Solicitors International Human Rights Group

The Republic of Turkey

V.

Adnan Oktar and 206 other defendants

The Special District Court

Silivri - Istanbul - Turkey

Before

Mahmut Basbug (Presiding), Bilal Altinsoy, Busra Eroglu

6th September to 16th November 2022

A Trial Observation Report

A Turkish court's second and most deliberate demolition of an independent group

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www.sihrg.org

Summary

Over 200 Turkish citizens, most from professional middle class backgrounds and of good character, adhering to a religious movement led by Adnan Oktar, were pursued through the criminal courts by disaffected former members, some of whom *may have been* victims of sexual exploitation *by some* of the 200, *without the knowledge* of other defendants. The 207 were all tried together over a range of offences, with the principal charge (though not necessarily the most serious faced by some) being membership of a "criminal organisation". The criminality of the organisation being determined *ex post facto* by the convicted criminality during the same mass trial of some members for other unrelated offences, including sexual offences, of which there was no proof that all or any not so charged knew anything about.

A Court of Appeal overturned the convictions and this report is about the second and Appeal Court confirmed convictions successfully achieved by the State in a second trial.

> This second trial, in a repeat of the first, lacked respect for the principle of *legal certainty of charges* and possessed in unlawful abundance *guilt by association*.

The court sentenced Adnan Oktar to a total of 8658 years in prison on 16th November 2022. Many of the male defendants received sentences of hundreds of years. The court sentenced 106 defendants (five of them lawyers) to four and a half years each for a charge of "membership of an armed criminal organisation". This is the maximum sentence that can be given.

The verdicts having been confirmed by a court of appeal the lawyers will go to prison and their licences to practise law revoked.

The court acquitted the defendants of aiding Fetö (an armed terrorist organisation) and of political or military espionage.

As in the first report produced by the Solicitors International Human Rights Group, I use the word "movement" to describe the religious group to which all defendants are associated or allegedly associated with. The "movement" is led by a charismatic leader named Adnan Oktar. The movement promotes an approach to Islamic beliefs and practice that is different in various respects to the dominant Islamic traditions in Turkish society. Those differences have been sharpened, for example, by the promotion by the movement of representations of a "liberal" attitude to dress. On a TV channel run by the movement women and men would appear lightly dressed. Such features have contributed to an atmosphere of distrust of the movement and negative coverage of their activities in a Turkish media dominated by "traditional" attitudes.

The convictions recorded against the accused in the first trial were annulled by a court of appeal. A re-trial was ordered. Though it was hoped justice would be served by an annulment of the charges by the court of appeal there at least remained hope that the second trial would be compliant with international fair trial standards. Sadly, that transpired to be wishful thinking. If anything the second trial was a greater travesty of justice than the first one and that was atrocious enough. I am reluctant to describe either process as a trial and only do so to avoid confusion.

In the first trial the judges did not apply the requirement for legal certainty of criminal charges and did not resist findings of guilt by association. The court failed in these regards the second time. The court intimidated defence lawyers and unlawfully restricted the opportunity of the defendants to properly present their defences. Again, Sihrg did not observe a trial that could be

described as fair by international standards nor the standards set by Turkish law. We describe this second trial as pantomimic. The rule of law was disrespected on nearly every level. The trial should not be afforded any credence by the international community.

The re-trial was deliberately and unashamedly disinterested in defence evidence or arguments and was manifestly determined to overturn the court of appeal's judgement, resulting once again in the defendants being sentenced to lengthy terms of imprisonment. An intent to crush the movement actuated by pressures from outside the courtroom can be readily inferred.

Background to the retrial.

On 15th March 2022 the 1st Penal Chamber Of The Istanbul Regional Court Of Justice overturned the judgement of the court of first instance and ordered the release from prison of 68 defendants that had remained in custody (decision numbered 2022/258/ k).

A petition of objection to the release of the defendants was filed by Zekeriya Şen, the public prosecutor of the Istanbul Regional Court of Justice on 22nd March 2022.

On 28th March 2022 the Istanbul Bam 2nd Penal Chamber decided to cancel the release of the men. This was published on the Sabah newspaper's website and on the Superhaber.tv news site.

Without physical compulsion the defendants made their own way to police stations . They were arrested again and were sent to their previous places of incarceration

The appeal court judges who ordered a re-trial were Reyhan Yaman (Presiding Judge), Derya Bayburtluoglu and Ahmet Mahnaoglu. Subsequently they were assigned to different chambers.

The Council of Judges and Prosecutors (HSK) has initiated an investigation against the judgea who ordered the (short-lived) release of the defendants between the two trials.

The above two events reflect poorly on the independence of the Turkish judiciary.

