

PERILS OF UNCONSTRAINED
PROSECUTORIAL DISCRETION:
**PROSECUTING TERRORISM
OFFENCES IN POST-COUP TURKEY**



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July 2023

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Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey

Emre Turkut¹ Ali Yıldız² Kevin Dent KC³

Executive Summary

Turkey's arbitrary employment of its legal arsenal of anti-terrorism and security tools reached unprecedented levels in more recent years, especially in the aftermath of the 15 July 2016 attempted coup. Exacerbated by the state of emergency decrees adopted over the post 2016 attempted coup period, the anti-terrorism framework has been used widely and arbitrarily to designate and criminalise many instances of peaceful activity of political opponents, human rights defenders and journalists.

This report evaluates whether Turkish prosecutors observe Turkey's domestic standards and its international legal obligations when prosecuting and/or investigating terrorism offences in the post-coup period by particularly looking at the outcomes of such prosecutions/investigations, namely the indictments, in relation to membership to the Gülen Movement.

The report draws on a detailed examination of 118 indictments at least one from each of the 81 provinces of Turkey that accuse individuals of membership in the Gülen Movement as per Article 314 of the Turkish Penal Code.

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The report finds that in the environment of fear enabled by the coercive state power in the post-coup Turkey, the practice of prosecutors, known as their traditional statist and regime-supporting approach, has moved further away from basic domestic and international standards. More particularly, the report shows that the post-coup indictments concerning the Gülen Movement members have been marred by the lack of a coherent presentation of evidence, the logical reasoning between suspects and alleged offences, the strong political/ideological language, the deliberate constructions of unsound and illogical plots and conspiracy theories, the lack of reasonable suspicion and ultimately the reversal of the presumption of innocence. This eventually led to several judgments, decisions and opinions in which the main international human rights bodies including the European Court of Human Rights (ECtHR), the United Nations Human Rights Committee (UN HRC) and other UN Treaty Bodies such as the UN Working Group on Arbitrary Detention (UN WGAD) condemned Turkey's post-coup practices due to the lack of essential human rights perspective.

Overall, the report provides a chilling reminder regarding the problems emanating from unconstrained prosecutorial discretion and the human rights unfriendly prosecutorial practices in Turkey. The authors urge Turkish prosecutors (I) to write the indictment in a plain and concise language; (II) clearly explain the factual and legal basis of the accusations; (III) to provide a coherent casual connection and link between the evidence and charges; (IV) to take into account evidence in favor of the suspect; (V) to refrain from resorting to illogical plots and conspiracy theories; and finally (VI) to respect and protect human dignity and uphold human rights when performing their duties.

I. INTRODUCTION

1. Turkey's arbitrary employment of its legal arsenal of anti-terrorism and security tools has reached unprecedented levels in recent years, especially in the aftermath of the 15 July 2016 attempted coup. Turkey's far-reaching Anti-Terrorism Legislation No. 3713 (ATL) offers only a vague definition of terrorism and one which lacks the level of legal certainty required by international human rights standards.¹ Exacerbated by the state of emergency decrees adopted over the post-2016 attempted coup period, this anti-terrorism framework has been (mis) used to designate and criminalise many instances of peaceful and otherwise lawful activity of political opponents, human rights defenders and journalists as constituting terrorist activity (in particular for alleged "membership of a terrorist organization"). As aptly concluded by an Amnesty International report, "when correctly viewed, everyone's a terrorist" in post-coup Turkey.²
2. The issue at hand is emblematic of many structural and inextricably intertwined problems. Each problem can be identified as either a *result* or a *cause* of one another -factors that, cumulatively, contribute to the excessive reliance on, and the misuse of, anti-terrorism framework, the weaponisation of the judiciary and, ultimately, the deepening rule of law crisis within the country.
3. One core structural factor, though often overlooked, is the unbridled prosecutorial discretion enjoyed by Turkish prosecutors under the Turkish anti-terrorism framework with regard to terrorism offences. It is no secret that Turkish prosecutors traditionally act with a reflexive statist and regime-centric approach in a considerable portion of the decisions they take.³ Since the 2016 attempted coup and the Turkish Government's subsequent consolidation of power, moreover, the problem has been severely aggravated. President Recep Tayyip Erdoğan's Justice and Development Party (AKP) Government has ventured into a massive project to purge Turkish society of dissenting voices and centralize political authority, with the Gülen Movement (GM) being one of the groups bearing the brunt of this crackdown. Along this same thread, the Government's enhanced control over the whole judiciary, epitomized by high levels of political pressure and forced dismissals and transfers of judges and prosecutors, has created an environment of fear and widespread self-censorship within the Turkish criminal justice system.⁴ In such an intimidating environment, the practice of prosecutors

1 See in particular ECtHR, *Selahattin Demirtaş v Turkey (No. 2)* App No. 14305/17; *Imret v. Turkey (No. 2)* App. No. 57316/10, 10 July 2018 and *Işıkırık v. Turkey* App. No. 41226/09, 14 November 2017.

2 Amnesty International, 'Punishment Without Trial: Pre-Trial Detention in Turkey' 5 May 2017, [amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/](https://www.amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/).

3 Ergun Özbudun and Füsün Türkmen, 'Impact of the ECtHR Rulings on Turkey's Democratization: An Evaluation' (2013) 35 Human Rights Quarterly, 985. P.1001

4 European Commission, 'Turkey 2019 EU Progress Report' (Communication) COM 260 final (2019) at 22-25.



has moved further away from basic domestic and international standards. The magnitude of the problem is particularly visible when one looks at indictments, the foundational documents of any legal case, as issued by Turkish prosecutors. The sad reality is that Turkish judges have no choice but to rubber-stamp most of the prosecutorial requests and decisions, mostly due to fear of possible retaliation for not doing so.

4. This report evaluates whether indictments issued in a number of cases concerning actual or perceived members of the GM conform to Turkey's domestic standards and its international legal obligations. More particularly, the report examines Turkish prosecutors' observance of Turkish procedural law, namely the Turkish Code of Criminal Procedures No. 5271 (TCCP), the UN Guidelines on the Role of Prosecutors⁵, the Recommendation of the Council of Europe's Committee of Ministers on the Role of Public Prosecution in the Criminal Justice System⁶, fundamental human rights and freedoms as enshrined in the Turkish Constitution, the European Convention on Human Rights (ECHR), and the International Covenant on Civil and Political Rights (ICCPR). This report focusses on indictments against actual or perceived members of the GM, alleging membership of an armed terrorist organization, as per Article 314 of the Turkish Penal Code (TPC). The report draws on a detailed examination of 118 such indictments, at least one from each of the 81 provinces of Turkey.
5. The report is structured as follows. After briefly elaborating on certain characteristics of the Gülen Movement and the 2016 attempted coup, as well as the concomitant emergency measures (Section II), the report will focus particularly on the most frequently invoked anti-terrorism provision within Turkey, namely Article 314 TPC (Section III). Section IV looks at the role of prosecution service in Turkey, to help identify how Turkish prosecutors take this provision into account when drafting indictments. Section V introduces the key statistical data for these indictments and Section VI outlines the main 18 criteria that are widely used in cases of membership to the GM. Section VII provides a detailed analysis on Turkish prosecutors' practices when prosecuting terrorism offences.
6. The key finding of the report is that post-coup indictments concerning the GM members have been marred by the lack of a coherent presentation of evidence, or logical connection between suspects and alleged offences, overt political/ideological language, the deliberate constructions of illogical plots and conspiracy theories, the lack of reasonable suspicion and, ultimately, the reversal of

5 The UN Guidelines on the Role of Prosecutors, UN Doc. A/CONF.144/28/Rev.1, 7 September 1990, <https://digitallibrary.un.org/record/161788?ln=en>

6 Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, <https://rm.coe.int/16804be55a>



the presumption of innocence. This has eventually led to several judgments, decisions and opinions in which the main international human rights bodies including the European Court of Human Rights (ECtHR), the United Nations Human Rights Committee (UN HRC) and other UN Treaty Bodies such as the UN Working Group on Arbitrary Detention (UN WGAD) have condemned Turkey's post-coup practices due to the lack of essential human rights perspective. (see Annex I). Overall, the report provides a chilling reminder regarding the problems that can emanate from unconstrained prosecutorial discretion and human rights unfriendly prosecutorial practices in Turkey. This report concludes with a number of recommendations.

II. THE GÜLEN MOVEMENT AND THE 2016 JULY ATTEMPTED COUP

7. The GM is widely accepted as an educational and religious movement dedicated to intercultural dialogue, humanitarian aid and business solidarity. It emerged as a liberal Islamic movement in the late 1960s-early 1970s under the leadership of Fethullah Gülen, a Turkish scholar and preacher who lives in self-exile in the United States.⁷ From the 1990s onwards, the movement had gained a wide base of support in the social, political and economic life in Turkey and abroad, developing into a broad transnational network of individuals and institutions, encompassing educational institutions, cultural foundations, charities and so on.⁸
8. The GM and its leader Fethullah Gülen have often been accused of seeking to change the constitutional order in Turkey. Since 1970s and 1980s, numerous legal cases have been initiated against him. In 2006, however, the Ankara 11th Heavy Penal Court acquitted him of all charges and, in 2008, the Turkish Court of Cassation (TCC) upheld this acquittal.⁹
9. With its rise to power in 2002, the AKP and the Gülen Movement formed an alliance ('a mutually beneficial relationship'¹⁰), against the military tutelage and the Turkish secular establishment. Over the following years, the AKP's political power reinforced the Gülen Movement's social and bureaucratic power until this marriage (of convenience) ended and gradually turned into a fierce power struggle. Prior to the 2016 coup, the Turkish National Security Council had already denounced the so-called Organization/Parallel State Structure' (FETÖ/PDY) as a threat to national security and a 'terrorist' group.¹¹ This denouncement

7 Bülent Aras and Ömer Çaha, 'Fethullah Gülen and His Liberal 'Turkish Islam' Movement' (2000) 4.4. Middle East Review of International Affairs 30-42.

8 John L. Esposito and İhsan Yılmaz, 'Islam and Peacebuilding: The Gülen Movement in Global Action' in Lee Marsden (ed.), *The Ashgate Research Companion to Religion and Conflict Resolution* (Routledge, 2016) 15-32.

9 Turkish Court of Cassation, Docket No. 2008/9-82, Decision No. 2008/181, 24 June 2008.

10 Hakkı Taş, 'A History of Turkey's AKP-Gülen Conflict' (2018) 23.3. *Mediterranean Politics* 395-402.

11 See Turkey, 'Memorandum prepared by the Ministry of Justice of Turkey for the visit of the delegation of the Venice Commission to Ankara on 3 and 4 November 2016 in connection with the emergency decree laws',



has given rise to certain legal problems, particularly with regard to the proper legal route to designate an organization as terrorist under Turkish Law.

10. Under Turkish law, the authority to designate a group as a terrorist organization is exclusively vested in the judiciary, as per Art. 138 of the Constitution. The first clearly worded judgment designating GM as an armed terrorist organization was made on 26 September 2017, over one year after Turkey declared the state of emergency, when the General Assembly of the TCC delivered a *res judicata* decision recognizing the existence of the FETÖ/PDY.¹² Other than Turkey, no State party to the ECHR or ICCPR has designated GM as a terrorist organization.
11. Since the 2016 attempted coup, millions of Turkish people who have had any contact or dealings with the GM in the past have consequently faced the risk of being subjected to criminal scrutiny, investigation and prosecution for terrorism charges. This massive crackdown has been particularly problematic from the perspective of a retrospective application of criminal law, as the GM had been regarded as a lawful and legitimate organization for decades in Turkey.
12. Over the two-year period of post-coup emergency rule, 32 emergency decree-laws were issued and a total of 131,922 measures were taken against both real and legal persons, accusing them of having membership of, affiliation, link, or connection with FETÖ/PDY or another terrorist organization or structure, formation or group that has been designated by the National Security Council to be performing activities against the national security of the State.

CDL-REF(2016)067, 23 November 2016, 5.

¹² Turkish Court of Cassation, Docket No. 2017/16, Decision No. 2017/370, 26 September 2017.





13. Of these measures, 125,678 were commanding dismissal of individuals from public service whereas 2,761 involved closing and dissolving legal persons.¹³ The below table gives a breakdown of the closed/dissolved entities.

Categories of Closed / Dissolved Entities	Number of Closed Entity
Associations	1470
Federations	19
Confederations	4
Foundations	109
Trade Unions	19
News Agencies	6
Televisions	19
Radios	22
Newspapers	53
Journals/Magazines	20
Publishing Houses and Distribution Channels	29
Education Institutions	881
Student Dormitories	108
Private Health Institutions	47
Private Universities	15

III. THE CORE OF THE PROBLEM: ARTICLE 314 OF THE TURKISH PENAL CODE (‘TPC’)

14. Article 314 TPC is Turkey’s primary and most frequently invoked anti-terrorism provision. Article 314/1-2 TPC criminalises the establishment, command or membership of an armed organization and carries a penalty of up to 22.5 years imprisonment.¹⁴ The provision reads as follows:

“(1) Any person who establishes or commands an armed organization with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years.

(2) Any person who becomes a member of the organization, defined in paragraph one, shall be sentenced to a penalty of imprisonment for a term of five to ten years.”

¹³ The Inquiry Commission on the State of Emergency Measures, Activity Report 2017-2022 https://soe.tccb.gov.tr/Docs/SOE_Report_20172022.pdf

¹⁴ The sentence given under Art, 314 TPC shall be aggravated by half under Article 5 of the ATL. For a detailed analysis on Article 314 TPC, see: the Third party intervention by the Italian Federation of Human Rights in *Gültekin Sağlam vs. Turkey* (Application no. 14894/20), <https://fidu.it/wp-content/uploads/THIRD-PARTY-INTERVENTION-BY-FIDU-logo-12.10.2021-1.pdf>



15. Neither Article 314 TPC, nor any other legal provision under Turkey’s anti-terrorism framework, however, provide a clear definition of the ‘membership of an armed terrorist organization’. In its case law, the TCC sought to adopt criteria through which to establish whether a membership relation has been formed between an individual and the armed organization in question. The Court in particular looks at (i) whether the accused involved or acted knowingly and willingly within the hierarchical structure of the organisation, (ii) whether the accused has an organic relationship with the organization and (iii) whether the accused engaged in activities that show continuity, diversity and intensity.¹⁵ However, these terms have not yet been clearly defined by either further law or by the practice of the Turkish judicial authorities.
16. In its opinion on 15 March 2016 regarding the application of Article 314 TPC, the Venice Commission warned that “the domestic courts in many cases decide on the membership of a person in an armed organisation on the basis of very weak evidence, which would raise questions as to foreseeability of the application of Article 314” and “the principle of legality within the meaning of Article 7 ECHR.”¹⁶
17. In the case of *Demirtaş v. Turkey (2)*, the ECtHR’s Grand Chamber similarly highlighted that “the range of acts that may have justified the applicant’s pre-trial detention in connection with serious offences that are punishable under Article 314 TPC is so broad that the content of that Article, coupled with its interpretation by the domestic courts, does not afford adequate protection against arbitrary interference by the national authorities”.¹⁷
18. In January 2023, the Turkish Government submitted its Action Plan to the Committee of Ministers of the Council of Europe, in which it also provided statistical data regarding the application of Article 314 of the TPC.¹⁸ The below two tables reproduced from the Action Plan show Turkish public prosecutors have filed some 340,000 public cases under Article 314 of the TPC within the period between 2017-2021.

