THE IMPARTIALITY, INDEPENDENCE, AND EFFECTIVENESS OF THE CONSTITUTIONAL COURT IN SENSITIVE APPLICATIONS

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PREFACE

The right to a fair trial, stipulated in Article 6 of the European Convention on Human Rights (ECHR), is a fundamental principle that guarantees that individuals have their cases heard fairly before an independent and impartial tribunal established by law. This principle requires not only that justice be actually served but also that it be visible to the public, as public trust in the judiciary depends on this visibility. Article 13 of the ECHR, on the other hand, grants individuals the right to an effective remedy before a national authority in the event of violations of the rights and freedoms recognized in the Convention. The Constitutional Court (AYM) plays a key role in protecting fundamental rights and freedoms in Türkiye and is considered an important domestic remedy for redressing violations of these rights through the individual application mechanism. However, in the period following July 15, 2016, particularly in cases related to the Gülen movement, serious criticism has emerged that the AYM is not only failing to function as an impartial and independent court, but that individual application has ceased to be an effective legal remedy. The political ties of the majority of the Constitutional Court members to the government, their prejudiced attitudes towards the Gülen movement, their accusatory rhetoric, and their direct actions such as profiling cast doubt on the objective impartiality and independence of the court and threaten the principle of a fair trial.

Furthermore, the Constitutional Court's justification for unlawful practices in these cases, its deliberate delays in filing applications, and its failure to address systemic problems identified by the European Court of Human Rights (ECtHR) in its decisions such as Yalçınkaya v. Turkey, undermine the effectiveness of individual application. This study provides a detailed analysis of the Constitutional Court's lack of impartiality and independence through the specific actions, statements, and past activities and duties of its members. It also assesses why individual application to the Constitutional Court has ceased to be an effective legal remedy in light of ECtHR precedents and judicial practice in Türkiye. The Constitutional Court's current structure and practices seriously undermine both the visibility of justice and the protection of individuals' fundamental rights, compelling the ECtHR to reassess its effectiveness.

I. IS THE CONSTITUTIONAL COURT AN IMPARTIAL AND INDEPENDENT COURT IN APPLICATIONS MADE WITHIN THE SCOPE OF SENSITIVE CASES?

A. PRINCIPLE OF AN INDEPENDENT AND IMPARTIAL COURT WITHIN THE SCOPE OF THE RIGHT TO A FAIR TRIAL

1. Introduction

The right to a fair trial is a fundamental right guaranteed by Article 6 of the ECHR and is an indispensable element of democratic societies. This right aims to protect individuals in criminal and civil trials and guarantees that everyone has a fair and public trial by an independent and impartial tribunal established by law within a reasonable time. At the core of this framework lies the principle of *an "independent and impartial tribunal*." Independence requires that the judge be protected from all external influences, which may arise from the executive, legislative, and the parties, while impartiality requires that they maintain an unbiased attitude. The ECtHR assesses independence through criteria such as the method of appointment, guarantees of tenure, protection against external influences, and both actual and apparent separation from the executive; while impartiality is assessed through subjective (the judge's freedom from personal bias) and objective (the lack of suspicion in a reasonable observer) tests. [1]The emphasis that justice should not only be achieved but also visible is the foundation of public trust in judiciary.[2] This principle: It is valid for classical courts as well as administrative bodies of a judicial nature, disciplinary boards and military courts.

2. Elements of Independence and Impartiality

Judicial independence and impartiality are cornerstones of the right to a fair trial and are meticulously addressed by the ECtHR. **Independence** requires that courts be institutionally and functionally separate from the executive and legislative branches. In this context, the ECtHR considers judges' appointment and promotion procedures, tenure and security of tenure, dismissal mechanisms, and safeguards against external pressures. The chain of command and promotion/dismissal processes in military courts, in particular, are seen as

1 Campbell and Fell v. United Kingdom, Case No: 7819/77 7878/77, 28/06/1984, § 78; Findlay v. United Kingdom, Case No: 22107/93, 25/2/1997, § 73.

2 Morice v. France, Grand Chamber, 29369/10, 23/04/2015, § 75; Piersack v. Belgium, 8692/79, 01/10/1982, § 30; De Cubber v. Belgium, App.No: 9186/80, 26/10/1984.

problematic in terms of judges' independence, leaving them vulnerable to hierarchical influence.

Impartiality, on the other hand, is considered in both its subjective and objective dimensions. Subjective impartiality refers to a judge's freedom from personal bias; objective impartiality refers to the judge's past roles, relationships, or public statements, which would not raise a legitimate doubt about his or her impartiality in *a "reasonable observer."* The ECtHR's *"legitimate doubt"* test examines whether the judge's previous duties related to the case, decisions made in the same case, relationships with the parties and the matter, or public statements have impaired his or her impartiality. Bad faith is not required for this assessment; even an apparent violation may be sufficient.

For example, if a judge, as a criminal court of peace, issues a detention order in one case and then issues a ruling on the merits of the same case in another court, this creates the impression that the judge has an opinion on the case, thus undermining the appearance of impartiality.[3] Similarly, a judge personally adjudicating a defamation claim against them is incompatible with objective impartiality due to a conflict of interest.[4] Furthermore, a judge's personal or professional ties (enmity, closeness, etc.) to the parties or the subject matter of the case may also raise legitimate concerns.[5]

The ECtHR considers both institutional and individual factors when assessing judicial independence and impartiality. Judges' appointment processes, previous positions, public statements, and their connection to the case can all influence the appearance of impartiality. In particular, the ECtHR considers judges' expression of biased opinions regarding the case as a violation of objective impartiality. For example, a judge's negative or prejudicial statements about an organization, structure, group, or case can cast doubt on the public's impartiality, leading to the perception that the judge may not be objective in their decision-making process. In assessing such situations, the ECtHR considers not only the judge's actual bias but also

3 Hauschildt v. Denmark, App.No: 10486/83, 24/5/1989, §46-52.
4 Kyprianou v. Cyprus, Grand Chamber, Application No: 73797/01, 15/12/2005, §118-127.
5 Micallef v. Malta, Grand Chamber, Application No: 17056/06, 15/10/2009, §93-98.

public perception. Therefore, judges' public statements regarding the case can compromise their impartiality and threaten the right to a fair trial.

The ECtHR's approach to this matter requires that judicial processes not only be fair but also be perceived as fair. For example, a judge's involvement in both the investigation and decision-making processes in the same case creates a negative perception of their impartiality in the public eye and violates the right to a fair trial. [6]Similarly, a judge's previous experience as a prosecutor in the case or their expression of opinion on the same material facts may violate objective impartiality.[7] Judges' prejudicial public statements regarding the case also undermine impartiality; for example, a judge's negative views on the case create the perception that they are unable to render an impartial decision and violate the right to a fair trial.[8] Furthermore, a judge's previous experience as a prosecutor and their public expression of opinions on the case undermines objective impartiality because this creates the impression that the judge is biased.[9] In assessing such situations, the ECtHR considers the content, context, and public impact of the judge's statements. Compensatory safeguards at trial (for example, the judge's withdrawal from the case or the ability to appeal the decision) may affect the severity of the violation. However, if the judge's previous actions or statements raise serious doubts about their impartiality in the eyes of a reasonable observer, this is generally considered a violation of the right to a fair trial.

3. Institutional Independence and Role Conflicts

The ECtHR is highly sensitive to the dependence of judicial bodies on the executive branch or their susceptibility to executive influence. For example, the presence of military judges in Turkey's state security courts has negatively impacted the courts' independence and impartiality.[10] The same individual assuming both administrative and judicial functions can create a conflict of institutional roles; a clear separation of personal and jurisdictional issues is

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6 De Cubber v. Belgium, Case No: 9186/80, 26/10/1984, §24-30.

7 Piersack v. Belgium, App.No: 8692/79, 1/10/1982, §30-32.

8 Morice v. France, Grand Chamber, Application No: 29369/10, 23/4/2015, §73-89.

9 Ramos Nunes de Carvalho e Sá v. Portugal, Grand Chamber, Application No: 55391/13 et al., 6/11/2018, §144-153.

10 İncal v. Turkey, Application No: 22678/93, 9 June 1998, §65-72; Çıraklar v. Turkey, Application No: 19601/92, 28 October 1998, §38-40; Öcalan v. Turkey, Grand Chamber, Application No: 46221/99, 12 May 2005, §112-118

necessary.[11] Furthermore, combining legislative or administrative duties with judicial duties exposes judges to political influence and undermines the appearance of impartiality.[12] The principle of *a "court established by law"* also encompasses the lawful execution of appointments. Serious irregularities in the appointment of judges may prevent a court from being considered *"legally established*." The ECtHR has developed a three-stage threshold test for this purpose: (i) a flagrant violation of domestic law, (ii) the violation's impact on the fundamental principles of the appointment process and the judiciary's independent exercise of power, and (iii) the national courts' effective review and remediation of the violation. Applying this test, the Court found a violation due to serious irregularities, such as an unjustified deviation from the candidate evaluation proposal and Parliament's failure to hold a separate, proper vote.[13] The ECtHR has applied this approach in subsequent case law to the Polish context, holding that election/appointment irregularities within the constitutional court and the supreme court undermined the court's *"lawfully established" status.*

4. Disciplinary Processes, Scope and Remedial Mechanisms

Disciplinary processes against judges and prosecutors are critical to protecting judicial independence and impartiality. The ECtHR requires these processes to be conducted in accordance with the right to a fair trial. The independence and impartiality of decision-making bodies in disciplinary proceedings are fundamental requirements. Failure to do so will violate the right to a fair trial. When assessing the independence of disciplinary authorities, the ECtHR examines their independence from the executive branch or other external influences, the legality of their members' appointment processes, their term of office, and their safeguards against external pressures. For example, in disciplinary investigations against judges and prosecutors, the fact that the decision-making body is subordinate to the executive branch or is vulnerable to political influence creates systemic problems of independence. This not only

11 Procola v. Luxembourg, Application No. 14570/89, 28 September 1995, §44-46; Kleyn and Others v. the Netherlands, Grand Chamber, Application No. 39343/98 and others, 6 May 2003, §192-200.

12 McGonnell v. United Kingdom, Application No. 28488/95, 8 February 2000, §51-57.

13 Guðmundur Andri Ástráðsson v. Iceland, Grand Chamber, Application No. 26374/18, 1 December 2020, §207-234; Xero Flor w Polsce sp. z oov Poland, Application No. 4907/18, 7 May 2021, §243-252; Reczkowicz v. Poland, Application No. 43447/19, 22 July 2021, §263-279.

undermines the credibility of the disciplinary process but can also lead to a violation of judicial safeguards.

In this context, the ECtHR stated that the disciplinary process against a judge in Ukraine revealed serious problems with the independence of the decision-making body, which violated the right to a fair trial.[14] The ECtHR emphasizes that in such cases, disciplinary processes must comply with judicial safeguards not only in their form but also in their content and implementation .

Article 6 of the ECHR applies not only to criminal or merits cases, but also to processes affecting civil rights and obligations. In this context, interim measures applied in disciplinary proceedings against judges and prosecutors (for example, sanctions such as suspension or salary deductions) are subject to the safeguards of Article 6 by the ECtHR because they directly affect the civil rights of individuals. Such measures must be decided by an independent and impartial body, in accordance with the right to a fair trial. In one case, the ECtHR stated that a decision to temporarily suspend a judge from office must be considered within the scope of Article 6 because it affects civil rights.[15] This decision clearly established that interim measures applied in disciplinary proceedings are subject to judicial safeguards because they may affect the professional status, income, or reputation of individuals. The ECtHR stated that in such proceedings, the parties' rights of defense must be protected, decisions must be reasoned, and the process must be conducted in a transparent manner.