Terms of reference of the delegation

To abide by the Trial Observation Manual for Criminal Proceedings – Practitioners Guide of The International Commission of Jurists 2009

To abide by the guidelines contained in the Guidelines For Human Rights Fact Finding Missions (a Joint Publication of The Raoul Wallenberg Institute of Human Rights and Humanitarian Law of The Lund University And International Bar Association – September 2009).

To report on whether the retrial of Adnan Oktar and others complies with the standards set under the European Convention for The Protection of Human Rights and Fundamental Freedoms 1950 :

1. Right to pre-trial liberty

2. Right to fair treatment in pre-trial detention

3. Rights to fair trial in particular:

I. Impartial tribunal

II. Presumption of innocence

III. Right to disclosure of case

IV. Right to be present

V. Right to examination of witnesses

VI. Right to legal assistance

The observation delegation

The Solicitors International Human Rights Group (Sihrg) is a United Kingdom based non-governmental organisation with a membership drawn principally from the solicitors' profession of England and Wales. A solicitor is a qualified lawyer and there are 138,000 solicitors practising in the United Kingdom and overseas. The objects of Sihrg include raising awareness of international human rights law within the solicitors' profession and motivating solicitors to participate in the movement to deepen respect for universal human rights around the world. It provides training in the UK and overseas on international human rights law. Sihrg has established a clear principle that whomsoever invites or sponsors it to observe a trial the approach will be objective.

The observation team consisted of:

Lionel Blackman – solicitor-advocate - Director of The Solicitors International Human Rights Group. Author of several international trial observation reports available via www.sihrg.org

Sarah Hermitage - Human rights activist and retired solicitor

Astra Emir - Barrister

The observer members received no compensation for any loss of work and gave their time without charge or reward.

Background and evaluations

Readers of the first trial report will be familiar with those contents from it which are repeated below. Repeated as they remain of equal relevance and application to the second trial.

Mr Adnan Oktar is a Turkish citizen who has published numerous books. He advocates an interpretation of the Koran that is "modern" But also in his view and that of his followers "true". For convenience I refer to them collectively as "the movement". The movement that the state maintained was a "criminal organisation".

The main themes of Mr Oktar's Islam-ism is tolerance of other religions and peoples, peace on earth, protection of the environment and equal rights for women. The "modernity" of his belief has been demonstrated by programmes on his movement's own television channel in which men and women frequently appeared in clothing that would be regarded as immodest in the eyes of "traditional" or mainstream Muslims.

Witnesses for the movement did not deny that models from outside Turkey were recruited to appear on TV programmes. In the first trial during examination by a judge and lawyers Mr Oktar made references to his own alleged sexual prowess.

The core of the complaint against Mr Oktar and 74 other adherents of the movement was sexual abuse. The alleged victims, all female, were 44 other adherents or past adherents of the movement or acquaintances of followers of the movement. The alleged offences included rape and sexual assault and 13 offences against complainants aged under 18.

A trial observer's object is not to find the truth or falsity of the accusations nor in this case to judge the movement's or its leaders' apparent or alleged attitudes to sexual freedom. It is apparent that the core allegations against adherents of the movement have discouraged interest in the case from world media and Turkish and international human rights non-governmental organisations.

Leaving aside procedural issues the following features of the case warrant an open mind being kept about the correctness of many of the guilty verdicts that were reached against all but a few defendants on most of the charges.

i. 10 complainants of sexual offences were also charged with being members of the criminal organisation. A "criminal organisation" implicitly accused of the purpose of committing sexual offences of which they were victims.

ii. Of 207 defendants charged with being a member of the criminal organisation 123 (26 men and 97 females) faced no other charges. Hence, according to the pattern of criminal behaviour alleged by the prosecution of movement followers being abused by other movement followers or leaders, potential victims of sexual abuse were also being condemned for the criminal offence of membership of the criminal organisation.

iii. One former complainant and defendant testified that her complaint of sexual assault had been wrought from her by police through threats and oppression. In doing so she disavowed the liberty that giving evidence for the prosecution would have earned her and instead attracted a four and a half year sentence of imprisonment for membership of a criminal organisation.

iv. No complaints of sexual abuse were made contemporaneous to the alleged events that occurred years and even decades past.

v. All complaints were gathered within a short recent period of time not by the usual police departments dealing with such offences but by an investigation unit for financial crime.

vi. Before the failed coup of 2016 adherents of the movement faced several prosecutions for being members of an alleged "criminal organisation". And acquittals followed.

Maintaining an open mind is always appropriate to the task of evaluating the fairness of a trial process. An assessment of the compliance of a trial with international standards of fairness is not to be influenced by the nature of the charges, nor the evidence of and the decision on guilt. Procedural fairness stands apart from the factual evidence of both prosecution and defence relating to the offences.