¹⁵ For a detailed analysis on this, see: Venice Commission Opinion on Articles 216, 299, 301 and 314 of the Penal Code Of Turkey (CDL-AD(2016)002).

¹⁶ Ibid, paras. 102-106.

¹⁷ ECtHR, *Selahattin Demirtaş v Turkey (No. 2)* App no [14305/17](#), para. 280

¹⁸ See: Communication from Türkiye concerning the cases of Selahattin Demirtas v. Turkey (no. 2) and Encü and others v. Turkey, Updated Action Plan, DH-DD(2023)45, 10 January 2023.

Year	No need for prosecution	Filling a public case	No jurisdiction Rationae Loci	Lack of jurisdiction	Joinder
2021	79 873	29 924	53 105	1 262	27 791
2020	82 642	33 354	63 768	1 299	27 706
2019	116 948	56 302	95 964	2 231	39 323
2018	145 419	85 888	149 552	3 705	59 579
2017	65 308	133 505	175 944	5 480	77 000

19. In the same period (between 2017 -2021), more than 310,000 individuals (all categories in the below table included except for acquittal) have been sentenced for membership in an armed terrorist organization.¹⁹

Year	Sentence of Imprisonment	Fine	Suspension of Imprisonment	Security measures	Other convictions	Acquittal	Suspension of pronouncement of the judgment
2021	18 816	12	135	12 986	12 093	17 970	4 738
2020	18 860	11	195	12 933	12 145	16 516	4 699
2019	30 589	8	357	21 130	18 764	26 175	7 550
2018	43 553	3	297	33 448	31 111	23 970	4 455
2017	14 971	8	171	11 437	10 340	6 096	692

20. Whilst the Turkish Government’s Action Plan fails to mention the total number of investigations in the said time period, a report by Mustafa Yeneroglu, member of the Turkish Parliament and former chairperson of the Parliament’s Human Rights Committee, highlighted that 1.7 million individuals have been probed for membership in an armed terrorist organization since the 2016 attempted coup.²⁰

IV. THE ROLE OF PROSECUTION SERVICE IN TURKEY: FUNCTIONS, COMPETENCES AND (INTER)NATIONAL LEGAL STANDARDS

21. Turkish prosecutors form an integral part of the judicial system. Prosecutors have powers and competencies in criminal, civil and administrative jurisdictions. The organization of the prosecutorial service is governed by the Turkish Law No.5235²¹ which stipulates that “in every province and district where there is a court” a chief public prosecutor’s office is established and named after that province or district; the chief public prosecutor’s office shall have a chief public prosecutor and a sufficient number of public prosecutors” (Article 16).

19 For an NGO report reporting similar numbers, see: Arrested Lawyers, ‘Turkey Abuses its Anti-Terror Law to Suppress Critics’, 8 September 2022, <https://arrestedlawyers.org/2022/08/09/turkey-abuses-anti-terror-laws-to-suppress-critics/>

20 ‘Turkey launched over 1.7 million terror investigations in six years, says opposition deputy’, Duvar English, 16.9.2022, <https://www.duvarenglish.com/turkey-launched-over-17-million-terror-investigations-in-six-years-says-opposition-deputy-news-61285>

21 The Turkish Law on Establishment, Tasks and Jurisdiction of Courts of Appeal and First Instance Civil and Criminal Courts, No.5235, 26 September 2004.



22. According to Article 17 of the said Turkish Law, the duties of the Chief Public Prosecutor's Office are to conduct investigations in order to decide whether or not to initiate a public prosecution, to monitor and participate in judicial proceedings on behalf of the public and to apply for legal remedies/appeals when necessary, to carry out and monitor the procedures related to the execution of finalised court decisions and to perform other duties assigned by law. The duties of public prosecutors on the other hand are to carry out procedures related to judicial duty, to attend hearings and to apply for legal remedies/appeals, to fulfill judicial and administrative duties assigned by the chief public prosecutor, to deputize the Chief Public Prosecutor, when necessary, to perform other duties assigned by law (Article 20).
23. Prosecutors' duties and competencies regarding criminal proceedings are mainly governed by the Turkish Code of Criminal Procedures No.5271 (TCCP). According to TCCP, the public prosecutor is the chief of any criminal investigation. According to Article 164 of TCCP, investigation procedures shall be carried out primarily by means of judicial law enforcement in line with orders and directives of a public prosecutor. Judicial law enforcement is mandated to immediately fulfil orders of a public prosecutor related to judicial matters. As per the same article, judicial law enforcement bodies are police, gendarmerie, customs protection and coast guards.
24. Article 160 of TCCP states that a public prosecutor shall immediately start an investigation "as soon as the public prosecutor learns of a situation which gives the impression that a crime has been committed by way of denunciation or otherwise". Article 160 also obliges prosecutors "to collect and preserve the evidence in favour of and against the suspect by means of the judicial law enforcement officers under his/her command, and to protect the rights of the suspect". The said provision makes it an objective for any investigation and a duty of any prosecutor to find out "the material truth and ensure a fair trial." In doing so, the TCCP commands prosecutors to be objective and protect the rights of suspects and, to this end, to collect and preserve evidence in favor of and against suspects.
25. As per Article 170/1-2 TCCP, "in cases where, at the end of the investigation phase, collected evidence constitutes sufficient suspicion that a crime has been committed, then the public prosecutor shall prepare an indictment." In line with the cardinal principle of presumption of innocence as protected under Article 38/6 of the Turkish Constitution and Article 6/2 of the ECHR, the burden of proof rests on the prosecution.²² Thus, prosecutors are required to be studious in reaching a decision as to whether to prepare an indictment and file a charge.

²² ECtHR, *Barberà, Messegué and Jabardo v Spain*, Series A no. 146, paras. 33 and 77 and *Capeau v Belgium* App no 42914/98, para. 25.



26. When an indictment was issued by the prosecutor's office and accepted by the court, the trial phase begins. And, in this phase, a prosecutor continually presents in court to fulfill the duty of prosecution on behalf of the public.

Legal Framework for Issuing an Indictment

27. Article 170 of TCCP sets out rules about both formal and substantive requirements of a proper indictment. As per Article 170/3 of TCCP, any indictment addressed to the court shall contain:

- a. The identity of the suspect,
- b. His defence counsel,
- c. Identity of the murdered person, victim, or injured party,
- d. The representative or legal representative of the victim or the injured party,
- e. In cases, where there is no danger of disclosure, the identity of the informant,
- f. The identity of the claimant,
- g. The date that the claim had been put forward,
- h. The crime charged and the related Articles of applicable Criminal Code,
- i. Place, date, and the time period of the charged crime,
- j. Evidence of the offence,
- k. Explanation of whether the suspect is in detention or not, and if he is arrested with a warrant, the date he was taken into custody and the date of his arrest with a warrant, and their duration.

28. In addition, prosecutors shall explain the events that comprise the charged crime in accordance with their relationship to the present evidence (Article 170/4). Prosecutors however cannot use every finding as evidence, as Article 38/6 of the Turkish Constitution stipulates that "findings obtained through illegal methods shall not be considered evidence". Prosecutors are therefore required to refrain from including such findings in their indictments.

29. Article 170/5 requires prosecutors to include aspects that are both unfavourable to and in favour of suspects in the conclusion section of indictments. Finally, at the conclusion section of the indictment, the following issues shall also be clearly stated: which punishment and measure of security as foreseen by the related law is being requested to be assessed at the end of the adjudication; in cases where the crime has been committed within the activities of a legal entity, the measure of security to be imposed upon (Article 170/6).

International Standards on the Role and Functioning of Prosecutors

30. UN Guidelines and the Council of Europe Recommendations on the role of prosecutors lay down several important principles which are well-incorporated by Turkey's domestic legal framework, in particular the TCCP as explained above. These principles are reproduced below:

The UN Guidelines on the Role of Prosecutors	Recommendation (2000) ¹⁹ of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System
12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.	24. In the performance of their duties, public prosecutors should in particular: a. carry out their functions fairly, impartially and objectively; b. respect and seek to protect human rights, as laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms; ...
13. In the performance of their duties, prosecutors shall: <ul style="list-style-type: none"> a. Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination; b. Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; 	25. Public prosecutors should abstain from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, health, handicaps or other status. 29. Public prosecutors should seek to safeguard the principle of equality of arms, in particular by disclosing to the other parties – save where otherwise provided in the law – any information which they possess which may affect the justice of the proceedings.
14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.	27. Public prosecutors should not initiate or continue prosecution when an impartial investigation shows the charge to be unfounded.
16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.	28. Public prosecutors should not present evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to methods, which are contrary to the law. In cases of any doubt, public prosecutors should ask the court to rule on the admissibility of such evidence.





V. DATA ANALYSIS OF THE INDICTMENTS

31. In the preparation of the report, its authors collected and thoroughly examined 118 indictments including at least one from each of the 81 provinces of Turkey. These indictments accuse individuals of membership in the Gülen Movement and charge them in accordance with Article 314 TPC.
32. These indictments relate to 444 suspects, 86 of whom are female and the remaining 358 male.
33. The table below breaks down these 118 indictments according to the year of detention/arrest of the suspects and the year an indictment was issued regarding them:

Year	Year of Detention / Arrest	Year of indictment
2016	31	7
2017	27	36
2018	30	36
2019	16	21
2020	9	10
2021	2	3
2022	3	5
Total	118	118

34. In an attempt to better see “the events that comprise the charged crime and its relationship to the present evidence” as per the wording of Article 170/4 TCP, the authors have focussed primarily on indictments with few suspects, however this has not always been possible and indictments with more than five suspects have also been included in our analysis. The table below presents data about the number of suspects in the indictments that we have examined for this report:

# of Indictment with 1 suspect	100
# of Indictments with 2 to 5 suspects	6
# of Indictments with 6 - 10 suspects	5
# of Indictments with 11-20 suspects	3
# of Indictments with 21-30 suspects	1
# of Indictments with more than 30 defendants	2
Total	118



35. The table below presents data about the duration that suspects were held in police custody after they were apprehended following a public prosecutor's order. The data is broken down into five categories in terms of duration of detention: 4 days and less, 5 to 10 days, 11 to 15 days, 16 to 20 days, and 21 to 30 days.

Duration of police custody (detention)	# of indictments	# of suspects	% of suspects
4 days and less	67	93	20,9 %
5 to 10 days	39	91	20,5 %
11 to 15 days	8	48	10,8 %
16 to 20 days	3	202	45,5 %
21 to 30 days	1	10	2,3 %
Total	118	444	

36. The data shows that 20,9 % of the suspects were held in police custody for four or fewer days as required by the Turkish Constitution, while 79,1 % of the suspects were held in police custody for five or more days, a length permitted only due to the state of emergency decree that was enacted immediately after the coup attempt of 2016.

37. The table below shows the different occupations of the 444 suspects:

Occupation	Number of Suspects	Occupation	Number of Suspects
Teacher	127	Military officer	13
Lawyer	86	Businessman	10
N/A – N/S	80	Housewife	9
Academic	36	Student	2
Civil servants	20	Judge or prosecutor	2
Medical Doctor	20	Accountant	1
Police	19	Construction worker	1
Engineer	18	Total	444



VI. THE MAIN CRITERIA USED IN CASES OF MEMBERSHIP TO THE GÜLEN MOVEMENT

38. It is a widely reported fact that, after the 2016 coup attempt, public prosecutors and courts across the country adopted a list of criteria to charge individuals under Article 314 TPC in respect of their alleged membership of the GM.²³ Although the wording varies, the report finds on the basis of a detailed analysis of 118 indictments that there are 18 most commonly-used criteria, which are shown in the table below. The table below also presents a data analysis on the frequency that each of these criteria has been used/deployed in the 118 indictments to charge the suspects for membership in an armed terrorist organization.

No	Criteria	Frequency in 118 indictments
1	Using or downloading the Bylock messaging application	78
2	Being a depositor at Bank Asya or having had a Bank Asya bank/ credit card or using Bank Asya payment terminal	64
3	Anonymous tips / denunciations or secret witness statements	50
4	Being a shareholder, manager or employee in companies and other legal persons (i.e. schools, universities, hospitals, media outlets, publishing houses and so on) that have been dissolved/seized under the state of emergency for their alleged GM link	32
5	Attending the religious gatherings known as “sohbet” organised by members of GM	28
6	Being an executive or a member of an association that has been closed/dissolved under the state of emergency for its alleged GM link,	25
7	Being an executive or a member of a trade union that has been closed/dissolved under the state of emergency for its alleged GM links	16
8	Subscription to periodicals that have been dissolved/seized under the state of emergency as a result of alleged GM links, i.e., Zaman daily, Sızıntı magazine	19
9	Possessing books, CDs or DVDs printed by publishing houses that have been closed/dissolved/seized under the state of emergency for their alleged GM links, or possessing copies of newspapers, and magazines that have been closed/dissolved/seized under the state of emergency for their alleged GM links	19

²³ See also, Venice Commission Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, para. 103, [https://www.venice.coe.int/webforms/documents/default.aspx?pdf-file=CDL-ad\(2016\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdf-file=CDL-ad(2016)037-e)



10	Being a resident or student in those schools, universities and dormitories that have been closed under the state of emergency as a result of alleged GM links, or sending children to those educational institutions	17
11	Analysis of social media activity and the websites visited, i.e., following certain accounts, sharing articles criticizing the AKP government	8
12	Donations made to relief organizations with alleged GM links, i.e., Kimse Yok Mu	8
13	Staying at hotels in the provinces of Ankara, Afyon and Nevsehir including Asya Thermal Resort Hotel which has been seized for GM links	9
14	Cancelling their subscription to DIGITURK, a digital tv platform, as a result of its decision to end the broadcasting of seven television channels allegedly linked to the GM	6
15	Participating in protests held in response to the Government's takeover of Zaman newspaper and Samanyolu TV or making press statement to protest the Government	6
16	Expressing support for the opposition parties or criticizing government for human rights violations	2
17	Possessing 1 USD banknote	7
18	Travelling abroad	14

39. In most of the 118 indictments, the criteria/variables are crammed together to incriminate the concerned individuals. For instance, in I-12, the Turkish prosecutor relied on several criteria including the suspect's subscription of Zaman Newspaper, his work history with a disbanded Gulenist educational institution, his regular donations to Gulenist aid organizations and his and his wife's bank account at Bank Asya. As can be seen in the above table, reliance on each criterion has been calculated in the total number.

40. In what follows, the report delves into how Turkish prosecutors used the above-mentioned criteria in order to indict/charge/incriminate actual or perceived members of the GM with membership in an armed terrorist organization as per Article 314 TPC.

