a security measure in addition to increased punishment for the first time during the hearing (Code of

Criminal Procedure Article 226). **The accused shall not be convicted according to another provision of law that includes the crime the elements of which are written in the indictment, unless he had been priorly informed of the change of the legal definition of the crime, and had been put into a position to make his defense (Code of Criminal Procedure Article 226/1).**

One of the basic principles of criminal procedure law is the principle of "notification of the accusation" to the accused. According to the principle of notification of the accusation, the defendant facing any accusation must be clearly informed about the act subject to the accusation and the crime brought about by this act. Sufficient time and opportunity should also be given to the accused, whose charge has been reported, to make defence against it. The indictment is the main document in which the criminal charge is reported to the accused in a compact manner. The accused should understand what the accusation is about from the indictment without any doubt, and should be able to make his defense accordingly and present his evidences. If the defendant is to be punished with a crime other than the one specified in the referral article in the indictment, he/she must be given the right of additional defense. If the criminal nature remains the same, but the penalty is to be increased or security measures are required in addition to the penalty, then defendant should be given right of additional defense (Code of Criminal Procedure Article 226/2). Thus, the defendant has the opportunity to prepare a defense for the changed criminal nature or to present new evidences. As a matter of fact, the court practices of the Supreme Court of Cassation are in this direction:

> *In the indictment dated 19.06.2013 against the defendant, although a lawsuit was filed for the crime of simple threat pursuant to Turkish Criminal Code Article 106 / 1- (sentence 2), the application of Turkish Criminal Code Article 106/1, which is not included in the indictment as a referral clause and contains heavier sanctions, without giving right of additional defense is restriction of the right to defense and is against the law. (4th Criminal Chamber of Supreme Court of Cassation, decision: 2015/24897)*
>
> *Although the punishment of the child driven to crime is requested in the indictment in accordance with the Turkish Criminal Code Article 109/1 in contravention of 5271 numbered* Code of Criminal Procedure Article *226 without giving the right of additional defense to the child, who was pushed to crime is restriction of the right to defense and is against the law in accordance with Turkish Criminal Code Article 109/2. (14th Criminal Chamber of Supreme Court of Cassation, decision: 2017/158)*
>
> *Although it is accepted that the defendant participated in the act in the position of performing the act together in accordance with Article 37/1 of the Turkish Penal Code and the indictment is requested to apply Article 39/2-b of the same Law (aiding a crime requiring less punishment), without granting additional defense rights, it is against the law to act in violation of Article 226 of Code of Criminal Procedure numbered 5271 by applying Article 37/1 of the Turkish Penal Code (2th Criminal Chamber of Supreme Court of Cassation, decision: 2015/23400)*
>
> *It is against the law to oppose Article 226 of the Criminal Procedure Code by deciding to apply Article 143 of the Turkish Penal Code numbered 5237 in the indictment (increase of the penalty due to the crime of theft at night) without giving an additional defense right in the indictment. (2th Criminal Chamber of Supreme Court of Cassation, decision: 2015/20405)*
>
> *According to the final report prepared by the ENT specialist in the same hospital about the victim; although it is stated that there is a nasal fracture that will affect the life functions*

of the victim in a slight (1st) degree, it is determined that this situation is determined from the lower limit in determining the basic penalty by granting the right of additional defense in accordance with Article 87/3 of the Turkish Penal Code No. 5237 (article increasing the penalty for injury due to bone fracture or dislocation). It is against the law not to observe that it should be considered as a reason for withdrawal. (3th Criminal Chamber of Supreme Court of Cassation, decision: 2015/30739)

In the indictment and the decision of non-jurisdiction, even though 109/1 of the Turkish Penal Code is demanded to be applied about the defendant, contrary to Article 226 of the Code of Criminal Procedure, without giving the defendant the right of additional defense, it is against the law to restrict the right to defense by establishing a decision based on the Article 109/2 of the Turkish Penal Code. (14th Criminal Chamber of Supreme Court of Cassation, decision: 2014/11905)

On the date of the crime, when the sun sets at 18:46 with the summer time application, and the victim stated that the incident took place around 20:30, the crime of theft was committed in the time period counted in the night according to the definition of Article 6/1-e of the Turkish Penal Code, and the suspect was given an additional right of defense. It is against the law not to consider that Article 143 of the Turkish Penal Code will need to be applied. (13th Criminal Chamber of Supreme Court of Cassation, decision: 2014/27075)

However, the court delegation acted against Code of Criminal Procedure Article 226 during the whole trial and prevented the defense rights of the defendants. **The president of the court said to the defendants who were about to make additional defense, "speak about the detention" and interrupted the speech of defendants many times. Before the defendants were even brought to the presence, the microphone was extended from hand to hand and additional defenses were received like this**. The defense counsels were not even asked for their statements regarding the additional defense.

THE COURT MISEMPLOYED THE "EFFECTIVE REMORSE" (PLEA DEAL) REGULATIONS AND DISCRIMINATED AMONG DEFENDANTS

Effective remorse provisions set out in Turkish Penal Code, Art. 221 are about the offenses of "founding or administrating or being a member of a criminal organization" and **it can only apply to and reduce the penalty to be imposed on account of these offenses.** In other words, a person who admits that he is a member of a criminal organization and that, within the scope of this criminal organization, he has committed a number of other crimes that are not subject to effective remorse provisions can benefit from impunity or penalty reduction only in terms of membership of the criminal organization. Penalty may still be imposed on account of the other offenses. As a matter of fact, there are many Supreme Court decisions on this issue:

"In order for effective remorse provisions to apply, first there must be a special provision in the law that allows it in terms of that crime and its perpetrator. ***It is not possible to apply effective remorse provisions for every crime*** *...* ***If effective remorse provisions are not regulated in the law for a certain type of crime,*** *in accordance with the "principle of legality",* ***effective remorse provisions cannot apply****, not even by comparison or interpretation." (Supreme Court of Appeals General Assembly of Criminal Chambers Decision 2016/154 dated March 29, 2016; Supreme Court of Appeals General Assembly*

of Criminal Chambers Decision 2015/515 dated 15/12/2015; Supreme Court of Appeals General Assembly of Criminal Chambers Decision 2015/419 dated November 24, 2015)

"It is against the law to apply it for the penalty determined for damaging property, ***without paying regard to the fact that the penalty reduction*** *specified in the Turkish Penal Code, Art. 221/4-last clause* ***covers only the offenses of founding and administrating a criminal organization, being a member of the criminal organization****, committing an offense on behalf of the criminal organization, although not being a member of that organization, or aiding and abetting the criminal organization knowingly and willingly. It is also accepted that it is against the law to disregard that Turkish Penal Code, Art. 221-4, which is a matter of personal reduction, should be applied before Art. 62 regulating discretional extenuation." (Supreme Court of Appeals Criminal Chamber No. 9 Decision 2012/8599 E, 2012/15881 K, dated December 27, 2012)*

But **the Panel of Judges, in its judgment, acted against the explicit provisions of the TURKISH PENAL CODE and BETRAYED THAT THEY FAVORED THOSE DEFENDANTS WHO BENEFITED FROM EFFECTIVE REMORSE REGULATIONS**. The panel decided that those defendants sentenced to jail as per Turkish Penal Code Art. 102 and 103 and who also benefited from effective remorse provisions should be tried pending trial, but that other defendants who were sentenced on the same charges be tried in detention. In other words, the Panel of Judges did not detain the persons sentenced on criminal charges for which effective remorse provisions are not applicable, discriminating them from other defendants.

IT WAS MADE SURE THAT DEFENDANTS WHO BENEFITED FROM EFFECTIVE REMORSE PROVISIONS AND WHO WERE SENTENCED TO PENALTIES UP TO 71 YEARS WOULD BE TRIED PENDING TRIAL WITHOUT ANY EXPLANATION, WHILE IT WAS DECIDED THAT THOSE DEFENDANTS SENTENCED TO 1 TO 3 YEARS (ON CHARGES SUCH AS TURKISH PENAL CODE ART.125, TURKISH PENAL CODE ART.106, TURKISH PENAL CODE ART.133, VIOLATION OF LAW NO. 6136, ETC.) BE TRIED IN DETENTION, and be hastily arrested at the final hearing. **This is obviously ambivalent and favors the defendants who benefited from effective remorse provisions, thus aiming to manipulate other defendants to apply to benefit from effective remorse too.**

FOR EXAMPLE, ALTHOUGH THE FOLLOWING DEFENDANTS WHO BENEFITED FROM EFFECTIVE REMORSE PROVISIONS HAVE BEEN SENTENCED TO THE LISTED PENALTIES, IT HAS BEEN DECIDED THAT ALL OF THEM WOULD BE TRIED PENDING TRIAL AND ANY JUDICIAL CONTROL MEASURES WOULD BE LIFTED:

MUSTAFA ARULAR - 71 YEARS 10 MONTHS 14 DAYS,

SERDAR DAYANIK - 61 YEARS 9 MONTHS 22 DAYS

KEMAL AYAZ - 51 YEARS 6 MONTHS 22 DAYS

EMRE KUTLU - 40 YEARS 7 MONTHS 14 DAYS

ADNAN TINARLIOĞLU - 28 YEARS 22 DAYS

SUPHİ SERDAR TOGAY - 25 YEARS 11 MONTHS 6 DAYS

ALİ ŞEREF GİDER - 19 YEARS 8 MONTHS 7 DAYS

EMRE TEKER - 10 YEARS 11 MONTHS 7 DAYS

AKIN GÖZÜKAN - 4 YEARS 22 DAYS

MURAT TERKOĞLU - 4 YEARS 22 DAYS, EVEN THOUGH SUCH PENALTY WAS GIVEN TO HIM, IT WAS DECIDED TO JUDGE HIM WITHOUT ARREST AND THE JUDICIAL REVIEW MEASURES WERE REMOVED FOR HIM.

THE PANEL OF JUDGES MADE FORGERY-LIKE ALTERATIONS IN THE MINUTES OF THE HEARINGS. MINUTES OF THE HEARINGS DO NOT HAVE A PROBATIVE VALUE AGAINST THE CODE OF CRIMINAL PROCEDURE ART. 222

WE NOTICE THAT THERE ARE SOME WORDS THAT THE PANEL OF JUDGES DID NOT ACTUALLY UTTER INSERTED IN THE MINUTES OF THE HEARINGS, which were deciphered by the experts and submitted to the case brief. **WE ALSO SEE THAT SOME VIOLATIONS OF THE LAW MADE BY THE PANEL OF JUDGES and MENTIONED DURING THE TRIALS ARE EXCLUDED FROM THESE MINUTES**. Again, in these minutes, some statements are missing and have not been completed despite objections and motions, and some words that the parties did not say have been included in the minutes, etc. These issues were notified to the Panel of Judges prior to the judgment, asking for the required corrections to be made or an explanation to be made on the subject. The Panel of Judges ignored these motions.

Code of Criminal Procedure Art.222 reads, *"Whether the procedural rules and formalities were observed during the main hearing or not, may only be proven by the record of the trial. Against the record of the main hearing, there is only one possibility to attack, which is by the claim that the document was false."* It is obvious that the minutes of the hearings in our case are not sound and they do not have the probative value. In addition, it is essential to investigate any issues that may result in an offense to the extent of forgery of documents. Some examples of what we have noticed so far are as follows:

1- On page 7 of the minutes of the session dated November 16, 2020, it reads:

> ***"It is seen, read and put into the file that NO PETITIONS HAVE BEEN SUBMITTED so far ABOUT QUESTIONING those who were heard in the absence of the defendants alleged to have not applied to benefit from the effective remorse provisions."***

First of all, **HOW AN UNSUBMITTED DOCUMENT IS READ AND PUT INTO THE FILE IS A MYSTERY**. **MOREOVER, THIS STATEMENT ADDED TO THE MINUTES SUBSEQUENTLY IS NOT TRUE.** It was stated in many petitions by the defendants and the defense counsels that they wanted to ask questions to those defendants who benefited from effective remorse provisions.

For example;

- Att. Samet Topçu, the attorney of Kartal İş, submitted a petition on September 9, 2020 on that matter.
- Defense attorneys Att. Samet Topçu, Att. Eşref Nuri Yakışan, Att. Hacı İbrahim Tokan, Att. İbrahim Alper Can, Att. Burak Akın and Att. Nasıf Aydın Dölek referred to this matter about the defendants' right to ask questions on February 25, 2020, as can be seen in the minutes of the hearing of that day.

- Adnan Oktar's lawyer submitted a petition on November 6, 2020 requesting the court to allow the defendants to use their right to ask questions according to the Code of Criminal Procedure Art. 201.
- Both verbally during the hearing and by a written petition on August 19, 2020, Mehmet Noyan Orcan's lawyer Att. PhD. Ümit Kocasakal requested the court to allow the defendants to use their right to ask questions.

2- At the hearing dated December 6, 2019, at 11:33:29 in the SEGBIS [Sound and Video Information System] records while the defendant Ebru Yılmaz Atilla Umur was being interrogated, the **PROSECUTOR LEFT THE COURTROOM WITHOUT GIVING ANY NOTICE. DESPITE THAT, THE PANEL OF JUDGES CONTINUED THE HEARING WITHOUT GIVING A BREAK.**

Attorney Eşref Nuri Yakışan, a defense counsel, reminded the Panel of Judges that the Public Prosecutor was not in the courtroom. The Presiding Judge answered saying, **"*you leave the courtroom too*"**, which is far from a serious and legal basis.

When Att. Eşref Nuri Yakışan responded saying, *"The trial can be continued without our party, but in accordance with Code of Criminal Procedure Article 188/1... the Public Prosecutor... must be present... "*, the Presiding Judge said ***"turn his microphone off, shut up"*** and continued the trial without giving a break.

Thereupon, Att. Eşref Nuri Yakışan submitted a petition to the case file and requested that these statements he made during the hearing be identified from the video recordings and transferred to the court report. **However, the Panel of Judges has removed the events of this process from the SEGBIS [Sound and Video Information System] transcripts or did not include them at all.**

3- The defendant Berkay Kayabay gave a statement at the hearing on October 16, 2019. However, the majority of his statement (1st session) was not written down in the minutes of the hearing.

> **PRESIDING JUDGE:** Defendant Berkay Kayabay. No, then, let us give a break to the hearing for today. The time of prayer is approaching also. There are also requests for the prayer, everyone should be here tomorrow on 9:30 am. We will go on tomorrow from where we left.
>
> 16/10/2019, SESSION 2
>
> **PRESIDING JUDGE:** Yes.
>
> **DEFENDANT BERKAY KAYABAY:** Yes, Sir.
>
> **PRESIDING JUDGE:** Yes, Berkay, now.
>
> **DEFENDANT BERKAY KAYABAY:** First of all, we have now been over with the guard duty matter, but can I make an addition to that topic.
>
> **PRESIDING JUDGE:** We will come to that point, not now, I will allow you to make an addition Berkay again.

Berkay Kayabay and his defense counsel requested that the missing parts of his statement be identified from the video recordings and dictated on the court proceedings in order to be able to exercise his right of defense with many different petitions he submitted to the case file. However, none of these demands were met.

In addition, when Berkay Kayabay made a statement against the opinion on the merits on December 10, 2020, his speech was interrupted by the Panel of Judges and was settled before completing his statements.

4- Panel of Judges asked the defendant Bedri Edis Yılmaz at the decision hearing dated 11.01.2011 and the defendant made the following statement:

> *"There is no concrete evidence against me, there is no complainant about me. Regarding the merits, my defense was not taken neither against the indictment, nor the statements of the complainants or the defendants who benefit from law on effective remorse. In many ways, my defense rights have been violated. "*

While the defendant Bedri Edis Yılmaz continued his words, Presiding Judge interrupted his speech and therefore the defendant had to end by demanding his acquittal quickly. It was written in the hearing report as follows:

> *"The Accused Bedri Edis YILMAZ was asked his Last Word: There is no concrete evidence against me, I demand our acquittals, he said."*

As can be seen, the above statements of Bedri Edis Yılmaz stating that his right to defense was restricted and he was not given the right to defend in many stages were distorted in the minutes of the hearing and dictated differently. Accordingly, Bedri Edis Yılmaz submitted a petition dated 18.01.2020 and requested the correction of this error by examining the video recordings. However, the Panel of Judges ignored this request.

5- What we have mentioned above is limited to what we can already detect. In this case, it is not possible to talk about the soundness of the hearing minutes and transcripts. Because even the above examples cannot be explained by a simple mistake. We suspect that these mistakes were made deliberately when we refer to the transcriptions of the minutes where the defense rights of the defendants were restricted, the statements in their favor were concealed, and the statements that Presiding Judge did not say were written against the defendants.

It is extremely important to investigate and resolve these situations, which may give rise to the crime of forgery of documents, in terms of the soundness of the hearing minutes and other court proceedings in the case file.

Moreover, this issue is very easy to confirm. Article 8/2 of the Regulation on the Use of Audio and Video Information System (SEGBIS) says, "*Upon request or objection, audio and video recordings can be watched by the relevant person under the supervision of the investigation and prosecution authority in accordance with the conditions stipulated in the law*."

The SEGBIS [Sound and Video Information System] records are in court possession, and it is possible to review the videos of the days on which such suspicion is present. **However, although the Panel of Judges was "under suspicion" in this sense, they ignored these requests and ruled with this error.**

EVEN THOUGH THE PANEL OF JUDGES "RESTRICTED THE DEFENDANTS WITH RESPONDING TO OPINION ON THE MERITS" THIS SITUATION WAS RECORDED IN THE MINUTES DIFFERENTLY

In the defense of the defendants, which began on November 30, 2020, the Presiding Judge warned the defendants that **"they were restricted to ONLY WITH DEFENSE AGAINST THE OPINION ON THE MERITS prepared by the prosecutor's office".** The defendants stated that their defense would be taken "within the scope of the case file" both in the minutes of the hearing and in the sms messages sent for the invitation to the hearing, and when they wanted to defend against all the accusations made against them in the file, they were refused by reprimanding and interrupting their words.

The Presiding Judge, interrupted the defense of the defendants who stated that they had not responded to the claims of neither the complainants nor the defendants that benefit from law on effective remorse. The defendants who wanted to use their right to defense, and could only make a few sentences agains the thousands of pages of allegations and demanded to put forward their own defensive evidence due to the heaviness of the charges were intercepted and made to sit down in their places.

This unlawful treatment had an extremely negative effect on all the defendants, they did not explain many issues they wanted to answer with the concerns of "being interrupted during their speech, being put in place, and reprimanded", so they tried to speak too quickly and made an effort to fully exercise their defense rights.