In disciplinary proceedings, flaws in the first instance body's independence or impartiality identified can be remedied by an effective higher review mechanism. However, the ECtHR has stated that this remedial mechanism must be comprehensive, independent, and effective. The higher review body must be able to review the first instance decision not only formally but also on its merits. This review must include the legality of the decision, its reasons, and the proportionality of the sanctions imposed. The ECtHR has stated that a lack of impartiality by the first instance body can be remedied by an effective appeals process, but the appeal body must conduct an independent and comprehensive review.[16] However, if the

14 Oleksandr Volkov v. Ukraine, App.No: 21722/11, 9/1/2013, §103-117.
15 Micallef v. Malta, Grand Chamber, Application No: 17056/06, 15/10/2009, §86.
16 Bryan v. United Kingdom, App.No: 19178/91, 22/11/1995, §44-47.

higher review body has only limited review powers or is subordinate to the executive branch, this remedial mechanism is considered inadequate. In these cases, the ECtHR considers the entire disciplinary process to be contrary to the right to a fair trial. For example, it has considered the failure of the appeal body to adequately review decisions or its lack of independence in a judge's disciplinary proceedings a violation of the right to a fair trial.[17] This approach is essential for both protecting individual rights and maintaining public confidence in the judicial system.

B. THE PRINCIPLE OF THE IMPARTIAL-INDEPENDENT COURT AND THE CONSTITUTIONAL COURT

The Constitutional Court, expected to play a significant role in protecting fundamental rights and freedoms, is expected to act in accordance with the principle of an impartial and independent tribunal, as stipulated in Article 6 of the ECHR. A fundamental element of its constitutional oversight mission is that it adheres to the principle of an impartial and independent tribunal. However, as discussed in detail below, there are serious grounds for doubt that the 11 members of the Constitutional Court will not be able to act impartially and independently in applications submitted within the scope of politically sensitive trials. These concerns revolve around their past political engagements, rhetoric supporting state policies, prejudicial attitudes toward the Gülen movement, and direct actions such as profiling. These members' close ties to the government, their statements that broadly accuse the Gülen movement, and their relationships with the executive branch threaten individuals' right to a fair trial and undermine the credibility of the Constitutional Court as an independent judicial body. According to the *"reasonable observer"* criterion emphasized in Article 6 of the ECHR, the conduct of these members not only obstructs the delivery of justice but also its visibility. Therefore, because these individuals represent the majority of the court, it is clear that the Constitutional Court is not an impartial and independent court in cases related to religious communities. This section will separately examine the circumstances and statements of each member that cast doubt on their impartiality.

17 Oleksandr Volkov v. Ukraine, §130.

1. Kadir Ozkaya

Kadir Özkaya, President of the Constitutional Court, was appointed as a member of the Constitutional Court by President Recep Tayyip Erdoğan on 18 December 2014, was elected as the Deputy President of the Constitutional Court on 12 March 2020, and as the President by the Constitutional Court General Assembly on 21 March 2024.

Özkaya's speech at the Eighth High-Level Meeting of the Presidents of African Constitutional Courts, Supreme Courts, and Constitutional Councils, held in Cairo, Egypt, on **January 26-30, 2025,** demonstrates his lack of impartiality in cases related to the Gülen Movement. In his speech, Özkaya stated: *"The last state of emergency regime in our country was implemented following the coup attempt on July 15, 2016.* ***The treacherous terrorist organization known as FETÖ attempted a coup with a heinous attack against our nation and state on July 15, 2016. This attempt was thwarted by the resolute stance and resistance of our nation, led by our state institutions. Furthermore, the treacherous organization's years of infiltration into public institutions, its atypical structure, and its crypto tactics necessitated a much more comprehensive and meticulous fight.***"

In this context, on July 20, 2016, using the authority granted by the Constitution, the government *declared a state of emergency throughout the country within the scope of the State of Emergency Law, effective July 21, 2016, and ending on July 18, 2018. With the declaration of the state of emergency,* ***extraordinary measures were implemented to eliminate the existing threat and eliminate the organization from the state.***

As I stated above, these measures were taken and implemented in accordance with constitutional principles and fundamentals. ***All institutions of our state, particularly the executive, legislative, and judicial institutions, performed the functions assigned to them by the Constitution and laws in accordance with the Constitution and laws.*** *Although the decrees establishing the state of emergency measures were not subject to judicial review as decrees, they were subject to constitutional review after they were submitted to Parliament for approval and enacted into law. Therefore, the state of emergency measures were established within a legal framework and are subject to judicial review.*[18]

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18 https://www.anayasa.gov.tr/tr/haberler/faaliyetler/anayasa-mahkemesi-baskani-kadir-ozkaya-afrika-anayasa-mahkemeleri-ve-yuksek-mahkemeleri-ile-anayasa-konseyleri-baskanlari-toplantisi-na-katildi/

On July 15, 2025, on the official website of the Constitutional Court In the post titled *"Constitutional Court President Kadir Özkaya's Message for July 15 Democracy and National Unity Day," it was stated: "July 15 is the name of the heroic epic written by our nation by reinforcing its unwavering belief in its independence and freedom with love for the country.*

The heroic stance our nation displayed that night has taken its place in our glorious history as a milestone. By thwarting the treacherous coup attempt with great courage, our nation demonstrated its commitment to democracy with the utmost determination, once again demonstrating to the entire world the powerful will of our national unity and solidarity.

Our Constitutional Court, drawing strength from our beloved nation, strongly rejected this unlawful attempt to threaten the constitutional order and the national will. In a statement issued in the early moments of the coup attempt, it declared its support for the democratic state governed by the rule of law. As the Constitutional Court, we resolutely continue our duty to protect and strengthen values such as justice, the rule of law, and fundamental rights and freedoms, in light of the principle of a democratic state governed by the rule of law enshrined in the Constitution.

On this occasion, on the anniversary of July 15th, I commemorate with mercy our cherished martyrs who sacrificed their lives for the peace of our nation and the survival of our state, and I offer my gratitude and appreciation to our heroic veterans. I congratulate our noble nation on July 15th, Democracy and National Unity Day.[19]

Kadir ÖZKAYA's characterization of the Gülen movement as *a "treacherous terrorist organization"* at a high-level meeting in Cairo , his adoption of the discourse of *a "heinous attack against the nation and the state,"* and his use of accusatory terms such as *"crypto tactics"* and *"infiltration of public institutions"* raise serious doubts regarding judicial objectivity and the obligation to avoid bias. This language, by establishing a framework that confirms the state's official position and conveys disputed facts as definitive judgments, can lead to the weakening of the presumption of innocence for individuals affiliated with the movement. In light of the *"reasonable observer"* standard in Article 6 of the ECHR, it is clear that generalizing and accusatory discourse of this scale undermines the need for justice not only to be achieved but

19 https://www.anayasa.gov.tr/tr/haberler/faaliyetler/anayasa-mahkemesi-baskani-kadir-ozkaya-nin-15-temmuz-demokrasi-ve-mill%C3%AE-birlik-gunu-mesaji/

also to be visible. This discourse was also repeated in the *"July 15 Democracy and National Unity Day Message"* published on the Constitutional Court's official website on July 15, 2025. In the statement in question, July 15th was exalted as a *"heroic epic,"* emphasizing that "the treacherous coup attempt was thwarted by the nation's resolute stance," and reminding that the Court declared that it *"sided with the democratic state governed by the rule of law*." This official message carries a tone that confirms the executive's security-oriented narrative at the institutional level.

Özkaya's categorical legitimization of the state of emergency practices as a process *"in accordance with constitutional principles and fundamentals"* and *"open to judicial review"* contradicts the perception of institutional impartiality, given that the Constitutional Court represents an authority responsible for overseeing the state of emergency regulations and their impact on fundamental rights. This stance, while suggesting an engagement with the state's argument, raises reasonable doubts about its capacity to provide a fact-based, unbiased, and personalized assessment of individual applications concerning the community. Indeed, repeating this rhetoric on an international platform from a position representing the impartiality of the judicial body is likely to undermine public confidence in the Constitutional Court's independence. Similarly, the political-epic discourse established by emphasizing *"our nation's heroic stance"* and *"martyrs and veterans"* in the official message issued by the President of the Constitutional Court on July 15, 2025, reinforces the perception that the Court's institutional communications are aligned with an executive-centric narrative.

In the context of tens of thousands of individual applications related to the Gülen movement being intertwined with political dynamics, adopting language that endorses the executive's security-focused narrative, rather than exercising judicial restraint, undermines judicial impartiality. Consequently, the categorical and prejudicial statements used in the Cairo speech erode reasonable confidence in Özkaya's ability to provide an objective assessment of Gülen-related cases; they undermine the Constitutional Court's constitutional oversight mission; and they conflict with the guarantees of the right to a fair trial. Consequently, the appearance of an independent and impartial trial in these cases has been seriously damaged.

2. İrfan Fidan

While serving as Istanbul Chief Public Prosecutor, İrfan Fidan was elected to the Court of Cassation by the General Assembly of the Council of Judges and Prosecutors (HSK) on November 27, 2020, and appointed to the Constitutional Court by President Recep Tayyip Erdoğan on January 23, 2021. However, Fidan's nomination to the Constitutional Court just 27 days after his appointment attracted attention as an unusually rapid process. This speed led to criticism that Fidan was nominated without having served on the Court of Cassation and without sufficient seniority. Fidan's process as a Constitutional Court member was characterized by the public and legal circles as a government operation and perceived as political interference.[20]

Fidan's handling of sensitive cases for the government, such as those involving Can Dündar, Erdem Gül, the Gezi protests, and Osman Kavala during his tenure as Istanbul Chief Public Prosecutor, led to his appointment being interpreted as an effort to increase political control over the judiciary. In 2021, a news report alleged that Fidan was planning to become the Constitutional Court president and that the process was being expedited. Furthermore, it was alleged that the Ministry of Justice phoned some members of the Court of Cassation during the voting process and encouraged them to vote in Fidan's favor. These allegations not only cast doubt on judicial independence but also led to Fidan's association with political loyalty. Fidan's role in the post-Gülenist investigations (Selam Tevhid, MİT Trucks, Sledgehammer) reinforced the perception that the appointment process served a political strategy. Allegations that then-Constitutional Court President Zühtü Arslan ran for reelection under pressure and that President Erdoğan invited Constitutional Court members to the Palace to lobby for Fidan raised serious questions about the transparency of the process.[21]

İrfan Fidan has also made statements that undermine his impartiality in cases related to the Gülen movement. In a speech delivered **on September 5, 2017,** as Istanbul Chief Public Prosecutor, he said: *"FETÖ members, under the orders of the organization's leader, Fetullah Gülen, not only infiltrated every capillary of the state but also ruthlessly exploited public resources to eliminate*

20 https://bianet.org/haber/irfan-fidan-in-aym-uyeligi-evrenin-yaratilisindan-hizli-238258

21 https://haber.sol.org.tr/haber/aymde-iktidar-operasyonu-yuksek-mahkemenin-basina-gecirilmek-istenen-irfan-fidan-kimdir

state institutions and individuals they perceived as rivals and who might have stood in their way in order to achieve their desired government. The process the country has experienced to date and the facts that have emerged have clearly demonstrated this: whoever carried out the July 15 coup attempt is also responsible for the December 17-25 coup attempt. We have witnessed that the December 17-25 coup attempt was aimed at forcing the resignation of the 61st Government of the Republic of Turkey by putting it under national and international pressure."

Starting on the morning of December 17, 2013, attempts were made to manipulate the public opinion with news reports disseminated through press and broadcasting organizations under the guise of a "major corruption and bribery operation." On the same date, the Istanbul Police Department's Organized and Financial Crimes Branch, along with three separate investigation files apparently led by the same prosecutor, transformed the operation into a separate operation. False reports were circulated claiming that "three ministers' children were involved in bribery schemes, and four ministers were included in the case." These included the publication of search footage, intercepted communications, and interviews on media and social media, the publication of the detention list on December 25th, the naming of the then-Prime Minister's son, and the attempt to portray the Prime Minister as having ties to terrorism. It is clear that information and documents from the investigation file labeled the Salam/Tawhid Jerusalem Army Terrorist Organization were leaked to the press, thereby attempting to use these as a tool of public pressure on the government.