Criterion I:	Frequency in 118 indictments
Using or downloading the Bylock messaging application	78

41. Bylock is an encrypted message app that (used to) enable its users to communicate through written and voiced messages. Accessible via most online markets and app stores including Google Play Store and Apple Store, it was in opera-

tion between 14 March 2014 and 19 February 2016. A report by the FOX-IT, a Netherland-based prominent forensic IT company, found that the Bylock app was downloaded more than a hundred thousand times only from Google Play Store.²⁴ In 2020, a pro-government media outlet reported that over 92.000 people had been identified and prosecuted for allegedly using the Bylock app²⁵, while the actual numbers might be even higher.

42. The Turkish Government claims that Bylock had been exclusively designed and developed to fulfill the communication needs of the GM ('exclusivity claim'). This claim is routinely rubber-stamped by the Turkish judiciary despite numerous expert reports refuting it. To name a few, digital forensic reports by leading firm such as the Fox-IT²⁶ and leading experts such as Jason Frankovitz²⁷ and Thomas Kevin Moore²⁸ have proved that this 'exclusivity claim' is wrong. In its jurisprudence, however, the Court of Cassation of Turkey has consistently ruled that any involvement in the Bylock network represents sufficient evidence to convict a person of membership to an armed terrorist organization even in the absence of any other evidence.²⁹

43. In a total of 78 of the 118 indictments, Bylock is used as incriminating evidence against suspects in order to establish their alleged membership of an armed terrorist organization. In three indictments (I-87/105/106), the claim that the suspect's spouse was a Bylock user was mentioned as evidence against the suspect. In one indictment (I-69), the prosecutor used the suspect's call records with someone who was allegedly a Bylock user as criminalizing evidence against him. In one indictment (I-9), the fact that a housemate shared his Wi-Fi Internet modem with his housemate who then used it to access the Bylock was presented as evidence for aiding and abetting a terrorist organization. In another indictment (I-30), the suspect's (air) travel with a group of people, some of whom were Bylock users was relied on as evidence against him.

24 FOX-IT, Expert Witness Report on Bylock Investigation, 13.9.2017, <https://blog.fox-it.com/wp-content/uploads/2017/09/bylock-fox-it-expert-witness-report-english.pdf>

25 'FETÖ'den 612 bin kişiye işlem' (612,000 people were processed for FETÖ), Yeni Safak, 27.11.2020, <https://www.yenisafak.com/gundem/fetoden-612-bin-kisiye-islem-3587006>.

26 Fox-IT, 'Expert Witness Report on Bylock Investigation' 13 September 2017 <https://blog.fox-it.com/wp-content/uploads/2017/09/bylock-fox-it-expert-witness-report-english.pdf>

27 Jason Frankovitz, Expert Report on Bylock, 9 August 2017, https://drive.google.com/file/d/0B_lp_O2-rTN-qWlhQnFOUDJzSZA/view?resourcekey=0-T0xxB0IYDkeF4lkF1-OJbA

28 'Opinion on the reliance on use of the Bylock messaging application as evidence of membership of a terrorist organisation' enjoined reports by UK lawyers William Clegg Qc and Simon Baker and forensic expert Thomas Kevin Moore, 24-25 July 2017, <https://www.2bedfordrow.co.uk/opinion-on-the-legality-of-the-actions-of-the-turkish-state/>

29 Yasir Gokce, 'Admissibility of Bylock-Related Data as Evidence is now Under the Scrutiny of the European Court' Strasbourg Observers, <https://strasbourgobservers.com/2021/07/07/admissibility-of-bylock-related-data-as-evidence-is-now-under-the-scrutiny-of-the-european-court/>, 7 July 2021



“It was established that the persons named ..., who were passengers on the same plane when the suspect left the country on XX/XX/20XX, were Bylock users.” (I-30)

44. In none of these indictments, Turkish prosecutors were able to present the content of communication made through the Bylock app. Instead, they appear to have grounded their allegations solely on the government’s “exclusivity claim”. It is noteworthy here that there is no concrete and clear information regarding how the ByLock data was acquired. The Turkish intelligence service, the MIT, noted in its report that the Bylock app is “obtained through using the methods, tools and techniques of technical intelligence that are unique to the Agency [MIT]”³⁰ in contravention of legal safeguards. This has corroborated the reports that an MIT team had cracked the main Bylock servers, which had been located in Lithuania.³¹
45. Significantly, the content of Bylock communications had not been made fully available to Turkish prosecutors and courts. In cases where Bylock was used as evidence, the MIT shares a single page document called either “Bylock Inquiry Module Minute” or “Bylock Determination or Evaluation Minute”, which shows only some raw data including phone numbers and activation data but with no information related to the actual content of Bylock communication.³²
46. In addition to Bylock, Turkish prosecutors have often presented the use of other encrypted messaging apps such as Signal, Telegram and KakaoTalk as evidence of criminal intent. For instance, in I-103 the prosecutor in the indictment determined that:

“...the person installed applications such as “Signal” and “Telegram”, which are used by FETÖ/PDY Terrorist Organization members to communicate, on his phone ...”

Criterion II	Frequency in the 118 indictments
Being a depositor at Bank Asya or having had a Bank Asya bank/credit card or using a Bank Asya payment terminal	64

30 MIT, ‘Bylock Application Technical Report’, p.12, <https://foxitsecurity.files.wordpress.com/2017/09/by-lock-mit-technical-report-turkish.pdf>

31 Murat Yetkiner, ‘Gülenists’ Existential Fight Over A Mobile Application’ HuffPost, 26 October 2016.

32 In *Taner Kılıç v Turkey* (App No 208/18, 31 May 2022), the ECtHR called such a police report “rough/raw” and then said this report was “without any precise indication of the basis on which the authorities came to such a conclusion, and above all on the basis of what data. The document, therefore, does not include the underlying data on which it was based, nor does it provide any information on how those data were established.”





47. Bank Asya (Asya Finance Institution A.S.) was a Turkish bank that was established with the approval by Turkey’s Council of Ministers on 11th April 1996 as required at the time. It operated as a legal financial entity and was granted license to collect taxes, and other public financial obligations, such as social security premiums, and public fines.
48. As a part of crackdown on the GM, President Erdogan and pro-government media initiated a defamation campaign against Bank Asya in 2014. Public entities stopped their operations with Bank Asya and it is widely reported that the Turkish government pressured private companies not to work with Bank Asya. In response, members of the GM and many other opposition figures either opened deposit accounts in Bank Asya or increased the amount deposited in their existing accounts. On 3 May 2015, the Banking Regulation and Supervision Board decided that the Bank would be administrated by the Saving Deposit Insurance Fund (SDIF). Following the declaration of a state of emergency after the July 2016 coup attempt, the Government cancelled the Bank’s license and the Bank was fully disbanded on 23 July 2016.
49. Soon thereafter, investigations across Turkey have been launched in respect of the former Bank Asya customers. These investigations particularly focused on those who continued to work with Bank Asya after 2014. Hundreds of thousands of people have been indicted, prosecuted, and convicted for membership in an armed terrorist organization as a result of these investigations.
50. In 64 out of the 118 indictments examined, either having a deposit account in Bank Asya, having a bank or credit card of Bank Asya, or using a Bank Asya payment terminal (POS device³³), were presented as incriminating evidence with which to charge suspects with the membership of an armed terrorist organization. For instance, in I-18, the prosecutor alleged:

“The fact that the suspect ... opened an account at Bank Asya, received a credit card from Bank Asya, even had 2.000,00TL in his account, and that his account at Bank Asya is still active ... when evaluated as a whole ... are strong evidence(s) that establish that he is materially and organically linked to the FETÖ/PDY armed terrorist organization...” (I-18)

51. In two indictments (I-5/38) using a Bank Asya bank card given by the suspect’s employer to receive salary payments were presented as incriminating evidence.

³³ A POS device is a computerized system that records and tracks sales transactions in a retail or hospitality environment.

For instance, in I-5, the prosecutor relied on a finding of an expert report which found that the suspect received regular money ‘under the name of salary payment’ and this alone provided conclusive evidence for the prosecutor to demonstrate terrorist membership.

52. In three of the 64 indictments in which having a deposit in Bank Asya is used as the main evidence, although the suspect in question did not themselves have a Bank Asya deposit account or bank/credit card, they were incriminated due to the allegation that their relatives (father (I-20) or spouse (I-32)) had used Bank Asya deposit account and/or payment terminal (I-113). In five (I-18/35/71/96/118) indictments, the possession of a Bank Asya credit card and, in two indictments, the taking of a mortgage or car loan (I-86/112) from Bank Asya was presented as evidence of criminal intent.

53. Finally, in one indictment (I-118), buying an auto insurance policy from a Bank Asya subsidy was considered by the prosecutor as evidence establishing the relation and affiliation of the suspect with the GM.

Criterion III	Frequency in the 118 indictments
Anonymous tips / denunciations or secret witness statements	50

54. After the coup attempt of 2016 July, President Erdogan repeatedly called people to denounce Gülenists to the police. On one occasion, he presented this as a “patriotic duty” and urged people to “...expose...[and] report them.”³⁴ To facilitate such anonymous tips/denunciations, the Alo 140 Report Terrorism Hotline was launched in 2015 and was largely publicized with public service ads. In addition, the Presidency Communication Center (CIMER), the MIT and the Turkish police launched online sites whereby anonymous tips may be sent by email. Consequently, the MIT reportedly received 10,000 tips in July 2016, 8,000 above the monthly average, and almost all of them were reportedly about members of the GM.³⁵

34 ‘Erdogan’dan FETÖ’cülerini ihbar edin çağrısı’ (Erdogan calls on people to report FETÖ members), EnSon-Haber, 10 August 2016, <https://www.ensonhaber.com/gundem/erdogandan-fetoculeri-ihbar-edin-cagrisi-2016-08-10>

35 ‘MİT’e yapılan ihbar sayısı 15 Temmuz’dan sonra 10 bini aştı’ (Number of reports to MİT exceeded 10,000 after July 15), Haber Sol, 1 October 2016, <https://haber.sol.org.tr/toplum/mite-yapilan-ihbar-sayisi-15-temmuzdan-sonra-10-bini-asti-170844>





55. In a total of 50 separate indictments³⁶, the statements of either anonymous tips/denunciations (43³⁷ indictments) or secret witnesses (13³⁸ indictments) were used against the suspects.
56. In I-6, a suspected military officer was charged with membership in an armed terrorist organization i.e. the GM, based on solely his estranged former spouse’s denunciation. In I-117, a military officer was similarly accused of membership in an armed terrorist organization based on an anonymous tip by a person whose clear identity could not even be determined.
57. In I-99, a denunciation based on the defendant’s reactions to the pejorative speeches against Fethullah Gülen (his remarks such as “Don’t say FETÖ, say Hodja Efendi”) was included as incriminating evidence in the indictment.
58. In I-25, which concerned 25 academics, numerous unverified sources of information emanating from their social circles as well as extracts from witness statements and denunciations, were part of the indictment:

“The suspect was overheard criticising the government saying “one man, a despotic governance etc.”

“The suspect was heard saying that ‘After all, the Kurds are demanding their democratic rights. What’s wrong with that?’”

“The suspect was witnessed making it clear that he was glad that AKP did not win the 7th of June Elections.”

59. In none of the 50 cases, however, did any information obtained through anonymous tips/denunciations or secret witnesses indicate any criminality and/or incitement to violence. As is clear, they were exclusively about details of social life or political opinions.

Criterion IV	Frequency in the 118 indictments
Being a shareholder, manager or employee in companies and other legal persons (i.e., schools, universities, hospitals, media outlets, publishing houses so on) that have been dissolved/seized under the state of emergency for their alleged GM links	32

36 I-3/6/7/11/12/17/20/23/24/25/27/32/33/35/36/40/41/47/48/49/51/52/54/58/59/62/66/67/68/69/75/76/77/80/85/87/89/ 91/93/95/99/ 100/103/105/106/ 107/114/116/117/118

37 I-3/6/7/12/17/20/23/25/27/33/36/40/41/47/48/49/51/52/58/59/62/66/67/68/69/75/76/77/80/85/89/93/95/ 99/100/103/105/106/107 /114/116/117/118

38 I-11/17/24/32/35/36/48/52/54/62/87/91/118



60. In 32 indictments³⁹, sensitive personal data emanating from the social circles and affiliation (or membership to associations, foundations, or trade-unions), as well employment history has been considered as incriminating evidence against suspects.

61. I-5 clearly reflects this pattern:

“Subject: “(This indictment) is about the suspects who worked as teachers and assistant principals in Private Kudret Ünal Schools in Sereflikoçhisar District of Ankara Province owned by a company named Sakarya Egitim Yay. ve Tic. A.S., which was closed down due to its affiliation and connection with the armed terrorist organization FETÖ/PDY.”

62. The table below contains excerpts from indictments that incriminated working for an entity and/or organization that was considered legal at the material time.