However, when the minutes of the hearing arrived, it was observed that the situation was reflected in the minutes surprisingly very differently. For example, in the 11th Session's Minutes dated 30 November, 2020, it was alleged that the defendants were given the right to defend "the contents of the entire file" - contrary to the truth:

> **SEGBIS [Sound and Video Information System] RECORDING STARTED (09.54)**
>
> The prosecution's opinion on the merits is communicated to all parties, the defendants who will make a statement against the opinion are listed and grouped, the parties are notified, this order will be followed and the hearing will continue.
>
> Defendant Arzu Leman ORCAN's Attorney Elif Esra KIRIMLI spoke:
>
> **Decision:**
>
> It was unanimously decided to reject the request of the defendant's attorney because it was against the procedure and law.
>
> The defendant Arzu Leman ORCAN was taken into presence.
>
> **DEFENDANT ARZU LEMAN ORCAN WAS ASKED ABOUT THE OPINION ON THE MERITS OF THE PROSECUTION AUTHORITY THAT IS BOTH COMMUNICATED AND READ OUT AND REGARDING ALL THE DOCUMENTS, REPORTS AND STATEMENTS IN THE CASE FILE IN THE PRESENCE OF HER ATTORNEY ELIF ESRA KIRIMLI:**

Defendant BEDRİ EDİS YILMAZ is taken to presence:

DEFENDANT BEDRİ EDİS YILMAZ WAS ASKED ABOUT THE OPINION ON THE MERITS OF THE PROSECUTION AUTHORITY THAT IS BOTH COMMUNICATED AND READ OUT AND REGARDING ALL THE DOCUMENTS, REPORTS AND STATEMENTS IN THE CASE FILE IN THE PRESENCE OF HIS ATTORNEY BURAK TEMİZ:

Defendant CANAN KÜTAHNECİOĞLU is taken to presence:

DEFENDANT BEDRI EDIS YILMAZ WAS ASKED ABOUT THE OPINION ON THE MERITS OF THE PROSECUTION AUTHORITY THAT IS BOTH COMMUNICATED AND READ OUT AND REGARDING ALL THE DOCUMENTS, REPORTS AND STATEMENTS IN THE CASE FILE IN THE PRESENCE OF HIS ATTORNEY ASLI AVCI:

Defendant EBRU FİŞEK is taken to presence:

DEFENDANT BEDRI EDIS YILMAZ WAS ASKED ABOUT THE OPINION ON THE MERITS OF THE PROSECUTION AUTHORITY THAT IS BOTH COMMUNICATED AND READ OUT AND REGARDING ALL THE DOCUMENTS, REPORTS AND STATEMENTS IN THE CASE FILE IN THE PRESENCE OF HIS ATTORNEY DUYGU AKYOL:

The minutes were recorded for all the ongoing defendants that they were allowed to speak as above without exception. When looking at the SEGBIS [Sound and Video Information System] transcripts, it will be seen that these statements are in place respectively for all the other defendants.

BUT CONTRARY TO WHAT IS STATED IN THE MINUTES, ARZU LEMAN ORCAN AS WELL AS ALL THE OTHER DEFENDANTS WERE ONLY ASKED FOR THEIR DEFENSE AGAINST THE PROSECUTOR'S OPINION ON MERITS COMMUNICATED TO THEM, AND THEY WERE DEFINITELY NEITHER ASKED, NOR PERMITTED TO MAKE THEIR DEFENSE AGAINST "REGARDING ALL THE DOCUMENTS, REPORTS AND STATEMENTS IN THE CASE FILE" AS RECORDED IN THE MINUTES.

THE OTHER WAY AROUND, the defendants were interrupted by VIOLATION OF THEIR RIGHT TO DEFENSE and the coherence of their defense was distorted at the moment they started speaking outside the limits of the opinion on merits or on other documents, reports and statements in the case file. For this reason, many of the defendants were completely interrupted and their defense rights were taken away from them and they were made to sit in their places. Examination of the SEGBIS [Sound and Video Information System] video recordings will reveal the truth.

MANY DOCUMENTS IN THE CASE FILE WERE NOT GIVEN TO US DESPITE OUR INSISTED REQUESTS

Many petitions submitted to the file by the complainants and their attorneys, flash memory containing audio and video recordings, CD and their attachments as well as the documents, minutes, expert reports etc. submitted to the case file from outside were not given to us despite our persistent requests. In fact, questions were directed to the defendants through most of them, but the defendants were not allowed to examine them.

Tens of verbal and written requests we made to correct this situation, which has been one of the biggest problems since the first day of the case, and to complete the deficiencies, were not taken into consideration by the court. For this reason, **the defendants were forced to make a defense before they could examine the evidence submitted to the file against them, and thus their right to defense and fair trial were taken away.**

In addition, UYAP portal (National Judiciary Informatics System) is very complex and especially the annexes of most documents have not been added to the UYAP system. As a result of our requests on this subject, some documents were scanned and uploaded to the system, but some document attachments were never uploaded.

Although the court has made a decision on the merits of the case, **some of the documents that have not been given to us yet are as follows**. However, at this point, we should remind you that **the following documents are limited to the ones we know exist but cannot access**.

ITEM NO	DOCUMENT DATE	SENDING INSTITUTION	CONTENT OF RELATED DOCUMENTS	EVIDENCE NOT GIVEN TO US
1	20.09.2018	Fight Against Financial Crimes Branch	12 files about the complainants submitted to the prosecutor's office and the digitals submitted by the complainants in the content of their attachments ***(ANNEX-1)***	
			Ceylan Özgül	1 CD, 1 hard disk
			Gamze Press	1 CD
			Mervenur Lookout	1 CD
			Ozkan Mamati	1 hard disk 2 flash memory
			Ebru Alkan	1 flash memory
			Emre Yasar Ertuzun	1 flash memory
			Hanife Akalin	1 CD, 1 flash memory
			Zeynep Ceren Yiğitcan	2 CDs
			Serra MohammedValipour	1 CD
			Diamond Crescent Hero	2 CDs
			Beyza Banu Yavuz	1 flash memory

			Koray Kilic	1 CD
			Beyza Özalıcı	2 CDs
			Serdar Ozturk	1 CD
			Omer Celenlioglu	1 flash memory
			Umit Kuruca - Ugur Sahin - Ozkan Mamati	1 flash memory
			Ugur Sahin - Umit Kuruca	1 flash memory
			Beyza Banu Yavuz	1 flash memory
			CD where the Turnstile Claim is explained	1 CD
			Fetö Connections - Pool Queries	1 DVD
			Talk about Jonathan Schanzer	1 CD
			Judah Glick open source research	1 CD
			Oktar Babuna Israel Trip	1 CD
			Notice Report	1 CD
2		Complainant - Injured Party Statement Records	Ahmet Keser, Anıl Köroğlu, Atna Şenlikçi, Ertuğrul Karatay, Hacı Özkan, Hasan Meter, Kurtcebe Tarık Işık, Mehmet Tunç, Mukaddes Günsu Akçagöz, Murat Kartoğlu, Mustafa Ekici, Osman Altınışık, Tufan Köse, Uğuk Sevim, Uğur Coşkun, Sema Çiçek	16 statement reports
3		Witness statements	Aycan Mamati	1 statement report
4	14.11.2018	Information Technologies Communication Authority	HTS records of 224 suspects **(ANNEX-3)**	1 CD
5		Of the 16 CDs seen to be submitted to the	No. 7,13,14 CDs. No.1 and No.5 CDs whose contents cannot be opened by any means	5 CDs

		file within the scope of the evidence list		
6	02.11.2019	Ministry of Finance Maltepe Small and Medium Taxpayers Group Presidency	Attachment CDs of the tax technique report numbered 2019-A-3956/8 prepared about the Global Publishing company	Additional CDs
7	16.04.2019	Expert Fahrettin Ülkü	Deed Records **(ANNEX-9)**	2 CDs
8	05.12.2018	Supreme Election Board	Information and documents regarding the voting status of 235 people **(ANNEX-10)**	1 folder of documents
9	18.03.2019	Council of Higher Education	Examining the Yöksis database about their education status **(ANNEX-11)**	1 CD
10			Images recorded by law enforcement during search and seizure activities, helicopter camera recordings	Camera recordings
11	09.08.2018	Turkey Finans Participation Bank	Credit usage information of suspects using credit **(ANNEX-14)**	1 CD
12	28.03.2019	Türk Telekom Headquarters	Backup of the cloud account with the customer number 1051563315 belonging to Global Publishing Company **(ANNEX-15)**	1 CD
13	21.10.2019	Fight Against Financial Crimes Branch	Image sample of the e-mail address of Hanife Akalın, the client **(ANNEX-16)**	1 flash memory

14		Camera recordings of the statements of the suspects who said they wanted to benefit from the effective remorse provisions	Adnan Tınarlıoğlu, Akın Gözükan, Gülcan Karakaş, Kemal Ayaz, Ayça Pars, Mehmet Murat Develioğlu, Bahar Bayraktar,, Beril Koncagül, Muazzez Arık, Bilge Tok, Serdar Dayanık, Burak Abacı, Sıdıka Sema Gül, Ceyhun Gökdoğan, Yıldız Arık, Çağla Teker , Mustafa Arular, Ece Koç, Murat Terkoğlu, Emre Kutlu, Election Köse, Emre Teker, Begüm Tekiner, Ali Şeref Gider, Suphi Serdar Togay	26 camera records
15	21.10.2019	Fight Against Financial Crimes Branch	Image examples of Beyza Banu Yavuz and Özkan Mamati's phones (**ANNEX-17)**	2 flash memory
16	17/09/2019 - 10/06/2020	Complainant - injured party attorneys	All digital material and evidence they presented to the court in the 1st, 2nd, 5th and 6th sessions	CD, DVD, flash memory, hard drive, etc. Material and evidence
17	30.09.2019	Istanbul Criminal Police Laboratory Directorate	İST / KM / 18-31201 numbered expertise report on the determination of shooting distance **(ANNEX-18) (157th page of the indictment)**	1 report
18	30.12.2019	Istanbul CBS 2019/119278 S.	Records of the wiretaps made in the Technical Follow-up Office **(ANNEX-19)**	1 TB external disk with serial number NM12ROVS
19	13.01.2020	Istanbul CBS 2019/119278 S.	A9 TV broadcast recordings **(ANNEX-20)**	13 CD-DVDs
20	11.07.2018	İEM Financial Branch - Confiscation Record	Kandilli Mah. Yamaçlı Sk. No: 36 Üsküdar / Istanbul, security camera recording no. 2L07AF7PAEYE622W **(ANNEX-21)**	Security camera recorder recordings
21			Statement record of Kadriye Mihrace Seyrek dated 18/02/2020	1 statement report

22	10.08.2018	Istanbul CBS 2016/103113 S.	The response of the warrant written to the Istanbul The Marmara Pera Hotel Directorate regarding how the persons named Jonathan Schanzer and Daveed Gartesnstein Ross pay the hotel **(ANNEX-23)**	1 information delivery report, pos device records of Garanti Bank and Akbank dated 10/08/2018
23	29.05.2018	Delivery Report	DVD delivered by Saber Mohammad VALIPOUR to the Financial Branch **(ANNEX-24)**	1 DVD
24	18.07.2018	Digital material review report	Copy of the image of the Samsung brand KP42T61CM623 with a 64 GB capacity memory card, which allegedly contains images of İffet Piraye Yüce.	1 image copy
25			Medical reports taken during the detention period and photographs recorded by law enforcement	Report and photos
26			Examples of digital material images belonging to defendants	Image examples
27	16.07.2018	Fight Against Financial Crimes Branch	Complainant Beyzanur Çelebioğlu forensic report	Forensic Report
28	24.07.2020	Istanbul CBS Statement Record	Camera recordings submitted by Gülay Akpolat to the file	Camera recordings

THE ORIGINS OF THE CONSERTED DITIGAL MATERIAL AND THE IMAGE-EXPORT SAMPLES WERE NOT GIVEN TO THE DEFENDANTS OR THEIR ATTORNEYS DURING THE TRIAL

The Panel of Judges ignored the statements and requests that the confiscated digital materials were illegally seized and copied, and did not refrain from making the unlawful evidence the subject of the trial. In fact, the intervening attorneys of the complainants asked almost all of their questions based on this unlawful evidence, and the Panel of Judges allowed these questions to be asked.

As can be clearly seen from the minutes of the hearing, almost every question was appealed by the defense counsels and a decision on this matter was requested, but the Panel of Judges did not make a decision in violation of Article 236 of the Criminal Procedure Code. They even forced the defendants to make statements based on this unlawful evidence.

In addition, all the requests that the defendants and their defense counsels made regarding the delivery of the image-export samples of these digital materials, which are the subject of almost every hearing, and the originals of these digital materials, in accordance with the relevant articles of the Code of Criminal Procedure, were not taken into account by the Panel of Judges. However, Article 134 of the Code of Criminal Procedure is very clear.

> *Article 134 – (1) Upon the motion of the public prosecutor during an investigation with respect to a crime, the judge shall issue a decision on the search of computers and computer programs and records used by the suspect, the copying, analyzing, and textualization of those records, if it is not possible to obtain the evidence by other means.*
>
> *(2) If computers, computer programs and computer records are inaccessible, as the passwords are not known, or if the hidden information is unreachable, then the computer and equipment that are deemed necessary may be provisionally seized in order to retrieve and to make the necessary copies.* ***Seized devices shall be returned without delay in cases where the password has been solved and the necessary copies are produced.***
>
> *(3) While enforcing the seizure of computers or computer records, all data included in the system shall be copied.*
>
> *(4)* ***In cases where the suspect or his representative makes a request, a copy of this copied data shall be produced and given to him or to his representative and this exchange shall be recorded and signed.***
>
> *(5) It is also permissible to produce a copy of the entire data or some of the data included in the system, without seizing the computer or the computer records.* ***Copied data shall be printed on paper and this situation shall be recorded and signed by the related persons.***

Although it was told by the court at several different times that the defense counsels would be called and these records would be delivered to them, they were never given.

The Panel of Judges **kept the said records from the defendants and never handed them over to prevent the defendants from defending themselves against this alleged evidence by acting contrary to the express provisions of the law**. However, the intervening parties and their attorneys were able to access the colored and legible records regarding these records, apart from the black and white and illegible digital examination reports in the file, and even asked questions through them. Despite this, these records were never given to the defendants.

In the final verdict of 11.01.2020, it was decided to return the digital materials confiscated with the finalization of the decision. This decision of the court constitutes a clear violation of the provisions of Article 134 of the Code of Criminal Procedure as well as the prevention of the right to defense of the defendants.

THE PANEL OF JUDGES ACTED IN VIOLATION OF ARTICLE 212 OF THE CRIMINAL PROCEDURE CODE, TOOK TESTIMONY OF COMPLAINANTS FORCIBLY EVEN THOUGHT THEY CLEARLY STATED

THE CONTRARY, DIRECTED THEM AND PREVENTED QUESTIONS TO BE ASKED FOR REVEALING THE MATERIAL TRUTH IN COMPLAINANTS' TESTIMONIES

The complainant named Bengisu Güler, who was present at the hearing dated November 8, 2020 clearly stated that she "wanted to withdraw her complaint" and "did not want to give a statement" when he was brought to the presence of the Panel of Judges. The complainant stated that she had been called to the police security before, she had to give a statement because she was very much afraid and that she had to testify even though she was not aware of anything. She also said, she was told that she would not need to give a statement once again at the police station and that she believed this and gave her first testimony.

Bengisu Güler, the complainant, like some other complainants, was shown as a "suspect" by the police in a letter dated 07.06.2018 and a "travel ban" was requested for her. This request was accepted by the investigation prosecutors and a decision was taken to ban her from going abroad since she was considered a suspect. Upon this, the complainant, who was summoned to the police, was deceived and forced to complain with the promise that "only if she gives a statement, the ban on her will be lifted and she will be turned into an injured party."

In fact, the complainant expressed this situation in her court testimony with the words *"No, I only knew that I had to give (a statement), but if I did not know that I had to give it, I would never tell it ..."*.

However, despite all these statements of the complainant and even the complainant did not want to give a statement and wanted to drop the charge, the Panel of Judges forced the complainant to give a statement (as the witness) in defiance of the Code Of Criminal Procedure Article 212 forcibly. As it is reflected almost every line of the hearing record, the complainant was extremely forced, wept and constantly uttered that she did not want to give statement from beginning to the end of the statement. **Nevertheless, the Panel of Judges read the first statement of the complainant to herself at length by catechizing and asked to the complainant as; "is it true?".** Whereas the complainant just confined herself to say "true". It is obvious that the attitude of the court is unlawful according to the Code of Criminal Procedure Article 212.

Besides, the Panel of Judges made the attended attorneys ask the questions which were addressed to the complainants based on unlawful evidence despite of the objections. However, the Panel of Judges disrupted the cogent questions directed to elicit the material fact regarding to the allegations in the complainant statements by culprit defendants by turning off the microphone of the culprit defendants.

> **ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS:** Before you gave a statement, were asked to you whether you wanted a solicitor or not?
> **THE COMPLAINANT BENGİSU GÜLER:** No, I was not asked.
> **ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS:** When they called you from the security directorate what did they tell you directly?
> **THE COMPLAINANT BENGİSU GÜLER:** Pardon me? I couldn't understand.
> **ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS:** As they called you from the security directorate in order you to give a statement, as they called you to invite you.
> **THE COMPLAINANT BENGİSU GÜLER:** Yes.

ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: You told in that way. In the course of the phone call, did the police superintendent Baybars call you, or the police superintendent Batu call you?
PRESIDING JUDGE: Just a minute, I do not approve this question to be asked, skip it, continue by the next question.
ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: When they called you from the security directorate, what did they tell you directly on the phone?
PRESIDING JUDGE: I did not approve this question to be asked, either. It is not about trial issue, what else?
PRESIDING JUDGE: Continue by the next question.
ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Can I carry out my speech?
PRESIDING JUDGE: No.
ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: When some of the culprits were pleading here, they alleged that the complainants had been pressurized and had been canalized by some certain police officers, I am asking within this scope. Can you please not interfere in my question?
PRESIDING JUDGE: No. We do not approve, skip it. It is not approved, continue by the next question.
ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Your Honour Chief Judge can you please allow?
PRESIDING JUDGE: Mister Solicitor, skip it, or else, I will turn off the microphone.
ATT. NURİ EŞREF YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: In the course of your statement in the security directorate, when you went to the security directorate who met you first?
PRESIDING JUDGE: Turn off the microphone. Yes, any questions? No. Okay thank you may return back to your seat. Let's have 10 minutes break. We will continue where we have quitted after 10 minutes, return back to your seat.

From the beginning to the end of the trial statement, the culprit alleged that she "was forced to give a statement as she had been called by the security directorate, she gave statement unconsciously and her statutory rights had not even been reminded her" etc. However, **the Panel of Judges disrupted the questions addressed to be asked in order to clarify the allegations with a harsh and aggressive manner.** Moreover, even by not allowing the defendants to ask questions in different points, the Chief Judge turned off the microphone of the culprit defender Attorney Eşref Nuri Yakışan and he quitted the trial session right after it.

WITNESSES HAVE BEEN PRESENT IN THE HALL DURING THE INTERROGATION AND FOLLOWED THE INTERROGATION

In the first hearing that started on September 17, 2019, **the defense lawyers asked the court to determine whether there were witnesses present in the hall and, if so, to be taken outside the courtroom, however contrary to the ruling provisions of the Code of Criminal Procedures, instead of determining whether or not there were witnesses inside the courtroom, the panel of judges rejected this request stating that there are no witnesses in the courtroom.**

Att. Şule Akyol requested the determination of the witnesses and thereupon, the presiding judge stated that there were no witnesses in the hall without conducting any research and questioning.