The irregularities discovered during the December 17/25 investigations revealed that FETÖ had established itself within the judiciary and police force, operating within a hierarchical structure outside the legal hierarchy. It is also a fact that this organization, which masquerades as a religious community, also pressures those who criticize it by using its own members within the judiciary and police force. The Cüppeli Ahmet Hoca Case, as it is commonly known, the Match-Fixing Case, the Tahşiye Case, and the Military Espionage Case are just a few examples. The process the country has experienced to date and the facts that have emerged have clearly demonstrated this.

"The structure and aims of FETO will be understood through the process that has taken place from February 7, 2012, to the present day, the operations that FETO elements attempted to carry out between December 17-25, the MIT trucks and other actions. [22]

Fidan said the following in an interview conducted with him **on July 12, 2019;** *I came to Istanbul from Hatay in 2010. While serving as the Şişli Prosecutor, the courthouses were merged in 2011, and I was transferred to the Istanbul Courthouse in Çağlayan, where I currently serve. While serving there, on February 7, 2012, the incident occurred in which MIT Undersecretary Hakan Fidan was summoned to testify. This was FETÖ's first serious operation against the Republic of Turkey. During that period, following the closure of the Specially Authorized Courts in Beşiktaş, which were densely populated by organization members, terrorism prosecutors authorized under Article 10 of the Anti-Terrorism Code (TMK) were established throughout Turkey. After February 7, while I was working at the Forgery and Smuggling Bureau, I was appointed by the HSK as a terrorism prosecutor under Article 10 of the TMK. Even after the operation targeting the state on February 7, most of the 22 prosecutors assigned to the Istanbul Courthouse were identified as members of FETÖ. Most of those 22 prosecutors are either on the run or under arrest.*

The December 17 judicial coup attempt was an international operation targeting the Republic of Turkey. FETÖ was the domestic subcontractor of this operation. I can say this with confidence. This operation was carried out on behalf of foreign states and intelligence agencies. As someone who prepared the indictment against so-called police officers, I can say this. It wasn't just directed at Turkey; the events in Brazil clearly demonstrate this. December 17, 2013, also marks the date when the Republic of Turkey began its fight against and reckoning with the organization. This reckoning was attempted with a small number of people, a small number of prosecutors (unfortunately, I must say this), and only with the support of the nation. It was attempted with limited resources, staff, and personnel. Fortunately, the organization that subsequently launched the December 25th file during this process failed.

FETÖ then launched an operation against MIT trucks in Adana. Despite the resistance of state officials and the support of the public, the organization failed again. I launched an investigation against these individuals for espionage. Detention orders were issued for those responsible for this heinous and

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22 https://www.sabah.com.tr/gundem/2017/09/05/istanbul-cumhuriyet-bassavci-fidan-feto-siyasi-destek-arayisinda

despicable act. This operation, targeting the organization members who stopped the MIT trucks, was the first operation targeting FETÖ's branch within the armed forces. The MIT trucks were a major attack on the state. The first detentions were made regarding FETÖ's military wing. Generals and high-ranking officers were arrested. We undertook a challenging process.

One of the key milestones in the process leading up to the July 15 coup attempt was the investigation we conducted into the key police officers who carried out this act, known as the Selam Tevhid conspiracy, on July 22, 2014. July 22 marks the date of the first detention linked to FETÖ. The reason for the detention is even more significant. We charged these individuals with espionage. They attempted to obtain the state's most confidential information, wiretapped the phones of high-ranking officials, and stored these conversations.

December 2014 is a crucial date in the struggle. As the Istanbul Chief Public Prosecutor's Office, we issued a court order designating this organization as a terrorist organization. The case, known as the Tahşiye Conspiracy, is very simple. Hand grenades, guns, and bullets were planted in the homes of elderly men at night. FETÖ declared this organization, which they saw as an opposition, a terrorist organization through their own conspiracy. They used the hand grenades, guns, and bullets themselves in this action. For this reason, we detained the individuals involved in the media and police departments involved in this conspiracy and, for the first time, had the organization registered as a terrorist organization by the court.

We first requested an arrest warrant for the organization's leader, terrorist leader Fetullah Gülen, and obtained it from the court. We issued the decision, which declared this organization a terrorist organization, in collaboration with Hasan Yılmaz, the Istanbul Deputy Chief Public Prosecutor currently in charge of the terrorism bureau. Hasan Yılmaz's efforts and dedication are invaluable to me. He continues to contribute to this effort alongside his fellow prosecutors. On behalf of the Chief Public Prosecutor's Office, I extend my gratitude.

In January 2016, I was appointed Deputy Chief Prosecutor responsible for the Terrorism Bureau. The period between this date and July 15th was a critical one. The explosions carried out in Sultanahmet, Taksim, and Atatürk Airport by various terrorist organizations (ISIS, PKK, DHKP-C) were intended to prepare the Republic of Turkey and its people for the July 15th coup attempt. By creating chaos and unrest, they attempted to engrave the perception that there was no alternative but a military takeover in the nation's memory.

One of the most critical moments on July 15th was when our President, Recep Tayyip Erdoğan, went on television to declare opposition to the coup and this vile attempt, and called upon the nation to take to the streets. This was a crucial moment. As someone who has been fighting this organization for many years, I can easily attest to this call. Following Erdoğan's call, the state began to regain control together with the people. Occupied territories began to be recaptured one by one, with the support of the people. The President's arrival in Istanbul further strengthened the nation's resistance.

Despite the February 7, December 17-25 judicial coup attempts, and the ongoing process clearly revealing the vile nature of this organization, its unlawfulness, and its effectiveness at the behest of foreign intelligence services, our loneliness in this struggle, leading up to July 15th, is a matter that saddens me. July 15th is significant in that it increased the number of those fighting. The martyrdom of 251 of our citizens revealed their recklessness.

Turgut Aslan, Head of the Ankara Police Department's Counterterrorism (TEM) Department, is a dear friend and I worked closely with him until July 15th. They tried to martyr him. He was one of their primary targets. I believe we would be executed if captured. I keep Turgut Aslan's remains in my office in the Chief Public Prosecutor's Office. There are also individuals they identified after attempting the President's life. Turgut Aslan was one of these individuals. Although the coup attempt was understood to have failed, they were unable to contain their resentment. The reason for the attempted martyrdom of Turgut Aslan is this: During our time together, Turgut Aslan wrote and signed the statement "This organization is a terrorist organization" in the report we requested from the General Directorate of Security in the Tahşiye file. He was martyred alongside his close guard, Hasan Gülhan.

My comment on the July 15th coup attempt is this: Not all members of the organization embedded within the Turkish Armed Forces participated in the coup attempt; some did. The number of soldiers prosecuted in the July 15th trials is known. More than this number were serving within the Turkish Armed Forces. In fact, investigations into these individuals for membership in the organization are ongoing by the Istanbul Chief Public Prosecutor's Office and other chief prosecutors' offices. This is the organization's strategy. The organization kept some of its forces in reserve as reserve forces. It did not

deploy some of them for the coup attempt, keeping them in the background. Our investigations into these individuals who remained in the background are also ongoing.[23]

Fidan made another statement **on December 13, 2020**, in response to allegations of corruption and bribery, as well as a medical report and complaint alleging domestic violence against his wife. He said: *"FETÖ's discrediting operation is underway before my Constitutional Court candidacy. Criminal complaints are being filed against those who spread lies. I will file a lawsuit for compensation."*[24]

In his speech as Istanbul Chief Public Prosecutor **on September 5, 2017, Fidan's portrayal of the Gülen movement as** *a "subcontractor for the enemies of the Republic of Turkey,"* a structure that "*fabricates false dreams*," and "*infiltrates the capillaries of the state*" raises serious doubts about his capacity to conduct objective and individualized assessments of community-related cases. This categorical and accusatory rhetoric risks making group affiliation the sole determining criterion, incompatible with the requirements of the principle of individual criminal responsibility. Furthermore, his assessment of the allegations against him in his statement dated December 13, 2020, as *a "discrediting operation by FETÖ"* demonstrates his biased approach by automatically linking personal allegations to an organizational conspiracy narrative. Fidan's characterization of the December 17/25 process as a *"judicial coup"* during his time as chief prosecutor, his definition of this process as an international operation in the same speech, and his systematic reference to the community as an *"organization"* demonstrate that he has permanently adopted a security-oriented ideology.

Fidan's statements regarding sensitive government files, such as the Selam-Tevhid, MIT trucks, and Balyoz cases, during his tenure as chief prosecutor, including his labeling of the December 17-25 process as *a "judicial coup"* and his assertion that *"public opinion was manipulated with false news*," reveal the adoption of a security-centric narrative rather than an evidence-based judicial assessment. This obscures the need for a person-centered and fact-focused examination of applications and undermines the appearance of impartiality in the specific case. Indeed, Fidan linked the processes carried out since February 7, 2012, to

23 https://www.sabah.com.tr/gundem/2019/07/12/istanbuldaki-saldirilar-15-temmuza-hazirlikti

24 https://www.evrensel.net/haber/421039/irfan-fidan-kadina-siddet-ve-yolsuzluk-iddialari-icin-feto-operasyonu-dedi

allegations of "*espionage*, *obtaining the state's most confidential information,* and *connections with foreign intelligence."* In this context, he presented the MIT truck investigations as *"the first operation targeting the organization's military wing"* and associated the arrest/detention measures against relevant actors with the rhetoric of *"confirming the organization's terrorist nature*." This language and framing reinforce the belief that he will continue a similar approach in the higher judiciary.

On the other hand, Fidan's appointment to the Constitutional Court just 27 days after his term as a member of the Court of Cassation, and the resulting controversy surrounding this process, raise reasonable doubts about the compatibility of his career progression with institutional practices and perceived merit. These doubts negatively impact the outlook on judicial independence and impartiality, seriously undermining the expectation that Fidan would be able to conduct an unbiased assessment of individual applications related to the Gülen movement. The unusually rapid pace of the process, the debates over actual duties and seniority within the Court of Cassation, allegations of schemes targeting the Constitutional Court presidency, and allegations of backstage/influence regarding the voting process have led to the public's association of the appointment with political interference, creating an additional perception problem that seemingly undermines the standard of impartiality.

In conclusion, Fidan's generalizing and criminalizing language during his time as chief prosecutor, his security-focused statements, and the perceived problems created by the expedited appointment process raise legitimate doubts about his ability to act impartially in cases related to Gülen movements. This situation has the potential to have negative consequences for the Constitutional Court's institutional credibility and the guarantee of the right to a fair trial. Therefore, it would not be inaccurate to say that the appearance of judicial independence and impartiality has been seriously damaged in these cases.

3. Yılmaz Akçil

Yılmaz Akçil was elected to the Council of State by the Council of Judges and Prosecutors in 2011, appointed President of the Justice Academy in 2014, and served as President of the 10th Chamber of the Council of State since 2018. The 10th Chamber of the Council of State, chaired by Akçil, issued a decision regarding the Hagia Sophia becoming a museum, annulling the Council of Ministers' decision of 24 November 1934 that had designated Hagia Sophia a

museum and ordering its reopening for worship. Similarly, the decision to terminate the Istanbul Convention with the President's signature was deemed lawful by the 10th Chamber of the Council of State, chaired by Akçil. Akçil was appointed to the Constitutional Court by President Recep Tayyip Erdoğan on January 31, 2024.[25]

"New Generation Terror: FETO's Participation in Analysis Meeting"

Yılmaz Akçil participated in the "New Generation Terror: Analysis of FETO" workshop organized by the Police Academy Presidency in 2017, as the President of the Justice Academy.[26]

This workshop positioned the Gülen Movement as one of Turkey's most significant security, social, economic, and political threats, and examined allegations in detail, including its psychological control methods, radicalization processes, religious manipulation practices, recruitment in security and education sectors, economic financing mechanisms, state infiltration tactics, and legal-political strategies. The report defined the movement as an esoteric cult, highlighted its leader Fethullah Gülen's mystical leadership image (the Mahdi/Messiah analogy) and the construction of affiliation through the "bison" distinction. It argued that the members were subjected to psychological pressure/control in orphanages from the age of 12 or 13, radicalizing them through a cycle of reward and punishment.