Indictment No	Excerpt
I-37	<p>“... As it was established that he was a mathematics teacher at ... High School, which was closed down by the Decree Law issued within the scope of the State of Emergency, which was found to be affiliated with the FETÖ/PDY Armed Terrorist Organization...</p> <p>... that the suspect was a member of Pak Education Work Union which was closed down due to his contact with the FETÖ/PDY Armed Terrorist Organization...”</p>
I-41	<p>“.. The suspect’s wife was arrested due to FETÖ membership, ..</p> <p>... In the examination of the suspect’s SGK [social security registry] records he had worked in FETÖ institutions ...”</p>
I-63	<p>“... that he was a member of Pak Education Work Trade Union, ...</p> <p>... that he had SGK [social security registry] registration at ... Private Prep Schools AS and ... Private Education, Publication AS, which were also affiliated with the FETÖ/PDY Armed Terrorist Organization, ...</p> <p>... that his children went to educational institutions belonging to FETÖ/PDY terrorist organization...,</p> <p>that he had an account in Asya Participation Bank, ...”</p>

³⁹ I-5/7/10/15/19/25/37/41/55/62/63/66/68/70/71/76/79/80/81/84/88/92/94/96/99/100/105/106/112/114/116/118



I-76	<p>"... that he had a Bank Asya account, he worked as a teacher at ... Private Education Trade A.S., Private ... Education Publication A.S., ... Education, Teaching, Services. A.S. ...he worked as a dormitory manager at ... Student Dormitory, he had a subscription to Zaman Newspaper until the 6th month of 2015, he donated 5 TL to Kimse Yok Mu Association via SMS 3-4 times until 2015, he was a member of ... Clergymen Association, ...</p> <p>... he had an account at Bank Asya, ... he worked in tuition centres affiliated to the organization's companies until the 6th month of 2015, he had a subscription to the organization's newspapers, he was associated with the organization. ... he worked as a dormitory manager at ... Student Dormitory, he had a subscription to Zaman Newspaper until the 6th month of 2015, he donated 5 TL to Kimse Yok Mu Association via SMS 3-4 times until 2015, he was a member of ... Clergymen Association, he had an account at Bank Asya, ... he worked in classrooms affiliated to the organization's companies until the 6th month of 2015, he had a subscription to the organization's newspapers, as it has been deduced from the intensity of his actions the suspect is a member of a FETÖ/PDY armed organization..."</p>
I-71	<p>... that he continued to work at the [FETO] organization's tuition centres and dormitories, had subscriptions to the Zaman newspaper and Sızıntı magazine and had a Bank Asya account,</p>
I-84	<p>"... That he had SGK-social security payments records as an employee of K--- Special Education ... AS, M--- Private Education Services, Trade A.S, S--- Education, Teaching ... AS, ... S--- Education Institutions AS; ...</p> <p>... that he was a member of Pak Egitim Is Trade Union which was closed down due to its affiliation with FETÖ/PDY terrorist organization; he had an account in Bankasya, the financial institution of FETÖ/PDY terrorist organization, ..."</p>
I-105	<p>"... It has been established that his wife --- has a SGK record at X--- UNIVERSITY which was linked to the FETÖ/PDY Armed Terrorist Organization. ... that the suspect --- deposited money into the Bank Asya account following Fethullah Gülen's public plea, ..."</p>
I-116	<p>"... After the bank account of the person was examined, it has been established that salary payments in the total amount of X--- TL was made to his account between 2014-2015, and the institution making the payment was G--- A.S which was linked to FETO/PDY, ...</p> <p>... he was employed by S--- Co and Y--- Education Foundation and X--- Private Education ... A.S which was closed down by a Decree Law and the ownership of which was transferred to the state..."</p>
I-99	<p>"... His son stayed in a dormitory belonging to FETÖ/PDY armed terrorist organization, his other son worked at Zaman newspaper, and he sent his daughter to F... Tuition Centre in 2008-2009, ..."</p>

I-25	<p>"... It has been determined that the suspect has SGK (social security registry) records from XXX University XXX Hospital and XXX University Medical Faculty Hospital, that the said XXX University and XXX University are among the higher education institutions closed down by Decree-Law No. 667 issued on 22.07.2016 regarding the Measures Taken within the Scope of the State of Emergency on the grounds that they are among the ... institutions that are determined to be affiliated, related or connected to the Fethullahist Terrorist Organization (FETÖ/PDY), which is determined to pose a threat to national security, ..."</p> <p>"... XXX University, where the suspect did his master's degree and has SGK (social security registry) record, was among the higher education institutions that were closed down on the grounds that it was one of the institutions that were "determined to belong to, be affiliated with or have contact with the Fethullahist Terrorist Organization (FETÖ/PDY), which is determined to pose a threat to national security" in Article 2 of the Decree-Law No. 667 on the Measures Taken within the Scope of the State of Emergency, which entered into force after being published in the Official Gazette dated 23/07/2016 and numbered 29779."</p> <p>"... XXX University, where the suspect obtained his PHD degree and has SGK (social security registry), is among the higher education institutions closed down by Decree-Law No. 667 issued on 22.07.2016 regarding the measures taken within the scope of the State of Emergency on the grounds that it is among the institutions ... whose belonging, affiliation or contact with the Fethullahist Terrorist Organization (FETÖ/PDY), which is determined to pose a threat to national security, ..."</p>
I-99	<p>"... His son stayed in a dormitory belonging to FETÖ/PDY armed terrorist organization, his other son worked at Zaman newspaper, and he sent his daughter to F... Tuition Centre in 2008-2009, ..."</p>

63. As is shown in the above table, the suspects' employers were either a university⁴⁰, a foundation⁴¹, an association⁴² or a company running a private education institution⁴³, all of which were founded/incorporated in compliance with the law and were completely legal entities at the material time. Yet, working at/for such workplaces/employers was presented as incriminating evidence in 31 indictments.

64. I-81 is perhaps even more indicative, as the suspect was incriminated on the basis of working at a carpet shop owned by a person who was investigated in connection with FETÖ/PDY armed terrorist organization.

⁴⁰ Under Turkish law, private universities are founded by a law passed by the Parliament and they are regarded as public institutions.

⁴¹ Under Turkish law, foundations are created by a court warrant and inspected by the General Directorate of Foundations.

⁴² Under Turkish law, associations are registered with and inspected by the Ministry of Interior.

⁴³ Under Turkish law, private schools and education centers are licensed and inspected of the Ministry of National Education.





Criterion V	Frequency in the 118 indictments
Attending the religious gatherings organised by members of GM called “ <i>sohbet</i> ”	28

65. *Sohbet* is a Turkish word and means ‘to talk, converse, discuss and engage with one another in a friendly, caring, warm and informal manner’.⁴⁴ In this context, *sohbets* are known as spiritual, conversational and reading circles of the GM. In 28 separate indictments, the prosecutor used the suspect’s participation in *sohbets* as evidence proving his/her membership to a terrorist organization.

66. I-89 provides a stark example of where a Turkish prosecutor regarded the participation in *sohbets* as a proof of the defendant’s organic relationship with the GM: “[The]recruitment for and loyalty to the organization was achieved mostly in such meetings, that for that reason, the defence that the participation in a *sohbet* was due to only religious reasons is not valid ... *sohbets* were well-intentioned meetings, and that by participating in such *sohbets* the suspect demonstrated his complete loyalty to the organization... for that reason attending such *sohbets* would be the most significant act of its members to further the causes of the organization...”

67. Some excerpts from the indictments concerning this criterion are shown below:

Indictment No	Excerpt
I-89	“... <i>Sohbets</i> were being held at the suspect’s house until February 2014... that recruitment for and loyalty to the organization was achieved mostly in such meetings, that for that reason, the defense that the participation in a <i>sohbet</i> was due to religious reasons is not valid, that the members of the organization acted in complete secrecy, that a reasonable person and the ordinary flow of life would not allow a reasonable person to accept that these <i>sohbets</i> were well-intentioned meetings and that by participating in such <i>sohbets</i> the suspect demonstrated his complete loyalty to the organization... for that reason attending such <i>sohbets</i> would be the most significant act of its members to further the causes of the organization, ... during the search conducted at the residence of the suspect, a book titled On Ramadan, Thanks And Frugality written by Bediüzzaman Said Nursi and published by Sahdamar Publications, one of the banned publishing houses, was found. it has therefore been established that sufficient evidence has been obtained to give rise to the level of suspicion that warrants the preparation of an indictment for the suspect for the crimes specified in the law referred to above that the suspect is part of the hierarchy of the FETÖ/PDY armed terrorist organization...”

⁴⁴ Smita Tewari Jassal, ‘The Sohbet: Talking Islam in Turkey’ (2014) 1.3-4 The Sociology of Islam, 188-208.



I-2	"...that he participated in <i>sohbets</i> organised by the [FETO] organization and that he also organised such <i>sohbets</i> , ..."
I-3	"...that people who wanted to read the Qur'an were put in contact with ..., that ...'s knowledge of the Qur'an was the best among those who were working there at that time ..."
I-107	"...that the suspect was subscribed to the organization's Zaman Newspaper, that s/he regularly participated in the activities organised by the organization in the city, especially in charity sales, that he participated in talks called "sohbet", as established through the witness statements, it is therefore considered that the suspect had therefore acted in complete compliance with the wishes of the organization and that s/he was part of the hierarchy of the organization..."

Criterion VI	Frequency in the 118 indictments
Being an executive or a member of an association that has been closed/dissolved under the state of emergency for its alleged GM link	25

68. In 25 of the indictments⁴⁵, being an executive or a member of associations that were closed down/dissolved under the state of emergency for its alleged GM link was used as sufficient evidence by prosecutors to establish membership to an armed terrorist organization.

69. Several of the indictments reflect how Turkish prosecutors have been retrospectively incriminating the acts that were designated as lawful at the material time. In I-12 for example, membership to an Ankara-based association, the Law and Life Association – a civil society organization that aimed to promote democracy and rule of law, had carried out several projects with the European Union, Turkish Constitutional Court, and the Ministry of Family but later dissolved on the basis of supposed Gülenist links, was presented as evidence of membership of a terrorist organization. Similarly, in I-85, the Turkish prosecutor relied on the mere membership in Ahenk Law Association – a lawyers' association closed down by a state of emergency decree in the post-coup period as concluding evidence.

70. In I-35, the prosecutor described, without any tangible proof in the folder, a UK-based non-governmental organization the International Police Association (IPA)⁴⁶ as being affiliated with the FETÖ/PDY armed terrorist organization and,

⁴⁵ I-3/7/8/12/15/21/25/26/35/43/51/62/64/66/67/68/69/73/76/85/94/95/96/106/112

⁴⁶ The International Police Association is a friendship organization for members of the police force, whether in employment or retired, and without distinction as to rank, position, gender, race, language or religion. They have around 372,000 members in nearly 100 countries. For further information see: <https://www.ipa-international.org/About>

consequently, included the membership in this association as evidence against the suspect in the indictment.

71. Even memberships in alumni associations were presented as evidence of criminal intent. For instance, in I-66 and I-96, the prosecutor used the defendant’s membership in O.G.H. College Alumnus and Students Association and the Harran University Alumni Solidarity Association as tangible evidence.

72. Not only the suspects’ but also their spouses’ membership in associations with alleged links to GM have been investigated. In I-106, the prosecutor heavily relied on the membership of a suspect’s spouse in a local businesspeople association and a college sports club.

Criterion VII	Frequency in the 118 indictments
Being an executive or a member of a trade union that has been closed/dissolved under the state of emergency for its alleged GM links	16

73. Under Turkish law, trade and professional unions are founded in order to meet the common needs of the members of a given profession. Such unions possess the characteristics of public institutions and enjoy a number of rights protected under the Turkish Constitution.⁴⁷ Despite these constitutional guarantees, over the post-coup period, many trade and professional unions have been dissolved pursuant to the emergency decrees. In 16 of the indictments studied in this report, Turkish prosecutors did not hesitate to use a suspect’s membership in such unions as a proof of membership to a terrorist organization.

74. For instance, in I-96 and 115, trade union records were explicitly mentioned as incriminating facts under the “evidence” sections of the documents.

I-96	Evidence: Statements, union and association records, bank records, secret correspondence programme used by the organization, newspaper subscriptions belonging to the organization, dismissal decisions of public officials with emergency decree laws, records of schools belonging to the organization, criminal records and registry office records and the entire investigation file.
I-115	Evidence: Investigations of the Security Directorate, Bylock Records, Bank Asya records, Trade Union records, statements against him and other evidence and the entire investigation documents.

75. In I-96, the prosecutor described 10 unions as affiliated with the GM and, consequently, accused several suspects for membership in armed terrorist organization in respect of their membership in these unions.

⁴⁷ See Articles 51 and 135 of the Turkish Constitution – an English translation is available at: https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf.



76. Again, in none of these indictments, have Turkish prosecutors presented any supporting evidence indicating criminal intent or conduct and/or any explanation on how being a member of a constitutional entity, founded in accordance with the relevant law at the time, may constitute a terrorism offence.

Criterion VIII	Frequency in the 118 indictments
Subscription to periodicals that have been dissolved/seized under the state of emergency as a result of alleged GM links, i.e., Zaman daily, Sızıntı magazine	19

77. Zaman Daily was an Istanbul-based newspaper founded in 1986. The Turkish authorities seized the newspaper in March 2016⁴⁸ and disbanded it with an emergency decree in July 2016. Its circulation was around 650,000 before the governmental seizure.

78. Since the July 2016 attempted coup, Turkish prosecutors have considered subscriptions to Zaman and other periodicals that have been dissolved/seized under the state of emergency, as a result of alleged GM links, as providing evidence of membership in an armed terrorist organization.⁴⁹

79. In I-5, receiving 6 SMS text messages from Zaman Daily were presented as evidence against the suspect. In I-18, the suspect's membership in Aktif Education Union and subscription to dailies Zaman and Meydan, and magazines Aksiyon and Yeni Bahar were, similarly, taken as proof of the membership to a terrorist organization.

80. In I-51, the prosecutor considered the subscription fee to Zaman daily and Sızıntı Magazine as providing funds to a terrorist organization:

"... that the suspect funded the organization by subscribing to Zaman Newspaper and Sızıntı Magazine, (and) that the suspect transferred funds to the organization by finding subscribers for Zaman Newspaper and Sızıntı Magazine ..." (I-51)

81. In I-69 and I-118, Turkish prosecutors carried out a thorough examination of suspects' credit card spending records in order to establish whether they subscribed to the GM aligned newspaper and magazines.

⁴⁸ Reacting in March 2016, the then CoE Commissioner for Human Rights **Nils Muižnieks**, saw the governmental control over the Zaman daily via court-appointed trustees "as an extremely serious interference with media freedom which should have no place in a democratic society" and urged the Turkish authorities "to take all necessary measures to reverse the effects of these interferences". See 'Commissioner Muižnieks deplores new case of judicial harassment against media in Turkey' 4 March 2016, <https://www.coe.int/en/web/commissioner/-/commissioner-muiznieks-deplores-new-case-of-judicial-harassment-against-media-in-turkey>

⁴⁹ I-2/3/5/7/12/18/25/51/68/69/71/76/80/95/96/107/111/112/118





Criterion IX	Frequency in the 118 indictments
Possessing books, CDs or DVDs printed by publishing houses that have been closed/dissolved/seized under the state of emergency for their alleged GM links, or possessing copies of newspapers, and magazines that have been closed/dissolved/seized under the state of emergency for their alleged GM links	19

82. As seen in all 118 indictments, at the investigation stage, Turkish prosecutors (with the Turkish judicial police under their command) conducted a search at each suspect’s house and in their workplaces. During these searches, any item said to be related to the GM or with entities that have been closed down with emergency decrees seized as evidence.⁵⁰ In order to avert this, as consistently reported in the media, there were numerous incidents where people burned the books they possessed and/or threw them in streets or public trash bins.⁵¹ In all cases, the police conducted fingerprint examinations on the books thrown into bins in the streets and then arrested people based on the results.⁵² For instance, in I-94, the suspect was arrested and charged on grounds that his/her fingerprint was found on page 79 of a book authored by Fethullah Gulen.