> **ATT. ŞULE AKYOL, THE ATTORNEY OF SOME DEFENDANTS:** Esteemed President. First of all, we assure you that if you listen to our procedural demands first of all, in terms of the authority of the trial and the harmony of the hearing, we will not make repetitive statements in order not to disturb the harmony of the trial, but if you receive our individual requests, this will please us. We are talking about a long period of 45 days, besides, we demand that before the trial starts, before the defendants are interrogated, the determination of whether the persons to be heard as witnesses are among the audience or at the complainants' part, should be made by the court officers, and in this sense, the provisions of the Code of Criminal Procedures should be fulfilled. We demand that the court take necessary precautions…
>
> **PRESIDING JUDGE:** We know the witnesses are not present in the courtroom now.

Again in the same hearing, Att. Elif Esra Kırımlı repeated the same demand and reminded the court that contrary to the statement of the presiding judge, there were witnesses present in the courtroom as of that moment. **However, the panel of judges remained silent in the face of this demand as well and did not take any action.**

> **ATT. ELİF ESRA KIRIMLI, THE ATTORNEY OF SOME DEFENDANTS:** As a result these should be reflected in the decision. Furthermore, according to your statement we know that there are no witnesses present in the courtroom right now, but we do not know their identities, we do not know if these witnesses are here right now or not. Even now, I catch sight of a few of the witnesses for instance. Consequently, for the complainants should win the title of being a complainant to be given the right to sit there in the complainants' compartment. We should be presented which of them are allowed to become the intervening party on which grounds, they need to make their statements to define with which title they will take their place in this courtroom. Without doing any of these, you are starting with hearing the defense of the defendants, you are entering the merits of the case.
>
> **PRESIDING JUDGE:** Yes
>
> **ATT. ELİF ESRA KIRIMLI, THE ATTORNEY OF SOME DEFENDANTS:** None of these are in line with the procedure. I request that our every objection on this matter be resolved
>
> **PRESIDING JUDGE:** Let us move on to the other lawyer lady.

HOWEVER, AS WE COULD DETERMINE, THE WITNESS NAMED ARZU CEVAHIR FOLLOWED THE HEARINGS IN THE FIRST WEEK OF THE TRIAL AND WAS PRESENT INSIDE THE COURTROOM DURING THE INTERROGATIONS OF THE DEFENDANTS. Moreover, this person confirmed in her own statement before the court that she was indeed inside the courtroom that day. It would be possible to determine whether or not there were other witnesses present inside the courtroom if the records of the hearings are examined.

WITH AN INTERIM DECISION THE DEFENDANTS WERE PROHIBITED TO TALK TO THEIR LAWYERS DURING THE HEARINGS AND THE RECESSES

Turkish Code of Criminal Procedure encompass the following provisions;

Code of Criminal Procedure Art.149*; " The suspect or accused may benefit from advice of one or more defense counsels at any stage during the investigation or prosecution; in cases where the suspect or the accused has a legal representative, he may also choose a defense counsel on his behalf."*

Code of Criminal Procedure Art.154*; "Any suspect or accused at any time shall have the right to an interview with a defense counsel in an environment where individuals are unable to hear their conversation; a power of attorney is not required. Written correspondence by these individuals to their defense counsel are not subject to control."*

The reason why the lawyers are required to be present during the hearings is that they would provide legal assistance to the defendant. This right of the defendant cannot be limited on any grounds such as the number of the defendants, the physical conditions of the courtroom, etc. This is a necessity by the mandatory provision of the law.

In the same way, in Article 6/3 of the European Convention on Human Rights, entitled Right to Fair Trial; "Everyone charged with a crime has the following minimum rights:

b-Having the necessary time and facilities to prepare his defense

c- To defend him personally or to benefit from the help of a lawyer he chooses."

Therefore, it is clearly stated that the right of the person charged with a criminal charge to benefit from the assistance of a counsel is an indispensable element of the right to a fair trial. However, despite the clear regulations in the law, the panel of judges made ambiguity between the parties and deliberately took away the defendants' right to effective defense, fair trial, and the right to benefit from defense counsel. Namely;

On the third day of the trial dated September 19, 2019, using the physical condition of the hall and the so-called practices of the prison prosecutor's office as an excuse, the court banned the meeting of the defendants and their attorneys during the hearings and the recesses.

September 19, 2019 – SESSION 1

> **PRESIDING JUDGE:** Yes, we are continuing with our hearing from where we left off yesterday, however before that we think that the lawyers taking the floor should clearly and understandably state their names and their clients' names before they start speaking because the clerks are having difficulty. We would appreciate if you could be careful on this issue. The lawyers' requests regarding talking to their clients and having document exchange inside the courtroom during the recesses will be stopped because of the physical and personnel conditions of the courtroom and the general application of the Prison's Prosecutor's office that allows the lawyers to see their clients in prison until 22:00. That means such a thing will not be allowed from now on, it would not be permitted…

However, complainants and their attorneys are allowed to meet and they can even send written notes to each other during the hearings. The objections brought by the defense counsels were rejected as well.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Now, esteemed President of the court, yesterday, Att. Arzu Gül also voiced this concern. She said that some of the complainants are writing questions to be asked and that they are giving these questions as notes to their lawyers. We are not saying that the complainants are not allowed to guide their lawyers that they are not allowed to benefit from their legal assistance. What I am saying is asking why the defendants are not allowed to talk to their lawyers, that is 1, and secondly…

PRESIDING JUDGE: During the hearing or while we are going on with the hearing…

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: No, not during the hearing

PRESIDING JUDGE: Meeting during the recesses, have you ever seen such a practice in other trials before this?

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Of course

PRESIDING JUDGE: In high criminal courts?

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Article 149/2 and 3 of the Code of Criminal Procedures is very clear. The law states that at every stage of the investigation and prosecution, at every stage; the accused or the suspect benefits from the assistance of his lawyer. This is a clause that even paves the way for the defendant to sit beside his lawyer.

PRESIDING JUDGE: Are you allowed to go see your client at 2:00 o'clock in prison?

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Yes it was 4:00 when I left Kırıkkale F Type Prison a few days ago. Esteemed President, these are all documented by reports.

PRESIDING JUDGE: That is all up to the practicing party

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Alright, that is what I mean, it is all up to the practicing party

PRESIDING JUDGE: This is also about our practices. I mean we decided on this practice and thus we have made a decision.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Alright Mr. President but the decision you made is wrong according to the Code of Criminal Procedure. That is why we request that you overrule your interim decision.

PRESIDING JUDGE: Stop, now come back to the report on this issue. Eşref Nuri Yakışan, it has been decided to deny the request of the Att. Eşref Nuri Yakışan representing the Defendant Mehmet Noyan Orcan because it does not conform with the procedure and the laws. The defendant Bora Yıldız has been taken to the stand….

THE PANEL OF JUDGES ASSUMED AN AGGRESSIVE AND OFFENSIVE ATTITUDE AGAINST THE LAWYERS OF THE DEFENDANTS

As we have frequently stated above, in almost every process from the beginning to the end of the trial, **the defense lawyers were repeatedly interrupted by the president of the court, they were not allowed to make statements and requests, their microphones were turned off and the procedures were breached even by having the lawyers taken out of the courtroom by law enforcement officers, on some occasions.** With this attitude, the presiding judge deliberately prevented the exercise of the right to an effective defense and a fair trial. **That is because the panel of judges did not read the petitions and defenses submitted to the case file and did not consider written requests and thus left no space for the accused party to defend itself.**

Here are a few examples of the court board taking away the right to ask questions, defend and request, and provide legal aid to the defendant by interrupting the defense of defense lawyers and turning off their microphones:

While the Complainant Hatice Ural was giving her statement- August 5, 2020 – Session 1

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: Dear President, according to Code of Criminal Procedure ***you do not have the right to directly stop a question being asked***.

PRESIDING JUDGE: ***ALRIGHT, TURN OFF, TURN OFF, TURN THE MICROPHONE OFF.***

While Complainant Bengisu Güler was giving her Statement- August 5, 2020 – Session 1

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: *Mr. President, some defendants,*

PRESIDING JUDGE: Skip to the other question.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: *May I complete my words?*

PRESIDING JUDGE: No.

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: *Some defendants claimed here while making their defense, claimed that complainants were also pressured and lead by some certain police officers,* ***I am asking my question within this scope, please will you not interfere with my question?***

PRESIDING JUDGE: No, we are not allowing this, pass that one. *It is not accepted, skip to another question.*

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: *Mr. President, will you please let me ask?*

PRESIDING JUDGE*: Mr. Attorney, skip to the next question or* ***else I will have your microphone turned off.***

ATT. EŞREF NURİ YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: *Who welcomed you when you first went to the Security Headquarters for your statement?*

PRESIDING JUDGE: TURN THE MIC. OFF. Anyone with another question? No. Alright thank you you can go to your place. We will give a recess for 10 minutes, we will continue from where we left off 10 minutes later. You go to your seat.

While the complainant Cihat Onur Aykaç was giving his statement - 08/11/2020 1. Session

ATT. VİLDAN EDA ÇAMURCU, ATTORNEY OF DEFENDANT MERT SUCU: We will have a request

PRESIDING JUDGE: Go on

ATT. VİLDAN EDA ÇAMURCU, ATTORNEY OF DEFENDANT MERT SUCU: I am Att. Vildan Eda Çamurcu, representing Mert Sucu. Mr. President, **we have previously made the same request on writing but we do not know the result of this request**. I have a short request before the hearing of this complainant before you. We requested that our client to be brought to this hearing. During the complainants Cihat Onur Aykaç and Abdullah Karadaş's Statements, we request that our client to be brought here even though my client and other defendants are not allowed in this courtroom during the statements of the complainants to ensure that there is no pressure on the complainants, the charge brought against my client is to attempt to kill a person on purpose and that is the harshest offense in the case file, and apart from this the real subject of the even that took place that day is my client. **The fact that this charge is only related with my client that none other than my client is involved in this and that the complainants are in fact police officers, it is obvious that exerting pressure or intimidation is out of question in this issue**, consequently it is not possible for the 200th article of the Code of Criminal Procedures to be applicable in reference to the crime my client is charged with. For us to effectively use our right for defense, to prevent the violation of our right to a fair trial, we want our client to be present while the complainants Cihat Onur Aykaç and Abdullah Karadaş are heared.

PRESIDING JUDGE: Yes, since decision regarding this point has been made before, there is no grounds to make another decision.

ATT. VİLDAN EDA ÇAMURCU, ATTORNEY OF DEFENDANT MERT SUCU: On what grounds Mr. President?

PRESIDING JUDGE: On previous grounds

ATT. VİLDAN EDA ÇAMURCU, ATTORNEY OF DEFENDANT MERT SUCU: We do not know the previous grounds either Mr. President...

PRESIDING JUDGE: OKAY, TURN OFF, TURN OFF THE MICROPHONE; TURN OFF THE MICROPHONE, Yes.

While Defendant Benefiting from Effective Remorse Law, Ceyhun Gökdoğan is giving his statement – March 3, 2020 – Session 2

ATT. EŞREF NURI YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: *He is not responding to the question, Mr. President.*

PRESIDING JUDGE*: Next question*

ATT. EŞREF NURI YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN: *If he doesn't want to answer, he can say that he won't answer*

***PRESIDING JUDGE**: He gave his answer, the answer is given*

***ATT. EŞREF NURI YAKIŞAN, THE ATTORNEY OF DEFENDANT MEHMET NOYAN ORCAN:** I am asking who requested this meeting?*

***PRESIDING JUDGE: Mr. Lawyer, Alright Turn off the microphone. Next question, turn off the microphone, that is it. That is over.** Anyone with another question? Here you go Ms. Lawyer.*

HEARING DATED October 17, 2019

ATT. ELIF ESRA KIRIMLI, THE ATTORNEY OF DEFENDANT MEHMET ÇOŞKUN PAMIR: Now, consequently, again earlier regarding your wife, a poem has been read here by a lawyer who claimed that she was the lawyer of a complainant, although we still do not know which lawyer is representing which complainant. About the social media posts of your wife, Mr. President seeing that you allow them to show videos-

PRESIDING JUDGE: Are you asking me or are you asking the defendant?

ATT. ELIF ESRA KIRIMLI, THE ATTORNEY OF DEFENDANT MEHMET ÇOŞKUN PAMIR: I am making request from you, to let us watch a video right now

PRESIDING JUDGE: Not a request like this, I asked if you have a question to be addressed to the defendant and you raised your hand

ATT. ELIF ESRA KIRIMLI, THE ATTORNEY OF DEFENDANT MEHMET ÇOŞKUN PAMIR: I would like to ask a question after that video, lots of videos have been shown here just before this

PRESIDING JUDGE: You cannot ask me a question. Turn off the microphone, turn off the microphone if you don't have a question

ATT. ELIF ESRA KIRIMLI, THE ATTORNEY OF DEFENDANT MEHMET ÇOŞKUN PAMIR: I am not asking you a question. I want that video shown before I ask my client a question.

PRESIDING JUDGE: No, Yes, do not speak again before you are given the floor. Yes. She has been warned and continued to speak again. The fact that she should not speak has been reminded once again. Yes, alright we had questions asked to you Mehmet Coşkun Pamir and have received our answers. Thank you. You may go back to your seat.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: Att. Serkan Temel representing some of the defendants. Mr. President I would like to make a small remark about the prosecution today and before. With all due respect, before the very begining of the prosecution I believe that you treated kindly both to the defendants and to us. But today during my client Mehmet Orhan Mazıcı's interrogation, the Public Prosecutor suddenly turned on his microphone and interrupted the interrogation.

PRESIDING JUDGE: that that that

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: Let me finish my words, if you please Mr. President

PRESIDING JUDGE: Yes, go on.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: I will say something proper really.

PRESIDING JUDGE: Alright go on.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: He interrupted. Public Prosecutor was asking his question had I not interfered. That is what happened and when we do something like this you-

PRESIDING JUDGE: You reminded us. We thank you about this matter.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: Alright you're welcome. But there is something here Mr. President. Now according to the code of Criminal Procedure 149/3 the legal step that a lawyer would take during the interrogation of a defendant cannot be prevented nor can it be limited. I mean we do not ask you to do us a favor, I had to state something there. I can provide all kinds of legal assistance to the defendant, to my client.

PRESIDING JUDGE: No, okay yes.

ATT. SERKAN TEMEL, THE ATTORNEY OF SOME DEFENDANTS: I kindly have a request from you Mr. President, may it be a lawyer of a defendant or an intervening party. Where we sit is not important. We are all lawyers. I would like to ask you to use a better, a more proper language, a better language towards us especially when we talk about things you do not want Mr. President.

PRESIDING JUDGE: In the indictment there charge brought about the defendant is to found and lead a criminal organization.

A LAWYER WHOSE NAME CANNOT BE HEARD:???

PRESIDING JUDGE: I will have you taken out of this courtroom if you talk once more before you are given permission to speak Mr. Lawyer. He has been warned and is not given permission to speak. Right now the charges against the defendant is being read that is why the permission to speak is not granted….

ATT. ALI TIZIK, THE ATTORNEY OF SOME COMPLAINANTS: Att. Ali Tizik, Mr. Adnan, Are you the Mahdi or do you have a claim to be the Mahdi?

PRESIDING JUDGE: You cannot interfere with their right to ask questions. Do not talk before you are allowed to talk Mr. Lawyer, not again.

ATT. EŞREF NURI YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: I would like to remind you something.

PRESIDING JUDGE: Do not speak before you are given permission to

ATT. EŞREF NURI YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Mr. Judge, did you accept their request to become the intervening party?

PRESIDING JUDGE: You interfere during the recess, during the recess. Your name?

ATT. EŞREF NURI YAKIŞAN, THE ATTORNEY OF SOME DEFENDANTS: Eşref Nuri Yakışan

PRESIDING JUDGE: Eşref Nuri Yakışan insistently continued to speak before given permission to speak, he has been warned, and has been reminded that he should not speak once more before given permission to speak. Upon the request of the lawyer of the complainant, the defendant is asked. Yes, it is coming, it is coming, go to the microphone setting.

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: Mr. President I would like to draw your attention to this point. Now you, as the panel of judges, do not adequately cut in to commentary, leading and unrelated questions posed by the lawyers of the complainants. However here you threaten the defense lawyers by turning their microphone off, you even turn their mics off, when they make their points any how regarding the procedure. You have turned my microphone off twice or even threatened me by throwing me out of the courtroom. I mean will you please secure justice here.

PRESIDING JUDGE: We are securing justice, we believe that we do.

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: See, let me finish my words Mr. President? Please may I finish my words?

PRESIDING JUDGE: Yes

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: The complainants sitting across us are not yet announced as intervening parties, I mean this is the first time I …

PRESIDING JUDGE: But, but , but, I gave you permission to speak in regard to the statements of the defendant before us right now. You are now talking about other things. That is why I have to interrupt.

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: Mr. President, alright, about procedural things you have given me permission to speak just now. Do I have to wait for all the defendants to complete making their defense. Now if there is a procedural mistake I am responsible for reminding this procedural situation according to the Code of Criminal Procedure. And you are responsible for resolving these issues. I mean there is no such understanding of procedure. See that you are practicing a wrongful procedure here. Please be careful about these issues. At least in procedure, seing that we are doing something wrong, let us do this at least; as much as you give the floor to the complainant party, you give this side as well and do not turn our microphones off

PRESIDING JUDGE: We are, we are doing that. Now when we start listening to the complainants, we will listen to the witnesses, you will then be allowed to ask this much questions. I mean there is justice in this. Do not be bothered by that. Yes, what else?

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: I am not bothered by that Mr. President. Here is the situation, I mean I do have such a request; I kindly ask you not to allow the leading questions posed by the complainants, but you should please be careful about the things you ask as well. You just asked Ms. Didem Ürer about my client and you said: Does Adnan Oktar perform his prayers five times a da yor not? Mr. President I am sorry but this is not the subject of your court.

PRESIDING JUDGE: In the indictment, in the indictment, one moment, one moment, Mr. Lawyer, A moment

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: Our capital law, constitution, Constitutional Law Articles 24 and 25, but please I am telling you something here, please

PRESIDING JUDGE: Tell us, alright, tell us and let me see

A MALE LAWYER WHOSE NAME CANNOT BE HEARD: Now according to Articles 24 and 25, our Constitutional Law; "No one shall be compelled to reveal religious beliefs and convictions, no matter what." You right now are asking this question to people who are in front of you and are influenced by that pressure under certain conditions. I mean you are jurists

PRESIDING JUDGE: About that, about that, in that regard the point mentioned in the indictment is that as a member of the organization and the leader of the organization, as member and a leader of the religious organization, it is claimed that he does not performed his prayers and it was a question asked regarding whether that claim is true or not. That is why, that is why it was asked there. Apart from that, you do not have a question about this defendant. I am not giving you permission to speak. Alright.

December 18, 2019 DATED HEARING

ATT. ARZU GÜL, ATTORNEY OF DEFENDANT TARKAN YAVAŞ: I kindly request. Dear Presiding Judge, according to Article 201, my name is Arzu Gül. We know that the prosecution, defense counsels, and complainants, if I am not wrong. That is why we demand this, firstly, we should have the right to ask questions and make statements.