As with the first trial, at the outset I qualify this report by acknowledging that our Co-vid challenged availability and resources meant that we observed only samples of the second trial. However, what we saw and what we read from reliable sources, were in my opinion sufficient to warrant the condemnation of this trial that this report contains.

I will summarize only some of the breaches of fair trial rights that were directly observed by the observation team and other reliable sources. It is not appropriate to identify the human sources of third-party information upon which I occasionally rely because of a legitimate fear of recriminations being visited upon such persons for the assistance that they have provided to us. I have only relied on third party or defence related sources that in my opinion are reliable. That is not to say I treat such sources as proof of facts mentioned. Nevertheless, they are cogent and consistent with our own observations and also consistent with established patterns of behaviour of state personnel in Turkey that are widely reported and evidenced in other cases and situations. It will be obvious that pre-trial matters are not matters that the Sihrg team could possibly have observed and thus statements of fact relating thereto have been provided by reliable third party or defence related sources.

I acknowledge that each member of the observation team had to rely upon a locally appointed interpreter to understand the hearing. The Sihrg team of observers had confidence in the interpreters who worked with us but inevitably detail is often lost in translation. The public gallery was situated a great distance from the participants in the trial. Large screens projected a relay of participants when speaking.

Again, I have been provided copious reports from persons connected to the defendants especially in respect of background matters and hearings in the case that we did not observe. The vast majority of hearings we were not able to observe for ourselves. However, I am satisfied from the relatively short periods of our team's direct observations combined with a study of the charges (as explained in the table and arguments below), that the whole trial process was (once again) a deliberate and calculated perversion of justice.

Again, it is not necessary to buttress my conclusions by drawing extensively on third party and defence related sources. On the contrary. If this report quoted extensively from third party and defence related sources such information would serve to undermine the objectivity and independence of Sihrg's own direct observations. I am satisfied that those observations are sufficient in themselves to establish a reliable opinion that the process observed was perverse.

A tabulation of charges, defendants and complaints is appended to this report at Appendix 1.

The reader is recommended to study the table before reading further.

In respect of charges under article 220 concerning belonging to a criminal organisation I have concluded that the process failed to comply with the internationally recognized principle of legal certainty.

Forming organised groups with the intention of committing crime

> "Article 220 of the Turkish Penal Code
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> (1) Those who form or manage organised groups for the purpose of committing acts which are defined as crimes by the laws, is punished with imprisonment from two years to six years unless this organised group is observed to be qualified to commit offence in view of its structure, quantity of members, tools and equipment held for this purpose. However, at least three members are required for the existence of an organised group.
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> (2) Those who become a member of an organised group with the intention of committing crime, are punished with imprisonment from one year to three years."

The elements in the article which I have underlined were again not specified in this retrial and again, this defect was not cured by the existence of other substantive charges on the indictment. Without it being stated it would not be possible for a defendant facing only the charge under article 220(2) to know what crime he or she was accused of having an intention to commit.

All the other charges on the table featured in the indictments are offences perfectly capable of being committed by individuals without being part of a group organised for that purpose. Apart from the sexual offences it is noteworthy that the other substantive offences only involved singular or very few defendants.

The criminality of the movement was determined ex post facto by the court. The movement was not a legally proscribed organisation. A terrorist organisation, the proscription of which is provided in legislation, places citizens on notice that to join it is illegal. There is then no

requirement for the state to prove any specific criminal intent on behalf of an accused other than membership of the organisation.

The repeated findings of guilt in this retrial of some members of the movement for substantive offences was the ground for determining that all followers of the movement charged were thus members of a criminal organisation. The court dispensed with the requirement to establish what criminal offence each defendant charged with membership intended to commit by joining the movement. It was sufficient for the court to find guilt by association. Finding guilt merely by association is a breach of international law.

PRINCIPAL FINDINGS

A. The judges did not comply with the requirement upon them to give to the defendants charged with membership of a criminal organisation the benefit of the right to legal certainty in the criminal law.

B. In so failing the judges also breached their duty not to reach verdicts of guilty against individuals based solely on their association with others who were found guilty of substantive offences.

C. The judges were blatantly partial. They were openly biassed against the vast majority of defendants. This was evidenced by a range of breaches of fair trial rights including denial of defence witnesses, a refusal to examine digital and documentary evidence from the defendants, intimidating defence lawyers and providing insufficient time to present defences.

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The second trial started on the 6th September 2022 and concluded on the 16th November 2022

Information concerning the court.

The court is located within the security area of the Silivri “prison campus”. This area is a two hour drive from the centre of Istanbul. The courtroom is the size of a vast warehouse. If packed it could accommodate, we imagine, two thousand people. The public gallery is a great distance from the court actors. Speakers’ voices were amplified and the faces of some actors in the court process were projected on giant screens as they spoke.