“...Among the books belonging to FETÖ/PDY Armed Terrorist Organization found on a tricycle near the District Governorate building, it was determined that the fingerprint on page 79 of the book titled “Sense of Responsibility” belonged to the suspect...” (I-94)

83. In 19 cases⁵³, books, dictionaries, encyclopedias, issues of newspapers or magazines, student report cars even medical reports or prescriptions issued by the closed/dissolved hospitals have been seized as evidence:

“In a house search at the address of the suspect at on .../.../2016 ... a birth report issued by Turgut Özal Hospital, a prescription issued by Fatih University, a biochemistry lab test result issued by Turgut Özal Hospital, 2 CDs about methods of memorising the Quran, a Biology pocket book published by Zirve publications, a chemistry pocketbook published by Zirve publications, a physics book published by Zirve publications, a mathematics book published by Zirve publications have been seized” (I-12)

50 See: ‘Stockholm Center for Freedoms’ ‘Turkish gov’t detains 11 military officers over alleged links to Gülen movement’, 10 August 2018, <https://stockholmcf.org/turkish-govt-detains-11-military-officers-over-alleged-links-to-gulen-movement/>

51 Advocates of Silenced Turkey, Turkey’s Assault on Books, March 2019, <https://silencedturkey.org/wp-content/uploads/2019/04/Turkeys-Assault-On-Books.pdf>

52 Stockholm Center for Freedoms, ‘Turkish police detain student over fingerprints on Gülen books’, 11 July 2017, <https://stockholmcf.org/turkish-police-detain-student-over-fingerprints-on-gulen-books/>

53 I-12/19/25/28/39/45/50/51/68/73/79/85/89/94/95/99/101/103/113

84. The mere fact that a book possessed by a suspect was printed by a publishing house closed down with an emergency decree over its links to the GM sufficed in some cases to be regarded as evidence of crime. I-25 provides a lucid example of this pattern:

“That during the searches...: (1) book titled “Agenda of Politics” by Ufuk Book Publications, the author of which is Naci BOSTANCI, was seized, and according to the content of the report prepared by the officers of the ... Provincial Security Directorate, it was determined that the seized books were from forbidden publishing houses and therefore could be linked to the FETÖ/PDY armed terrorist organization...” (I-25)

85. Below are some further excerpts from indictments featuring this aspect:

Indictment No	Excerpt
I-12	“... Encyclopedia titled “The History of Islam” consisting of 8 volumes published by Zaman newspaper, one of the institutions affiliated with FETÖ/PDY, Encyclopedias titled “Islamic Law” consisting of 10 volumes published by Zaman newspaper, one of the organizations affiliated with FETÖ/PDY, ... a book titled “The New Dictionary” by the author Abdullah YEGIN, published by Hizmet Foundation publications, an organization affiliated with FETÖ/PDY, a copy of FETÖ/PDY-affiliated ZAMAN newspaper dated 3 March 2016...”
I-12	“In a house search at the address of the suspect at ... on .../.../2016 ... a birth report issued by Turgut Özal Hospital, a prescription issued by Fatih University, a biochemistry lab test result issued by Turgut Özal Hospital, 2 CDs about methods of memorising the Quran, a Biology pocket book published by Zirve publications, a chemistry pocketbook published by Zirve publications, a physics book published by Zirve publications, a mathematics book published by Zirve publications have been seized...”
I-12	“... that the book titled “Child Education Advice for Mothers” by Zambak publishers, there is no handwriting or other organizational markings on the inside of the book, but the publishing house is one of the publishing houses closed down by a Decree Law...”
I-50	“... during the search conducted at the residence of the suspect; books were seized, the emblem of Zaman Newspaper, which was closed with the Decree Law No. 668, was found on these seized books, and the books belonged to FEZA Publications A.S., which was closed down with the Decree Law No. 670...”
I-94	“...among the books belonging to FETÖ/PDY Armed Terrorist Organization found on a tricycle near the District Governorate building, it was determined that the fingerprint on page 79 of the book titled “Sense of Responsibility” belonged to the suspect ...”
I-25	“... that 13 books were seized, and it was determined that the books were from forbidden publishing houses and therefore they might be in contact with FETÖ/PDY armed terrorist organization...”



I-25	"That during the searches conducted: (1) book titled "Pillar of Our Religion: Prayer" by Isık Publications and (1) book titled "Night Worship" by Isık Publications were seized. According to the report prepared by the Provincial Security Directorate officials, the seized books were from forbidden publishing houses..."
I-25	"That during the searches...: (1) book titled "Agenda of Politics" by Ufuk Book Publications, the author of which is Naci BOSTANCI, was seized, and according to the content of the report prepared by the officers of the Provincial Security Directorate, it was determined that the seized books were from forbidden publishing houses and therefore could be linked to the FETÖ/PDY armed terrorist organization,"
I-25	"That 11 books, a clipping of Zaman Newspaper, a magazine named Yeni Bahar belonging to Zaman Newspaper, an issue of Zaman Newspaper dated 08 July 2013 were seized, and according to the report prepared by the Provincial Security Directorate officers, it was determined that the seized books were from forbidden publishing houses and therefore could be linked to FETÖ/PDY armed terrorist organization..."
I-103	"... that (2) copies of the book titled "Journey to Noble Ideals" authored by F.GÜLEN, (1) copy of the book titled "Infinite Light" authored by F.GÜLEN were seized during the search, that the book titled "Infinite Light" was authored by Fethullah GÜLEN, the ring leader of FETÖ/PDY... , that a measure on the prohibition of distribution and sale of this book by a decision numbered 2017/3150 and dated 22.06.2017 adopted by Batman 1 st Criminal Peace Judgeship, that (2) copies of the book titled "Mefkûre Yolculuğu (Journey to Noble Ideals) authored by Fethullah GÜLEN, the ring leader of FETÖ/PDY..., and published by Nil Publications, a measure on the seizure of all printed copies of this book ... was adopted with a decision dated 25.07.2017 and numbered 2017/3714 of Şırnak Criminal Peace Judgeship..."
I-95	"... that during the search conducted at the residence of the suspect, 1 copy of a prayer book, payment receipts belonging to Bankasya, a Bankasya bankbook, issues of Bugun, Millet, Zaman, Taraf newspapers, (2) copies of Yeni Bahar magazine were seized..."

Criterion X	Frequency in the 118 indictments
Being a resident or student in those schools, universities and dormitories that have been closed under the state of emergency as a result of alleged GM links, or sending children to those educational institutions	17

86. In 17 separate indictments under consideration,⁵⁴ the school, university or dormitory where the suspect or the suspect's child had been a student or resident was used as incriminating evidence. For instance, in I-36, the prosecutor regarded the attendance of a suspect's children in schools disbanded over Gulenist links as evidence showing that suspect's membership to an armed terrorist organization.

⁵⁴ I-5/7/12/25/26/35/36/40/63/68/75/79/83/96/99/108/ 118





87. Similarly, in I-118, sending one’s child to a Gulenist school was considered as providing funds to a terrorist organization and showing loyalty to the GM terrorist organization.
88. In I-25, which concerns 25 academics, the universities where some of the suspects completed their master’s degrees or obtained their PhD degrees were considered as providing evidence of their membership to the GM.

“... X... University, where the suspect obtained his PhD degree and has SGK (social security registry), is among the higher education institutions closed down by Decree-Law No. 667 issued on 22.07.2016 regarding the measures taken within the scope of the State of Emergency on the grounds that it is among the institutions ... whose belonging, affiliation or contact with the Fethullahist Terrorist Organization (FETÖ/PDY), which is determined to pose a threat to national security, ...”

Criterion XI	Frequency in the 118 indictments
Analysis of social media activity and the websites visited, i.e., following certain accounts, sharing articles criticizing the AKP government	8

89. In 8 indictments⁵⁵ where suspects’ social media posts were thoroughly analysed, Turkish prosecutors regarded posts that were either critical of the government or favourable to the GM as providing incriminating evidence.
90. In I-81, for example, the prosecutor relied on the accounts followed by the suspect on Twitter as establishing criminal intent.

“...through a Twitter account registered in his name with profile name XXX, he followed Twitter accounts with the names @FGulencomTR and @ekremdumanli access to which was restricted as part of FETO/PDY investigations, it has been established that he worked in a store called XXX carpets owned by a person called XXX who was investigated in connection with FETÖ/PDY armed terrorist organization together with his family ...”

91. In I-7, sharing articles or videos by journalists who are critical of the Turkish government on social media was among the prominent sources of evidence in the prosecution file.

⁵⁵ I-7/12//27/63/66/68/81/96



Criterion XII	Frequency in the 118 indictments
Donations made to relief organizations with alleged GM links, i.e., Kimse Yok Mu?	8

92. Kimse Yok Mu was founded in 2004 as a relief and social solidarity organization in Turkey. In 2008, it was given an ‘Association of Public Interest’ as per the Turkish Law No. 5253 on the status of Associations. This status, which is given to a very small number of relief and aid organizations, provides several important rights and liberties for such organizations, including tax exemptions. In 2012, it received an outstanding public service award by the Turkish Parliament due to its activities in Turkey and all around the world. It was closed by the Turkish government, however, for its alleged affiliation with the GM through an emergency decree enacted over the post-coup emergency rule.⁵⁶

93. In 8 of the indictments⁵⁷, making donations to Kimse Yok Mu was presented as evidence of criminality (membership of an armed terrorist organization). Below are some excerpts from these indictments:

Indictment No	Excerpt
I-51	“... The suspect donated to Kimse Yok mu Dayanışma ve Yardımlaşma Derneği (Kimse Yok mu Solidarity and Aid Association), which was closed down by Decree-Law No. 667 due to its affiliation with FETÖ/PDY, and he was a provincial representative of Kimse Yokmu Solidarity and Assistance Association ...”
I-76	“... (It was established) that he made, via SMS messages, no more than 3-4 donations in the amounts of 5 TL each to Kimse Yok Mu Association, the last one being in 2015 ...”
I-5	“... It has been established that the suspect also ... received, during the same time period, 2 separate messages from Kimse Yok Mu Association ...”
I-108	“... the suspect was found to have donated money to Kimse Yok Mu Association, one of the financial sources of the (FETÖ/PDY) organization ...”
I-110	“... It was established that he made donations to the Kimse Yok mu Association through 4 separate text (SMS) messages...”
I-118	“... (it was established that) ... spendings were made from the Bank Asya credit card on various dates to Kimse Yok Mu Solidarity ...”
I-12	“... A donation receipt itemized as “Alms: 1.000 TL, Food: 120 TL, For Eid: 100 TL and For Iftar: 50 TL” issued to ... by Kimse Yok Mu which is one of the institutions affiliated with FETÖ/PDY to which FETÖ/PDY members and executives generally donate...” were seized during the search conducted at the suspect’s residence.

⁵⁶ Stockholm Center for Freedom, ‘Turkish gov’t issues detention warrants for 58 over links to Kimse Yok Mu charity’ 17 October 2017, <https://stockholmcf.org/turkish-govt-issues-detention-warrants-for-58-over-links-to-kimse-yok-mu-charity/>

⁵⁷ I-5/12/51/76/96/108/110/118

Criterion XIII	Frequency in the 118 indictments
Staying at hotels in the provinces of Ankara, Afyon and Nevsehir including Kizilcahamam Asya Thermal Resort Hotel which had been seized by the Turkish Government for its alleged GM links	9

94. Under Turkish law, the Department of Public Order of the General Directorate of Security is the authorized body to collect and retain data on accommodation across Turkey.⁵⁸ Under the Turkish Law on Notification of Identity, all kinds of accommodation facilities (whether private or public) are required to make instant notifications on the identity of their guests to law enforcement agencies. In almost all criminal cases on terrorism, hotel accommodation data of a suspect is obtained from this database and this data is used as evidence, even in the absence any other further evidence showing a criminal intent.⁵⁹

95. Several indictments examined in this report relate to Thermal Hotels in Nevşehir, Ankara and Afyon provinces, where members of the FETÖ/PDY Terrorist Organization are said to have usually stayed. In these indictments, the mere fact of having stayed at one of the mentioned thermal hotels was regarded by Turkish prosecutors as providing a strong link showing the suspects' affiliation with the GM.⁶⁰ In I-118 for example, the 10 suspects' credit card spending records were examined to find out whether suspects stayed at a Bank Asya subsidy, Kızılcahamam Asya Termal Hotel. As some of them stayed at this thermal hotel at various dates, this was included as evidence in the indictment.

96. In other indictments, staying at thermal hotels in Afyon (I-67) and in Nevşehir/Kozaklı (I-116) on dates that coincided with the dates of stay of others who have also been investigated for GM links was presented as incriminating evidence, without putting forward any explanation or evidence to establish that their stays are connected.

Criterion XIV	Frequency in the 118 indictments
Cancelling subscription to DIGITURK, a digital tv platform, as a result of its decision to end the broadcasting of seven television channels with alleged links to the GM	6

97. In October 2015, DIGITURK and other digital TV platforms stopped broadcasting KanalTurk, Samanyolu TV, Mehtap TV, S Haber, Bugün TV, Yumurcak TV and

58 See generally, the Turkish Law No. 2259 on Duties and Powers of the Police.

59 Nordic Monitor, 'Turkish intelligence agency's secret profiling of critics exposed', 18 March 2019, <https://nordicmonitor.com/2019/03/turkish-intelligence-agencys-unlawful-profiling-of-critics-were-exposed/>

60 I-12/66/84/106/112/118



Irmak TV, which were critical of the government and perceived as Gülenist media.⁶¹ In response, some 80,000 users unsubscribed from these platforms.⁶²

98. Since the 2016 attempted coup, Turkish prosecutors have regarded the termination of subscriptions as strong indication of a GM membership, which was the case in 6 of the indictments examined in this report. For instance, in I-28, the prosecutor made a case that the individuals concerned cancelled their subscription in line with the instructions of the GM.

In October 2015, after the removal of Bugün TV and Samanyolu TV from digital platforms, following the organization’s instructions to “protest the said organizations and terminate subscriptions to them”, it was established that some suspects terminated their subscriptions in line with instructions of the organization by expressly stating the reason why they were doing so and this was considered strong but not the only evidence.” (I-28)

Criterion XV	Frequency in 118 indictments
Participating in protests held in response to the Government’s takeover of the Gülenist media outlets including Zaman newspaper and Samanyolu TV or making press statement to protest the Government	6

99. In December 2014, Turkish police raided the GM affiliated media outlets Samanyolu TV, Zaman Daily and its English version Daily Zaman to arrest their executives or editors.⁶³ In response to this police operation, peaceful protests and press statements were held across the country. Almost two years after these protests took place, however Turkish prosecutors started to use the participation in these protests as providing incriminating evidence linking the suspects’ to the GM.

100. For instance, in I-68, the prosecutor noted that “on 14 December 2014, a public press statement was organized on ‘Democracy and Rule of Law – Freedom of the Press’ with a view to protesting the operations against FETÖ/PDY. In the said press statement, banners were displayed such as ‘Free Press cannot be

⁶¹ “In October 2016, seven critical television channels were removed from the leading satellite television provider, Digitürk. Similarly, a number of channels were removed from the State-owned satellite distribution platform TÜRKSAT.” – See: Office of the United Nations High Commissioner for Human Rights, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, 21 June 2017, <https://www.ohchr.org/en/documents/country-reports/ahrc3522add3-report-special-rapporteur-promotion-and-protection-right>

⁶² ‘80,000 unsubscribed from Digiturk after its removal of critical channels’, Turkish Minute, 13 April 2016, <https://www.turkishminute.com/2016/04/13/80000-unsubscribed-digiturk-removal-critical-channels/>

⁶³ European Commission, ‘Joint statement on the police raids and arrests of media representatives in Turkey’, 14 Decia. 2014, https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_14_2640



silenced', 'Handcuffs on Free Media', 'We Will Not Bow Down, Coup on Democracy' and slogans were shouted such as "The Coup on Media is Unacceptable". Subsequently, the prosecutor named 40 individuals who took part in these two protests and claimed that their participation provided evidence of their membership to the GM.