PRESIDING JUDGE: No, it follows from the attorneys of the complainants. This is the second day that we are implementing the same system. For that reason, it will be like this.
ATT. ARZU GÜL, ATTORNEY OF DEFENDANT TARKAN YAVAŞ: The system is like that, but the law rules the other

PRESIDING JUDGE: Yes.

ATT. ARZU GÜL, ATTORNEY OF DEFENDANT TARKAN YAVAŞ: Then let me make a very brief statement, a very concise one.

PRESIDING JUDGE: We forbid you from making a very brief statement.
ATT. ARZU GÜL, ATTORNEY OF DEFENDANT TARKAN YAVAŞ: Forbidding, how come this happens.

PRESIDING JUGE: What I mean with forbidding is that we do not allow you to speak right now.

ATT. ARZU GÜL, ATTORNEY OF DEFENDANT TARKAN YAVAŞ: Then my request is recorded in the minutes, right.

PRESIDING JUDGE: Yes, yes, it is recorded in the minutes, you may turn off.
ATT. ARZU GÜL, ATTORNEY OF DEFENDANT TARKAN YAVAŞ: Right.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: Dear Presiding Judge, we will have a request. This has shown that the prosecutor gentleman cannot do his work as required. He has lost his quality of being objective.

PRESIDING JUDGE: Now in regard to him, at this stage.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: I want to make a request, I am making a demand in accordance to the Criminal Procedure Code. You may later evaluate. I only make this request. Even though there is no mentioning of any demand for rejecting the prosecutor in the Criminal Procedure Code, we are asking for the withdrawal of the prosecutor from the casefile.

PRESIDING JUDGE: Yes.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: As much as we know, Mr. Prosecutor.

PRESIDING JUDGE: Yes, this request.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: I have not completed my request dear Presiding Judge, you cannot interrupt please, I would like to repeat my demand. It is up to you to decide if you will accept it or not. The chief prosecutor is another matter. Now, as far as we know, Mr. Prosecutor is one of the prosecutors who prepared the indictment, it is obvious that he has an emotional connection to the indictment. Therefore, he is asking questions that violate the privacy and private life. Why is your father not your attorney? Why is it not practiced like that.

PRESIDING JUDGE: Those are questions asked within the scope of the trial.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: Dear Presiding Judge, please do not intervene, let me complete my request. It is another matter if my request will be considered or not.

PRESIDING JUDGE: But, you are not making a request. Mr. Attorney, you are making comments.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: I am not making any comments. This is my request.

PRESIDING JUDGE: I will interrupt.

MALE ATTORNEY WHOSE NAME CAN'T BE DETERMINED: The questions he asks. You cannot interrupt. The questions you are asking.

PRESIDING JUDGE: I am interrupting. Turn him off now. Turn off. Turn off. Yes. You cannot speak without receiving the permit to speak. You will be thrown out. Yes, take the attorney out. Officers, take the attorney out, right now. You officers, don't wait. Don't wait, be quick. We have decided for him to be taken out because he spoke without receiving the right to speak. We are giving 5 minutes break to the hearing.

PUBLIC PROSECUTOR: Is your attorney, your father? Does your father practice law as a profession?

DEFENDANT TARKAN YAVAŞ: Well, he does not practice law as an attorney in the first degree, becaues my father is retired.

PUBLIC PROSECUTOR: Does that mean that he did not make the choice of defending you, or did you not prefer him to defend you? Being emotional.

DEFENDANT TARKAN YAVAŞ: My father is an elderly person.

PUBLIC PROSECUTOR: If there is anyone to object, they can raise their objection and the panel of judges will evaluate.

PRESIDING JUDGE: Do not object, just wait.

PUBLIC PROSECUTOR: I have asked my question.

PRESIDING JUDGE: For you, the right to speak…

PUBLIC PROSECUTOR: He has the opportunity to respond, do not interrupt my word. Do not interrupt my word when I am speaking with the defendant.

PRESIDING JUDGE: Just a second, just a second.

PUBLIC PROSECUTOR: Don't interrupt my word.

PRESIDING JUDGE: Turn off the microphones.

PUBLIC PROSECUTOR: You may object and the panel of judges will decide.

PRESIDING JUDGE: Turn off the microphones.

PUBLIC PROSECUTOR: I did not respond at all when the defendant was speaking.

PRESIDING JUDGE: Ms Attorney, wait a second. Stop for a second. Wait a second. Now at this point, the right to ask questions to the defendant is given to the prosecutor. The prosecution may pose questions, and receive answers. But the procedure for doing this, yes do not speak for a second, I am reminding this point again. If anyone speaks without receiving permission, I will have them thrown out, this is my final warning. If there is anyone who speaks other than this warning, he/she will be taken out. Now, as the prosecution, you may direct your questions to the defendant, and you need to respond in correspondence to the questions. Then we will permit first the complainant attorneys, then the defense counsels to speak one by one. There is no other way, please do not cause chaos in trial. Is that right.

PRESIDING JUDGE: Ms Attorney, do not speak again without asking for permission, yes you may go on?

DEFENDANT BÜLENT SEZGİN: Dear Presiding Judge, there is nothing wrong, it is not important.

PRESIDING JUDGE: Do not speak without asking for permission, if you do that again I will have to take you out, yes go on?

PRESIDING JUDGE: Ms Attorney, do not speak without asking for permission. Ms Attorney, you will go out please, yes you may take Ms Attorney outside. Let us take Ms Attorney out?

ATT. ESER ÇÖMLEKÇİOĞLU, ATTORNEY OF SOME OF THE COMPLAINANTS: We may not do like this.

PRESIDING JUDGE: Be quick, we cannot have a hearing like this, please adhere to the procedure. Take Ms Attorney outside please, decision is made. We have given 5 minutes of a break, take Ms Attorney out, quick.

September 25, - SESSION 5

PRESIDING JUDGE: Yes, Mr. Attorney?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: Dear Presiding Judge, I want to describe the circumstances, there is severe tension in the air, and everyone is disturbed of this stress, the defendants are stressed also. My attorney colleagues have been trying to explain since the morning, we request one thing from you, but you state that you have already made a decision, therefore there is no need for a decision. Maybe we could not express ourselves well, maybe you could not understand, I would like to clarify this point once again. You have already established a decision on at what stage the intervening parties will be entitled to intervene. You also stated that there is no regulation regarding this in the Criminal Procedure Code, and based on that you decided that they are able to pose questions. We are no objecting to that, you may preserve your decision on that matter, we do not say anything about that however, we would like the complainants to state who they represent while they are asking questions. You have not made a decision on this, then they should ask their questions and we may object accordingly.

PRESIDING JUDGE: Yes, understood?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: We demand them to state which complainants they represent, and that is why Ms Esra had objected. And the second point is, Ms Esra is right in saying that there is an unlawful evidence and the questions are asked based on that evidence. When she made an objection, even though there is no procedure related to the court administration, you established the decision on your own as the Presiding Judge. You did not consult the panel of judges, and you did not ask for an opinion from the Prosecution.

PRESIDING JUDGE: Yes, understood?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: We want the decision to be made by the entire panel of judges and asking for an opinion, and if we have anything to say about the opinion, we want to be asked for our comments. And if a lawyer is taken out, that should be until the end of the session, when a break is given. Mr. Bülent has no attorney here right now, you have taken out his attorney Ms Esra. The interrogation of Mr. Bülent cannot be continued for that reason. Therefore, since you have a break after the session, if you could tell the gendarme forces that

Ms Esra may come back, we would like Ms Esra to come back to the courtroom. Our request is in this direction, and please make a decision for our requests, thank you.

PRESIDING JUDGE: Yes, understood, now first of all, we have taken your request, now you need to wait. Yes, Mr. Attorney, you may go on?

ATT. İBRAHİM ALPER CAN, ATTORNEY OF SOME DEFENDANTS: Yes, dear Presiding Judge, just as my colleague has mentioned recently, you have decided with an unfair decision to take our colleague Ms Esra out of the courtroom. That is in opposition to the principles, to procedure, and you did not have a consultation for that decision. We consider that you have made that decision due to an aggressive conduct. We think that the demand that Ms Esra made after she was permitted to speak is in accordance with both the principles and procedure. You named them to be intervening attorneys, but they are not intervening attorneys, we do not know with which title they are here.

PRESIDING JUDGE: Yes, understood.

ATT. İBRAHİM ALPER CAN, ATTORNEY OF SOME DEFENDANTS: That is an unlawful conduct, Sir, let me explain if you may permit, please give me a minute. They describe this to be voice recordings that were attained in an unlawful fashion, and we do not yet know the title of those attorneys. If they have any demand to intervene because they are disturbed of the activities of Adnan Oktar and his friends, then the Public Prosecutor of the Turkish Republic is here to operate on behalf of the public. This has been undertaken both at the investigation and prosecution stages, which means at this point there is no need for the attorneys of complainants or intervening attorneys. If the Court does not recourse, then we would like to state that as attorneys of some defendants we also will leave the court room together with Ms Esra.

PRESIDING JUDGE: Yes now as of Article 201 of Criminal Procedure Code, the attorney participating the hearing are among those ones who may pose direct questions, for that reason that request is rejected. And as of the last sentence of Article 188 of the Criminal Procedure Code, if the attorney leaves the hearing, then the hearing is continued, for that reason the hearing will go on from where it had left. And besides, according to Article 201 of the Criminal Procedure Code, the Presiding Judge decides whether questions will be posed or not, the Court will decide which questions will be asked, so the requests are rejected in that regard. The open trial is continued, yes, now we will go on with the questions. You cannot speak without permission Mr. Attorney, it is stated that the hearing continues if the attorney leaves, yes, understood.

ATT. BAHRİ BAYRAM BELEN, ATTORNEY OF SOME DEFENDANTS: I am the defense counsel, Att. Bahri Belen.

PRESIDING JUDGE: Yes, defense counsel Att. Bahri Belen, you are warned because you should not speak without asking for a permission. Turn off the microphone.

ATT. BAHRİ BAYRAM BELEN, ATTORNEY OF SOME DEFENDANTS: Fine.

PRESIDING JUDGE: We are evaluating decisions if these are related to the allegations in the indictment. For that reason we may view.

ATT. ELİF ESRA KIRIMLI, ATTORNEY OF SOME DEFENDANTS: For how long are the open sources considered to be evidence dear Sir?

PRESIDING JUDGE: It can be asked because it is related to the allegation in the indictment.

ATT. ELİF ESRA KIRIMLI, ATTORNEY OF SOME DEFENDANTS: Open source…

PRESIDING JUDGE: We can bring whatever we want. There is no inconvenience. Turn off the microphone. Yes, go on. Show it. Which one?

PRESIDING JUDGE: Ask your question, otherwise, I will turn off.

ATT. ENES AKBAŞ, ATTORNEY OF DEFENDANT ADNAN OKTAR: Do not shout out loud Mr. Presiding Judge, please calm down.

PRESIDING JUDGE: If you have no question, I will turn off.

Much more of these examples are available in the court proceedings. **This judgment style and method of the Presiding Judge is clearly contrary to the Principle of Equality of Arms, as it embodies the crime of Misuse of Duty under Article 257 of the Turkish Penal Code and requires a warning penalty under the Law on Judges and Prosecutors.** Because, according to Article 257/1 of the Turkish Penal Code: *"any public officer who… causes any loss to the public or an individual by acting contrary to his duty shall be sentenced to a penalty of imprisonment for a term of six months to two years."*

According to the 63/1-b clause of the Law No. 2802: *"To behave in a hurtful manner towards colleagues, the personnel under his command, the people he is dealing with because of his duty, or the business owners* ..." is an action that requires disciplinary punishment. The main subject of the criminal trial is the defendant and the trial is built on the defense of the defendant. In order to reveal the material truth and to make a fair decision, the accused must fully exercise his right to defense. At this point, it is certain that the defense counsel has an undeniable role. Considering the lower and upper limits of the penalty for which the defendants are tried together with the scope of the file, the fact that this trial is carried out without a defense counsel or the limitation of the right to speak of the defense counsel are clearly contrary to the principle of equality of arms and the right to a fair trial.

In addition, the presiding judge frequently intervened in the questions of the defense lawyers, tried to direct them, and his own mocking style put psychological pressure on the defense attorneys. Under these circumstances, he caused the defense lawyers to be intimidated and unable to make effective defense, thus preventing the defendants from using their right to defense and their right to benefit from the defense counsels. A few examples of this style of the presiding judge are as follows, and there are many more in the minutes of the hearing.

September 28, 2020

PRESIDING JUDGE: Now, look at what kind of answers the defendant is giving to the questions you ask. The defendants are giving their defense, saying continually that the digital data were placed there by Özkan Mamati and they have no relations to it. Therefore,

when that answer is obvious, **I get the impression that by means of these questions it is as if, in between yourselves, both the attorneys of complainants and defense counsels, you will get something very valuable**. But that does not benefit the trial, ask questions that will contribute to judgment.

July 16, 2020

PRESIDING JUDGE: Do you have an authorization?

ATT. BÜŞRA ÇİÇEKLİ, ATTORNEY OF SOME DEFENDANTS: We have a certificate of authorization in the casefile.

PRESIDING JUDGE: Who is it related to?

ATT. BÜŞRA ÇİÇEKLİ, ATTORNEY OF SOME DEFENDANTS: Our certificate of authorization is on behalf of Attorney Sinem Mollahasanoğlu, the defendant is Erkan Seyhan…

PRESIDING JUDGE: Mollahasanoğlu is sitting here, she would read **if you have anything to read, why did you come at all?**

PRESIDING JUDGE: No, I am listening attentively.

ATT. BÜŞRA ÇİÇEKLİ, ATTORNEY OF SOME DEFENDANTS: We all have fallen, but I am making my defense vigorously.

PRESIDING JUDGE: I am waiting if anything striking will come from you…

ATT. BÜŞRA ÇİÇEKLİ, ATTORNEY OF SOME DEFENDANTS: You have already listened, maximum this will come… I am going on.

July 8, 2020

PRESIDING JUDGE: Yes, in that thing, for some evidence you use the words “it is not lawful” in your sentences, **it comes to mind that a person who is not a jurist wrote it or…**

ATT. BURAK TEMİZ, ATTORNEY OF SOME DEFENDANTS: Yes Dear Presiding Judge. No, Dear Presiding Judge, I wrote it.

PRESIDING JUDGE: If you have written it, you need to correct it, go on.

ATT. BURAK TEMİZ, ATTORNEY OF SOME DEFENDANTS: It is against law, it is against legality, let me express it this way.

PRESIDING JUDGE: Yes, go on.

July 14, 2020

PRESIDING JUDGE: Mr. Attorney, how many more pages are there?

ATT. YUNUS EMRE UÇAK, ATTORNEY OF DEFENDANT MUSTAFA METE OKTAR: There are still 15-20 more pages. If you like, I can give a break but there are still 15, 20 pages more.

PRESIDING JUDGE: Is it 15 or 20, just look, don't you know what you have in your hand?

ATT. YUNUS EMRE UÇAK, ATTORNEY OF DEFENDANT MUSTAFA METE OKTAR: I have not looked at the exact number of pages, but…

PRESIDING JUDGE: Then, you did not write it?

ATT. YUNUS EMRE UÇAK, ATTORNEY OF DEFENDANT MUSTAFA METE OKTAR: No, it is not that I did not write it…

PRESIDING JUDGE: Then, go on…

March 11, 2020

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: The one in the photo line-up.

PRESIDING JUDGE: Is it finished, is it finished?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: It is not finished, I am going on.

PRESIDING JUDGE: Is there more?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: I am going on dear Presiding Judge.

PRESIDING JUDGE: How many more questions are there Mr. Attorney?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: I did not number my questions as one, two, there, so I do not know dear Presiding Juge.

PRESIDING JUDGE: Yes, yes. You do not know the quesetions, yes go on, here you are.

July 7, 2020

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Another defendant… The same again… I will explain the same thing… Ali Şeref gave his statement and testimony here by making a reservation in regard to Fatih Müftüoğlu. These persons were directed by Fuat Selvi, and in his petition Fatih Müftüoğlu mentioned of an Attorney Kübra who visited him, and during that visit all kinds of arrangements were made. In accordance to that he would only say that he kept distant to the organization, and if he accepted even partially the activities in a system called turnpike, he was told that he could be released as a result. I hold your chiar and the prosecution office beyond this, he expressed what he stated and these were submitted into the casefile. In this context, it is obvious how Fuat Selvi induced the statements of those defendants who benefit from law on effective remorse, by means

of inducing these statements he can produce any statement as he likes, as to the person he desires and submit these into our casefile. And they can come up with as much statement as they like about as many people as they want. And later on, they can withdraw these and the deendants who benefit from law on effective remorse are called or encouraged to protect one another. Dear Presiding Judge, regarding Aydın Kasap…

PRESIDING JUDGE: I was not making a sign to you, but to Mr. Attorney at the back… Because he is distressed. That is why I told him.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: In regard to Aydın Kasap… Fuat… Fuat Selvi…

PRESIDING JUDGE: Everyone knows who is guilty… Yes go on, you may go on.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Dear Presiding Judge, while making a judgment in High Criminal Court, you are telling this to me by identifiying a crime…

PRESIDING JUDGE: Yes, go on.

July 7, 2020

PRESIDING JUDGE: Are you talking about Fatih this time Mr. Attorney, you gave that example, and you say it is not enough, and you want to talk about Fatih. Are you going on like that?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Dear Presiding Judge, in this…

PRESIDING JUDGE: You have explained repetitive times that they had given their testimonies under imprisonment threat and pressure, we have listened to that.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Should I not cover a number of these Dear Presiding Judge. I mean…

PRESIDING JUDGE: Will you go on in terms of every other defendant… You may go on for the defendants that you are an attorney of. You may go on.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Dear Presiding Judge, I have explained this many times, I am sorry but I have to explain again. My client is being tried in scope of Article 220/5, defendants who benefit from law on effective remorse and defendants…

PRESIDING JUDGE: Yes, we know these, fine.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Other than the statements of complainants, there is nothing properly explained in the indictment.

PRESIDING JUDGE: This means… Do you want to go on by making an explanation for each one of the 238 defendants?

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Dear Presiding Judge, while you are establishing your decision here in that regard, you will decide for each one of the cases separately. While the indictment was being written, my client…

PRESIDING JUDGE: Why are you discussing that with me? I know how to establish a decision with what, what I am saying is that in your defense will you mention the names of each defendant one by one. This one was subjected to this, the other one was subjected to that, or you may say the names of the defendants and explain what have been done in common to them. You will make a more profound contribution to judgement that way.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF DEFENDANTS MEHMET NOYAN ORCAN, AYÇA GÖKÇAYLAR, DAMLA PAMİR, PINAR SEZGİN, SERVER GÖRKEM ERDOĞAN, BURAK SANVER, KENAN YAVUZYİĞİT, BEDRİ EDİS YILMAZ, SEMİH MERİÇ: Dear Presiding Judge… Thank you.