Trial observations

Unless otherwise stated the articles referred to below are articles of the European Convention for The Protection of Human Rights and Fundamental Freedoms 1950 that Turkey has ratified. Reference is also made to the International Covenant on Civil and Political Rights 1966 that Turkey has also ratified. We have found that provisions of the Turkish constitution and Criminal Procedure Code reflect the principles contained in the aforementioned international human rights instruments. However, I have chosen, as with the first report, not to prolong this report with citations of domestic procedural law.

I have inserted under different headings a few selected direct quotations from our observers' original reports. Some of these reports evidence breaches of more than one fair trial right but I have inserted them within my consideration of the main right falling to be in question.

The breaches of the duty of the court to be impartial, to uphold the requirement of legal certainty of the charges and to treat defence lawyers with respect, were so blatant that it is not necessary to examine every other infraction of fair trial rights to establish that, as in the first trial, this second "trial" was not a fair one by any standard.

1. **Right to pre-trial liberty**

Article 5 Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

c) The lawful arrest or detention of a person affected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

3. Everyone arrested or detained in accordance with the provisions of paragraph i (c) of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful

Shortly after an appeal court ordered the release of defendants held in custody from the first trial a differently constituted court ordered that they be returned to prison.

The court of appeal that had released the defendants had taken one year to come to this decision.

The court of appeal which took the decision to re-arrest the defendants took three days to make their decision.

Neither the Turkish code required monthly "paper" bail reviews nor the required three monthly in-person or video link hearing bail hearings were held by the court.

2. Right to fair treatment in pre-trial detention

ICCPR - Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

ECHR

Article 3 prohibition of torture - *no one shall be subjected to torture or to inhuman or degrading treatment or punishment*

The defendants were taken back to their original prisons and the conditions were exactly the same as they had previously been.

Conditions in prison - (based on reliable third party information):

"The cells were generally standard T cells built originally for 8 people. Many accommodated up to 14 prisoners and there are credible reports of some cells holding as many as 27 prisoners.

There was a TV in prison and it was all over the news that the defendants were accused of sexual crimes, which caused serious problems for them. Many of the defendants were beaten by the convicted prisoners in the cells and the guards did not stop this behaviour. There was one hour of hot water a day for 20-30 prisoners.

There was little or no regular exercise.

Many had relatives unable to visit due to age and distances involved to do so.

The denial of access to medical care led to permanent and serious physical and mental disability in some of the defendants which it would be unsafe to name or outline the health issue involved. Many of these defendants were told that if they signed documents implicating themselves and others in various crimes, medical treatment would be granted."

The alleged treatment of the defendants in prison was a shortcoming in their right to fair treatment in pre-trial detention.

3. Impartial tribunal

Article 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

This retrial was heard by a panel of three judges. The observers noted that the judge continuously pushed the defendants when giving evidence to hurry them up. This was a central and repeated abuse of judicial authority. From the start of the proceedings the vast majority of defendants were allocated only 15 minutes each to present their defences. This time limit was strictly observed by the judge. When the 15 minute time limit was reached, he would push the defendants constantly to finish and if they did not he would shut them down and order them from the witness box to their seats. At one point the judge stated "terrorists only get fifteen minutes so why is it not enough for you".

From a Sihrg observers original notes:

"One defendant towards the end of a day addressed the judge quite aggressively. She told him he was breaching international law by only allowing them 15 minutes to speak. She accused him of being biassed and asked for the 15 minute rule to be dismissed. The judge ignored her and said it would continue. He said that this is how he conducts his trials and that he wanted the trial to be over quickly.

In one day 23 defendants gave their evidence in chief. The judge harassed every single one of them and did not allow them more than 15 minutes. At times the defendants insisted but he harassed them so much they sometimes became flustered and lost their place

Protests from defence lawyers on this issue were shut down by the judge.

On the first day the judge asked every single defendant to give their opinion on the verdict of the court of appeal. It was a pointless exercise not required by law.

After all the defendants had been given a chance to speak, the judge gave the complainants' lawyers a chance to address the court. There followed tirades of condemnation against the defendants without any substantive evidence."

An extract from a Sihrg trial observer's notes:

"On the first morning of my observation, 13 September, 2022, while Bora Yildiz was giving evidence, the judge told him that he had 5 minutes left. A lawyer tried to ask for more time for the defendant to make his representations, and the judge said 'please don't speak without permission'.

A few minutes later, after the defendant said that he had been given two days to speak by the previous trial court, and that still hadn't been enough. The judge replied that two days was too long.