101. In the I-66 the prosecutor claimed, without presenting any supporting evidence, that the suspect's participation in such a protest was due to an instruction by the GM. In I-12, where all suspects were lawyers, the suspects were incriminated on the basis of their making press releases or statements on behalf of their clients who used to work at Zaman and Samanyolu TV.

Criterion XVI	Frequency in the 118 indictments
Expressing support for the opposition parties or criticizing government for human rights violations	2

102. In two of the indictments, expressing support for the opposition parties or criticizing the government was included as incriminating evidence. In I-25, for example, the bulk of evidence against the suspects, who were all academics, was founded on their personal opinions about political and societal events.

"The suspect was witnessed talking in support of opposition parties to garner votes against AK Party." (I-25)

"The suspect was heard stating that the state perpetrated massacres in terror operations ("Trench Operations⁶⁴") in the East and Southeast (of the country)." (I-25)

103. In the same indictment, publishing an article that criticized the Government for violation of property rights during the 2016 post-coup emergency was included as incriminating evidence against an academic who was charged with membership in an armed terrorist organization for his alleged affiliation with the GM.

Criterion XVII	Frequency in the 118 indictments
Possessing 1 USD banknote	7

⁶⁴ 'In response to the operations that were allegedly conducted by the PKK in the region, which reportedly included setting up of barricades and digging trenches in residential areas, the Turkish government launched security operations in a number of provinces of South-East Turkey involving thousands of troops serving with combat-ready infantry, artillery and armored army divisions, as well as the Turkish Air Force.' – see: Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in South-East Turkey July 2015 to December 2016, February 2017, para. 17 https://www.ohchr.org/sites/default/files/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf





104. After the declaration of a state of emergency on 21 July 2016, the pro-government media circulated what may be considered a conspiracy theory, to the effect that every member of the GM was given a 1 USD banknote, which showed their place and significance within the hierarchy of the movement.⁶⁵
105. During this period, the Turkish General Directorate of Public Security circulated a memo to its provincial branches across Turkey. This memo was cited in full in several indictments: “In the memo of the General Directorate of Security dated 28.07.2016 and numbered 595075, it was reported that a (1) one US Dollar banknote was a symbol of the affiliation of the members to the [FETO] organization and that the hierarchy within the organization could be deduced from the serial numbers of the banknotes...”
106. Turkish prosecutors in seven of these indictments followed the cue and considered the serial numbers on 1 US Dollar banknotes as representing a special meaning within the hierarchy of the GM. In I-25, for instance, it was noted that “as a result of the examination of open sources; ... it has been established that the serial numbers on 1 US Dollar banknotes were used as identification numbers and their records were kept in the house where Fethullah GÜLEN, the ringleader of the terrorist organization, lived in Pennsylvania, USA and that each group of letters represented an assignment within the organization ...”. Although the prosecutor mentions open-source information, the indictment does not list these sources, which prevents any meaningful evaluation or fact-checking.
107. In none of these indictments, the relationship between the suspects possessing 1 USD banknotes and the crime they were charged was explained in any meaningful way.

Criterion XVIII	Frequency in the 118 indictments
Travelling abroad	14

108. In 14 of these indictments, the international travel records of the suspects were included as evidence without explaining its relationship with charged crime.⁶⁶

65 ‘Turkey: FETO’s ‘one-dollar bill’ mystery solved’, Anadolu Agency, 25 July 2016, <https://www.aa.com.tr/en/todays-headlines/turkey-fetos-one-dollar-bill-mystery-solved/614338>

66 I-2/12//25/26/30/66/68/90/95/96/99/105/106/114

VII. AN ANALYSIS ON TURKEY'S PROSECUTORIAL PRACTICES

109. An indictment plays a crucial role in the criminal process. It explains the factual and legal accusations made against a suspect/accused and thus forms the foundation of any legal case.⁶⁷
110. The sufficiency of the information presented in an indictment is delineated by several provisions and principles under the Turkish criminal law and criminal procedure law. The accused must at least be provided with sufficient information to understand fully the extent of the charges against him/her, which at least must include the time and place of the offence, sufficient information about offences with which the defendant is being accused, any references to the relevant provisions of the TPC and the identity of the victim, in order for the accused to be able to prepare an adequate defence.⁶⁸
111. As detailed below, however, the 118 indictments examined in this report fail to observe these principles in a number of respects, giving the impression that this would likely to give rise to numerous violations under Turkish criminal law – inter alia, from a strictly prosecutorial practice, Article 170 of the TCCP. This may also potentially infringe on a wide panoply of fundamental human rights, including the minimum fair trial standards under Article 6/2-3 (b) of the ECHR.⁶⁹

Non-compliance with Article 170 of the TCCP

112. The indictments mostly fail to conform to the requirements under Article 170 of TCCP in respect of a number of the formal aspects, including sub-articles (i) and (k) of Article 170/3, which require prosecutors to be precise as “Place, date, and the time period of the charged crime” and also to explain clearly “whether the suspect is in detention or not, and if he is arrested with a warrant, the date he was taken into custody and the date of his arrest with a warrant, and their duration”. Another non-compliance stems from Article 170/4, which requires that “the events that comprise the charged crime shall be explained in the indictment in accordance with their relationship to the present evidence”. These will be elaborated on below.
113. In a total of six of the indictments⁷⁰, the place where the charged crime was alleged to have been committed was not mentioned at all, while in the remaining 112 mostly the province or district where the suspect resides or was taken into custody was presented as the place of crime.

67 ECtHR, *Kamasinski v Austria* App No 9783/82, para. 79.

68 ECtHR, *Brozicek v Italy* App No 10964/84, para. 42.

69 ECtHR, *Mattoccia v Italy* App No 23969/94, para. 60.

70 I-30/55/56/61/105/115





114. With regard to the specificity of the date and time period for the charged crimes, the approaches of the prosecutors vary as is shown in the table below and are not in conformity with Article 170/3 (i) of the TCCP

The mentioned date and/or the time period of the charged crime	Number of indictments in compliance
The date that the suspect(s) was taken into custody was mentioned as the date of charged crime	66
15 July 2016, the date when the coup attempt took place, was mentioned as the date of charged crime	30
Different years such as 2016, 2017, 2018, 2019 were mentioned as the date of crime without specifying a date or a time period	19
“Since 17 and 25 December 2013” was mentioned as the time period of charged crime	2
No date was mentioned	6
Total	118

115. Determining the date when the suspect is taken into custody as the date of charged crime is based on the judgment of the Plenary of Criminal Chambers of the TCC, which ruled that membership in an armed terrorist organization is a continuing offence⁷¹ and that the suspect is continuously in a state of committing this crime. As a consequence, the moment that the suspect was taken into custody is also referred to as the date of the charged crime. The ECtHR, on the other hand, have found this interpretation “problematic in terms of the principle of legal certainty”⁷².

116. In 30 of the indictments, the date of the attempted coup, 15 July 2016, was recorded as the date of the charged crime, but none of the suspects in these indictments have been accused of participating in the coup attempt. Of those 30 indictments, suspects were taken in custody in 2016 (11 indictments), 2017 (5 indictments), 2018 (8 indictments), 2019 (3 indictments), 2020 (1 indictment), 2021 (1 indictment) and 2022 (1 indictment). Accordingly, it remains problematically unclear as to why the prosecutors mentioned the date of charged crime as 15 July 2016 in those indictments.

117. In two of the indictments, the time period of the charged crime was mentioned as “ever since 17 and 25 December 2013”, referring to the corruption operations allegedly initiated against the AKP by members of the GM. Besides this, however, the prosecutors offered no justification or evidence to link the suspects to those operations.

71 TCC, Plenary of Criminal Chambers, Docket No: 2017/997, Decision No: 2017/404, 10 October 2017.

72 EctHR, *Alparslan Altan v Turkey*, App no [12778/17](#), para.114.



118. In almost all indictments, the prosecutors failed to explain the date that the suspect was taken into custody and/or the duration of the custody period and/or the date of the suspect was remanded to pre-trial detention and/or the duration of pre-trial detention and/or whether the suspect is under pre-trial detention at the time of the issuance of the indictment, in contravention of Article 170/3 (k) of the TCCP. All in all, it is clear that Turkish prosecutors routinely failed to comply with the basic formalities of proper indictment writing required by Article 170 TCCP.

Lack of a causal connection between evidence and charges

119. According to Article 174 of the TCCP, when an indictment is submitted to a court, the court first shall examine whether it meets the criteria laid in Article 170 and, if it does not, the court shall send the indictment back to the prosecutor's office.

120. In its case law, the Turkish Court of Cassation consistently holds that “it is imperative that the indictment be detailed, and that the offence charged against the accused is explained in such a way as to leave no room for doubt. When the indictment is read to the accused before his interrogation [*in court*], he must understand what the offence imputed to him is, and he must be able to make his defence and present his evidence accordingly. The charged offence must not be vague but must be clearly and precisely defined so that the right of defence is not restricted.”⁷³

121. In almost all of the 118 indictments studied here, the prosecutors failed to clearly and properly explain the alleged crime and the evidence establishing the evidence. More particularly, they failed to set out how evidence indicating a relationship in the form of everyday and ordinary activities such as attending high school, travelling abroad for studies or working in a (at the time) legitimate, government-recognized university meet the criteria of “acting knowingly and willingly within the “hierarchical structure” of a terrorist organization”.

122. Such prosecutorial practice clearly lacks a coherent presentation of the causal connection and link between the evidence and charges, which make these charges ultimately impossible for a court to fairly or properly assess. This issue was clearly addressed in *Demirtaş v. Turkey (2)*, where the ECtHR warned that there is “tendency of the domestic courts to decide on a person’s membership of an armed organization on the basis of very weak evidence.”⁷⁴ On that account,

⁷³ TCC, 4th Criminal Chamber of Docket No: 2010/21275, Decision No: 2012/13997, 11 June 2012 [*emphasis added*].

⁷⁴ ECtHR, *Demirtaş v Turkey (2)* App no 14305/17, para. 337.

the Court also highlighted that the “national courts do not appear to have taken into account the ‘continuity, diversity and intensity’ of the applicant’s acts, nor to have examined whether he had committed offences within the hierarchical structure of the terrorist organization in question, as required by the case-law of the Court of Cassation”.⁷⁵

Lack of objectivity and impartiality

123. A related, yet broader problem emerges from the evident lack of objectivity on the part of prosecutors, who are required by Article 170/5 TCPP to include in their indictments not only evidence that is against suspects but also those favorable to them.
124. The present authors observe that Turkish prosecutors often copy-and-paste different parts of an infamous report prepared by Turkey’s Anti-Terror Department of the National Security Directorate. The report is not made available to the public and can at best be described as a police/intelligence report. So far as the authors are able to understand about these reports from the extracts reproduced in the indictments, the report tries to explain in some detail the objectives and formation of the GM. As a whole, the report reproduces several political theories and reflects biases and prejudices about the GM. Despite this, the prosecutors heavily rely on this report and take its findings as established facts.
125. It is also clear that prosecutors pay little to no heed for the defence of the suspect/accused. Prosecutors seem, without exception, to do nothing more than simply state that all such acts were criminal, without explaining how, for instance, attending a government-licensed school, holding an account in a government-licensed bank, travelling abroad, staying in certain hotels or making a donation to a relief organization can constitute criminal activity. Rather, it seems enough for the prosecutors that suspects fulfill as little as 2 of the 18 above-listed criteria in order to indict them under Article 314 TPC.

Incoherent plots and conspiracy theories replaced facts and evidence

126. In the indictments examined here, Turkish prosecutors tended to present all-encompassing political plots and conspiracy theories, which are in no way related to the charges being brought against the suspects. The conspiracy theory concerning 1 USD banknote, for instance, which featured in 46 separate indictments, provides a stark example of this thread. Generally, after hundred pages of narrative, there is usually only a single page about the suspect and the offence.

⁷⁵ *Ibid*, para 278.

es alleged. The indictment in general fails to provide cogent evidence or analysis linking the suspect to offences.⁷⁶

127. Below are excerpts from some of the conspiracy theories which, even if they were proven to be true, would have no logical or reasonable connection to the accused or the offences allegedly committed and, in any case, should never be part of an indictment:

Indictment No	Excerpt
I-63	“... that it [FETÖ/PDY] tries to distort the principles of the religion of Islam and establish a belief system based on perverted religious principles under the name of moderate Islam, which is something the global powers want...”
I-44	“... there are no strict criteria for membership in the organization. The organization has members from all different faith segments of society. In addition to observing Muslims, the organization recruits anyone who can be used for its purposes. Within the organization, there are people of Alevi origin, atheists and other groups that seem to have no relation with the organization, as well as Jewish and Christians. In other words, it is not necessary to be religious or even a believer in order to be a member of the organization, nor is it necessary to be a Muslim. If a person pays his/her dues it does not matter what crime or sin, he/she has committed...”
I-28	“... that there are foreign organizations which are similar to FETÖ/PDY such as the Opus Dei and the Moon, ... That the founder of Opus Dei was not a Christian but came from a family of crypto Jews who had converted to Christianity during the time of the Jewish Inquisition..., The US is the centre from which all three sects are being coordinated..., That the [FETÖ/PDY organization’s] efforts of interfaith dialogue give the impressions that they share the same goals..., ...another similarity is that the leaders of all three sects lived in the USA; ... all three sects were supported by US intelligence bodies such as NED, CSIS and the CIA...”
I-82	“... as part of the strategy devised by the CIA and FBI in relation to their activities against the [Turkish] government, members of the [FETÖ/PDY] organization were given pieces of training on various subjects. The best examples of this are the [graft] operations carried out by prosecutors and security forces on the 17th of December [2013]. This is an attempt to completely destroy the government to weaken the state together with all of its institutions. ... This failure also meant that the organization lost credibility in the eyes of America and Israel. Therefore, the Hagia Sophia issue was brought up and the organization started to shape public opinion through its media in order to weaken the government...”