The workshop also addressed the Gülen Movement's structure within the military, police, and judiciary, the July 15 coup attempt, and the December 17-25 conspiracies as *"infiltration* and *fraudulent methods of the state,"* analyzing its financial power through fundraising and commercial activities. In the legal battle, statements such as *"if there is suspicion, the state will benefit"* legitimized the convictions and dismissals by statutory decree. This report includes recommendations supporting the state's purge of the Gülen Movement (e.g., restricting religious organizations within the bureaucracy and preventing other groups from infiltrating vacant positions) and alleges that the movement is engaging in victimization propaganda.

25 https://t24.com.tr/haber/erdogan-danistay-in-ayasofya-ve-istanbul-sozlesmesi-kararlarina-imza-atan-yilmaz-akcil-i-aym-ye-atadi,1149608

26 https://drive.google.com/file/d/1t8iQg7pPU4MKOzDBHgonTyp1mY-UN62g/view

Akçil's participation in the workshop as the President of the Justice Academy is seen as a strong reason for suspicion that he, as a member of the Constitutional Court, will be unable to be impartial and independent in cases related to the Gülen Movement. The workshop described the movement as *an "esoteric cult"* and *"Turkey's greatest security threat,*" presented its leader, Fethullah Gülen, as a mystical figure, and alleged that the movement engaged in psychological manipulation, recruited cadres, orchestrated the July 15 coup attempt, infiltrated the state, and employed fraudulent methods. His active participation in this workshop creates the impression that he embraces these accusatory and biased arguments and suggests that he has internalized the state's official narrative against the movement. This participation seriously undermines Akçil's ability to maintain an objective and balanced stance when evaluating individual applications related to the movement and profoundly undermines confidence in his impartiality. Considering that decisions in a high judicial body such as the Constitutional Court must be made solely based on evidence and free from bias, Akçil's role poses a significant risk in terms of the obligation of impartiality.

Akçil's participation in the workshop demonstrates his position in support of the state's official policies against the Gülen movement. This reinforces the perception that Akçil may be influenced by the views apparently adopted at the workshop when deciding on Gülen-related cases at the Constitutional Court and may adopt an approach aligned with state policies. The workshop report contains suggestions that the Gülen movement is engaging in *"victimhood propaganda"* and that *"if there is doubt, the state will benefit,"* which are likely to legitimize the dismissals and convictions issued by statutory decrees. The fact that Akçil is understood to have contributed to these views raises serious questions about his independence and impartiality. This suspicion raises concerns that Akçil will adopt a biased approach in favor of the state when evaluating allegations of rights violations related to the Gülen movement and could undermine individuals' rights to a fair trial.

The workshop was designed as a platform for reflecting the views of participants in the report; Akçil's active participation in this process reinforces the impression that he endorsed the accusatory theses raised in the workshop. The allegations of socio-psychological manipulation and radicalization contained in the report raise the possibility that Akçil will adopt a harsh and prejudicial stance when evaluating applications concerning members or sympathizers of the community, potentially undermining the presumption of innocence.

Given that cases related to the Gülen Movement extend over a long period, Akçil's participation in the workshop stands out as a factor that hinders his ability to maintain an impartial stance in such cases.

In addition, while the names of the moderators and participants were included in the first edition of the workshop report published in 2017 (p. 47),[27] the list of moderators and participants was removed from the text in the second edition of the report published in 2019, which was a clear reflection of the reactions and especially the members of the judiciary who participated in the workshop.[28]

YENİ NESİL TEROR: FETÖ'NÜN ANALİZİ

Türkiye'ye karşı kullanmıştır. Bu konudaki iç ve dış etkenler çok iyi analiz edilmelidir.

18. FETÖ'nün dış bağlantılarının örgüt açısından ne kadar büyük bir öneme sahip olduğu bilinmekte ve görülmektedir. Bu bağlantıların ortaya çıkarılması da örgütün gücünü yitirmesi bakımından dikkate alınması gereken bir diğer mücadele alanı olarak karşımıza çıkmaktadır.

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YENİ NESİL TEROR: FETÖ'NÜN ANALİZİ

MODERATÖRLER

Yılmaz ÇOLAK	Polis Akademisi Başkanı
Ufuk AYHAN	Polis Akademisi Başkan Yrd.
Şafak Ertan ÇOMAKLI	Polis Akademisi Öğretim Üyesi

KATILIMCILAR

Abdullah ÇAVUŞOĞLU	YÖK Üyesi, Havelsan Yönetim Kurulu Başkanı
Abdullah TOLU	YMM, Maliyeci
Ali Alper SAYLAN	Cumhuriyet Savcısı
Cafer IŞIK	Hakim, Ceza Mahkemesi Başkanı
Deniz TURAN	Polis Akademisi Öğretim Üyesi
Feridun YILMAZ	Uludağ Üniversitesi Öğretim Üyesi
Hüseyin ARSLAN	Polis Akademisi Öğretim Üyesi
Mehmet Akif KİREÇÇİ	Bilkent Üniversitesi Öğretim Üyesi
Mehmet Levent YILMAZ	Polis Akademisi / Cumhurbaşkanlığı
Mustafa ÖZTÜRK	Marmara Üniversitesi Öğretim Üyesi
Necip Cem İŞÇİMEN	Cumhuriyet Başsavcı
Nusret YAZICI	Gıda Tarım ve Hayvancılık Bakanlığı Müsteşarı
Oğuz DİK	Hakim, Ceza Mahkemesi Başkanı
Orçun İMGA	Polis Akademisi Öğretim Üyesi
Orhan ATALAY	Ardahan Milletvekili, Öğretim Üyesi
Salih Zeki HAKLI	Polis Akademisi Öğretim Üyesi
Selfet GİRAY	Hakim, Ceza Mahkemesi Başkanı
Yasemin ABAYHAN	Hacettepe Üniversitesi Öğretim Üyesi
Yılmaz AKÇİL	Adalet Akademisi Başkanı
Yusuf TEKİN	Milli Eğitim Bakanlığı Müsteşarı
Yücel ERKMAN	Cumhuriyet Savcısı

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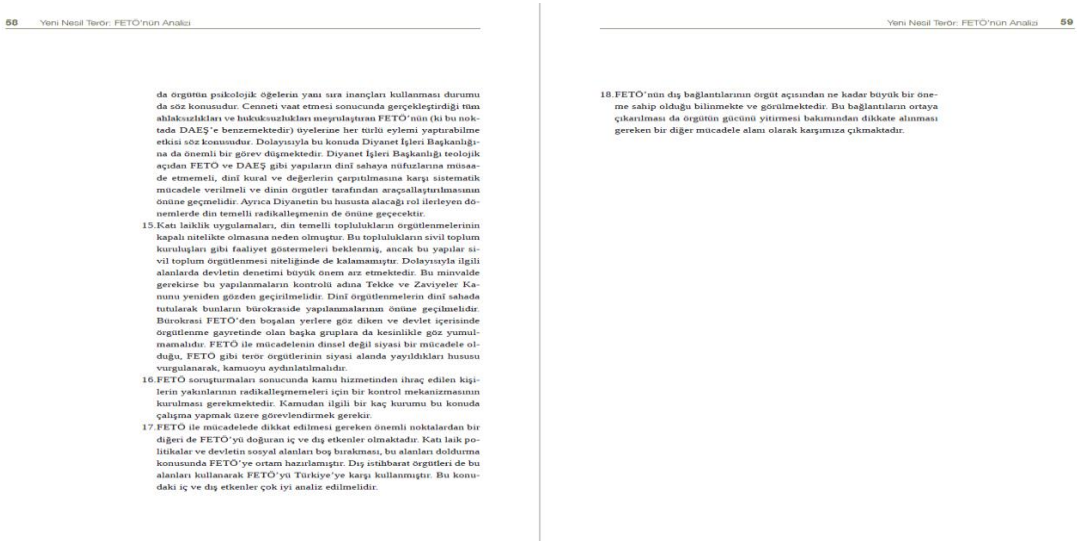
(First edition published in 2017)

27https://drive.google.com/file/d/1t8iQg7pPU4MKOzDBHgonTyp1mY-UN62g/view

28 https://cdn2.pa.edu.tr/Upload/Rapor/Dosya/yeni-nesil-teror-fetoe28099nun-analizi.pdf



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da örgütün psikolojik öğelerin yanı sıra inançları kullanması durumu da söz konusudur. Cenneti vaat etmesi sonucunda gerçekleştirdiği tüm ahlaksızlıkları ve hukuksuzlukları meşrulaştıran FETÖ'nün (ki bu noktada DAEŞ'e benzemektedir) üyelerine her türlü eylemi yaptırabilme etkisi söz konusudur. Dolayısıyla bu konuda Diyanet İşleri Başkanlığına da önemli bir görev düşmektedir. Diyanet İşleri Başkanlığı teolojik açıdan FETÖ ve DAEŞ gibi yapıların dinî sahaya nüfuzlarına müsaade etmemeli, dinî kural ve değerlerin çarpıtılmasına karşı sistematik mücadele verilmeli ve dinin örgütler tarafından araçsallaştırılmasının önüne geçmelidir. Ayrıca Diyanetin bu hususta alacağı rol ilerleyen dönemlerde din temelli radikalleşmenin de önüne geçecektir.

15. Katı laiklik uygulamaları, din temelli toplulukların örgütlenmelerinin kapalı nitelikte olmasına neden olmuştur. Bu toplulukların sivil toplum kuruluşları gibi faaliyet göstermeleri beklenmiş, ancak bu yapılar sivil toplum örgütlenmesi niteliğinde de kalamamıştır. Dolayısıyla ilgili alanlarda devletin denetimi büyük önem arz etmektedir. Bu minvalde gerekirse bu yapılanmaların kontrolü adına Tekke ve Zaviyeler Kanunu yeniden gözden geçirilmelidir. Dinî örgütlenmelerin dinî sahada tutularak bunların bürokraside yapılanmalarının önüne geçilmelidir. Bürokrasi FETÖ'den boşalan yerlere göz diken ve devlet içerisinde örgütlenme gayretinde olan başka gruplara da kesinlikle göz yumulmamalıdır. FETÖ ile mücadelenin dinsel değil siyasi bir mücadele olduğu, FETÖ gibi terör örgütlerinin siyasi alanda yayıldıkları hususu vurgulanarak, kamuoyu aydınlatılmalıdır.

16. FETÖ soruşturmaları sonucunda kamu hizmetinden ihraç edilen kişilerin yakınlarının radikalleşmemeleri için bir kontrol mekanizmasının kurulması gerekmektedir. Kamudan ilgili bir kaç kurumu bu konuda çalışma yapmak üzere görevlendirmek gerekir.

17. FETÖ ile mücadelede dikkat edilmesi gereken önemli noktalardan bir diğeri de FETÖ'yü doğuran iç ve dış etkenler olmaktadır. Katı laik politikalar ve devletin sosyal alanları boş bırakması, bu alanları doldurma konusunda FETÖ'ye ortam hazırlamıştır. Dış istihbarat örgütleri de bu alanları kullanarak FETÖ'yü Türkiye'ye karşı kullanmıştır. Bu konudaki iç ve dış etkenler çok iyi analiz edilmelidir.

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18. FETÖ'nün dış bağlantılarının örgüt açısından ne kadar büyük bir öneme sahip olduğu bilinmekte ve gözülmektedir. Bu bağlantıların ortaya çıkarılması da örgütün gücünü yitirmesi bakımından dikkate alınması gereken bir diğer mücadele alanı olarak karşımıza çıkmaktadır.