THE PANEL OF JUDGES EVOKED THE DEFENDANTS OF THEIR BIASED AND PREJUDICED PERSPECTIVE AND ESTABLISHED PSYCHOLOGICAL PRESSURE ON THE DEFENDANTS THUS FORCING THEM TO TESTIFY NOT BASED ON THEIR OWN FREE WILL BUT IN LINE WITH THEIR URGES

Throughout the whole trial, the panel of judges created psychological pressure on the defendants who testified in front of them and at every opportunity expressed their biased perspective towards the defendants. The style used by the presiding judge when asking questions to the defendants and the fact that he directed them to answer as he wishes with dominant questions shows that the court statements are not taken in a sound manner and in this respect, constitute a violation of Article 148 of the Criminal Procedure Code. Some examples reflected in the hearing minutes are as follows:

PRESIDING JUDGE: There is some news, in this document there is an interview made with Attorney Sinem Mollahasanoğlu. In that interview, Ms Attorney says one sentence in the information department that Mustafa Işık is founder of; and says the information provided by our friends facilitate the unearthing of unsolved murders. Were you aware of such a department?

DEFENDANT ADNAN OKTAR: If a legal work is carried out, then evidence is sought for. But anyone can produce that evidence.

PRESIDING JUDGE: That is not my question. Were you aware of that work, of such a group?

DEFENDANT ADNAN OKTAR: I am not interested in anything, including such matters. I am not interested in any departments, apartments, nothing.

PRESIDING JUDGE: Then is the wrong person sitting in front of us, who are we asking these questions?

December 13, 2020

PRESIDING JUDGE: There is an operation, you leave your friends to the police there, and then run away.

DEFENDANT ADNAN OKTAR: But, they were planning a show to put me to shame…

PRESIDING JUDGE: Do you mean that you have carried out the nine out of ten, what do you mean?

October 1, 2020

PRESIDING JUDGE: Fine, why are you telling these to us?

DEFENDANT FATMA CEYDA ERTÜZÜN: I will give information about my environment. Based on that explaining where my environment comes from… I am telling these as an answer to the allegations of political lobby activities. I am completing Mr. Presiding Judge. I am ending now… My husband has given economy lessons in War Colleges.

PRESIDING JUDGE: Even the village headmen have such an environment.

DEFENDANT FATMA CEYDA ERTÜZÜN: Sorry?

PRESIDING JUDGE: Even the village headmen have that kind of an environment.

DEFENDANT FATMA CEYDA ERTÜZÜN: Yes Sir, if you say that, then it is like that.

March 11, 2020

DEFENDANT FATİH MEHMET DOĞAN: I am afraid to misunderstand. Could you express that once again?

ATT. SENA AKKAYA AVVURAN, DEFENDANT OF SOME COMPLAINANTS: Sure. After leaving the organization, other than the Adnan Oktar organization, have you carried out businesses for other persons or companies?

PRESIDING JUDGE: She asks if you have acted as an Attorney of the hypocrites at all?

DEFENDANT FATİH MEHMET DOĞAN: The attorneyship of the hypocrites, Sir, Merve…

THE PRESIDING JUDGE HAS MADE COMMENTS REFLECTING BIAS BY IDENTIFYING THE PERSONS WHO LEFT THE GROUP AS "HYPOCRITES" IN THE QUESTIONS HE DIRECTED TO ATT. FATİH MEHMET DOĞAN.

In addition, during the interrogations, the presiding judge forced the defendants to answer in the direction they wanted, not with their free will, and directed them in dominant styles. Some examples of what happened during client Adnan Oktar's interrogation are as follows, and much more of these examples are available in the court proceedings.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: This is made-up, and legally invalid evidence. It is legally invalid.

PRESIDING JUDGE: So, you say it is made-up. For instance, Adnan Oktar, you very briefly say that this evidence is made-up. I would like you to make your defense according to the content, I'm reading the content here.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I do not accept this document. Istanbul Police Headquarters, …

PRESIDING JUDGE: I'm reading the content, I'm asking in relevance to the content. For instance, I can ask you the idea of renting an apartment for 4000TL and under whose name it shall be rented. This text is not something which says Adnan Oktar murdered a john doe and burried him somewhere. However, It is not such issue. Therefore, I'm asking you to answer and defend yourself in accordance with the content this content.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Sir, I have never been involved in such decisions, that is why I claim that it is a made-up text. I have never been involved in such topics either in writing or oral correspondence -

PRESIDING JUDGE: If you are not whom this is addressed, then whom does it address?

This is what the bill of indictment says. What do you say?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Invalid.

PRESIDING JUDGE: Why don't you talk?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Legally, it is invalid.

PRESIDING JUDGE: Why don't you talk?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I'm waiting for you to ask.

PRESIDING JUDGE: Here I am asking but you are waiting.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Sir, one has to be really careful while talking to you. I do not want to say anything that might offend you. I would like to behave properly.

PRESIDING JUDGE: We ask questions and we get answers. That is what we do.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Yes

PRESIDING JUDGE: There is whatsapp messaging recovered from Ibrahim Tuncer's mobile phone. Here it's said that Selcan Yalva has become acquainted through a fan. What do you say about this.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I do not accept it as the document is legally invalid.

PRESIDING JUDGE: You weren't answering my questions just by saying "legally invalid" yesterday. But now, you only say you don't agree because its invalid document. I tell you that I listened to your defense on the invalidity of the documents. But I'm asking you about their content.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Even if it were just the content you are asking, I would be accepting the validity of the document just by indirectly talking about it.

PRESIDING JUDGE: What is your defense on the content?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: This is what I have just been saying. I cannot talk about the content since it will legally mean that I accept the validity of the document. Yet, I do not. Yet, if you direct me this question as a hypothetical question not based on this document, I will agree and immediately give an answer. Yet, now I do not agree to answer since it means I indirectly accept the validity of the document. I have agreed to give my answers previously considering them all as hypothetical cases. I don't accept the content of the message. I did not respond in that regards. I consider them as hypothetical cases.

PRESIDING JUDGE: The text says that Eymen asks if it is possible to give a scholarship to someone mentioned by a member of the supreme court. "It is possible to send scholarship directly to the student's account. The bank account and name are given. It is about 2000 Turkish Liras. Are we going to do it?" The note that is claimed to be conveyed to you.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I do not answer this question because the document is not legally valid.

PRESIDING JUDGE: Do you want to resort to your right to remain silent?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: It is legally invalid, that's why.

PRESIDING JUDGE: Do you want to resort to your right to remain silent?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Why sir? If you explain it to me, I'll correct my words.

PRESIDING JUDGE: You still do not give an answer to the content.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: My attorney told me that if I talk about the content, that can be interpreted as I accept the validity of the document, as well. And I say this document is invalid, I cannot accept. If it were asked independent of this document, I would be able to talk about it. I do not accept any document that is legally invalid.

PRESIDING JUDGE: You are free not to accept the validity of the document but you can answer the question.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I do not wish to offend you but according to what my lawyers say, an answer might be misinterpreted as to the validity of the document. I do not answer the question and it will be risky to talk about a legally invalid document - if that is called the right to remain silent.

PRESIDING JUDGE: The defendant's answers are stereotypical. Append this to court records.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I just cannot answer this question due to the invalidity of the document. If I did, this would be used against me. That's not what I would want.

PRESIDING JUDGE: You also have the right to remain silent. You may say "I do not wish to answer this question".

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: No, not such a thing.

PRESIDING JUDGE: You have many rights, so you can do so.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Yes

PRESIDING JUDGE: It won't be a problem.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Yes

PRESIDING JUDGE: Do you understand?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I cannot answer only the questions in relevance with legally invalid documents. But, I'll talk about the others.

PRESIDING JUDGE: There is a mail sent from yelizaksoymail@gmail.com. In this digital data, it says "you tell them to revise the settled order within the community. Can brothers Alpar, Bora, Oben, Selçuk Hazineci be asked to give their advice on the issue. These brothers have a greater vision not just for their companies but also for the issues relating to the community." This is a note addressed to you. What do you say?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I do not accept it as it is legally invalid.

PRESIDING JUDGE: So, you do not answer.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Sir, when I answer to this, that means I accept the validity of the document. Yet, I do not. But if you ask about this not in relation to the document but in relation to the bill of indictment, I can answer it.

PRESIDING JUDGE: How do you want me to ask it?

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: You ask for instance how I can answer a claim from the bill of indictment...

PRESIDING JUDGE: I just did. This is from the bill of indictment not from outer space.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: I mean digital notes. I do not accept digital ones.

PRESIDING JUDGE: I understand you do not accept. Yet, I ask you about its content and you answer the same.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: in his defense: Let me ask my lawyers again as I do not wish to see it used against me. I do not want to make any legal mistakes.

PRESIDING JUDGE: You weren't so much afraid of speaking up. You were such an extrovert person answering our questions the other day but today you hesitate and you are unwilling to answer.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: in his defense: This is because I do not want to make a legal mistake, sir.

PRESIDING JUDGE: I am telling you. You have the right, you can say I don't want to answer to this.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Only for this question.

As a reply to my questions, you can say you want to remain silent and that you don't want to reply.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: Sir, I am sorry…

PRESIDING JUDGE: Then I will accept that. I have to accept that.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: OK, but please I kindly ask from you, because I don't know the law. If I have the right to deny answering partially. Because I don't want to reject answering the questions overall. I mean this. I want to deny answering for certain questions.

PRESIDING JUDGE: OK.

DEFENDANT ADNAN OKTAR IN HIS DEFENSE: For instance, I wll not reply to this question. But I will reply to your other questions.

DEFENDANT ADNAN OKTAR: I do not accept this testimonial, I do not accept the statement here, either. However, Mister Erel pleaded splendidly to the commentary about himself in the bill of indictment. He technically walked over it completely. He clarified all. In other words he clarified them with no return. He proved them one by one.

PRESIDING JUDGE: You beat around the bush again, you talked unclearly Adnan Oktar.

DEFENDANT ADNAN OKTAR: Excuse me?

PRESIDING JUDGE: That is to say, your expressions are not concrete.

DEFENDANT ADNAN OKTAR: He explained them, it is claimed to him.

PRESIDING JUDGE: You already say that he shot down this he shot down that, now you are just saying this.

DEFENDANT ADNAN OKTAR: What is the thing that I am supposed to answer?

PRESIDING JUDGE: See, I have asked you a question, I am telling you to answer to the question. I am telling you that you give general answers, namely you do not answer correspondingly to the question. I am trying to account for it. I would like to listen to your plead in this direction. I would like to hear concrete plead to concrete allegations, not like with those rambling intangible sentences. I am telling this.

DEFENDANT ADNAN OKTAR: Yet, Erel is only able to answer to this, I was not with him. How could I know it? Namely what could I know? I would demand you to accept his commentary as the base. What else would I tell? I didn't witness anything about him, namely I did not see, he is not a person right in front of my eyes. He works in a hospital, he is not a person connected with. How can I talk about him? I could only state that he presented his statements, I cannot say anything else.

DEFENDANT ADNAN OKTAR: Yes.

PRESIDING JUDGE: You could say that the digital documents are not legal.

DEFENDANT ADNAN OKTAR: Yes.

PRESIDING JUDGE: But you could also say that the content digital documents that I read is true in this part, wrong in that part.

DEFENDANT ADNAN OKTAR: Sir, I respect you, of course I trust you too but as do not have legal knowledge ... for no reason ...

PRESIDING JUDGE: For God's sake, I do not have a trouble with you to entrap you, Adnan Oktar.

DEFENDANT ADNAN OKTAR: Not at all.

PRESIDING JUDGE: I do not have a trouble with you like that.

DEFENDANT ADNAN OKTAR: I trust you very much, also I respect you.

PRESIDING JUDGE: What bothers me is to find the material fact here. Do you understand?

DEFENDANT ADNAN OKTAR: Yes. But in formal logic I respond you and I told you that I do not have time for those kind of things in no circumstances, I said that I have no opportunity to engage in thus and so.

PRESIDING JUDGE: We ask you whether you know or not.

DEFENDANT ADNAN OKTAR: Yes. So.

PRESIDING JUDGE: For instance; again in a note as Ebru Altan was a Managing Director in Mert's jewellery company in terms of her partnership, she is in charge of the debt which

would arise jointly. If she withdrew the partnership, she would forfeit the right to have a gun. There is a note written as İnşaAllah. The note tells us that this is one of the evidence about taking arms.

DEFENDANT ADNAN OKTAR: For a moment ago's question and also for this digital document, I do not accept any of them. I do not give an answer as they are not legal.

DEFENDANT ADNAN OKTAR: Sir. Because there is no legal evidence.

PRESIDING JUDGE: Did any subject matter happen like that?

DEFENDANT ADNAN OKTAR: Sir, I do not understand. Excuse my ignorance. If this a transcript, that is to say if this is a found document, I see it void.

PRESIDING JUDGE: Relating to Hulusi's disease.

DEFENDANT ADNAN OKTAR: Whose?

PRESIDING JUDGE: Hulusi Gökmenli's.

DEFENDANT ADNAN OKTAR: Yes.

PRESIDING JUDGE: Did any action happen related to his disease which I have read about? A reproach, verbal?

DEFENDANT ADNAN OKTAR: Sorry about that Sir, you say that, you mention about a paper, you talk about a document.

PRESIDING JUDGE: Adnan Oktar, I ask you a question about the content, I say that,

DEFENDANT ADNAN OKTAR: Yes.

PRESIDING JUDGE: Did the matter of correspondence in this content, this correspondance that I read happen between you? Was the information given to you like that? I say.

Presiding Judge manipulated with similar tones during the interrogations of the other defendants and impeded the defendants to give statements with their free will, and most of the time he impeded them to make statements by heckling their words. Some instances of the tones of the Presiding Judge are as below and there are many more in the hearing records.

PRESIDING JUDGE: ... us Ministers or ... I tell you to give answers to the allegations in the bill of indictment, but you still plead about that; the institution managers in Ankara, they came, those left, we met, we got together with those, we were not a criminal organization...

DEFENDANT FATMA CEYDA ERTÜZÜN: Your Honour Presiding Judge...

PRESIDING JUDGE: That is to say, you can talk about anybody, but we are not interested in.

DEFENDANT FATMA CEYDA ERTÜZÜN: Alright Your Honour Presiding Judge... So if you let me Messrs. Süleyman SOYLU...

PRESIDING JUDGE: I do not let you...

DEFENDANT FATMA CEYDA ERTÜZÜN: As you said, you can talk about...

PRESIDING JUDGE: You do not do anything by getting a permission from me. You plead yourself, go on...

DEFENDANT FATMA CEYDA ERTÜZÜN: Alright Sir. Messrs. Yalçın AKDOĞAN and Messrs. Süleyman SOYLU relayed the instructions of our President of the Republic Messrs. Recep Tayyip ERDOĞAN who was the Prime Minister at that time that we shall go to the Embassies and tell them.

PRESIDING JUDGE: They have already told this, yesterday also the day before yesterday...

DEFENDANT FATMA CEYDA ERTÜZÜN: Now, as I am rendering The Embassy Meetings...

PRESIDING JUDGE: Why are you particularly engaging in dialogue with us saying that I am getting an allowance, what's your reason?

DEFENDANT FATMA CEYDA ERTÜZÜN: I submitted Your Honour Presiding Judge, my plead about this issue was interrupted a couple of times...

PRESIDING JUDGE: What did you submit? Why did I interrupt it? The men told it, see, I am telling what you told either...

DEFENDANT FATMA CEYDA ERTÜZÜN: Within your discretion Sir, you shall asses this. After he relayed the instructions to us ...

PRESIDING JUDGE: When you are pleading, I frequently warn you, make a plead regarding to the allegations in the file.

DEFENDANT FATMA CEYDA ERTÜZÜN: Your Honour Presiding Judge...

PRESIDING JUDGE: About who you met, who you talked ... us

PRESIDING JUDGE: How many times have you counted the names, what if you do not mention on names, at least just say the name of the institution and pass...

DEFENDANT FATMA CEYDA ERTÜZÜN: Alright, Your Honour Presiding Judge, I only submitted the authorities we applied for in written form. Here 120 government authority names, our deputies' and our ministers'...

PRESIDING JUDGE: The people work there do not go to ... as much as you did I am sure, go on, go ahead.

DEFENDANT FATMA CEYDA ERTÜZÜN: I submitted this, this petition to you.

PRESIDING JUDGE: Ok, we understand. Anything else?

DEFENDANT AYŞEGÜL HÜMA BABUNA: Alright. The root of FETÖ (terrorist organization) is on abroad and it is connected with CIA, sir. This is firm with the letters of good conduct given by Graham Fuller for Fethullah GÜLEN about (his) FETÖ leader's stay on abroad. Our government had already announced it. It is even appeared in the press. We are absolutely domestic and national. Due to the domestic and national service we did, we are in prison now. Or else, we would be travelling in Miami now, and so forth, May God forbid. Under

the deceptive name, FETÖ transgresses all the provisions of Koran. FETÖ's transgressing all the provisions of Koran is apparent on YouTube by Fethullah GÜLEN's word of mouth. Perish the thought!, he says referring to Koran that; Perish the thought, "it (Koran) is a darkness, when will you quit following, pursuing it (Koran)". God put thousands of damnation on their heads. If you leave Koran, if you abandon Koran, God will make the life miserable for you. God will dishonour you with the one who support you, inşaAllah. Therefore, there are too many things, they stole the questions in OSYM and KPSS (official examinations held by the government) examinations. We have never had such a relation with the government. We never resort to such a thing like being an armed terrorist organization, in no circumstances...

PRESIDING JUDGE: I mean, do not tell us as if you were the complainant of FETÖ; here there are allegations about being the helping FETÖ, plead within the scope of the allegations in the bill of indictment.

DEFENDANT AYŞEGÜL HÜMA BABUNA: The reason why we cannot help FETÖ by evidence...

PRESIDING JUDGE: It is not a material evidence, what you read is as if we were carrying out an adjudication of FETÖ here, you plead as if you were a FETÖ complainant.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Actually, we are the complainants of FETÖ

PRESIDING JUDGE: Well, ok, plead in the file when you are the complainant.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Ok

PRESIDING JUDGE: You are tried in the court as if just because you helped them.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Ok Sir.

PRESIDING JUDGE: Plead directed to it.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Then, something like that happened. I shall add one more thing. Just a while ago, we made a formal application of FETÖ to Messrs. Cumhur ÇİLESİZ and to the Head of inspection Board, to the General Directorate of Security Affairs the Head of inspection board. Mister Efkan Ala was the Minister for Internal Affairs...

PRESIDING JUDGE: You still continue...

DEFENDANT AYŞEGÜL HÜMA BABUNA: Alright, let me skip, Sir. Shall I skip FETÖ issue? Shall I tell something else?

PRESIDING JUDGE: I do not intervene in your plead. I just tell you to return to the allegations in the bill of indictment.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Alright, Sir. So, it is clear. Mister Adnan Oktar has got a big service in his one of the works.

PRESIDING JUDGE: Alright, we understand, it is understood okay.

DEFENDANT AYŞEGÜL HÜMA BABUNA: And we achieved success MaşaAllah. In the Blue Marmara incident...

PRESIDING JUDGE: But if you told me that we went to the Greeks and met them, but they did not accept; we succeeded in, it would be a bigger thing.