The lawyer for Adnan Oktar, Mr Sinan Kocaoğlu then asked the judge not to limit the defendant's time to speak. My notes of the incident state:

'defence counsel complains saying "on what basis are you giving a time limit? You have no right to stop them, to limit their rights, they have been in prison for four years!"

The judge turned off his microphone. The judge told him that he was interrupting the court, and not to make the judge take precautions.

Counsel continued to shout. The judge told the jendarma security not to let the lawyer speak any more and to take him out of the court room. He said "we cannot continue the trial like this", and asked the lawyer to leave. He said to him not to shout, and said to the

jendarma to take him and throw him out. He said "I am talking to you calmly, please throw him out".'

(Although I did not note this at the time as it was not interpreted for me, when speaking to those nearer the action I was later informed that the words used were: 'Can't the jendarma hear me? Grab his collar and throw him out!'. The lawyer replied 'the man who would remove me from this court room has not been born', leading the judge to announce 'he was born, throw him out!')

The jendarma put a hand on the lawyer arm to remove him, but he left of his own accord, accompanied by a large number of lawyers.

Another defendant then tried to take her turn to make representations, but was unable to at the time because her lawyer was no longer present.

The requests made by the defendants were often similar. One after the other they stood in front of the judges and asked for:

1. To be released from custody to await trial. Many of them pointed out that the custody time limit for their particular offence had expired. Some said that they needed medical treatment, at least in one case for cancer. A large number highlighted the fact that, rather than escaping from the police after the first court of appeal had freed them, as appeared to be alleged, they in fact went and handed themselves in to the police, in many cases even though the police did not know why they were doing so.
2. To ask for the prosecution witnesses to come to court so that they could cross-examine them. At the previous trial they had come to court but the defendants had not been permitted to be in the room, so they did not know what the witnesses had said, and could not give instructions to their lawyers on what to ask. This was particularly pertinent as the defendants pointed out a large number of discrepancies between the first and subsequent statements of many of the witnesses, particularly for the sexual abuse allegations and the shooting incident.
3. To ask for further evidence that they said was in the possession of the prosecution. Of particular relevance was video evidence that it was said would show a shooting incident and so would clear those involved in that. They also asked for forensic reports in relation not only to the sexual abuse allegations but also for the shooting, pointing out a number of discrepancies with the bullet holes and the bullet cases that were found.

These were the main issues raised by the defendants.

Although those defendants who were alleged to be more senior in the alleged organisation were given an hour or so to speak, those lower down often only had a few minutes, and were still constantly told to hurry up by the judge.

The second and third days of my attendance (14 and 15 September 2022) were fairly uneventful otherwise, and consisted of a stream of defendants making the above requests, one after the other.

This continued until 4.12 pm on the final day of my attendance, 16 September.

At 4.12 pm it was the turn of the lawyers to make their submissions. In total 26 defence lawyers spoke. I noted that when Sinan Kocaoğlu spoke the judge appeared to turn his back on the lawyer, although it could have been that he was looking at the screen on the other side of the court,

but I thought this was unlikely given his position. The effect of it was quite rude and would have been disconcerting for a lawyer who was addressing the bench to be faced with the judge's back.

The lawyers were listened to mostly in silence and were able to make all their submissions without interruption. The submissions finished at 9.41 pm. The court had sat late on all four of the dates I attended, finishing just after 5.30 on 13 September and around 6.15pm on 14 and 15 September, but on Friday 16 the hearing continued into the night.

The court then went out to consider their decision. They returned at 11pm.

The public were not permitted to enter to hear the decision, only lawyers and press. I was also refused entry. I sent a message to the judge three times explaining who I was and requesting that I be allowed to observe the decision, but this was refused. The message was eventually returned to me via the security guard that if I was a Turkish lawyer I would have been allowed in, but as I was not then I would be treated as a member of the public and must stay outside.

The decision as reported to me was that all the defendants who were already in custody would continue to be remanded in custody and that all requests for disclosure of further evidence or for witnesses to attend trial were refused.

The judges had taken less than 79 minutes to consider the detailed representations of 68 defendants and 26 lawyers which had taken at least the four days of my attendance, and presumably the five days of sitting before that.

The decision as reported to me appeared to be a collective decision – it did not appear that there had been consideration of each defendant's particular circumstances when looking at the issue of release, nor was there consideration of the individual requests for evidence or for witnesses to come to court to be questioned that were made. In addition to this, no reasons were given for the decisions made.

When the hearing was over, after ii.30pm, several hundred people – defendants, lawyers and public – had to make their way home, mostly to Istanbul which is at least 1.5 hours drive away from the court complex."