(Second edition published in 2019)

a) "July 15 in Historical and Legal Perspective" Panel

In the *"July 15th in History and Law Perspective" panel* on July 20, 2022, as the President of the Council of State's 10th Chamber, Yılmaz Akçil clearly demonstrated his lack of impartiality in applications concerning the Gülen Movement.[29] Akçil emphasized that both heroism and treachery were experienced simultaneously during the July 15th process. He stated that the treacherous coup attempt of July 15, 2016, revealed the treacherous betrayal of the young people who emerged from Turkey's heart, were raised as the apples of its eye, and could not bear to care for them. He said, *"We experienced the heroism that enabled the defeat of the treacherous coup attempt of July 15th together. I am deeply pleased and excited to be here in my hometown with my fellow citizens, and especially to have been invited, to speak on such a topic.*"

"Every coup has a trial. More precisely, there's a legitimacy issue. This is the case with every regime change," Akçil said, adding, *"After every regime change, trials and courts have come into play. We know that the Independence Tribunals conducted trials during the Republican era. The Yassıada trials following the 1960 coup are well-known. The legitimacy issue of every coup is whether the attitudes and behavior of the judiciary at that time toward the coup plotters ensured legitimacy or not. This is crucial. Indeed, until the July 15th coup attempt, members of the judiciary were always behind and behind every coup.*"

29 https://www.kocatepegazetesi.com/yargi-hala-fetoculeri-ayiklamakla-ugrasiyor/214767/

Akçil, who stated that the 1980 coup, following the 1971 memorandum, holds a significant place in Turkish history, said, *"It is clear that coup plotters are held accountable sooner or later in court. This is a fact. The principle that no matter the time or year, if a person interferes with an unjustly elected government, they will eventually be held accountable has become ingrained in the Turkish state. As is well known, February 28th is a postmodern coup. As is well known, those who perpetrated that coup were tried and convicted. They are still in prison. The perpetrators of this coup, which is known as a different kind of postmodern coup, are currently being held accountable. I will get to the July 15th process. We are discussing July 15th, and it is very important."*

Yılmaz Akçil later said, *"We all know that everyone is surrounded by these people (member of Gülen Movement). The Turkish nation has two sensitivities. The first is religion, and the second is education. Since the 1960s, FETÖ leader Fetullah Gülen, aware of these sensitivities as a nation, has entered the Turkish nation from two perspectives. He portrayed himself as religious. The second is education. Every family wants to raise their children well. They strive to ensure that they attend a good school, are well-mannered, are loyal to their country and nation, and have a good job. FETÖ exploited this sensitivity very effectively. First, schools, prep schools, then universities, dormitories, and community centers were all established within an organized system and meticulously worked on."*

Noting that private teaching institutions are of great importance within the scope of the movement's activities, Akçil said; *As is known, FETÖ's first conflict with the then-administration began with the closure of prep schools. They suddenly jumped into action. However, all prep schools were closed. The prep school phenomenon was about to be ended. As is well known, the MIT crisis occurred in 2012. It is well known that the then-director of MIT requested to be interrogated on the orders of two public prosecutors. Perhaps the first open conflict between the government and FETÖ began with the February 7th incident of 2012. Perhaps it existed before, but it was not visible. This incident was what became clear. Immediately following this, we see what we call the December 17-25 judicial coup, an example of judges and prosecutors staging coups. Our esteemed history professor mentioned a military coup but let me also emphasize that judges and prosecutors are also at fault. Our esteemed Commander is here. Those who perpetrated the coup were not only soldiers. Members of the judiciary first applauded and supported the coup in 1960. We said that every coup has a legitimacy problem. In 2013, A coup was staged in Egypt. The government, elected with 52 percent of the vote, was overthrown. Their first action was to appoint al-Mansour, then the Constitutional Court Chief Justice, as interim president. This legitimized the coup, and Sisi remains in power. The stance of members of the*

judiciary is so crucial that if they support the coup, it also gains legitimacy in the eyes of society. The coup plotters resolve the legitimacy problem through the decisions of the judiciary."

Akçil stated that the first activity during the coup attempt on July 15, 2016, started around 20.30 in the evening; He stated, *"The July 15th coup attempt was first reported around 10:00 PM. However, around 11:00 PM on the evening of July 15, 2016, our public prosecutors, including the Afyonkarahisar Chief Public Prosecutor, issued direct orders to law enforcement officers, stating that the coup plotters had committed crimes and that they needed to be arrested, thus ensuring one of the most important factors in the coup attempt's success. In other words, the judiciary put itself through its pace that night during the July 15th coup attempt. We demonstrated this with the 2014 elections for the Council of Judges and Prosecutors (HSK). We experienced serious electoral conflict within the judiciary at that time. FETÖ members fielded their own candidates, but they claimed to be independent candidates and received a significant number of votes. Approximately 13,000 people voted, and the election was narrowly won. The HSK's structure was established with numbers in the 30s and 40s. This means that the HSK's structure played a crucial role in preventing the July 15th coup attempt."*

Akçil, emphasizing the community's very unique operating system, said, *"FETÖ has a very different operating system. They ascribe sanctity to themselves. The FETÖ leader is sacred. Whatever he says is in the name of God, in the name of the Prophet. It must be obeyed without question. I will share an anecdote from my time as a Council of State member. A Council of State member slandered another judge, and I witnessed his slander. I asked him, 'Why are you slandering?' He said the exact same thing: "I break my fast and earn rewards." He patiently endures the slander and earns rewards. This is a structure that can expect reward by fulfilling this command, which is clearly forbidden, like slander, and is found in the Holy Quran. Consider the extent of its sanctity. In the organizational jargon, whatever the 'imam' or 'abi' says is valid. It is a structure built entirely on submission. On one hand, there is secrecy, on the other, there is a culture of dissimulation. You cannot recognize someone; in other words, it is very difficult to tell if they are a member of FETÖ. They have many faces and many masks. They take off one and put on another. It is almost impossible to tell if someone is a member of FETÖ. Imagine such a structure has become very powerful within the judiciary, the military, the civil authorities, and even all public institutions. It has reached such a point that they have reached almost the very core of many institutions. The second in line of every important position—the aide to a Pasha, the private secretary to a minister, the secretary to a director—became a member of FETÖ. They archived and used all kinds of information."*

Akçil, sharing a memory he had about the Gülen Movement during his time as President of the Turkish Justice Academy, said: *"When I was President of the Academy, the Minister of Justice of the Gambia, a small country at the very edge of Africa, visited the academy. Before the July 15 coup attempt in 2014, they wanted the Turkish Justice Academy to provide training to judges and prosecutors in the Gambia. The topic then turned to FETÖ, which was described as a 'Gülen Movement.' He told a very interesting story. I have to share it. He said, 'Your Prime Minister of the Republic of Turkey called on all brotherly and friendly countries. Please close down the FETÖ-affiliated schools in your countries. We, the Gambia, were the first to close it down. The US and UK gave us a note. We responded to the note, saying, this must be a mistake, this Turkish school, the Turkish flag is flying there. What does it have to do with the US and the UK? we said. There must have been a mistake. We said it was a Turkish school that was closed, not a British or American school. The response we received was interesting. They said, It's a Turkish school in appearance. In reality, it's under our protection; you can't close it down. We stood our ground and closed it down. They reduced our Embassy in Washington to the office of chargé d'affaires.' The Gambian Minister of Justice explained how beloved these schools are by the Turkish community, like Turkish Olympiads, and how many people even cry with the songs and poems sung by the children who come out of them. But this is an important event that I have experienced to show who is behind this organization, this structure.*"

Akçil said that it is extremely difficult to define and explain the community; *I want to explain the difficulty the judiciary faces in this matter. You define PKK terrorist organization very well. PKK's actions are well-known. Intelligence agencies have previously collected information on these individuals. DHKPC terrorist organization is the same. Others are similar. All state units, including the police and gendarmerie, are known. The militants are known, and their actions are well-known. Defining FETÖ is so difficult. Who is a FETÖ member and who is not? One has to be a saint. Understanding a person's inner intentions is very difficult. The judiciary tried to sort these out after the July 15 coup attempt and continues to do so.* ***In Türkiye, more than 600,000 people had to be prosecuted for their alleged affiliation with FETÖ.*** *Perhaps most of them were unaware, and the proceedings were carried out in absentia. When it was understood that they were not, they were abandoned. People are criticizing why these cases are still ongoing. It should be understood that these cases are not easy cases. A Statutory Decree (KHK) was issued. It goes beyond the Penal Code, aiming to remove public officials from the state. It was mentioned, contact, affiliation, and membership. In other words, it's been softened a bit more. Not to the same extent as criminal proceedings, but at least in terms*

of administrative measures, regulations have been made to allow the administration to operate more freely."

Akçil, reading a message allegedly found on the cell phone of a police officer alleged to be close to a religious movement during the July 15, 2016, coup attempt, said: *"In the culture of taqqiya, these people describe themselves as follows. A message recorded as 'Regional Imams' was sent on the phone of Deputy Commissioner E.G., one of the suspects in an investigation conducted after the July 15 coup attempt, at 5:20 a.m. on July 16, 2016, immediately following the coup attempt, and read: 'Important situation. Very urgent announcement. Convey to all provincial and district imams, elder brothers, elder sisters, and institutional imams. All service members must issue statements strongly condemning the coup.' The coup attempt was repelled at night when, upon the call of our President, the Turkish nation took to the streets with courage and strength. They never expected such a response to the coup attempt. They thought everyone would accept it and retreat at night. And on the important and positive point: The coup plotters normally planned the coup at 3:00 in the morning. When an officer informed the Undersecretary of MIT that the coup would take place around 8:00 p.m., they immediately mobilized and started the coup around 8:30 p.m., and it was a great blessing. People were awake. If it had happened at 3:00 a.m., perhaps they would have achieved their goal. The suspicious Deputy Commissioner EG continued his message as follows: "They should issue statements strongly condemning the coup. They should go to the squares and camouflage themselves. They should take pictures and post them on social media. They should talk about democracy, the elected will, and so on. But never mention the name of the esteemed Hoca Efendi in any further statements. We all deserve this." "They can. Everyone should say they didn't know about the coup, I just heard it on television. Never make negative statements about the government or Tayyip. I'm shutting down this group," he said. "This is their true face."*

Akçil's 2022 panel speech, in which he portrayed the Gülen movement as *"traitorous youth"* and a structure that *"exploits religion and education,"* and his characterization of it as an organization *"masked by dissimulation"* and *"unquestionable in its sanctity,"* reflects a blanket accusation of individuals. This generalizing and accusatory language indicates a bias that could undermine the presumption of innocence of those associated with the movement. Akçil's labeling of the December 17-25 investigations as *a "judicial coup"* and his presentation of the private teaching institution disputes as the first clash with the government demonstrates that he has adopted the state's official policy toward the movement. This stance undermines the

Constitutional Court's mission to protect fundamental rights and freedoms and reinforces the perception that Akçil has lost his impartiality by aligning himself closely with state policies. Given that the Constitutional Court, as a constitutional oversight body, is required to act independently, these statements raise strong doubts about its ability to render impartial decisions in cases related to the Gülen movement. Furthermore, the decision of the 10th Chamber of the Council of State, chaired by Akçil, which annulled the Council of Ministers' decision of November 24, 1934, converting Hagia Sophia into a museum, paving the way for its reopening for worship, and the decision that deemed the presidential decree of terminating the Istanbul Convention lawful, demonstrates a line aligned with the government's fundamental political preferences. Akçil's election to the Constitutional Court, following his decisive role as chamber head in these two critical cases, reinforces the perception of his closeness to the government and points to a striking timing regarding the impact of his career progression on the appearance of impartiality.