DEFENDANT AYŞEGÜL HÜMA BABUNA: No... During the meeting with Greeks, as the time was pressing we barely could make something like a parade with Mehter, let's suppose that we did scientific manifestation. For the Blue Marmara incident; after the Blue Marmara incident, Mister Adnan OKTAR met with the people who came from Israel again, he met with the Sanhedrin Members again. He made statements from the Torah and Koran to the people, in other words Mister Adnan OKTAR made statements to those people from the Torah verses which are concurring to Koran and with verses from the Koran. He said that; it is a religious duty to pay a ransom to the people who were killed, to their families. That is to say, it is also agreed with Koran. It is also agreed with Torah you read, he said. Secondly, The Republic of Turkey ... he said...

PRESIDING JUDGE: Just a moment, enough is enough... The defense has been cautioned for the last time about not to make a plea except from the plea in the main file, merits number 2019/313, in case of continuing, the right to remain silent... it is required for the defendant to plead directed to the leadership allegations in the supplemental bill of indictment. The terms is cautioned to the defendant that she shall be regarded to misuse her right of defense. Go ahead.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Sir, you cautioned for the first time but ok so it be the last, alright, inşaAllah.

PRESIDING JUDGE: There are many cautions in the meantime but you missed, yes.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Alright. Then Sir, it is alleged that to the Judicial Authorities who carried out operations to the police and the police forces are FETÖ members and The British Deep State members, just a minute, where was the FETÖ... Anyway it is alleged, as if I used the expressions in this manner.

PRESIDING JUDGE: You wandered off the subject...

DEFENDANT AYŞEGÜL HÜMA BABUNA: I beg your pardon?

PRESIDING JUDGE: In other words, you wander off the subject and then you also drag everybody.

DEFENDANT AYŞEGÜL HÜMA BABUNA: No, no way.

PRESIDING JUDGE: Unnecessary questions are asked about it, and unnecessary answers are given.

DEFENDANT AYŞEGÜL HÜMA BABUNA: No way.

PRESIDING JUDGE: It causes hearing to be extended for no reason, you answer the allegations.

DEFENDANT AYŞEGÜL HÜMA BABUNA: Alright. This allegation is a clear one. The operation...

PRESIDING JUDGE: You have made a plead about sexuality, are you going back again?

DEFENDANT ULVİYE DİDEM ÜRER: Well, also, in terms of people 1-2 ...

PRESIDING JUDGE: Are you going back?

DEFENDANT ULVİYE DİDEM ÜRER: No.

PRESIDING JUDGE: You said you pleaded...

DEFENDANT ULVİYE DİDEM ÜRER: I said I pleaded generally, Sir. I am telling the names of the people...

PRESIDING JUDGE: The defendant is reminded and cautioned that her present plead is required to be directed to the allegations in the supplemental bill of indictment and except for allegations in the supplemental bill of indictment she is required not to plead, if she continues, she shall be regarded to misuse her right of defense.

DEFENDANT ULVİYE DİDEM ÜRER: Okay.

PRESIDING JUDGE: This is the last caution to her.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: Okay. So I skip this issue, the scary sense is finished.

PRESIDING JUDGE: This is the last caution anyway, go ahead.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: Okay, okay Sir. Well, pardon me. I will make a statement about a foundation, it is about a very brief observation of being an armed criminal organization foundation.

PRESIDING JUDGE: You pleaded about the foundation.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: Pardon me?

PRESIDING JUDGE: You already said you pleaded about the foundation.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: I do not remember whether I did or not. I pleaded about sex crimes.

PRESIDING JUDGE: You read an expert report about it.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: No, pardon me, I mispronounced it. A very brief observation about not being an armed criminal organization foundation. I misspelled it. We are already ...

PRESIDING JUDGE: It is reminded to the defendant that it is required not to take too much time of the court, it is insistently required her to plead. Go ahead.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: Okay, I will pay attention to it. We are not the criminal organization. We have already told it many times, let me not tell this over and over again. Those people say it Sir, I do not say it alone. We were allegedly an organization for 40 years, according to the Public Prosecutor we were a Criminal Organization, look. The Professor Kayahan İçel gave us an opinion about it.

PRESIDING JUDGE: When you talk about the counsel for the prosecution again, revise your addressing as the counsel for the prosecution.

DEFENDANT MERVE BÜYÜKBAYRAK IN HER PLEAD: Okay, okay, let me not complain about the counsel for the prosecution.

PRESIDING JUDGE: Okay, it is understood.,

DEFENDANT BORA YILDIZ IN HIS PLEAD: In the bill of indictment, I do and I am of the opinion that it lost its reliability. Now, your Honour Presiding Judge I would like to talk about the element of fear on girls, on these girls.

PRESIDING JUDGE: You have been talking about the element of fear on girls since the morning.

DEFENDANT BORA YILDIZ IN HIS PLEAD: But, I mentioned about the conspiracy and I will show the exemplification of fear.

PRESIDING JUDGE: Come to the point. To the allegation of FETÖ.

DEFENDANT BORA YILDIZ IN HIS PLEAD: But I was going to tell really important things here.

PRESIDING JUDGE: Come to the point of FETÖ allegation.

DEFENDANT BORA YILDIZ IN HIS PLEAD: Alright then, let me talk about that thing. Yes, Yes, Messrs. Presiding Judge.

PRESIDING JUDGE: The provision to plead without taking much time was reminded to the defendant. Go ahead come on.

DEFENDANT BORA YILDIZ IN HIS PLEAD: Ok if we are not in a hurry, or we don't have time ... another time ...

PRESIDING JUDGE: No, we are waiting, waiting without reason, therefore prepare your plead quickly, start accordingly. Go ahead...

DEFENDANT BORA YILDIZ IN HIS PLEAD: No, it is ready... But if we are in a hurry, or anything, I could plead later Your Honour Presiding Judge, as you may wish.

PRESIDING JUDGE: No, no not in a hurry

DEFENDANT BORA YILDIZ IN HIS PLEAD: Because I have been arrested for 2.5 years, I would like to make myself understood in detail.

PRESIDING JUDGE: We have already listened to you before, now only in addition to the supplemental bill of indictment

By restraining the defendants to be under psychological pressure, the Presiding Judge hinders them to give statements and the Presiding Judge stated to see the things that the defendants tell against the allegations about themselves as "the waste of time" and he exercises power over the defendants by using the words such as "go ahead quickly, come on."

PRESIDING JUDGE: No, no you tell.

DEFENDANT YELİZ SUCU IN HER PLEAD: Alright. About the sexual abuse.

PRESIDING JUDGE: You already tell, whatever we say, you tell.

DEFENDANT YELİZ SUCU IN HER PLEAD: I totally refuse the things that they told me. In other words about our friends.

PRESIDING JUDGE: If not, refuse again in other words, if you did not refuse, refuse again. Because you already refused after you had refused for 3 times, you refused likewise.

DEFENDANT YELİZ SUCU IN HER PLEAD: I do my best.

PRESIDING JUDGE: All the limit things are available to you from now on. In other words you can refuse for the 5th time and for the, 6th time, go ahead.

DEFENDANT YELİZ SUCU IN HER PLEAD: Ok in that I thank you but I will pay attention from the aspect you told. I told Asiye Sandıkçı. Erhan Keskin...

PRESIDING JUDGE: Shut up for a moment. I shall ask this question and you answer after that. 11 banknotes of 100 America Dollars, 3 banknotes of 50 American Dollars, 1 banknote of 10 American Dollars, 2 banknotes of 5 American Dollars, 11 banknotes of 1 American Dollar, 3 banknotes of 50 Euros, 1 banknote of 10 Euros, totally 1281 American Dollars and 165 Euros cash currency, 1 quarter gold coin, 4 full gold coins embossed with Ataturk picture were grasped and the mobile phone 00.18??? is being analyzed it says, did the grabbed items belong to you?

DEFENDANT ESRA İPEK UÇAR IN HER PLEAD: Firstly, I do not think that I did something that requires you to get angry Your Honour Presiding Judge. I would like to indicate that my heart is broken and I am trying to answer your questions very kindly.

PRESIDING JUDGE: Yes, answer my questions, do not interfere with my method manner. Go ahead.

DEFENDANT BILGE TOK: Now, there are people that call me. They say they want to meet me. I do not have grantor entourage. I cannot even go to the office regularly. That is to say I could not even go to the office regularly for three years. In the recent years isn't any letter of attorney taken to me. I cannot do my job so in other words my concerns about the it is still progressing. I want your protection. In particular, if you give me the opportunity in terms of acquintment, because I haven't involved in any of their crimes. I would like you to put me in a different equation than the solicitors who are tried in the court. I am particularly telling you. I also clearly told you my aggrievement. Rest assured that it is the first time I have gone on a trial. That's why I do not do the thing. Now, I am barely able to stand here. Well, you reprehended me a short time ago, but I ...

PRESIDING JUDGE: No, we did not reprehend, we warned you loudly.

DEFENDANT BILGE TOK: Well, do not stand in this way, well I am a person who can barely remain standing.

DEFENDANT SEÇİM KÖSE: I would like to tell one last thing.

AN ECHO FROM THE HEARING ROOM: Can I ask a question after their statements?

PRESIDING JUDGE: No, no, no.

DEFENDANT SEÇİM KÖSE: I would like to tell one last thing.

PRESIDING JUDGE: Alright, you shall return to your seat.

DEFENDANT SEÇİM KÖSE: Alright, alright.

AN ECHO FROM THE HEARING ROOM: Your Honour Presiding Judge, asking a question...

PRESIDING JUDGE: Go out, return back to your seat. His interrogation has finished, he directly addressed questions. It is over. In order to gather his last words he was recognized. He also stated it, he was returned back to his seat. Yes, now, from our defendants, our defendants Yıldız, Muazzez Arık,

AN ECHO FROM THE HEARING ROOM: Your Honour Presiding Judge.

PETITOR DEFENDANT MUAZZEZ ARIK: Firstly he said, it is the British deep state, here it is this, it is that. Now, for instance he comes to this tactic. The 30 years old fellowship does not end. They are threatened to be killed, that's why they are doing this and so on... Now, they share those via the social media. For instance; when I left, they registered a facebook account in behalf of my mother, and my mother; think about a woman who is 74 years old, she barely reads and writes. Because from that account she was going to talk about me, she was going to do it.

PRESIDING JUDGE: So are you saying that this is a new version?

PETITOR DEFENDANT MUAZZEZ ARIK: Actually, when we first left, it was always like that, "they are the British deep state, they are the conspiracy gang, they are together and so on. Now, it is the new version, "we love you so much, the fellowship never ends, we won't rise to the bait and so on Now, they are in the mood of the turtledove. After all, this is his classical tactic, for instance in the 1999 bust ...

PRESIDING JUDGE: What do you mean, are you saying that he would go back on if necessary?

PETITOR DEFENDANT MUAZZEZ ARIK: How so?

PRESIDING JUDGE: Are you saying that he would go back on if necessary?

PETITOR DEFENDANT MUAZZEZ ARIK: He would go back on immediately, he would never say that I had said that yesterday, it would be a shame, I would do it in that way. If it suits to one another, he twists into another, he has a character like that.

PRESIDING JUDGE: Why would he do such a thing like that?

PETITOR DEFENDANT MUAZZEZ ARIK: Now, at the moment, we namely tell everything

THE COURT BOARD DECREED TO ACCEPT THE BILL OF INDICTMENT WITHOUT SUFFICIENT EVALUATION AND DESPITE THAT THE INDICMENT LACKING THE CONDITIONS STATED IN CODE OF CRIMINAL PROCEDURE ARTICLE 170

Article 170 of Turkish Criminal Code lists the absolute elements that must be included in a bill of indictment. The bill of indictment is to include how an evidence makes an action criminal as well as the legal quality of that action. The bill of indictment must clearly define how a certain evidence is connected to a certain suspect and how it creates a basis for a crime. This burden of proof is a must to preserve the right of defendant. It is also obligatory to include the date and location for the imputed crime in the bill of indictment. However, the current bill of indictment does not explain how and when the alleged crimes are committed, nor the methods and dates for these alleged crimes.

As per Turkish Criminal Code article 170/4, "the incidences constituting the crime is explained in the bill of indictment, as relation to available evidences". As per Turkish Criminal Code 225, "The verdict shall be given only for the action and the perpetrator whose elements are clearly pointed out in the bill of indictment." As per these codes, it shall not be possible for giving a verdict on the criminal actions unexplained in the bill of indictment as it will not suffice to include them in the applicable articles of the annexes.

As per this article, the bill of indictment should be based on facts and justified. The connection between the criminal action and the perpetrator should be linked. Its conclusion section must include the elements that are against and also in favor of the suspect. The same principle also applies during the onset of the investigation (Turkish Criminal Code, article 160/2). The prosecutor must preserve the evaluation criteria for the punishment while categorising the action in the bill of indictment and he must present a complete legal evaluation to the court from all aspects (Turkish Criminal Code, article 61).

Moreover, Supreme Court says, *"It is mandatory to prepare a detailed bill of indictment so that the content of the alleged action is clearly explained without any hesitation. The defendant is to understand what he is being accused of and he should be able to defend himself by providing relevant evidences. The alleged crime cannot be uncertain; it should be clearly and explicitly defined and the right to make defense cannot be restricted. Since a document lacking the quality of being regarded as an evidence of alleged crime cannot be included in the bill of indictment, any case with a verdict settled and neglecting the criteria to start case shall be considered a direct breach of article 6 of ECHR on the right for fair trial. If the allegations of complaints which are partially based on physical events and supported by explanations cannot be proven or confirmed, it should be discussed whether this shall not be sufficient for the crime of making false allegation on its own and whether the right to file a complaint is used as a constitutional right". [...] The bill of indictment does not mention any of defendant's action which may constitute the crime of making false allegations and it solely mentions the statements of the victims and accused. Referring to a report by an inspector of the Directorate of Education stating that there is no need to take action with regards to the allegations; ignoring the fact that A BILL OF INDICTMENT WHICH IS SOLELY ISSUED FOR REQUESTING PENALTY CANNOT BE CONSIDERED SMEARING AND THEREFORE THE RETRIVED DOCUMENT CANNOT BE INCLUDED IN THE BILL OF INDICTMENT DUE TO LEGAL CONCERNS; giving verdict in a non-procedurally filed case is a direct breach of article 6 of ECHR on the right to fair trial, [...]"* (Turkish Supreme Court 4th Penal Chamber, Merit no 2010/21275, Verdict no 2012/13997, Date: June 11, 2012).

Another consistent verdict of the Supreme Court on similar grounds states: *"The bill of indictment should be explicit and should clearly specify the actions of which the suspect is being charged*

without casting any doubt. Before the interrogation and upon reading the bill of indictment, the defendant is to understand what he is being accused of and he should be able to defend himself by providing relevant evidences. The alleged crime cannot be uncertain; it should be clearly and explicitly defined and the right to make defense cannot be restricted. The action included in the bill of indictment should be clear and explicity so that the court is able to understand whether and how the stated action constitutes a crime […]. The second paragraph of Turkish Criminal Code article 174 states that the return of indictment cannot take place due to legal quality of the crime. Although the sole evidence in the case file is a statement made by the plaintiff, claiming that the suspect ..... said to him "I'll kill you; you will leave this house within twenty four hours, you pimp"; the bill of indictment states that the suspects address the plaintiff and say "we will kill you ... you will leave the those within 24(twenty four) hours, you pimp" but the suspect .....'s threats were not explained; it is understood that the BILL OF INDICTMENT DOES NOT HAVE THE SPECIFIED ELEMENTS based on the existing evidences in the case file, the return of indictment is prepared to prevent the long lasting judicial processes and to make sure that the cases can be completed with a single session; in addition to preserving the reputation of the suspect and unnecessarily exposing the suspect to judgment. On these grounds; with regards to the return of indictment no 2019/461, merits no 2019/462, investigation no 2019/899 and dd April 2, 2019; in the verdict of Urla 1st Basic Criminal Court dd April 22, 2019 and 2019/243 evaluation; and with relation the refusal of objection to this verdict, in the verdict of Izmir 1st Heavy Penal Court dd May 8, 2019 and 2019/784 Sundry Business no, no inconsistency is detected." (Turkish Supreme Court 4th Penal Chamber, Merit No 2010/21275, Verdict no 2012/13997, Date: June 11, 2012).

However, the current bill of indictment does not follow the principle stated by the Supreme Court verdicts stating that "It is mandatory to prepare a detailed bill of indictment so that the content of the alleged action is clearly explained without any hesitation." **With regards to crimes of "being an organization member and committing sexual crimes"; plaintiffs gave all the names they are familiar with to accuse everyone by saying that " these are the people I know as a member" or "these are the ones I had sexual intercourse."** These names mentioned between commas are all accused of the same crimes with the same format although their relation to the criminal activity is not mentioned at all.

Besides, the bill of indictment also puts forward that conferences, seminars, invitations, publications within the country and abroad as criminal actions although these social events are held by any other non-governmental organizations. The right to vote or not to vote or the right to have paid military service or issuing legal files against the social media insults are all presented as organizational activity. However, there is no applicable article to these activities presented as crimes. In addition to lacking these; the bill of indictment is also not carefully prepared or perhaps intentionally prepared to include these misleading and biased expressions.

Despite all, the court board decided to accept the bill of indictment with the verdict no 2019/6548 dd July 12, 2019. The court board gave the verdict without a careful analysis on the eligibility of the bill of indictment to Turkish Criminal Code article 170 and with this insufficient bill of indictment missing many details, they eventually charged all the defendants.

OTHER PUBLIC PROSECUTORS PRESENT IN THE TRIAL ARE NOT ASKED TO GIVE THEIR OPINION ON WHETHER THEY AGREE OR DISAGREE WITH THE OPINION AS TO THE ACCUSATION DECLARED

The council for the prosecution presented his opinion as to the accusation on November 13, 2020. Serdar Akan, the public prosecutor having issued the legal opinion, did not attend a great majority of following sessions. For instance; Gokhan Emre Albay - the public prosecutor- attended the trials on November 30, 2020, December 1, 2020, December 2, 2020 and 03.12.2020; Umit Gunturk - the public prosecutor- attended the trials on December 14, 2020, December 15, 2020, December 16, 2020 and December 17, 2020; Ali Nazmi Dandin - the public prosecutor- attended the trials on December 28, 2020 and December 29, 2020.

HOWEVER, THE COURT BOARD NEVER ASKED ANY PUBLIC PROSECUTOR WHETHER THEY AGREE WITH THE PREVIOUS OPINIONS TO THE ACCUSATIONS OR HAVE A NEW OPINION TO THE ACCUSATIONS. Besides, they were also not asked if they wish to examine the case file. However, the established court practices in Supreme Court makes it obligatory to ask for the opinions of Public Prosecutors attending the trials and hearings after the opinions to the accusations are declared.

> *"After giving opinions to the accusations by the Public Prosecutor present in the trial on July 26, 2005; it is against the law and an opposition to Turkish Criminal Code no 5271 article 216 that the other Public Prosecutor attending the following trials as well as the trial on February 21, 2006 declaring the verdict is not asked whether he agrees with the previous legal opinions or has his own legal opinion..." (Supreme Court 9th Penal Chamber. 2007/12331 M. 2009/5072 V. 27/04/2009 T.)*

THE WAY THE VICTIMS WERE HEARD AS WITNESSES IS AGAINST THE PROCEDURES ON TURKISH CRIMINAL CODE ARTICLE 236/3

As explained above, the court board listened to all victims and the accused who benefited from effective repentance law without the presence of the accused as per TCC article 200/1 and sent all the accused away as per TCC article 236. That is to say, victims making statements were heard as witnesses. However, the court board did not follow the relevant provisions on witness testimony.