4. **Right To Be Presumed Innocent**

> Article 6 Right to a fair trial
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> 1. Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law

The defendants had been released by the appeal court on 15th March 2022. They were rearrested on 29th of March 2022 amidst a structured and deliberate adverse publicity campaign.

There were no material changes in circumstances warranting the reversal of the presumption for bail. The reversal had all the hallmarks of a decision motivated by prejudice of an irrational kind that has no place in judicial reasoning.

Reviews of the remands into custody were either denied or brushed aside peremptorily without cogent reasoning.

The behaviours of the presiding judge of the Court toward defence evidence, defendants and defence lawyers, as reported throughout this report, all accumulate to demonstrate that the Court had little if any interest in even the possibility that defendants might be innocent. The conduct of the trial gave the appearance that the Court was minded to find defendants guilty regardless.

5. **Right to be informed of charges and disclosure of evidence and adequate time and facilities to prepare defence**

Article 6 Right to a fair trial

3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence;

In the first trial report we observed a failure to disclose evidence and a failure to permit sufficient time for defence preparation.

In view of the time that elapsed between the first and second trials these are not failures we could be confident in suggesting necessarily took place in the second trial.

However, difficult conditions of detention prevailed throughout and notwithstanding the lapse of time, incarcerated defendants still faced the obstacles as reported to us. I report these concerns here.

From a defence source:

"The defendants did not have time to go to the computer room and read the [prosecutor's 490 page] opinion on the merits conveyed to them on the cd. It is impossible for them to prepare a defense without reading the opinion. Only some of the detained defendants were given the right to go to the computer room once, and this period is only 2.5 hours.

*"the notion of "facilities" May include such conditions of detention that permit the person to read and write with a reasonable degree of concentration. (mayzit v. Russia, 2005, § 8i; moiseyev v. Russia, 2008, § 22i). It is crucial that both the accused and his defence counsel should be able to participate in the proceedings and make submissions without suffering from excessive tiredness (barberà, messegué and jabardo v. Spain, i988, § 70; makhfi v. France, 2004, § 40; fakailo (safoka) and others v. France, 20i4, § 50).- ". (*the 6 § 3 (b) article of the echr.)

- since the hearings are over at late hours and there is no break, the defendants do not have the opportunity to meet with their lawyers. Especially in marmara (silivri) prison no. 9, the fact

that there are few lawyer visitation rooms and too many detainees, means that the defendants cannot meet their lawyers.

'the facilities provided to the defendant include the defendants' meetings with their lawyers. (echr article 6 § 3 (b), campbell v. Feli v. United kingdom, § 99, gaddi v. Italy, § 3i)

- there is not enough time to meet with lawyers on weekends; and since the lawyers are attending the hearings 5 days a week and they have many other clients, therefore they cannot allocate enough time on the weekends.

- since the defendants return to their wards late at night, they do not have time to prepare and work on their defenses.

- after the hearings that last until late in the evening, the 74 detainees are taken to the prison, and it is already 24:00 for them to enter their wards after the inspections etc.

- due to the late hour, they have to wait longer for vehicles to arrive from prison.

- since the ending of the hearings is the same hour with the inspection for attendance in prison, the defendants are made to wait in custody for about 2 hours when they reach the prison before entering their wards.

- after they come to the ward, and meet their needs such as shower and meal and make preparations for the next day, they can only go to bed at around 02:00am at late night and have to wake up at 05:00 in the morning to come to the hearing in the courtroom. In other words, they can only sleep 2-4 hours every day.

- only lunch and dinner are provided during the hearings, they do not have food with them, and even water is provided in limited quantities. In this case, they have to be content with the food that the prison provides with extremely low nutritional value and insufficient amount.

- facilities provided during working hours, such as razors, cannot be provided because they cannot be in their wards during working hours.

- the defendants can't even make phone calls with their families.

- the defendants cannot meet with their lawyers.

- the defendants cannot request referral to infirmary or hospital when they have health problems.

The health of the defendants, who are in the courtroom all day long without being able to meet their needs, with only 2-3 hours of sleep, are at risk, and they have difficulty in keeping their attention during the hearings.

The 6 § 3 (b) article of the European Convention Of Human Right refers to "the states' duty under article 6 § 3 (b) to ensure the accused's right to mount a defence in criminal proceedings includes an obligation to organise the proceedings in such a way as not to prejudice the accused's power to concentrate and apply mental dexterity in defending his position. Where the defendants are detained, the conditions of their detention, transport, catering and other similar arrangements are relevant factors to consider in this respect (razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia, 2019, § 252)."

Defendants who are on trial with sentences of ten thousand years should be able to make a strong and effective defense. However, this is not possible under these conditions.

The time pressure on the defendants, the purpose of which is not clear, is gradually increasing. It is obvious that this is a practice that will harm the health of the defendants, make them uneasy, and weaken their power and opportunities to prepare and speak during their defense.