The anecdotes Akçil shared during the panel—especially the slander claim at the Council of State and the accounts of community schools in Gambia—show that he positions the Gülen movement as a tool of conspiracy and manipulation. These personal experiences appear to make it difficult for him to maintain an objective and case-focused approach to individual applications regarding the Gülen movement. Furthermore, statements such as *"more than 600,000 investigations"* and *"Gülen movement cases are not easy"* carry a tone that legitimizes the dismissals made by statutory decrees and has a detrimental effect on individuals' right to a fair trial. His exaltation of the state as a leader and his critical view of the HSK elections in this process reveal that he has adopted a stance that supports the state's attitude towards the movement.

In conclusion, Akçil's participation in the workshop and his accusatory rhetoric during the panel demonstrate a prejudiced attitude toward the Gülen movement and his commitment to state policies. This situation limits the ability to conduct objective assessments of individual applications related to the Gülen movement and presents a picture incompatible with the principles of independence and impartiality. His election to the Constitutional Court, following his decisive role as the head of the 10th Chamber of the Council of State in the Hagia Sophia and Istanbul Convention decisions, further deepens this perception due to its timing and context. The use of language that accuses the Gülen movement en masse undermines the

right of individuals to present evidence in their favor and to benefit from the presumption of innocence; adopting the state's official narrative undermines trust in the judiciary and undermines the Constitutional Court's mission to protect fundamental rights. For these reasons, it appears unlikely that Akçil will be able to serve as an independent and impartial judge in Gülen-related cases.

4. Muhterem İnce

Muhterem İnce was appointed Governor of Artvin on June 1, 2016, and Undersecretary of the Ministry of Interior on September 7, 2016. He served as Undersecretary until August 7, 2018, and was appointed Deputy Minister of Interior by Presidential Decree dated August 8, 2018. He was elected as a member of the Court of Accounts at the Turkish Grand National Assembly General Assembly on June 29, 2022. Following the election held at the Turkish Grand National Assembly General Assembly, he was elected as a member of the Constitutional Court on October 5, 2022.

Considering Muhterem İnce's statements, events he attended, and social media posts, it becomes clear that he cannot be impartial in cases related to the Gülen movement. Indeed, in his speech at the opening of *the "Third Regional Coordination Conference"* organized by the Regional Cooperation Council (RCC) on December 6, 2018, as Deputy Minister of the Interior, İnce said: *"Just like PKK, we are also fighting against FETÖ, a group that Europe still doesn't sufficiently consider or grasps. FETÖ is a very different entity from classic terrorist organizations; it's a beta version of radical terrorism. Its methods and structure are far more complex. They manipulated legal and administrative processes through their operatives placed in key public positions. Ankara, the Turkish Grand National Assembly, and several public buildings were bombed by F-16s. Our requests for extradition of terrorists who fled to Europe due to these terrorist organizations are being met to some extent by the Balkan countries, but unfortunately, we are not seeing this as we move further West. I would like to emphasize here that PKK and FETÖ operatives are nested in certain European countries, and this poses a grave threat to Europe as well."*[30]

30 https://www.trthaber.com/haber/gundem/icisleri-bakan-yardimcisi-muhterem-ince-feto-radikal-terorun-beta-versiyonudur-396640.html

The Ankara Bar Association's report alleging torture against some individuals detained in a Gülen movement operation was brought to the agenda of the Parliamentary Human Rights Commission on July 11, 2019. İnce, who attended the meeting as Deputy Minister, stated, *"Among the lawyers who claim this, for example, we know that the father and brother of one of them are ByLock users, that his father is imprisoned, and his brother is a fugitive. We also know that another lawyer's father is a ByLock user and is imprisoned for this reason. I would like to share this information with you."* In response to this statement from the members of parliament on the commission, İnce stated that he was not making a defense, but merely providing information. *"This is not a matter for defense; it is merely an allegation. If the allegations are true, necessary action will be taken. We have information suggesting that this is a FETÖ organization; we have similar allegations.*" Upon Commission Chair Hakan Çavuşoğlu's question, *"So, is FETÖ organizing the torture allegations?"* İnce replied, *"Exactly. There are international connections on this matter; we have international information."*[31]

On April 6, 2021, İnce shared the following on his personal Twitter account: *"The political mouthpiece of the terrorist organization, who, because they failed to protect the trust of the FETÖ terrorist organization, feared FETÖ's reproach and tried to cover up the loophole… As always, he found the solution in slandering the state, may God correct him…"*[32]

In his post on his Twitter account on July 15, 2024, he said: *" On #July15th , I commemorate with mercy our martyrs who, with profound foresight and heroism, shielded themselves against the FETO-affiliated coup plotters and the forces supporting their pawns, and I offer my gratitude to our veterans."*[33]

On July 15, 2024, he made the following statement on his Twitter account: *"I commemorate with mercy and gratitude our cherished martyrs who defended the national will at the cost of their lives. On July 15, our nation demonstrated once again that this homeland will never surrender to the infidels and their pawns. Our stance and our hearts will remain steadfast in this direction."*[34]

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31 https://www.gazeteduvar.com.tr/gundem/2019/07/11/ankara-barosu-iskence-raporuna-feto-suclamasi
32 https://x.com/muhteremince/status/1379408596383981573
33 https://x.com/muhteremince/status/1680188473657925634
34 https://x.com/muhteremince/status/1812852728290328836

In a statement on his Twitter account on July 15, 2025, he said: *" On the night of #July15 , the sun never rose again for the traitors who were defeated by the unwavering will of our beloved nation. However, the future sun of our nation, its national and independent will, will shine forever. On the anniversary of their martyrdom, I commemorate our martyrs with respect and mercy and wish our veterans a healthy life."*[35]

Ince's description of the Gülen movement as *a "beta version of radical terrorism"* and a structure that *"infiltrates key public positions"* at the Regional Cooperation Council on December 6, 2018, as Deputy Minister of the Interior, demonstrates his prejudiced attitude toward the movement. This accusatory language suggests that İnce may disregard the presumption of innocence of individuals affiliated with the movement and adopt an approach aligned with state policies. Furthermore, his characterization of the Ankara Bar Association's torture report as *a "FETÖ organization*" at the Parliamentary Human Rights Commission on July 11, 2019 , and his accusation of family members of the lawyers who prepared the report as ByLock users further demonstrate his generalizing and accusatory approach toward individuals associated with the movement.

In his Twitter posts, İnce described the Gülen Movement as the *'dirty face of FETÖ*,' labeling it as *'traitors'* and *'pawns of the infidels'* and presenting the July 15, 2016, coup attempt as a *'victory of the nation.'* These statements suggest he has adopted state rhetoric, potentially compromising his ability to evaluate Gülen-related individual applications objectively. These posts also reinforce the impression that İnce harbors a personal animosity towards the movement and suggest that this attitude may be reflected in his decisions at the Constitutional Court. In accordance with the principle of the visibility of justice emphasized in Article 6 of the ECHR, this discourse casts doubt on the impartiality of the Constitutional Court. İnce's administrative role in the Ministry of Interior, and particularly his influential role in the implementation of anti-Gülenist security policies, raises additional questions regarding judicial impartiality and proportionality.

Ultimately, İnce's accusatory rhetoric, social media posts, and engagement with state policies raise legitimate doubts about his objective impartiality in cases involving the Gülen

35 https://x.com/muhteremince/status/1945064065472032811

movement. This situation makes it difficult for İnce to maintain an unbiased stance in individual applications concerning the Gülen movement, undermines the Constitutional Court's institutional credibility, and conflicts with the guarantees of the principle of fair trial. Therefore, İnce cannot serve as an independent and impartial judge in these cases.

5. Kenan Yaşar

Kenan Yaşar was elected to the Constitutional Court by the Turkish Grand National Assembly while serving as the mayor of Çorum. Yaşar has been a member of the AKP since its inception. In an interview on January 21, 2022, he stated, *"I was a member of the AK Party when it was founded. I was a founder. I ran for parliament in 2002, 2007, and 2011. I was a provincial deputy chairman."* Yaşar stated that there was no legal impediment to being elected to the Constitutional Court while still a party member, adding, *"I don't see any ethical problems either."*[36] In other words, Yaşar has been involved in the AKP and active politics since its founding.

The following messages, shared from his now-deactivated Twitter account (@avkenanyasar), clearly demonstrate his partisan stance in favor of the AKP and President Erdoğan. On July 10, 2017, he shared a post titled *"Despite everything, Erdoğan is everyone's hope,"* but the post was later deleted. In this post, he highlighted the relentless fight against "FETÖ" after July 15th and its repercussions, positioning Erdoğan as "hope." Similarly, on May 8, 2018, he retweeted content containing Erdoğan's election slogan, *"We will be one, we will be great, we will be alive, together we will be Turkey."* These posts are indicative of a social media stance praising Erdoğan and the AKP and supporting the ruling party's policies of national security and unity.

36 https://t24.com.tr/haber/tbmm-nin-yuksek-mahkemeye-gonderdigi-kenan-yasar-partiliyken-aym-ye-secilmenin-hukuken-engeli-yok-etik-acidan-da-sikinti-gormuyorum,1009537


Av Kenan YAŞAR @avkenanyasar · Jul 20, 2017
Her şeye rağmen herkesin umudu Erdoğan
HER ŞEYE RAĞMEN
HERKESİN
UMUDU ERDOĞAN
habercim19.com
Her şeye rağmen herkesin umudu Erdoğan
Habercim19 Yazarlarından Av. Kenan Yaşar 15 Temmuz ve sonrasında FETÖ'ye karşı sürdürülen amansız mücadeleyi ve yansımalarını ...


Av Kenan YAŞAR Retweeted
Murat Alparslan @Murat_Alparslan · May 8, 2018
Demokrasi, huzur, refah, özgürlük, milli birlik ve kardeşlik için DEVAM
Bir olacağız, iri olacağız,
diri olacağız, hep birlikte
Türkiye olacağız!
R. Tayyip ERDOĞAN
Cumhurbaşkanı

Yaşar wrote the following in an article titled *"Right Struggle" on July 20, 2017: "It was a year ago. This nation witnessed a betrayal and invasion attempt unlike any it has ever seen in its history. Every single member of the nation used their bodies as a shield against the traitors who had infiltrated the state. Tanks, bullets, bombs... And yet, an unprecedented and epic resistance."*

On a July evening, God is my witness, My Mehmed, it was the homeland that rose in revolt.

Each one of them was left exposed like iodine. Then began a great struggle to eradicate their treachery... Victory requires some damage. Along with the truth, there were also shortcomings and errors. In a struggle as difficult as finding a needle in a haystack, it's not easy to avoid getting swept up in the dust. Good and right things aren't easy, after all. The question "Where did we go wrong?" is a sentence filled with despair. We try to build our entire lives around avoiding this very sentence.

I see everyone's been talking about current events lately. But no one's speaking out. A wave of whispers amidst the silence... Our faith and values can only exist through justice. We must be meticulous to avoid regretting what we do today, tomorrow in this world and the day after.

All colors were becoming dirty, says the poet, and white took first place. Even the slightest dirt shows through on the garment of justice. It must be emphasized that this belated struggle must be waged in the strongest possible way; there is no disagreement on this matter. The point of disagreement is how this struggle should be waged and its scope.

These are challenging times. Anxiety, "Is there something we don't know, will I be misunderstood, will I be accused of a crime?", keeps people from speaking openly and directly. However, truth isn't found by remaining silent or waiting. The village of truth is reached by facing challenges and always walking the straight path. Justice is achieved by adhering to the rule of law.

A struggle within the framework of the law is something only independent and impartial members of the judiciary can accomplish. Everyone with good intentions is striving somewhere in the struggle. Yet, in an uncontrollable struggle, those with malicious intentions, those chasing power and personal gain, and those seeking to neutralize potential opponents are taking sides. They even seize the sword of accusation and attempt to categorize. They are diverting the river of struggle to the wrong course. There's a song that goes, "Which of us hasn't fallen for this blind love..." Wasn't politics deceived regarding the FETÖ issue? Was it bureaucracy, the shopkeepers, the businessperson, the civil servant, the poor citizen? Which one wasn't deceived, and which one doesn't regret it like crazy.