Paragraph 3 of article 236 of TCC no 5271 says; ***"An expert on psychology, psychiatry, medicine or education shall be present at the court while listening to the testimonies of victimized children or other victims whose psychology got disrupted due to the impact of the crime committed."***

Although we did not agree to it and expressed our objection, the court board listened to all the victims in closed sessions and in the absence of the accused claiming that the psychology of the victims gets distorted and they might feel fear. **However, the court board did not have anyone expert in psychology, psychiatry, medicine or education present while listening to the victim testimonies, which is in direct contrast with the court board's legal reasoning and in direct opposition to the clear provision stated in Turkish Criminal Code.**

DESPITE HAVING BEEN ENTERED THE PLEA AGAINST THE RESOLUTIONS CONCERNED WITH THE REFUSAL OF THE DEMAND BEING REQUIRED TO PASS A SUSPENSION VERDICT IN ACCORDANCE

WITH THE CODE OF CRIMINAL PROCEDURE (CMK) 172 /2 AND 223/7 AND INCOMPETENCY RETURN, THE FILE WAS NOT SERVED TO THE AUTHORITY

During the initial session of the trial on September 17, 2019, the defense counsel gave plea for the “lack of jurisdiction appeal” as per the Turkish Code of Criminal Procedure (CMK) article no 18. However, the claim was disavowed by the panel of judges and the defendant interrogations were commenced.

Yet, during the same session, with regard to the client Adnan OKTAR the verdicts of non-prosecution at various times about ganging up on and ruling were exhibited to the panel of judges, and it is stated that the bill of indictment was filed by the Peace Court of Criminal Jurisdiction without abrogating the judgments and that the legal proceedings were impleaded while the stipulation of the proceedings were not realized. In the act of not substantiating the stipulation of the prosecution, as it is required that the judgement is suspended in pursuance of the Code of Criminal Procedure (CMK) article no. 223/8, it was demanded accordingly. Nevertheless, this demand was disavowed by the panel of judges.

The experiences in the trial dated September 17, 2019 are briefly as follows:

Firstly, defendant Mehmet Noyan Orcan's the defense counsel Att. Eşref Nuri Yakışan held the floor and he demanded that he shall file an appeal of lack of jurisdiction, and he asked the court to pass a verdict about this demand before the defendant interrogations started. Also the Att. Eşref Nuri Yakışan demanded the decision of dismissal in terms of the accusation of helping the terrorist organization FETÖ according to the Turkish Code of Criminal Procedure (CMK) article no 223/8.

> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** You state that the defendant's interrogation begins, and then...
>
> **PRESIDING JUDGE:** No, if there is the allegation of challenging the venue, we will hear them. Yes, let's hear.
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** Please pay attention to our demurral about challenging the venue and then...
>
> **PRESIDING JUDGE:** In advance of taking the stand, tell your name and state whose defense counselor you are. We shall have the requisitions. After having the requisitions, the same requisitions cannot be put into words again by the other defendant counselors...
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** Okay, My name is Eşref Nuri YAKIŞAN, I am the defense counsel advocate of Mehmet Noyan ORCAN...
>
> **PRESIDING JUDGE:** Okay...
>
> **ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS:** We have filed the appeal of lack of jurisdiction and the legislative intention of the lack of jurisdiction is; if there is any continuous criminal offense in the enforcements which became legal precedent by the Supreme Court; it is required to make a plea of the jurisdiction and establish an authorized court where the interruption took place. Meanwhile, is it possible if Mr. Adnan Oktar had better not stay standing? While we are stating the plea of the jurisdiction, may Mr. Adnan Oktar take a sit Your Honor?
>
> **PRESIDING JUDGE:** He may sit, do sit.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: Thank you.

PRESIDING JUDGE: Go on, do not wait.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: We talk about continuous criminality. As there is a continuous criminality, the court where the organization or the criminality got interrupted is authorized. On the other hand, there is an alleged organization. Additionally, in concern with the alleged organization; Mr. Adnan Oktar who is present here on charges of being the organization leader was arrested in a place in the Anatolian side of Istanbul. In other words, there is no point that concerns the European side of the city. Besides, the place that is mentioned in the bill of indictment as the organization headquarter is in the Anatolian Side of Istanbul. Also the entire population of groups that have been identified as on charges of basic criminals are in the Anatolian Side. Additionally, the people who have been put on trial as defendant and the people who have been named as defendants have the Central Civil Registration System (MERNIS) in the Anatolian Side and the place where they became arrested is again the Anatolian Side. That is the reason why we are asking for reaching a verdict regarding to the authorization.

PRESIDING JUDGE: Okay Mr. Attorney, okay.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: I mean, we are on the opinion that not Çağlayan Courthouse but the Anatolian Courthouse is authorized and therefore, this trial is required to be taken place in the Anatolian Courthouse.

PRESIDING JUDGE: Yes, we listened to an allege of rejection of the venue and a plea of rejection of the venue.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: Also, with apologies I want to add something else about this issue. Alongside the issue of authorization in terms of the venue, there is also the issue of authorization in terms of legal article. And the requirement of the issue of authorization in terms of legal article is; according to the organic law article number 15, party number 4; the particular criminality which were stated in the (TCK) Turkish Criminal Law and the criminality which were stemmed from the Anti-terror Law article number 3713, required to be taken place in the country court which is named as the same as the city. Within the scope of bill of indictment, in regards to the allegation of helping FETÖ, any defendants, who are here as defendants….

PRESIDING JUDGE: You made a counterclaim of challenging the venue in terms of article...

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: No, I filed an appeal about lack of venue in terms of location ...

PRESIDING JUDGE: in terms of both article and location

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: I declare the reason of the demurral of lack of venue in terms of article…

PRESIDING JUDGE: Okay.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: The reason of entering the plea of lack of venue in terms of legal article is this; in accordance with the law no. 3713 ...

PRESIDING JUDGE: You have already told that Mr. Solicitor, do not repeat it; article no 3713...

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: I am getting to this point your honor. Regarding Mr. Adnan OKTAR there is an organization and he is alleged to be the leader of the organization. In concerning with Mr. Adnan OKTAR, he has been held more than one inquiries alleging to FETÖ and there are more than one verdicts of non-prosecution.

PRESIDING JUDGE: Yes.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: Within the scope of case file, a new evidence hasn't been found. Even, in case of having had a new evidence; so as to be authorized in terms of article, the court in the European side is required to revoke the decision of nol pros about the lack of venue. However; without revoking the nol pros, it is necessary that stopping verdict to be given in accordance with CMK the Code of Criminal Procedures article no 223/8 due to the fact that investigation condition is not sustained. Therefore, in concerning with the allegations of FETÖ, the trial cannot be heard here. Furthermore, when we look at the claim in regards to CMK the Code of Criminal Procedures article no 223/8, and it is necessary that stopping verdict to be given in accordance with CMK the Code of Criminal Procedures article no 223/8. This court is required to be declared unauthorized in terms of the article. Besides, examining the allegation in the context of TCK the Turkish Criminal Law article no 328, a petition was written to the Ministry of Foreign Affairs by the Prosecution office by force with regard to a woman who was named as Leyla, and the woman was addressed in the allegation. It is also stated in the petition that the woman does not have an official duty, she does not perform a duty as the interpreter, and the allegations have the subjective value. Having said that, it does not have a confidential information nature. In other words, here it is mentioned in such a condition as if anyone male or female who had a duty regarding to translation, cannot talk to anyone in normal life. And the Prosecution Office state that as if it is an attempt by force. Therefore, your court is unathorized in terms of both location and article, so we ask for the court to deliver a judgment about this issue.

Regardless of hearing the demands of the other defense attorneys, the Presiding Judge asked for the opinion from the Public Prosecutor, and immediately decided that Solicitor Eşref Nuri Yakışan's lack of venue demand to be rejected **without conferring with the committee and without recessing the trial.**

PRESIDING JUDGE: Let's mention something from there. In respect of rejection of venue, it is asked from the counsel for the prosecution. Regarding rejection of venue and article in regards to the lack of jurisdiction, it is asked from the Counsel for the prosecution.

PUBLIC PROSECUTOR CANER BABAOĞLU: Notwithstanding, in the Criminal Court Law numbered 5271 article number 3 and 12 and in the following articles; the terms concerned with the duties and authorities are explicitly regulated and in the duly bill of indictment, it is accepted by the competent and authorized court, and the prosecution proceedings has been started. Therefore; it is demanded to reject the demand of the Defense which is not compatible to the proceedings and the legislation.

PRESIDING JUDGE: Yes, it is considered by the court. In concern with the subject the bill of indictment which is compatible to the proceedings and the legislation, it is returned to

reject the demands on the location and authorization; it is pronounced to continue to the public trial. And the right to speak, Mr. Solicitor... If we constantly hold the floor to the defense advocates every time like this, this trial ... No, no if one demanded, the other must not ask for the same demand, yes okay. Go ahead Ms. Attorney, we are listening, tell us your name...

The panel of judges returned the decision of refusal first, and listened to the demands of the other defense advocates later then. The attitude, which is inconsistent with law and is without due process of law, clearly indicates the unserious and partial perspective of the panel of judges to the defendant party.

As a matter of fact, after the refusal verdict, the Att. Enes Akbaş, Att. Tahsin Akyüz, Att. Bülent Erşahin, Att. Sait Özağca, Att. Burak Temiz, Att. Evrim Yeşildağ, Att. Ercan Bozkurt, Att. Elif Esra Kırımlı, Att. Aydın Dölek demanded the rejection of venue in turn and individually.

Besides, as a reply to M.Noyan Orcan's defender Att. Enes Akbaş question whether there is accessible to the legal remedy against the refusal verdict, the Presiding Judge stated that the verdict, that they have taken without "without advisement" and seemed to be "with unanimity," it is accessible to have contention of unconstitutionality.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: I beg your pardon, Your Honor chief justice, you concluded my demand. Nevertheless, according to CMK Code of Criminal Procedure article number 18 faction 3 it is stated that "Decisions of the court related to the lack of venue may be subject to opposition", you did not pave the way for legal remedy. Only if you pave the way for plea, we would like to file an appeal by law.

PRESIDING JUDGE: If you submit a petition, we shall peruse it.

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: At least you shall inform us whether contention of unconstitutionality is accessible or not.

PRESIDING JUDGE: Of course, it is accessible...

ATT. EŞREF NURİ YAKIŞAN, ATTORNEY OF SOME DEFENDANTS: In that case, we are required to adjourn the trial.

PRESIDING JUDGE: We are not required to adjourn the trial...

However, the presiding judge had the manner to deceive the parties avowedly, and he did not enforce any plea law against the verdict that he had stated as the contention of unconstitutionality was accessible. Despite having entered the plea to both verdicts with petitions on September 22, 2019 separately, the panel of judges neither revised the decision in reference to the plea, nor they sent the file so as to be examined by the competent authority in 3 days, which is in defiance of CMK the Code of Criminal Procedure article number 268. Besides, although the same demands and pleas had been presented when the trials were sued out along with the other bill of indictments, the finder of fact did not take any legal action in this direction.

Therefore, this situation led (CMK) the Code of Criminal Procedure's article numbers 18/3, 223/8 and 268/2 to be infringed definitely.

THE STATUTORY RIGHTS WERE NOT REMINDED TO THE DEFENDANTS IN DEFIANCE OF THE CODE OF CRIMINAL PROCEDURE ARTICLE NUMBER 147

CMK The Code of Criminal Procedures' Article number 147, which regulates the style of an interview or interrogation, is stated as below:

> *(1) During the interview or interrogation of a suspect or an accused the following rules apply: a) The identity of the suspect or accused shall be established. The suspect or accused is obliged to provide correct answers to the questions related to his identity. b) The charges against him shall be explained. c) He shall be notified of his right to appoint a defense counsel, and that he may utilize his legal help, and that the defense counsel shall be permitted to be present during the interview or interrogation. If he is not able to retain a defense counsel and he requests a defense counsel, a defense counsel shall be appointed on his behalf by the Bar Association. d) The situation of arrest without a warrant of an individual shall be immediately notified to one of the relatives of his choice, unless Article 95 provides otherwise. e) He shall be told that he has the legal right to not give any explanation about the charged crime. f) He shall be reminded that he may request the collection of exculpatory evidence and shall be given the opportunity to invalidate the existing grounds of suspicions against him and to put forward issues in his favor.*

Yet, the panel of judges did not remind any of the legal rights that are written above. Rather, they impeded to exercise defendants' rights. From this aspect, the fullest extent of the statements taken from the defendants in the presence of panel of judges have been constituting contradictions to CMK the Code of Criminal Procedure Article 147.

THE COURT MADE THE DECISION TO ACCEPT THE INDICTMENT IN TERMS OF PEOPLE WHO HAVE TRIAL RESTRAINTS AND HEARD THE TRIAL

In the present trial the defendants named as Ayfer Bayer, Pelin Durmuş, Tuğba Bal, Nihan Toklu, Eşref Nuri Yakışan, Gülcan Karakaş, Bilge Tok, Fatih Mehmet Doğan, Ceyhun Gökdoğan have been tried in the court due to the activities of attorneyship profession. As a matter of fact, this situation is verified in the questions that were addressed to those people above in the bill of indictment by the intervening party. On the other hand, there are also defendants who are tried in the court due to their activities in various civil service.

In the Attorneyship Law no 1136 Article 58, it is stated that: "Investigations on attorneys induced by crimes arising in connection with their practice of attorneyship, or their duties with the organs of the Union of Bar Associations of Turkey or bar associations, or the crimes they commit during the performance of their duties will be conducted by the public prosecutor in the jurisdictional area where the crime is committed, ***upon the permission of the Ministry of Justice***." As it is stated in the open provision of law, the investigation of people is subject to the Ministry authorisation. With regards to the people who are public officials, it is required to have the authorization of the related institution as well.

All the provisions were reported to the panel of judges during the trials repeatedly both by the defendants and also by their attorneys both in writing and also verbally. However, the bill of indictment which was filed with regard to Ayfer Bayer, Pelin Durmuş, Tuğba Bal, Nihan Toklu, Gülcan Karakaş, Bilge Tok, Fatih Mehmet Doğan, Ceyhun Gökdoğan was confirmed on September 12, 2019, and the bill of indictment that was filed with regard to Att. Eşref Nuri Yakışan was confirmed on the date of August 7, 2020.

ATT. AYNUR TUNCEL YAZGAN, ATTORNEY OF DEFENDANT PELİN DURMUŞ: This is Aynur Tuncel YAZGAN, the defense counselor of defendant Pelin DURMUŞ. Apart from totally agreeing with the statements of my esteemed colleagues, I would like to make a statement about two more issues. One of them is that I would like to talk about the principles that are attached to the prosecution stage such as; adherency, clarity and nuncupation... What adherency is; the acts are identified in order by the legislator. Neither we nor you have the authorization to reverse the number besides some exceptions. After all, the code has indicated the exceptions. The CMK the Code of Criminal Procedure article 191/3-b stipulates to tell that; after the attendance and the identification the indictment shall be read with the formerly version. It's new version the KHK Decree Law has passed into law thenceafter. The discourse is not limited to whoever defendant they are, but it is to summarize the indictment as a whole and in a way that the auditors and the press can understand at ease. The explication means that, in the new cognisance, there is a morphology of the cognisance...

PRESIDING JUDGE: We were going to tell that in the beginning...

ATT. AYNUR TUNCEL YAZGAN, ATTORNEY OF DEFENDANT PELİN DURMUŞ: Sir, I am uttering that it is required not only to talk about Adnan OKTAR, but also to summarize the indictment as a whole, while Mr. Adnan Oktar is not standing and in full view and and by the operation of law's clarity principle. My first claim is this and my second claim is; my client Pelin DURMUŞ is a Solicitor, and she is registered to Istanbul Bar Association by register no 46742. I scrutinized the indictment. There are 7 pages about her. In the indictment, when you check the page 3673, she is accused of only giving the legal support to the organization members. In the attorneyship Law Article 58 it is stipulated that; "...or the crimes they commit during the performance of their duties will be conducted by the public prosecutor in the jurisdictional area where the crime is committed, upon the permission of the Ministry of Justice.". As you know, initially there is the Article 16 in the DGM The State Security Court, then there is the law no. 5190, then there is CMK The Code of Criminal Procedure Articles, 250, 251, 252, then there is TMK The Anti-Terror Law Article 10 and on February 2014 it was abolished by law no 6526. For the present, The Public Prosecutors have the direct authorization to make investigations about Solicitors stated that there are 8 criminal types in the CMK The Code of Criminal Procedure Article 161 Party 8 and TCK The Turkish Criminal Law Article 302 to 316. In regards to my client, there is a juridical characterization about the TCK The Turkish Criminal Law Articles 220 and 220/2 and 3. The allegation is about helping the organization members by providing legal support. Therefore, this expression is that, you are not linked to classification but according to CMK The Code of Criminal Procedure Article 226, you are linked to the offender and the action, and the action provides legal support to the other offenders, this is an Advocatory Service and it is in force in the Attorneyship Law Article 58.

PRESIDING JUDGE: Principle...

ATT. AYNUR TUNCEL YAZGAN, ATTORNEY OF DEFENDANT PELİN DURMUŞ: Sir, I am talking about the procedure not about the principle. It is not one of the 8 offenses in the CMK The Code of Criminal Procedure Article 161/8. Now, you shall not athorized to hear my client. Firstly, to do this a license must be given by the Ministry of Justice. Without taking this license your authorization shall not start. Therefore, according to CMK The Code of Criminal Procedure Article 223/8 it is required to pass the verdict of cease. As a matter of course, it shall be tried in the court together, there is a link. I am not stating that there is not. The allegations are linked. However, it is required to us to fulfil the condition of cognisance. I am beseeching you to pass the verdict of cease, I thank you.

ATT. BAHRİ BAYRAM BELEN, ATTORNEY OF SOME DEFENDANTS: This is Att. Bahri Belen, the defense counselor of Att. Ayfer Bayer. Before repeating my colleague's statements about the Attorneyship Law Article 58 and 59, I would like to highlight the two points; according to Law No 6526 Article 15, it is regulated that an investigation can be conducted directly by the Public Prosecution Office without getting a permission in order to fulfil any Criminal Procedure clause concerning to The Turkish Criminal Law Articles 302, 309, 311, 312,314 and 316. As a matter of fact, as my colleague has just mentioned, the special heavy penal courts, in the legislation which abolished the anti-terror courts the dispensation that has a Criminal Procedure stipulation indicates in terms of which crimes it shall be carried on and in terms of which crimes there is a lack of necessity to obtain permission with regards to investigations and prosecution. As your honour the panel of judges know, the accusations about my client and the other Solicitor colleagues who are on trial is the Turkish Penal Code Article 220, including the Clauses 2 or 3; these are included in the regulation in the Article 161 Clause 8, so these are not in the criminal category that the Attorney General shall carry out without getting allowance, which means, I am particularly stating this with respect to my client Ayfer BAYER. The accusations which addressed to her about Article 220 Clause 2 and 3, as a crime phenomenon, 64 lawsuit petitions's file numbers were mentioned and this indicates that, the entire crime phenomenon of the accusation with respect to Article 220 are Attorneyship actions and if there was a crime which was committed during performing the profession in terms of the attorneyship profession within the scope of Article 161 of the legislation, it certainly requires to get allowance. Your honour and Your Esteemed Panel of Judges, I would like to say something briefly, thereafter I will finalise my words. Here, the dispensation term is a Criminal Procedure term as we know, and when the Criminal Procedure term is missing, the investigation and prosecution proceedings cannot be carried on. The requisition here is not the issue of the Ministry of Justice to inspect whether there is competent evidence or not in the case document about the accusations which shall be demanded from the Ministry of Justice, in reference to Article 58 the one who asks for the investigation dispensation and in reference to Article 59 the legislative intention of demanding the investigation dispensation. The reason of this authorization is that; Judges and the Public Prosecutors and Notaries are also included. They are the founder elements of the

jurisdiction except Notaries and the reason of the authorization is surely not investigating the compatibility to the legislation but investigating the compatibility to the terms.