In particular, at a time when the covid19 pandemic is still ongoing and both the covid19 and seasonal flu epidemics are likely to come back stronger by the season, detained and pending defendants are subjected to severe conditions and their health is endangered.

The court delegation has the opportunity to rest between hearings and to have a healthy and strong diet. However, this is not possible for the detained defendants who are in prison.

The exclusion of the detainees from attending the hearings will not solve the problem. There is no legal or conscientious basis for making the defendants unable to attend the hearing and saying that they do not have to be present in the hearings. The defendants, who are being tried for at least a few hundred years, rightly want to attend the trial regularly, listen to the defences of other defendants and hear other information and evidence that will strengthen their own defence. Since this is a prosecution for a criminal organisation, the criminal charges against each defendant, and therefore their defence, are related and common.

By the current practice, the rights of the defendants to attend both the trial and to prepare their defence are violated.

It is obvious that there is urgent need to put an end to the ongoing violation of the rights of the defendants to a fair trial and defense. Holding the hearings until late hours and not giving a break for 15 days is consequently causing a series of sufferings and grievances that ruin the health of the defendants, break their defense power, and take away their time and energy."

6. Right to be present

ICCPR - Article 14 (3) (d) "To be tried in his presence..."

ECHR - Article 6 right to a fair trial

1. …… The press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

With the possibility of one or two exceptions we were reliably informed that none of the defendants were given a right to be present when complainants gave their evidence. Whilst there is a right for their lawyers to be present they often were not there. This was due to the fact that simply the judge would not allow it and rejected calls from lawyers and defendants for the complainants to appear for cross examination..

We have been reliably informed that records of hearings and minutes of the proceedings should have been made available to defendants and their lawyers and were not. Inevitably this placed the defence at a great disadvantage in preparing their defences.

A feature of the trial management was the unpredictability of the trial timetable. Consequently lawyers faced logistical obstacles attending hearings. Together with the removal of defendants during complainants' testimonies the defence were constantly working in ignorance of what evidence had been provided against them.

The judge continuously sat until 8 or 9 pm at night denying the defendants proper rest and timely meals, challenging their ability to concentrate and thus be present.

7. Right to call and examine witnesses

> Article 6 Right to a fair trial
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) To examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

The judge refused all requests from the defendants to call witnesses in their defence at any stage in these proceedings and did not provide reasons to support this refusal**.** Over and over again the defendants asked for the complainants to be brought to court in order to be cross examined. This was denied by the judge.

The defendants had waited four years for the opportunity to give their evidence and to be able to cross examine their accusers.

One witness presented photographs to the court of one of the complainants with someone she had accused of rape. The judge did not look at the pictures.

One defendant faced a charge of attempted murder and at Appendix 2 we print a detailed observation of relevant exchanges in court together with insights from a senior Turkish lawyer for the defence.

This example of the way in which the second trial court treated evidence was repeated throughout.

It also exemplifies the inherent unfairness of trying together so many defendants for so many allegations. The cross-prejudicial effects of trying over 200 defendants for multiple crimes would be difficult for some of the best judges to resist.

The judicial failures in this case justify my recommendation that a new international norm should be developed setting a reasonable limit on the number of defendants that can be tried simultaneously before the same tribunal.

8. Right to legal assistance

Article 6 Right to a fair trial

3. Everyone charged with a criminal offence has the following minimum rights:

(c) To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

Defence lawyers were continuously prevented from properly representing their clients. The judge persistently refused objections, turned off their microphones and expelled them from the courtroom. The judge was observed to be consistently obstructive towards defence lawyers whilst being obliging to the complainants lawyers.

Lionel Blackman - Solicitors International Human Rights Group - United Kingdom

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Appendix One - TABLE OF CHARGES AND FINDINGS

From the first trial. No substantial changes are reported from the second trial.