If we don't separate the deceivers from the deceived, who will be left innocent? ***Despite everything, everyone's hope remains in President Tayyip Erdoğan.*** *We know our sensitivity is his as well. So, why such a mistake? Why isn't this picture at the grassroots level reflected in the top? Why isn't December 17/25 the standard for politicians, but the standard for bureaucrats? Or is the December 17/25 rhetoric meaningless in the courthouse? If so, is it taken into account that three or five million people will be included in this category?*

How can our judges and prosecutors perform their professions so fearlessly in the fight against this treasonous attempt, which has no precedent in our history? In this environment, how fair is it to hold them solely responsible for the wrongs committed? How right is it to leave judges and prosecutors under the pressure of political judiciary by accusing them of being members of Gülenist Terrorism?

How well can we foresee the consequences of mistakes made today? Fighting a battle is no more important than doing it right. If we cut too deep, the patient will end up on the operating table. If our goal is to remove cancer from the body, we shouldn't leave the patient on the table. Since we don't like the opposition, we need to stop grumbling in coffee shops and tell the authorities about the mistakes, shortcomings, and errors.

The authorities must increase their efforts a thousandfold to ensure that this just struggle concludes in accordance with the will of the people. We cannot afford to make mistakes that serve a perception of victimhood that will only serve the interests of FETÖ. It must not be forgotten that this issue is far more important than the development of the country. The way to bring Türkiye, which is in a ring of fire, to the long-awaited peace is to ensure domestic peace and public trust. And the way to

achieve this is to stop shooting ourselves in the foot and turn the river of struggle back to its own course. On this occasion, we commemorate the martyrs of July 15th with mercy and gratitude.[37]

Yaşar's status as a founding member of the AKP, his service as a provincial deputy chairman, his parliamentary candidacy in 2002, 2007, and 2011, and his defense of this political past by stating, *"I see no ethical problems"* in an interview on January 21, 2022, raise serious doubts about his objective impartiality in applications related to the Gülen movement. While it is a separate matter that political activity alone does not constitute an absolute legal impediment, in terms of the objective impartiality (apparent impartiality) criterion required under Article 6 of the ECHR, a sustained and clearly stated political engagement, particularly in applications related to the Gülen movement, carries the risk of creating the impression of a preconceived opinion in the eyes of *a "reasonable observer* ." In this context, due to the nature of the role of a high court judge, the impact of past and current political engagement on public perception is particularly significant. In his article *'The Right Struggle*,' published on July 20, 2017, Yaşar characterized the July 15, 2016, coup attempt as a *'treason and invasion attempt*,' portrayed the Gülen Movement as *'traitors who have infiltrated the state*,' framed the struggle as aiming to *'eradicate it*,' and **positioned the President as *'everyone's hope*.**' These statements suggest he has adopted preconceived notions about the Gülen Movement and an executive-driven security narrative, potentially compromising his impartiality in related applications.

Yaşar's posts, apparently from his now-deactivated Twitter account—for example, his July 10, 2017, post titled *"Despite everything, Erdoğan is everyone's hope" and his May 8, 2018 retweet of the President's slogan , "We will be one, we will be great, we will be alive, together we will be Turkey"* —show that he aligns with and supports the executive branch's rhetoric. Such public posts, when considered alongside the requirement for a Constitutional Court member to appear politically neutral, raise reasonable suspicions that he aligns with the state's argument (e.g., membership/connection/affiliation) in applications related to the Gülen movement. This undermines confidence that the principles of the presumption of innocence, the individuality of crimes, and individualized evidence assessment will be meticulously applied in cases. Furthermore, it should be noted that the politically charged public statements of members of

37https://www.habercim19.com/public/kum-saati-kenan-yasar/dosdogru-mucadele

the judiciary directly impact the appearance of impartiality in relevant cases. In this context, the *"Right Struggle"* article's advocacy of a strong political-criminal framework regarding the method and scope of the struggle , with expressions such as *"conducting the delayed struggle in the strongest possible way," "separating the deceivers from the deceived," and "those who divert the river of struggle to the wrong* ," along with its emphasis on the role of the judiciary in this struggle and its assessment that errors in implementation should not lead *to a "perception of victimhood,"* demonstrate that judicial processes are being considered within the framework of the political-security paradigm. This discourse, coupled with preconceived negative characterizations of the relevant structure, is problematic enough to warrant withdrawal in the cases in question.

In conclusion, when Yaşar's active political history within the AKP and social media posts supporting government policies are considered together with his characterizations and framings in his *"Right Struggle"* article regarding the post-July 15th coup attempt, legitimate doubts about his objective impartiality in cases related to the Gülen movement are significantly heightened. This situation makes it difficult for Yaşar to maintain an unbiased stance in individual applications related to the movement, undermines the Constitutional Court's constitutional oversight mission, and conflicts with the guarantees of the principle of fair trial. Therefore, Yaşar is unlikely to serve as an independent and impartial judge in these cases. In particular, the characterizations in his public statements and writings, along with his apparent support for the executive branch, undermine the perception of impartiality under the reasonable observer test. To maintain trust in the judiciary, he must resign, or at least apply clear, verifiable standards of justification that would address this perception.

6. Yıldız Seferinoğlu

Yıldız Seferinoğlu has held various positions within the AKP and served as a member of parliament for the party. On January 25, 2019, he was appointed a member of the Constitutional Court by President Recep Tayyip Erdoğan. Seferinoğlu was elected as a Member of Parliament for Istanbul in the 26th Term in the November 1, 2015, general elections and served as Chair of the Turkey-Turkish Republic of Northern Cyprus Friendship Group during this period. He also played an active role in the party's founding as the AKP's Bayrampaşa district founder, serving two terms as deputy chair of district election affairs, and was a candidate for parliament for Istanbul's 2nd District in the 2011 general elections.

Before being elected as a member of the Constitutional Court, Seferinoğlu shared numerous posts on his personal Twitter account against the opposition parties, especially the CHP and HDP.[38]

Seferinoğlu's founding of the AKP's Bayrampaşa district, his two-term position as deputy district election affairs chairman, his candidacy for parliament in the 2011 general elections, his election as a 26th-term Istanbul deputy in 2015, and his chairmanship of the Turkey-Turkish Republic of Northern Cyprus Friendship Group demonstrate his enduring commitment to the AKP's conservative-nationalist ideology. His posts against opposition parties on his personal Twitter account prior to her appointment demonstrate publicly visible signs of a political position that undermines the appearance of judicial impartiality. This intense political engagement suggests that Seferinoğlu supported party policies during the post-December 17-25 period, when the Gülen movement was labeled *a "terrorist organization,"* and that he may have reflected this bias in his tenure at the Constitutional Court.

Seferinoğlu's appointment to the Constitutional Court by the President on January 25, 2019, is considered a reward for his political credentials. This appointment reinforced the perception that Seferinoğlu had embraced the government's anti-Gülenist rhetoric and could make decisions accordingly at the Constitutional Court. In terms of the principle of the visibility of justice, as emphasized in Article 6 of the ECHR, Seferinoğlu's political background negatively impacts the appearance of impartiality. Particularly at a time when cases related to the Gülenist movement are being conducted alongside intense political debate, Seferinoğlu's active role within the AKP stands out as a factor that hinders the objective assessment of individual rights violations on a case-by-case basis, based on concrete facts.

Consequently, Seferinoğlu's founding role in the AKP, his past as a member of parliament, and his political appointment process raise legitimate doubts about his objective impartiality in cases involving the Gülen movement. This situation makes it difficult for Seferinoğlu to maintain an unbiased stance in individual applications concerning the Gülen movement, undermines the institutional credibility of the Constitutional Court, and conflicts

38 https://www.birgun.net/makale/aym-ye-atanan-seferinoglu-ndan-skandal-paylasimlar-244736

with the guarantees of the principle of fair trial. Therefore, it appears unlikely that Seferinoğlu will be able to serve as an independent and impartial judge in these cases.

7. Recai Akyel

Following his term as governor of Tokat, Recai Akyel was elected President of the Court of Accounts by the General Assembly of the Turkish Grand National Assembly on June 26, 2009. He served for seven years. Immediately after his term expired on June 25, 2016, he was appointed Chief Advisor to the President. He was also elected by the President from among his senior executives to a seat on the Constitutional Court on August 25, 2016.[39]

Akyel's appointment as Chief Advisor to the President on June 25, 2016, and his election by the President to the Constitutional Court just two months later, on August 25, 2016, clearly demonstrate his close ties to the executive branch. This rapid transition suggests that Akyel is positioned in a position of engagement with government policies, and that this engagement may be reflected in his decisions at the Constitutional Court. A role as Chief Advisor, central to the executive branch, can be interpreted as a sign of Akyel's closeness to state policy, particularly after the July 15th coup, when the Gülen movement was designated a *"terrorist organization."*

Akyel's transition from the Court of Accounts to Chief Advisor and then to the Constitutional Court creates a perception that political loyalty is rewarded. This raise concerns that Akyel may adopt a biased approach favoring the state when evaluating individual applications related to the Gülen movement. In accordance with the *"reasonable observer"* criterion emphasized in Article 6 of the ECHR, this political affiliation undermines the appearance of impartiality. Especially at a time when cases related to the Gülen movement are being shaped by security-focused policies, Akyel's close relationship with the executive branch complicates his ability to conduct objective, case-based assessments.

In conclusion, Akyel's rapid transition from Chief Advisor to the Constitutional Court and his close ties to the executive branch raise legitimate doubts about his objective

39 https://www.anayasa.gov.tr/tr/baskanvekilleri-ve-uyeler/uyeler/doc-dr-recai-akyel/ ; https://www.bloomberght.com/eski-sayistay-baskani-recai-akyel-cumhurbaskani-basdanismani-oldu-1908066

impartiality in cases involving the Gülen movement. This situation makes it difficult for Akyel to maintain an unbiased stance in individual applications concerning the Gülen movement, undermines the Constitutional Court's constitutional oversight mission, and conflicts with the guarantees of the principle of fair trial. Therefore, it appears unlikely that Akyel will be able to serve as an independent and impartial judge in these cases.

8. Yusuf Sevki Hakyemez

Yusuf Şevki Hakyemez was a faculty member at Karadeniz Technical University's Faculty of Law and served as acting dean from 2015 to 2016. On August 25, 2016, he was elected to the Constitutional Court by President Recep Tayyip Erdoğan from among three candidates nominated by the Council of Higher Education (YÖK). Hakyemez also served as the Black Sea Regional President on the Wise Men Committee, established in 2013.

Hakymez, as a member of the Constitutional Court, has made statements indicating that he is not impartial, particularly regarding applications related to the Gülen movement. These statements were reported by the journalist to whom he made the statement on November 11, 2024, under the headline *"An interesting interview with the Constitutional Court member stuck between December 17-25!"* The content of the news report is as follows:

The next day, a Constitutional Court delegation from Türkiye, led by Kadir Özkaya, met with ECHR officials. This meeting was not announced to the public or the media in advance. We learned of the meeting through a social media post the ECHR made near the end of its working hours on Friday. The Constitutional Court was almost fully staffed in Strasbourg.

However, before I learned about the ECHR's statement and the delegation's meeting in Strasbourg, I had a rather interesting encounter with a member of the Constitutional Court at the Council of Europe. The large Turkish delegation in the prayer room where I went for midday prayer caught my attention. I realized that one of them was a current active member of the Constitutional Court. Upon leaving, I introduced myself and had the opportunity to speak for about 20 minutes in the Council of Europe's main building. ***(Given the scope of the speech, I believe it would be more appropriate not to mention the member's name.)***

I told the Constitutional Court member that numerous injustices had occurred in the trials and that people expected justice, and that the Constitutional Court members were the ones who could provide

it. The member explained that he intervened in cases he deemed unlawful, voted for violations in lengthy detention cases, strived for justice, and believed in the afterlife.