In other words, if there was an accusation about any Judge, Public Prosecutor, Solicitor in the Ministry of Justice with this authorization, or if there is an emerging public interest or

damage whether to carry on the accusation as an investigation or as a prosecution the power of discretion was given to the Ministry of Justice. Namely, the legislation states that, if there is a public loss in the investigation or in the prosecution, although there are competent evidence, the Ministry of Justice has opportunity to disallow it...

PRESIDING JUDGE: Your request...

ATT. BAHRİ BAYRAM BELEN, ATTORNEY OF SOME DEFENDANTS: It is called as the legislation and academy that, to investigate the compatibility in accordance the terms. Now, we state to the Esteemed Court that actually, in order to accept the legitimacy of all Court Members and His Honor Attorney General and all the friends from the defense counsel in this courtroom in the sense of both municipal law and the supranational law. It is mandatory to comply with the procedure adjudgements in order our duty's legitimacy here to be surely accepted in terms of justice servitude. I briefly would like to tell one more thing about how significant are the procedure adjudgements...

PRESIDING JUDGE: We shall take the requisition, not the significance of the Procedural judgement Mr. Attorney...

ATT. BAHRİ BAYRAM BELEN, ATTORNEY OF SOME DEFENDANTS: Your Honor, I am finishing my speech. Messrs. Faruk EREM says that; there is no discipline as vital as The Code of Criminal Procedure rules, namely, 200 years ago or after 200 years in England, in Russia, Arabia, London nowhere in the world and in no time period. Also Faruk EREM says that; if the Code of Criminal Procedure rules are not statutory to the universal principles or if it is statutory to the universal principles but yet practicing the principles is not consistent, there is no legal security in the country. However, the most crucial thing is that, there is no peace and security in that country...

PRESIDING JUDGE: Yes, Mr. Attorney...

ATT. BAHRİ BAYRAM BELEN, ATTORNEY OF SOME DEFENDANTS: In this respect, all the accusations and the crime phenomenon in the addressed accusation about my colleague, Attorney Ayfer BAYER and my other Solicitor friends who are tried in the court in this case are the Attorneyship activity. When the advocacy activity is taken into consideration, I am sure that esteemed panel of judges acquainted with it, your panel of judges know this. In that case, in order to carry out the allowance stipulation, I would like you to deliver the judgement of cease in regard to the legal proceedings of my Solicitor friends according to Article 223/7.

Moreover, the classification of defendants of Fatma Ceyda Ertüzün and Ayşegül Hüma Babuna about whom an indictment has been formed as per TCK (Turkish Penal Code) No. 220/2-3 in the primary indictment is modified in the indictment dated August 7, 2020, an indictment was arranged in accordance with Turkish Penal Code no.220/1-3 and they were held responsible for the all alleged crimes in the whole case with reference to Turkish Penal Code No. 220/5.

A verdict of non-prosecution numbered 2019/78041, dated September 16, 2019 and with investigation No. 2019/105129 given by Istanbul Office of Chief Public Prosecutor is given regarding Fatma Ceyda Ertüzün on charges of “Unlawfully Restricting The Freedom Of A Person Using Force, Threats Or Deception, Aggravated Sexual Abuse Of Children, Blackmailing, Aggravated Sexual Assault, Transporting Assets Abroad” and regarding Ayşegül Hüma Babuna on charges of “Unlawfully Restricting The Freedom Of A Person Using Force, Threats Or Deception,

Aggravated Sexual Abuse Of Children, Blackmailing, Aggravated Sexual Assault, Transporting Assets Abroad." Despite this fact, a public prosecution has been opened with regards to the same crimes with indictment dated August 7, 2020.

A similar situation occurred in terms of Mehmet Murat Atmaca. Although Mehmet Murat Atmaca was not prosecuted in terms of the accusation of "Buying or Carrying Bullets with Unlicensed Firearms" with a dated decision, a public lawsuit was filed for the same crime with the indictment dated July 12, 2019.

However, after the decision that there is no need for a prosecution, how to act in order to open a public case is regulated in Code of Criminal Procedure Article 172/2 and 173. The procedure for filing a public lawsuit for the same act after the decision on the non-objectionable prosecution in Article 172/2 of the Code of Criminal Procedure and in the case of rejection of the objection to the criminal judge of peace in Article 173/6, has been defined in reference to Article 172/2 of the Code of Criminal Procedure. In both cases, unless the procedure in Article 172/2 of the Code of Criminal Procedure is followed, it is not possible to prepare an indictment for the same suspect and action and therefore to open a public lawsuit. However, before all these deficiencies were corrected, the panel of judges made the decision of acceptance of the indictment and the trial was conducted.

THE COURT NEVER ASKED THE DEFENDANTS FOR THE DECISION OF THE DEFERMENT OF THE ANNOUNCEMENT OF THE VERDICT

Certain conditions must be met together in order to be able to decide to adjourn the announcement of the verdict. The judge does not have the authority to make the HAGB decision before all the conditions required by the Criminal Procedure Code for the HAGB decision come into being. **These conditions are regulated in Article 231/6 of the Criminal Procedure Code. The presiding judge explains to the party what it means to defer the announcement of the verdict and asks whether he/she accepts this. Asking this question is compulsory.**

However, the panel of judges did not direct this question to the defendants in our case openly and duly. The court delegation did not ask whether the defendants, to whom the Criminal Procedure Code's Article 231 is applied or the other defendants, accepted the decision to declare the verdict. The defendants, on the other hand, did not express their clear views on this matter.

Especially the defendants who benefit from law on effective remorse were called by the court registry and a message was sent to them, stating that they do not need to come for the final defenses, and it would be sufficient to submit a petition, and that they should state whether they consent to the decision to the deferment of the announcement of the verdict in their petition. This practice made by the panel of judges is clearly against the procedure and at the same time, it is an attitude that can be interpreted as "comments reflecting bias" (*ihsas-I rey*). Apart from this, we do not think that the judges of a high criminal court would not know the provisions of the Criminal Procedure Code, Article 231. However, we request that this unlawful and unofficial practice be investigated separately, despite the express orders of the law.

DURING THE REVIEW OF DETAINMENT HELD IN THE TRIAL DATED OCTOBER 30, 2019, THE PUBLIC PROSECUTOR GAVE HIS OPINION REGARDING THE DETAINMENT, BUT DEFENSE COUNSELS WERE NOT ALLOWED TO SPEAK

During the review of detainment conducted by the panel of judges on October 30, 2019 in the trial, an opinion was received from the prosecution regarding the detainment status of the defendants, but it was decided for the detainment of all defendants without allowing the defense counsels to speak.

The main purpose of criminal proceedings is to reach the material truth, and the basic condition for the realization of this aim is adherence to the principles of contradictory trial and equality of arms. The fact that all the defendants were detained without giving a word to the defense counsels, despite the fact that the prosecution was asked for an opinion by the panel of judges about the detention status of the defendants during the hearing, clearly contradicts both the contradictory trial and the principle of equality of arms.

VIOLATION OF THE REGULATION IN CRIMINAL PROCEDURE CODE ARTICLE 102/3

The majority of the defendants detained within the scope of the file were taken into custody on July 11, 2018 and remained under arrest as of July 19, 2018. **The only allegation against most of the defendants is the crime of Membership Of An Illegal Organization regulated in Articles 220/2-3 of the Turkish Penal Code, and this crime falls under the jurisdiction of the Criminal Court of First Instance.** According to Article 102 of the Criminal Procedure Code, titled the “the duration of detention”;

> *"ARTICLE 102 - (1) Where the crime is not within the jurisdiction of the court of assizes, the maximum period of detention shall be one year. However, if necessary, this period may be extended, for six more months, by explaining the reasons.*
>
> *(3) The decisions of extension, which in accordance with this article, shall be rendered only after the opinions of the public prosecutor, the suspect or accused and their defense counsel have been obtained.”*

It is clearly stated in the Constitutional Court decisions that the maximum period of detention mentioned in this article begins with detention. In the first article of the memorandum of consent dated July 19, 2019, although the obligation in Article 102 of the Criminal Procedure Code is mentioned, no explanation was made about what this obligation was and it was decided to extend the period of detention tacitly. However, as it is understood from the aforementioned article, it is not possible to extend this period implicitly.

Because, as it can be understood from the explicit expression of paragraph 3 of Article 102, the extension decision can be made after the opinions of the Public Prosecutor, the defendant and the defense counsel are taken. **The panel of judges did not comply with the procedure specified in the law by not taking the opinions of the Public Prosecutor, the defendants and the defense attorneys while making the decision for the extension.**

These issues were also stated by the lawyers at the first hearing of the case file dated September 17, 2019, and if the detention period would be extended, it was requested that this decision be made in accordance with the procedure in Article 102/3 of the Code of Criminal Procedure, but this request was not taken into consideration by the panel of judges. **The imprisonment of the defendants, the only accusation of whom is only being a member of an illegal organization, continued for 1 year and 6 months, that is, until the last day of the maximum limit stipulated**

by the law, and at this point, when there was no further means for a legal detention anymore, the panel of judges gave the decision for their release. **But this time the judicial control decision was made for them "not to leave their home" under house arrest and the defendants were deprived of their liberty.**

While the panel of judges issued this judicial control condition, which was mentioned in its interim decision on December 13, 2019, to be valid only during the hearing of the statements of the complainants and witnesses, the statements of the complainants and witnesses were completed on September 22, 2020, but the house arrest sentences of the defendants were not lifted. At the session dated September 24, 2020, the defense counsel expressed this injustice and demanded the removal of the judicial control requirement, but the panel of judges did not consider this request.

The liberty of approximately 100 defendants was unlawfully restricted by house arrest, which was imposed by not allowing them to leave their homes. This restriction was terminated only in the decision session dated January 11, 2021. In this way, after being detained in prison for 1.5 years, these defendants were also sentenced to house arrest for a full 1 year and 1 month. In terms of these 100 defendants, even if the penalty for the crime charged against them were given at the upper limit, although they did not have a prisoner in line with the current execution provisions, 100 defendants were deprived of their liberty for a total of 2 years and 6 months.

THE PANEL OF JUDGES DID NOT DISCUSS THE SCIENTIFIC OPINIONS RECEIVED BY THE DEFENDANTS IN THE PRESENCE OF THE COURT AND DID NOT CONSIDER THESE IN THE FINAL DECISION

Scientific and legal expert opinions were taken by the defendants and their attorneys in accordance with Article 67 of the Code of Criminal Procedure, and submitted to the case file. These scientific opinions are of great importance in clarifying a number of criminal charges that are subject to the case. However, these opinions, which were taken from experts in their fields, were neither discussed before the court, nor evaluated by the panel of judges. The experts who have examined the case file and presented their scientific and legal opinions, and the relevant context are as follows:

In the expert opinion of the former head of the 4th Criminal Chamber of the Supreme Court of Appeals, Osman Yaşar, dated 18.11.2020; he stated that the elements of a criminal organization are not formed in context of the casefile and that religious indoctrination is not possible through defective intention.

In the expert opinion of the former head of the 4th Criminal Chamber of the Supreme Court of Appeals, Osman Yaşar, dated 24.12.2020; he stated that the elements of the crime of being a member of FETÖ Armed Terrorist Organization does not occur in terms of our file.

In the expert opinion of the former head of the 4th Criminal Chamber of the Supreme Court of Appeals, Osman Yaşar, dated 10.01.2021; he stated that the elements of the crimes in opposition to the law numbered 6136 attributed to Rasin Kotil, Ali Suat Kütahnecioğlu and

Mehmet Murat Atmaca, as well as the crime attributed to defendant Deniz Tanık about listening to and recording conversations of people are not formed and therefore Article 220/5 of the Turkish Penal Code cannot be applied in terms of these crimes.

In the expert opinion of the Honorary Member of the 6th Criminal Chamber of the Supreme Court of Appeals, Ali Turhan, dated 10.11.202; he stated that the elements of the crime of an organization area not formed in terms of our file and that the testimonies of the defendants who benefit from law on effective remorse are against Article 148/5 of the Code of Criminal Procedure.

In the expert opinion of the Honorary President of the Court of Cassation Criminal Chamber, Ahmet Ceylani Tuğrul, dated 11.05.2020; he stated that it is not possible to "dissolve the will with religious indoctrination" and that the complainants were not subjected to such an act in our case file.

In the expert opinion of the Honorary President of the 19th Criminal Chamber of the Supreme Court, Att. Ramazan Özkeper, dated 12.11.2020; after examination of the MASAK reports submitted in the file, he presented his views that there is no criminal element in the company activities subject to these reports.

In the expert opinion of the Honorary President of the 4th Law Department of the Court of Cassation, Dr. Bilal Kartal, dated 08.09.2020; he presented his views that the report prepared by the General Directorate of Foundations on TBAV (Technics and Science Research Foundation) is against the procedure and the law.

In the expert opinion of the Cyber Forensic Informatics Expert, Tuncay Beşikçi, who has been an expert in very important cases, dated 08.01.2021; he explained in detail with the technical and legal details that the confiscated digital materials were taken, copied and analyzed through illegal methods and therefore their entirety is unlawful.

In the expert opinion of the Cyber Forensic Informatics Specialist, Tuncay Beşikçi, dated 28.10.2020; he examined the HTS-BASE records and stated that these could not be evidence against the defendants. In addition, he examined the "Herkul.org" and "the mail allegedly sent to Yaşar Yakış" and explained along with the technical details that the accusations against the defendants are not correct.

In the expert opinion of Founder of Gendarmerie Criminal Department and Gendarmerie General Command Criminal Department Technical Photo Film Sound Analysis Laboratory, Expert on Electronic Systems, Official Expert at Ankara Judicial Judiciary First Degree Commission, Electrical Electronics Engineer, Criminalistics Scientist (Sound and Image Analysis Specialist), Levent Güner, dated 24.11.2020; he examined the voice recordings submitted to the file by the complainants and allegedly claimed to belong to the client Adnan Oktar, and he stated

that there were "interventions by means of deletion, addition or relocation" in these recordings, and therefore, "the contents of the voice and speech do not preserve their original form".

In the expert opinion of the Criminalistics Scientist (Sound and Image Analysis Specialist), Levent Güner, dated 24.11.2020; he examined the images alleged to belong to the complainant Piraye Yüce and stated that the evaluation made by the Forensic Bureau of Combating Cyber Crimes was carried out "outside the accepted standards" and there are differences between the complainant Piraye Yüce and the person in the images.

In the expert opinion of the Criminalistics Scientist (Sound and Image Analysis Specialist), Levent Güner, dated 19.11.2020; he examined the images where it is alleged that the complainant Beyza Banu Yavuz appears together with the defendant Oğuzhan Sevinç, and stated that both images are out of the "recognition and detection" criteria and that it is not possible to compare the male person in the images with Oğuzhan Sevinç.

In the expert opinion of the Criminalistics Scientist (Sound and Image Analysis Specialist), Levent Güner, dated 30.09.2020; he stated that, contrary to the claims, Motorola brand walkie talkies are not produced for military purposes and that they can easily be purchased from the market without requiring any documents or licenses.

In the expert opinion of the Criminalistics Scientist (Sound and Image Analysis Specialist), Levent Güner, dated 10.04.2020; he examined the image records allegedly belonging to the defendant Kübra Kartal and presented his views that the investigation carried out by the Gendarmerie Criminal Laboratory was based on erroneous evaluations.

In his expert opinion, Graphology and Forgery Specialist Associate Professor Yasin Ataç, dated 12.11.2020; he examined the security statement, delivery report and photo identification record of the complainant Beyza Özalıcı and stated in his definite opinion that these signatures are not the product of Beyza Özalıcı.

In the expert opinion of the Forensic Science (Graphology-Forgery) Specialist, Msc. Mustafa Kaygısız, dated 23.11.2020; he stated that there are differences between the hand written text alleged to belong to the defendant Aslınur Alçakalan, and which was intended to create public indignation by serving the press etc. by hostile parties, and Aslınur Alçakalan's own hand writing.

In the expert opinion of Dr. Veysel Dinler from Hitit University, Institute of Science, Department of Forensic Sciences, dated 02.10.2020; he examined the suspicions and dark spots on the occurrence of the incident related to Mert Sucu, evaluated both the procedural errors and incomplete investigation details made by the Crime Scene Investigation Team, as well as the contradictions in the statements of the complainant special operations police officers and the statements that could not be explained according to the occurrence of the incident.

In the expert opinion of JACOBUS STEYL, who has worked with the FBI in the USA and is an expert in crime scene reconstruction, crime scene photographing, and the 36-year police officer JAN CHRISTOFFEL DE KLERK, who entered service in the South African Police Force in 1984, and have worked in the Ballistics Department of the Forensic Sciences Laboratory since 1989, dated 07.01.2021; they examined some of the alleged technical details in terms of scientific techniques in context of the incident related to Mert Sucu, and by carrying out the reconstruction of the alleged incident, they revealed the aspects that are contrary to the natural flow of life and that are not technically possible in the statements of the complainant special operations police officers.

In the expert opinion of SMMM Sworn-in Certified Public Accountant Expert, Mustafa Köksoya, dated 01.04.2020; he examined the MASAK reports and tax technique inspection reports in our file and presented a detailed opinion on the falsehood of the claims regarding A9 TV.

In the expert opinion of Sworn Financial Advisor, Noyan Alper Ünal, dated 08.12.2020; he examined the submitted tax technical reports in our file and stated that the alleged laundering offenses did not occur in terms of the relevant companies.

However, the panel of judges did not bring all these expert opinions before the court nor did they evaluate them while making the verdict. They have behaved as if these were not submitted into the file. However, the Supreme Court's Criminal General Board states the following; "*The procedure for discussing and evaluating the expert opinions compiled by the investigation or prosecution authorities and the private scientific opinions taken by the parties on their own initiatives is not different, but subject to the same provisions." (Supreme Court CGK, 2006 / 7-336 M, 2007/198 F, 09.10.2007 T)*

It is clear that most of the opinions detailed above do not fall within the area of expertise of the court. For this reason, the technical, financial, etc. opinions given by experts who are competent in their field and whose reliability are registered throughout the country are of great importance. Therefore, this practice aimed at preventing the right of defense of the defendants by the panel of judges is erroneous and necessitates reversal.