Charges	The number of defendants who faced that charge	The number of defence lawyers that have been charged	The number of those complainants who were also defendants	The number of defendants who were on trial ONLY for being a member of a criminal organisation	The number of defendants who applied to benefit from the remorse provisions	The number of defendants found not guilty
Attempt for Political or Military Espionage (Art. 328),	1	-	-		-	-
Establishing and Managing Organisations for the Purpose of Committing Crimes (Art. 220/1),	14	-	-		-	-
Being a member of a Criminal Organization (220/2),	207	10	10	123 (ONLY for being a member)	27, but 1 of them withdrew her former testimony stating that she was verbally and psychologically coerced into giving a testimony that she did not want to.	none, but the sentences against 25 defendants who applied to benefit from remorse provisions were deferred
Aiding a Criminal organisation although he does not belong to the structure of that organisation (220/7),	15	-	-	13 (ONLY for aiding)	-	3
Sexual abuse (Art. 103)	46	-	-		-	-
Sexual assault (Art. 102)	75	-	-		1 (but effective remorse provisions do not apply to sexual crimes)	1 defendant found not guilty re one complainant, but all found guilty re other complainants
Disobeidance of LAW ON FIREARMS, KNIVES AND OTHER TOOLS (Law 6136),	3	-	-		-	-
Prevention of the Right to Education and Training (Article 112),	1	-	-		-	-
Blackmailing (Art. 107)	4	-	-		-	1
Causes suffering of another person (Art. 96)	1	-	-		-	-
Prevention of freedom, (Art. 109)	3	-	-		-	-
Laundering of Assets Acquired from an Offence (Article 282),	1	-	-		-	-
Insult (Art. 125)	1	-	-		-	-
Disobediance The Law 3628 On declaration of Property and Fight Against Bribery and Corruption;	7	-	-		-	1 due to statute of limitation

Eavesdropping and Recording of Conversations between Persons (Article 133),	1	-	-		-	Found guilty against one complainant, and not guilty against another
Fraud (Art. 158)	1	-	-		-	-
Threatening (Art. 106)	5	1	-		-	-
Recording of Personal Data (Article 135),	1	-	-		-	-
Attempt to killing intentionally (Art. 82)	1	-	-		-	-
Aiding an Armed Terror Organization without being a member, (Art. 314)	2	-	-		-	-
disobediance of Law 5607 on An of Law 5607 on Anti-Smuggling,	1	-	-		-	-
Damage, Destruction or Concealment of an Official Document, Counterfeiting Official Documents, (Art. 205)	1	-	-		-	-
Favouritism of a Criminal (Art. 283)	2	-	-		-	-
Untrue declaration during issuance of an official document (Art. 206)	1	-	-		-	-
Unlawful delivery or acquisition of data (Art. 136)	1	-	-		-	-

Appendix 2

The evidence surrounding the defendant accused of attempted murder.

"On day three the judge decided that the evidence of the two police officers that were allegedly shot by a defendant was to be given. Videos were put onto the screen of a cartridge case that had dents in it and a protective vest that had a tear in it (allegedly made by a bullet).

The court was told that d shot them as they attempted to gain entry into his small dwelling in a garden. As they gave their evidence they made no mention of a third officer. The two police officers stated that they called out "police" Before they knocked on the door and broke it down and then entered the premises with shields, which is when they claimed they were shot by d.

D was then allowed to question the officers and also other defendants were allowed to put questions to them too.

The vest was not produced, the spent bullet casings were not produced nor was the cartridge holder that was said to be dented.

A third witness appeared on a video screen link. There was no mention of this witness by the first two police officers. This witness stated he gave a statement ii days after this incident took place. He could not remember where he gave his statement and he did not have a copy of it.

This witness contradicted the evidence of the first two police officers. The witness stated he had helped the officer who claimed he was shot, out of the room.

Before he gave his evidence he stated "i swear to tell the truth". All in court had to stand up as if to give some kind of sanctity to the oath. It took the common practice observed in many courts around the world of observing respectful silence when an oath is taken perhaps a bit far.

The first two officers stated they had entered the defendant's small room with shields. This officer (supposedly with them) who said they did not have shields.

The defendant then asked the judge if he could show video evidence (a cd) of that night. He stated that the cd showed that this officer was there and that he was referred to by name by the other two officers and that it was obvious that the first two officers knew him.

The judge refused to allow this evidence.

The judge turned to him and said:-

"anyway, what are you trying to prove to us here, these men are special forces".

The implication being that their evidence was unchallengeable on account of their status.

D replied, I am charged with a very serious crime and I would like to defend myself.

One of the defence lawyers, asked the two officers some questions about the timing in relation to their entry into the premises before being shot. The judge interjected and said "it is four years ago, seconds and minutes are meaningless".

The officer was asked if he had any bruising after he had been shot. He said he did not know, he did not go to the hospital. He was asked what the police procedure was when an officer had been shot. He said he did not know.

It was accepted by the court in both the initial trial and this retrial, that police video evidence existed of the shooting incident. This incident formed the basis of the State's assertion that the organisation was an "armed criminal" organisation. Despite this and, the fact that defence lawyers persistently asked for the prosecution to produce this evidence, the judge refused to direct that it should be. Further, according to a senior defence lawyer the vest, bullet cartridges and gun casing with a bullet dent in should have been brought before the court and directions given for forensic examination. Again, despite multiple requests from defendants and defence lawyers, the judge refused to give directions to the prosecution to produce this evidence and as a result, the evidence could not be properly tested.