⁷⁶ This problem was also reported in 2020 and 2021 reports of the Turkey Indictment Project of the Norway Pen: “As with so many indictments analysed by others who have produced reports for the PEN Norway project there is endless repetition, idealistic and academic theorising, and the expounding of conspiracy theories about Turkey and its reputation with the wider world but there is no cohesive and structured narrative linking the suspects with any factual basis on which they could reasonably be regarded as having committed the crimes they are charged with.” See: Pen Norway, PEN Norway Turkey Indictment Project Final Report, 2021, https://norskpen.no/wp-content/uploads/2022/03/PEN-Norway-Turkey-Indictment-Project-Report-2021_Eng.pdf





I-34	<p>“... the fact that FETÖ/PDY, which claims to conduct itself on the basis of religious values, has been interpreting it in line with its own ideals and according to its circumstances....</p> <p>instead of being at peace with its country and state seeing the state as an adversary, ... holding secret meetings with representatives of various foreign missions reveals that the structure in question is an organization, involved also in espionage...”</p>
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Abuse of secret witness procedure

128. The TCCP permits the use of secret/anonymous witnesses only in certain specified circumstances. The ECtHR, on the other hand, does not prohibit it, provided that the right to a fair trial is not unjustifiably impaired and that necessary safeguards are in place to counterbalance the suspect’s disadvantageous position.
129. In Turkey, however, the use of secret/anonymous witnesses has become a common practice in the last decade, particularly in political trials. The case of 11 human rights defenders affiliated with the Amnesty International Turkey⁷⁷, the Progressive Lawyers Association lawyers’ case (CHD case), and the party closure case against the pro-Kurdish People’s Democratic Party⁷⁸ provide leading examples of cases where secret/anonymous witnesses were deployed against defendants. To make it more clear, it was revealed that secret/anonymous witness used in the CHD case was also used in the same role in more than 100 different cases.⁷⁹
130. It was also revealed that some anonymous witnesses do not even actually exist. For example, the Diyarbakır Police Department admitted that an anonymous witness codenamed “Venüs”, whose testimony led to the detention and imprisonment of scores of people including Selahattin Demirtas, was made up by the police.⁸⁰
131. As elaborated above, the use of secret witnesses in GM cases has produced similarly controversial results. As reported in the Turkish media, a secret witness who testified against 145 suspects, whom he had accused of GM links, later admitted before the court that he did not actually know any of them.⁸¹

77 Amnesty International, ‘Briefing Prosecution of 11 Human Rights Defenders’, 20 October 2017 <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4473292017ENGLISH.pdf>

78 ‘MP questions secret witness statement in HDP closure case’, Bianet, 30.1.2023, <https://m.bianet.org/english/law/273517-mp-questions-secret-witness-statement-in-hdp-closure-case>

79 ‘Permanent witness’ to Court of Cassation: I hallucinate, don’t take my testimony into account’, BIANET, 30 June 2020, <https://bianet.org/5/147/226617-permanent-witness-to-court-of-cassation-i-have-hallucinations-don-t-take-my-testimony-into-account>

80 Stockholm Center for Freedom, ‘Turkish police admit nonexistence of ‘secret witness’ whose statements led to many imprisonments’, 19 February 2019, <https://stockholmcf.org/turkish-police-admits-nonexistence-of-secret-witness-whose-statements-led-to-many-imprisonments/>

81 Stockholm Center for Freedom ‘Turkish secret witness not recognise any of 145 defendants whom he accused of having Gülen links’, 31 October 2017, <https://stockholmcf.org/turkish-secret-witness-not-recognise-any-of-145-defendants-whom-he-accused-of-having-gulen-links/>

132. In 13 of the 118 indictments examined here⁸², the prosecutors used the evidence given by a secret witness called Garson (Waiter). Garson, who allegedly handed crucial digital evidence to the police including lists of members of the GM, was also asked by courts to testify during hearings against the defendants. Two reports by a Turkish lawyer, however, provided credible arguments noting that; (i) the data was obtained and processed contrary to the procedure laid down in Articles 206/2-a, 217/2, 230/1-b of TCCP and should therefore be considered unlawful evidence⁸³; (ii) Garson's statements often contradict each other and should therefore be considered as unreliable evidence.⁸⁴ Yet, Turkish prosecutors did not take heed of these experts reports and relied upon the digital evidence handed by Garson in their arrest warrants against thousands of individuals allegedly linked to the GM.

No human rights perspective

133. The 18 criteria elaborated on above are likely to infringe a wide set of human rights and freedoms enshrined in the Turkish Constitution, as well as Turkey's international obligations under the ECHR and ICCPR –which include the freedoms of expression, association, peaceful assembly, the right to respect for private life, the principle of legality of crimes and punishments and the prohibition of retrospective punishment.

134. As can be seen in the Annex I, from 2017 onwards the ECtHR, the United Nations HRC and other UN Treaty Bodies have all delivered numerous opinions, decisions and judgments and found that the Turkish judiciary's approach and practice in the criminal proceedings against the members of the GM lack the essential human rights perspective.

135. As regards the prohibition of retrospective punishment, for instance, in the case of *Yasin Özdemir v. Turkey* the ECtHR found that the applicant's social media posts in favour of the GM from 2015 cannot constitute the offense of praising crime and criminals as at the material time no members of the GM had been convicted with the final effect of being leaders or members of an illegal or terrorist organization.⁸⁵ By reaching this conclusion, the court implies that the con-

82 I-11/17/24/32/35/36/48/52/54/62/87/91/118

83 Mesut Can Tarım, 'Gizli Tanık Garson-SD Kart-Adli Bilişim Kapsamında Analiz-Sonuç Değerlendirme' (Anonymous Witness Garson-Secret Witness Garson (SD Card-Analysis in the Scope of Forensic Informatics), <https://hukukibilgiplatformu.com/wp-content/uploads/2019/12/2-Adli-Bili%C5%9Fim-Siber-Raporu-%C4%B0ncelemesi.pdf>

84 Mesut Can Tarım, 'Gizli Tanık Garson-İfadelerdeki Çelişkiler-Analiz-Sonuç Değerlendirme' (Anonymous Witness Garson (Controversies in Statements), <https://hukukibilgiplatformu.com/wp-content/uploads/2019/12/1-Garson-K-Gizli-Tan%C4%B1k-%C4%B0fade-Analizi.pdf>

85 ECtHR, *Yasin Özdemir v Turkey* App No 14606/18, para. 40.



duct prior to the TCC's judgment from September 2017 in which it designated the GM as a terrorist organization cannot be retrospectively criminalized.

136. In several important decisions related to the 2016 post-coup period, the ECtHR held that detentions or convictions based on the use of Bylock, Bank Asya, subscription to certain periodicals, membership in associations cannot be justified from a human rights perspective. In the case of *Taner Kılıç v Turkey* of May 2022, which concerns the then-chairperson of Amnesty International's Turkey branch, a combination of such criteria was at play.⁸⁶ In that case, Kılıç was detained by a Turkish magistrate with reference to several pieces of evidence, namely a report establishing that he had downloaded and used the ByLock app, his subscriptions to certain publications, such as the Zaman newspaper, the fact that the applicant's sister was married to the newspaper's editor, the attendance of his children at schools that were subsequently closed by decree-laws and his bank accounts at the Gülenist Bank Asya. In unequivocal terms, the ECtHR found that none of these can reasonably be regarded as constituting a body of evidence to establish that the applicant belonged to an illegal organization.
137. A similarly robust stance has also been taken by the UN HRC. For instance, in the case of İsmet Özçelik, the UN HRC considered that the mere use or download of a means of encrypted communication or bank account cannot indicate, in itself, provide cogent evidence of membership of an illegal armed organization, unless supported by other evidence, such as conversation records and, thus, found a violation of Article 9 (1-2) of ICCPR.⁸⁷ The HRC, in the case of *Mukadder Alakuş*, found that (i) Article 314 of TPC was too broad, (ii) there was no other domestic law to clarify the criteria used to establish the acts constitutive of the crime of membership in an armed terrorist organization (iii) the mere use or download of an app or bank account cannot establish the alleged crime and held that there had been a violation of the principle of legality of crimes and punishments.⁸⁸
138. In a similar fashion, UN WGAD has also consistently found that the mere reliance on the above-mentioned 18 criteria can not be construed as providing evidence a criminal intent/conduct unless and until supported by further evidence. In a series of decisions, UN WGAD concluded that these practices were rather the peaceful exercise of the rights protected by the ICCPR and the Universal Declaration of Human Rights.⁸⁹

⁸⁶ ECtHR, *Taner Kılıç v Turkey* App No 208/18, para 104.

⁸⁷ ECtHR, *Akgün v Turkey* App No 19699/18, para. 173.

⁸⁸ UN HRC, *Mukadder Alakuş v Turkey*, CCPR/C/135/D/3736/2020, 15 November 2022.

⁸⁹ See the Annex I.



139. The authors observe that in none of the 118 indictments under consideration, the above-mentioned opinions, decisions and judgments by ECtHR were given even the slightest regard, even though they are binding on Turkey as per Articles 15 and 90 of the Turkish Constitution.⁹⁰

VIII. CONCLUSION AND RECOMMENDATIONS

140. This report has sought to evaluate the Turkish prosecutors' practices in the investigations against perceived members of the GM in the post-coup period, by particularly looking at the outcomes of such investigative processes, namely 118 issued indictments.
141. As explained in the report, Turkish prosecutors form an important part of the Turkish judicial system and should make a vital contribution to the due process and the proper functioning of criminal justice system. Although sound prosecutorial judgment and through analysis of evidence is requisite in any investigation and/or drafted indictment – there is an even greater need for this in politically sensitive investigations/indictments. Prosecutorial practices in the post-coup period fell far away from (inter)national legal standards in the 118 indictments analysed in this report.
142. One principal area of concern is that the indictments do not provide any coherent presentation of evidence or logical reasoning to connect suspects to the alleged offences. This indicates that 'reasonable suspicion' standards are not being reached by anything even closely resembling sound or reliable evidence of crime. Indeed, in the vast majority of cases, the key international human rights bodies have consistently found that individuals with alleged GM links have been arrested and detained on the basis of mere suspicion and with almost no evidence to reasonably corroborate their involvement in terrorist activities.⁹¹
143. Another area of concern is the political and ideological tone of the indictments. Almost all of the 118 indictments evaluated in this report are marred by the overtly expressed political and/or ideological motives of the prosecutors. The present authors are of the opinion that, due to such a prevailing slant in the indictments, Turkish prosecutors deliberately use highly complex language and jargon with a view to disguising and concealing ideological motives.

⁹⁰ As per the Turkish Constitution, state of emergency measures might not violate Turkey's obligations under international law (Article 15) and international agreements concerning fundamental rights and freedoms should always prevail over Turkish law (Article 90).

⁹¹ For a detailed analysis on Turkey's post-coup detention practices under the ECHR, see: Emre Turkut and Sabina Garahan, 'The 'Reasonable Suspicion' Test of Turkey's Post-Coup Emergency Rule under the European Convention on Human Rights' (2020) 38.4 Netherlands Quarterly of Human Rights. 264-282.





144. Moreover, Turkish prosecutors routinely produce or repeat deliberate constructions of unsound and illogical plots and conspiracy theories, that are generally built around recurrent findings and repetitions from other indictments, excessive reliance on police inquiry reports and complicated narratives that all together stray far away from actual evidence of crime. Such a tendency is clearly overtaking and impairing sound prosecutorial judgment, logical association and reasoning or any coherent analysis of evidence.
145. These features – the strong political/ideological language, the lack of reasonable suspicion or coherent link between suspects and alleged offences and the reversal of the presumption of innocence, have significant impact on a wide range of human rights. These 118 indictments seem to criminalize the ordinary everyday activities of alleged GM members, without setting out any solid evidence said to in furtherance of any crime – let alone the serious terrorism offences.
146. In short, the report provides a chilling reminder of the problems that emanate from the wide prosecutorial discretion and prevalent human rights unfriendly prosecutorial practices in Turkey. The authors urge Turkish prosecutors (I) to write the indictment in a plain and concise language; (II) clearly explain the factual and legal basis of the accusations; (III) to provide a coherent causal connection and link between the evidence and charges; (IV) to take into account evidence in favor of the suspect; (V) to refrain from resorting to illogical plots and conspiracy theories and, finally, (VI) to respect and protect human dignity and uphold human rights when performing their duties.

ANNEX I

A. Relevant Judgments of the European Court of Human Rights

*Selahattin Demirtaş v. Turkey (2)*¹

1. In the case of *Demirtaş v. Turkey (2)*, the Grand Chamber of ECtHR observed that “the range of acts that may have justified the applicant’s pre-trial detention in connection with serious offences that are punishable under Article 314 of the Criminal Code, is so broad that the content of that Article, coupled with its interpretation by the domestic courts, does not afford adequate protection against arbitrary interference by the national authorities.” (para.280) Later, with regard to the right to liberty, the Grand Chamber remarked that “the present case confirms the tendency of the domestic courts to decide on a person’s membership of an armed organization on the basis of very weak evidence” (para. 337). On that account, it found that the terrorism-related offences at issue, as interpreted and applied in the present case, are not properly ‘foreseeable’ and do not ‘afford adequate protection against arbitrary interference by the national authorities’. The Court also highlighted that the “national courts do not appear to have taken into account the ‘continuity, diversity and intensity’ of the applicant’s acts, nor to have examined whether he had committed offences within the hierarchical structure of the terrorist organization in question, as required by the case-law of the Court of Cassation” (para.278).

*Tekin Akgün v. Turkey*²

2. In a complaint to the Court arising as a result of the applicant being detained on the basis of downloading/using Bylock, ECtHR found that the mere fact of downloading or using a means of encrypted communication or, indeed, the use of any other method of safeguarding the private nature of exchanged messages, could not in itself amount to evidence capable of satisfying an objective observer that illegal or criminal activity was being engaged in. It was only when the use of an encrypted communication tool was supported by other evidence about its use, such as, for example, the content of the exchanged messages, or the context of such exchanges, that the evidence was capable of satisfying an objective observer of reasonable grounds to suspect the individual using that communication tool of being a member of a criminal organization (paras. 177-181).

¹ ECtHR, *Demirtaş v Turkey (No 2)* App No 14305/17, 22 December 2020.

² ECtHR, *Tekin Akgün v Turkey* App No 19699/18, 20 July 2021.

Yasin Özdemir v. Turkey³

3. In the case of *Özdemir v. Turkey*, the ECtHR found that the applicant's social media posts in favour of the Gülen Movement and its leader Fethullah Gülen from 2015 cannot constitute the offense of praising crime and criminals as at the material time no members of the Gülen Movement had been convicted with the final effect of being leaders or members of an illegal or terrorist organization. (para. 40) By reaching this conclusion, the court implies that conduct prior to the Turkish Court of Cassation's judgment from 16 September 2017 in which it designated the Gülen Movement as a terrorist organization cannot be retrospectively criminalized.

Nazlı Ilıcak v. Turkey (No.2)⁴

4. In the case of *Ilıcak*, a journalist who used to work at Gülen-linked media outlets and was jailed after the coup attempt, the ECtHR first notes that the media outlets which were shut down and dissolved under the 2016-2018 state of emergency were completely legal at the material time (para. 139) and that working in those organizations and/or being paid by them thus cannot itself be a criminal offence (para. 153). The court also found that wiretapped phone conversations which show that the applicant had spoken with persons who were subsequently the subject of criminal proceedings cannot, in the absence of any incriminating evidence as to their content, be regarded as plausible grounds for suspecting the applicant of having committed the criminal offences of which she was accused (para. 152).

Taner Kılıç v. Turkey⁵

5. In the case of *Taner Kılıç*, who was the then-chairperson of Amnesty International's Turkey branch, the ECtHR underlined that he was detained by a Turkish magistrate judge with reference to several pieces of evidence, namely a report establishing that he downloaded and used the ByLock app; his subscriptions to certain publications, such as the Zaman newspaper; the fact that the applicant's sister was married to the newspaper's editor; the attendance of his children at schools that were closed by decree-laws; and his bank accounts at the Gülenist Bank Asya. In unequivocal terms, the ECtHR found that none of these can reasonably be regarded as constituting a body of evidence showing that the applicant belonged to an illegal organization (para. 104).

³ ECtHR, *Yasin Özdemir v Turkey* App No 14606/18, 7 December 2021.

⁴ ECtHR, *Nazlı Ilıcak v Turkey (No 2)* App No [1210/17](#), 14 December 2021.

⁵ ECtHR, *Taner Kılıç v Turkey* App No 208/18, 31 May 2022.



Acar and Others v. Turkey⁶

6. In the case of *Acar and Others v. Turkey* where the applicants were judges and prosecutors detained after the coup attempt, the ECtHR noted that their detention was based solely on an administrative measure taken by the Council of Judges and Prosecutors for their suspension from office or the revocation of their authorities, and/or on information indicating their use of the ByLock messaging app. The court then concluded that neither an administrative measure about the applicants nor using the ByLock messaging app could justify their pretrial detention.

Relevant Decisions and Opinion of the United Nations Human Rights Committee and the UN Treaty Bodies***İsmet Özçelik et. al v. Turkey***⁷

7. In this communication, the complainant was accused of membership in an armed terrorist organization for allegedly having a deposit account in Bank Asya and for allegedly downloading Bylock. Confirming that these are the only evidence in the file, the UN Human Rights Committee found that Turkey failed to fulfil its obligations of promptly informing the complainants of the charges against them and the reason for their arrest, or of substantiating that their detention meets the criteria of reasonability and necessity. The UN Human Rights Committee warned that a derogation under Article 4 ICCPR cannot justify a deprivation of liberty that is unreasonable or unnecessary. The Committee the concluded that that the complainants' detention amounted to a violation of their rights under Article 9 (1-2) ICCPR.

Mukadder Alakuş v. Turkey⁸

8. In the complaint filed by an individual who was convicted of membership in an armed terrorist organization as per Article 314 of TPC for alleged use of the Bylock application and holding a deposit account at Bank Asya, the UN Human Rights Committee found that Turkey violated Article 15(1) ICCPR. More particularly, the Committee highlighted that the complainant were punished for acts, at the material time of commission, that did not constitute sufficiently defined and predictable criminal offences under the TPC or international law. The Committee then found the mere use or download of an app or bank account cannot indicate, in itself, evidence of membership of an illegal armed organization.

⁶ ECtHR, *Acar and Others v. Turkey* App nos. [64251/16](#), 28 June 2022.

⁷ The UN Human Rights Committee, *İsmet Özçelik et. al.*, CCPR/C/125/D/2980/2017, 23 September 2019.

⁸ The UN Human Rights Committee, *Mukadder Alakuş v Turkey*, CCPR/C/135/D/3736/2020, 26 July 2022



Opinions of the Working Group on Arbitrary Detentions ('WGAD')

9. In its several opinions cited in the table below, the UN WGAD has consistently found that using Bylock, subscription to the periodicals that were affiliated with the GM, purchase of books and other publications, working for the institutions or private undertakings affiliated with the GM, participating in *sohbets* or protests, traveling the USA or doing academics study there, membership in NGOs, trade unions, holding a Bank Asya account cannot be regarded as evidence of membership to an illegal armed organization. In all opinion, the UN WGAD concluded that these were rather the peaceful exercise of the rights protected by the ICCPR and the Universal Declaration of Human Rights.

Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Muhammet Şentürk vs. Turkey, WGAD/2023/29	... the Working Group notes that Mr. Şentürk was accused of using the ByLock application on his mobile telephone, taking part in the university organization of the Gülen movement, going to Ankara to give a religious talk in a military school, opening an account at Bank Asya, being a member of the Karaman Academic Youth Association and participating in a demonstration. (para. 65)	<p>The Government failed to explain how these alleged activities amounted to a criminal act. Nothing in the materials before it allows the Working Group to conclude that these activities can be regarded as capable of generating a reasonable suspicion that he had committed the alleged criminal offences. Moreover, the Working Group recalls that this is not the first time that it has examined a case involving the arrest and prosecution of a Turkish national for the alleged use of ByLock as one of the key manifestations of an alleged criminal activity.⁹ In those other instances it concluded that, in the absence of a specific explanation of how the alleged mere use of ByLock constituted a criminal activity by the individual concerned, the detention was arbitrary. The Working Group regrets that its views in those opinions have not been respected by the Turkish authorities and that the present case follows the same pattern. (para. 65)</p> <p>The Working Group therefore finds that his deprivation of liberty was arbitrary, falling within category II, as it resulted from his exercise of the rights and freedoms guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights and articles 19 and 21 of the Covenant. (para. 69)</p> <p>It notes that the present case joins a series of cases concerning individuals with alleged links to the Gülen movement that have come before the Working Group in the past few years.¹⁴ In all these cases, the Working Group has found that the detention of the concerned individuals was arbitrary. A pattern is emerging whereby those with alleged links to the movement are being targeted on the basis of their political or other opinion, in violation of articles 2 (1) and 26 of the Covenant and articles 2 and 7 of the Universal Declaration of Human Rights. Accordingly, the Working Group finds that the Government of Türkiye detained Mr. Şentürk based on prohibited grounds for discrimination and that his detention was thus arbitrary, falling under category V. (para. 75)</p>

⁹ See, for example, opinions No. 42/2018, No. 44/2018, No. 29/2020 and No. 30/2020.



Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Nermin Yasar v. Turkey, WGAD/2020/74	... that Ms. Yasar has been arrested, tried and imprisoned for being a member of Empati Kadın ve İş Derneği (Empathy Women and Business Association), attending social events and trips organized by the Hizmet movement and installing and using the ByLock mobile application for communication. (para. 61)	<p>The Working Group finds no legitimate aim or objective in a free and democratic society to justify her deprivation of liberty for her exercise of freedom of opinion and expression, freedom of association and freedom to take part in the conduct of public affairs. Her detention was therefore neither necessary nor proportionate. (para. 65)</p> <p>The Working Group recalls that in those other instances it concluded that, in the absence of a specific explanation of how the alleged mere use of ByLock constituted a criminal activity by the individual concerned, the detention was arbitrary. (para. 66)</p> <p>The Working Group therefore finds that Ms. Yasar's deprivation of liberty is arbitrary, falling under category II, as it resulted from her legitimate exercise of the rights and freedoms under articles 19, 20 (1) and 21 (1) of the Universal Declaration of Human Rights and articles 19 (1) and (2), 22 (1) and 25 (a) of the Covenant. (para.67)</p>

Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Ercan Demir v. Turkey, WGAD/2019/79	... such regular activities as subscription to newspapers, magazines and journals, purchase of books and other publications, working for Gülen affiliated associations and unions, participating in social gatherings and other social activities, having downloaded ByLock application and having a bank account at Bank Asya. (para.68)	<p>The Working Group wishes to particularly point out that in its reply, the Government has simply stated that these regular activities were sufficient to justify reasonable suspicion that Mr. Demir has committed a criminal offence for which he was arrested and tried without actually explaining how it could arrive at such a conclusion (para.68).</p> <p>In the present case, it is clear to the Working Group that even if Mr Demir did use the ByLock application, an allegation denied by him, it would have been mere exercise of his freedom of expression. The same is to be said about Mr. Demir's subscriptions to various newspapers, magazines and journals as well as his purchases of books and other publications. To this end the Working Group notes that freedom of opinion and freedom of expression as expressed in article 19 of the Covenant are indispensable conditions for the full development of the person; they are essential for any society and in fact, constitute the foundation stone for every free and democratic society." (para.70)</p>

Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Abdulmuttalip Kurt vs. Turkey, WGAD/2020/2	The Government argues that Mr. Kurt was arrested, detained, charged with and ultimately sentenced for terrorism offences. [Because] (a) he held a bank account at Bank Asya, which was linked to the Hizmet movement; (b) he was a director of a student dormitory affiliated with the Hizmet movement; (c) he took part in demonstrations against the closure of the Zaman newspaper, which was used by the Hizmet movement for propaganda purposes; (d) he was a member of a trade union linked to the Hizmet movement; and (e) he worked at an educational institution linked to the Hizmet movement. (para.67)	... none of those activities in itself could be construed as a criminal act, but rather as the peaceful exercise of the rights protected by the Covenant and the Universal Declaration of Human Rights. ... In fact, there is nothing in the Government's response that would indicate that all these actions were something other than the peaceful exercise of Mr. Kurt's rights under the Covenant, including his rights to hold opinions and to freedom of association. (para.69)





Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Duman & Tibik v. Malaysia & Turkey, WGAD/2022/8	... the detention of ... was based on their alleged links with the Hizmet/Gülen movement, as well as ordinary activities undertaken years before their detention, such as holding a bank account, using a messaging application, and conduct relating to their employment and personal life. (para.98)	<p>The Government of Turkey offered no explanation as to how any of those activities, most notably the alleged use of the ByLock application, amounted to a criminal act, nor has it presented any information to suggest that ... were members of a terrorist organization. (para.98)</p> <p>The Human Rights Committee has also indicated that the use of ByLock and holding a Bank Asya account are insufficient to justify detention. (§99) The Working Group considers that, even if ... had used ByLock, that activity would merely represent the peaceful exercise of their rights to freedom of expression and of opinion under article 19 of the Covenant. (para.100)</p>

Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Muharrem Gençtürk v. Turkey, WGAD/2018/44	... core of the allegations against Mr. Gençtürk is his alleged alliance with the Gülen group .. which is said to have been manifested mainly through the use of the ByLock application. (para.85)	<p>The Working Group notes the failure on the part of the Government of Turkey to show how the mere use of such a regular communication application as ByLock by Mr. Gençtürk constituted an illegal criminal activity. (para.85)</p> <p>In fact, it appears to the Working Group that even if Mr. Gençtürk did use the ByLock application, an allegation that he denies, it would have been mere exercise of his right to freedom of expression. (para.86)</p> <p>The Working Group therefore concludes that the arrest and detention of Mr. Gençtürk resulted from his exercise of the rights guaranteed by article 19 of the Universal Declaration of Human Rights and article 19 of the Covenant, falling under category II. (para.88)</p>
Faruk Serdar Köse v. Turkey, WGAD/2020/30	... the essence of the allegations against Mr. Köse, as presented by the Government, ... stems from him having downloaded and used the ByLock application. (para.79)	The Working Group notes the failure of the Government to show how the mere use of such a regular communications application by Mr. Köse constituted an illegal criminal activity, especially given the absence of any evidence that he was in fact part of that organization. (§84) In the present case, it is clear to the Working Group that, even if Mr. Köse had used the ByLock application, an allegation denied by him, he would merely have been exercising his right to freedom of expression. (para.85)
Akif Oruç v. Turkey, WGAD/2020/29	... the core of the allegations against Mr. Oruç was his alleged and perceived alliance with the Hizmet movement, which is said to have manifested mainly through the use of the encrypted messaging software application ByLock. (para.88)	The Working Group notes the failure on behalf of the Government to show how Mr. Oruç's use of that software application constituted illegal criminal activity or to provide any evidence that he was in fact part of the "Fethullah terrorist organization/Parallel State Structure". (para.88) In the present case, it is clear to the Working Group that, even if Mr. Oruç did use the ByLock application, it would have been merely in exercise of his freedom of opinion and expression. (para.89)



Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Ahmet Caliskan v. Turkey, WGAD/2018/43	In the present case, the Working Group observes that at the core of the allegations against Mr. Caliskan is his alleged alliance with the Gülen group, which is said to have manifested itself through his attending a high school affiliated with the group, then travelling to study in the United States for his doctorate, a path allegedly often chosen by the members of the group, then working in a university allegedly associated with the Gülen group and by depositing money in the Bank Asya, which was also affiliated with the group. (para.79)	<p>However, the Working Group notes that the Government has done nothing more than simply state that all those activities were criminal actions without explaining how such everyday actions as attending high school, travelling abroad for studies or working in a legitimate, government-recognized university constitute a criminal activity. The Government has also failed to respond to the submission made by the source that Mr. Caliskan's bank account was in fact opened by the university and used by that institution to pay his salary. (para.79)</p> <p>In the case of Mr. Caliskan, the Government, although it had the opportunity to do so, has failed to show any illegal actions in the conduct of Mr. Caliskan that could be construed as his being a supporter of a criminal organization. His attendance of the high school as a 15-year-old was a normal activity for a child at that age, his travelling abroad to study and subsequent employment at the university, as well as having a bank account, were regular activities that Mr. Caliskan was entitled to enjoy as everyone else, in accordance with article 26 (para.82).</p>

Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
Levent Kart v. Turkey, WGAD/2020/66	.. the essence of the allegations against Mr. Kart is his alleged alliance with the Hizmet movement which, according to the Government, is evidenced by such regular daily activities as working in a university, having a bank account and using a communication application. (para.53)	<p>... the Working Group notes the Government's failure to explain how any of these three alleged activities amounted to a criminal act. ... The Working Group also notes the findings of the Human Rights Committee in <i>Özçelik et al. v. Turkey</i> (CCPR/C/125/D/2980/2017), in which the Committee dismissed the mere use of the ByLock application as sufficient basis for the arrest and detention of an individual.</p> <p>In relation to the allegations concerning the bank account with Bank Asya, the Working Group recalls its own jurisprudence concerning cases in which it had concluded that merely having an account with that bank had been equated with terrorist activity without any clear evidence. (§57) In the present case, it is clear to the Working Group that even if Mr. Kart had used the ByLock application or any other communication application, such use would have been merely in exercise of his rights to freedom of opinion and expression. (§58) The Working Group therefore concludes that Mr. Kart's arrest and detention resulted from his peaceful exercise of rights guaranteed by article 19 of the Covenant, and were therefore arbitrary, falling under category II. (para.59)</p>



Case Name	Accusation - Reason of Detention or Conviction	WGAD's Opinion
<p>Mestan Yayman v. Turkey, WGAD/2018/42</p>	<p>.. the core of the allegations against Mr. Yayman is his alleged alliance with the Gülen group in 2013, which is said to have manifested itself through his attendance at meetings of the group at that time and his use of the ByLock communications application. (para.86)</p>	<p>However, the Government has failed to show any illegal actions in Mr. Yayman's conduct which could be construed as Mr. Yayman being a supporter of a criminal organization. His attendance at the talks organized by the Gülen group in 2013 took place well before this organization was designated as a terrorist organization by the Turkish authorities some two years later, and the Government has not shown any evidence that Mr. Yayman's attendance led to any criminal actions. (§86) The Working Group also notes the failure on behalf of the Government to show how the mere use of such a regular communication application as ByLock by Mr. Yayman constituted an illegal criminal activity. (§87) In fact, it appears to the Working Group that even if Mr. Yayman did use the ByLock application, an allegation that he denies, it would have merely constituted exercise of his right to freedom of opinion and freedom of expression. (para.88)</p>