I reminded him that people were being convicted of terrorist membership for perfectly legal activities, like working for institutions or depositing money into Bank Asya. As our conversation progressed, I gained a better understanding of the member's perspective on the cases.

The Constitutional Court member professor stated that ***people must understand what happened after the December 17-25 operations and then sever their ties with the organization.*** *For example, he explained that if Bank Asya is mentioned in a person's conviction, it's because activity outside of regular banking transactions has been detected. Therefore, he added, those whose bank accounts showed unusual increases during that period "were found to have deposited money under instructions."*

He also quickly listed many allegations, such as the fact that the Gülen movement's dangerous nature ***was revealed through corruption and MİT truck operations, that the organization's roots were abroad, and that it was still carrying out activities against Turkey abroad.***

He even claimed that the Gülen Movement had committed numerous injustices in Turkey during its time, oppressing various groups, yet he nevertheless tried to investigate cases fairly. ***(I wish I had known when we spoke that this Constitutional Court member's articles had been published in Zaman newspaper for years!)***

I explained to him that it was neither right nor legal to expect everyone to take a clear line in the political climate that emerged after December 17-25. A significant portion of the public and politicians at the time were disturbed by the corruption that had emerged. I explained that while criminal activity should be prosecuted, no one envisioned being tried as part of a terrorist organization.

However, the picture in the mind of the Constitutional Court member was clear: ***Anyone who did not sever their ties with the Gülen movement after December 17, 2013, should have guessed that they would become members of an armed terrorist organization!***

Finally, I asked him about the ECHR Grand Chamber's ***Yalçınkaya decision.*** *I stated that the decision was persistently not being followed and emphasized that the decision merely confirmed the*

unlawful practices. The Constitutional Court members emphasized ***that the decision only concerned ByLock*** *and stated that the process was ongoing.*[40]

The person to whom the speech in question was made is the Constitutional Court member Yusuf Şevki Hakyemez, who has been writing for Zaman Newspaper for many years.[41]

Hakyemez served as the Black Sea Region Chair of the Wise Men Committee, established in 2013, and made presentations on the presidential system at the AK Party Rize Provincial Advisory Board meeting. In this presentation, he criticized the current presidential system, stating, *"The president's excessive power and lack of accountability are incompatible with the principles of neither democracy nor the rule of law." He described* the 1982 Constitution as a *"proxy tool for coup plotters"* and praised the presidential system as *"a functional model based on the separation of powers." He stated, "In the presidential system, this system is called the presidential regime because a powerful person is the president. Why is the president powerful? Because the president holds sole executive power... He can easily implement the policies he intends to implement during this four-year term without relying on the confidence of parliament."* These activities also reveal Hakyemez's closeness to government policies and his supportive role for the AK Party.[42]

Hakyemez's statement to a journalist at the Council of Europe on November 11, 2024, that *"anyone who continued to maintain their ties to the Gülen movement after December 17, 2013, should have predicted they would become members of an armed terrorist organization"* demonstrates a bias that wholesale criminalizes individuals' legal activities (e.g., depositing money into Bank Asya). This rhetoric demonstrates that Hakyemez disregards the principle of individual criminality and renders questionable his capacity to objectively evaluate individual applications related to the Gülen movement. Furthermore, the ECHR's narrowing of the Yalçınkaya decision by stating that it *"only concerns ByLock"* demonstrates a disregard for the broad scope of the decision, which points to systemic unlawfulness.

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40 https://www.tr724.com/17-25-aralikta-takili-kalan-aym-uyesi-ile-ilginc-bir-gorusme/

41 https://www.odatv.com/siyaset/atadigi-isim-hakkinda-cok-konusulacak-aciklama-99962

42 https://www.pazar53.com/akil-adam,-rizede-baskanlik-sistemini-anlatti-23327h.htm#google_vignette

Hakyemez's 2013 appointment as the Black Sea Region Chairman on the Wise Men Committee and his praise of the presidential system as *"a functional model based on the separation of powers*" on the AK Party Rize Provincial Advisory Board demonstrate his affinity for government policies. This political engagement raises concerns that Hakyemez may lean toward the state's thesis in cases related to the Gülen movement and may undermine individuals' right to a fair trial. Hakyemez's statement that the movement *"works against Turkey through corruption and MIT truck operations"* suggests that he has internalized government rhetoric and that this stance may be reflected in his decisions at the Constitutional Court.

Consequently, Hakyemez's biased statements and his role in supporting government policies raise legitimate doubts about his objective impartiality in cases involving the community. This situation makes it difficult for Hakyemez to maintain an impartial stance in individual applications concerning the community, undermines the institutional credibility of the Constitutional Court, and conflicts with the guarantees of the principle of fair trial. Therefore, it appears unlikely that Hakyemez will be able to serve as an independent and impartial judge in these cases.

9. Members of the Union of Judiciary Association and the Constitutional Court

The Association for Unity in the Judiciary (YBD) is a structure that has played a central role in the politicization of the Turkish judiciary. While YBD, which began as the Judicial Unity Platform (YBP) in 2014 and became an association on March 27, 2015, officially appears to have been established to *"increase trust in the judiciary,*" its actual purpose is to profile and purge members of the Gülen movement within the judiciary, thereby ensuring a pro-government cadre. This section of the study examines in detail the association's founding purpose, its organic ties to the government, international criticism, and, in particular, the reasons why founding members Metin Kıratlı, Selahaddin Menteş, and Basri Bağcı cannot be impartial and independent in cases related to the Gülen movement, within the context of the YBD's role.

-Association for Unity in the Judiciary

The *"purge"* of the judiciary against the Gülen movement, which the AKP government labeled *a "parallel structure"* following the corruption investigations of December 17-25, 2013. Its primary objective was to profile and purge members of the judiciary based on their Gülen movement affiliation (especially in the elections for the Council of Judges and Prosecutors -

HSK), transforming them into a pro-government organization. This process was coordinated through high-level meetings within the Ministry of Justice; profiling lists were prepared under the guise of *"training seminars"* in provincial courthouses , and these lists were forwarded to the National Intelligence Organization (MİT) and the Prime Ministry. While the association's bylaws contain general statements such as *"increasing social trust,"* statements by Birol Erdem (former Undersecretary and architect of the YBD) clearly outline the goal of eliminating members of the community by forming [43]*"alliances"* with nationalist, conservative, and social democratic circles.

The former member of the Council of Judges and Prosecutors (HSK), who provided the most detailed account of the founding of the Judicial Unity Platform was Birol Erdem, who served as Undersecretary of the Ministry of Justice between November 2011 and January 2014. Following July 15, 2016, Birol Erdem was tried for alleged links to the Gülen Movement. He testified both as a witness and as a defendant. He was ultimately acquitted. In his statements, he detailed the establishment of the Judicial Unity Platform through the Ministry of Justice's institutional identity and financial resources, and how members from this platform were selected for the HSK elections.

Birol Erdem stated: *"One of the issues that came up in the group meetings we held at the Hakimevi with members of the Supreme Court of Appeals and the Council of State was what the outcome would be in the upcoming elections for the Council of Judges and Prosecutors (HSK). I saw that all my colleagues were seriously concerned about this. The alliance we had formed with members of the Gülen Movement had long since ended. In fact, we had been engaged in an increasingly intense conflict for the last two years. It was absolutely necessary to seek a different alliance for the upcoming elections. We also brainstormed ideas on what we could do on this issue. Some colleagues even suggested revisiting the draft law establishing the Judicial Unity Association, which we had previously worked on within the ministry. They asked us if we were considering doing anything about it. Indeed, the elections were only 13-14 months away. Therefore, we needed to do something as soon as possible. I told my colleagues that we would first evaluate this matter with our colleagues within the ministry, and then we planned to*

43 https://justicesquare.org/turk_yargi_raporu/ ; https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerlerinde-golge-yargida-birlik-dernegi-raporu/

expand the scope of the matter, starting with HSK and the Ankara Courthouse. They reminded us that we shouldn't delay in this matter and left. I then summoned General Director of Personnel Muharrem Ürgüp, Deputy General Director Veysel Bektaş, General Director of Penal Affairs Metin Kıratlı, Deputy General Director of Penal Affairs Aytekin Sakarya, and Deputy General Director of Legal Affairs Feyzullah Taşkın to discuss the matter and explained the situation. I explained that we needed to take action on this issue and asked them to make preliminary preparations on a few matters. These included the name and form of this alliance we would establish, and who we could contact from nationalist, conservative, and social democratic circles, and with whom we could work together. I believe we held this meeting at the end of August. In September, I invited my colleagues again. I also invited Halil Koç, a member of the Council of Judges and Prosecutors (HSK), and Harun Kodalak, the Ankara Deputy Chief Prosecutor. We held the second meeting with these colleagues. At this meeting, we again discussed who among the nationalist and social democratic colleagues we could contact. For example, the idea of contacting Mr. Mehmet Yılmaz and Mr. Metin Yandırmaz, who are currently on the HSK, was raised even during these meetings. I believe that after this meeting, I called Mr. Metin Yandırmaz and invited him, and we met in person a couple of times. In fact, Mr. Metin came to one of these meetings with a valuable statesman he'd known and worked with for many years. This statesman had a request of me. He said, "Please, don't decide which idealists you'll work with yourself, don't define who the idealists are. We'd appreciate it if you could get our suggestions on this matter." I said, "No worries, that's what will happen." In these meetings, we discussed the problems in judiciary in general and the necessity of working together with common sense. I believe we invited Mr. ***Basri Bağcı to the last two or three meetings.*** *At the second or third meeting, I told my colleagues, "We need to contact our colleagues in the provinces quickly and clarify the situation of the judiciary as soon as possible. First, meet with colleagues in the ministry and the Supreme Court of Appeals, and if necessary, meet with them in groups at the Judges' House. Judges of all levels of seniority and rank in the ministry and the Supreme Court of Appeals will be invited to the meeting. There are prosecutors. I said, "If you can reach enough colleagues, you can remove a significant portion of the provincial members of this structure with colleagues at the central level." For the rest, I said, "Make provincial visits and meet face-to-face with colleagues at the courthouses, and try to learn about the situation of the judges and prosecutors there."* ***The General Director of Criminal Affairs (Metin Kıratlı)*** *said there are serious problems and deficiencies in the investigations conducted against civil servants, and we were already planning a training program on this issue. If you'd like, we could hold these trainings in the provinces under the*

supervision of certain commissions, and while we're there, we'll try to assess the situation of the courthouses and surrounding courthouses there. I said, 'That would be great.' Start immediately, prepare the necessary approvals, and bring them in. I believe the High Council of Judges and Prosecutors (HSK) was also contacted on this matter, and first, colleagues held regional meetings with the larger commissions, both conducting training activities and trying to get to know the judges and prosecutors in those areas. We held the fifth meeting of the Judicial Unity Group in December. How many colleagues have you met with in judiciary, or how many people have you identified? I said, "You did." They told me a figure of 1,500, but I don't remember now whether this was the number of people they interviewed or the number of community members they identified. Because the work wasn't completed, they hadn't given me the list yet. At the time, I had the lists of the Council of State and the Court of Cassation, which I had compiled, and the lists of the ministries and administrative courts, which I had commissioned from these friends I mentioned. (pp. 57-59).[44]

Former Ankara Chief Public Prosecutor and founding member of the YBD, Harun Kodalak, who currently serves as a member of the Court of Cassation, testified as a witness in a case heard at the 9th Criminal Chamber of the Court of Cassation: *"I received a call from the Ministry in September 2013. When I arrived, there was a meeting, chaired by Undersecretary Birol Bey. As far as I recall, the Ministry's senior unit heads and deputies had gathered at the time. …They told me the topic was the 2014 elections, which I had mentioned to Birol Bey in the summer. The Judicial Unity Movement, which later evolved into a platform and an association, first began with this meeting. …After December 17-25, I also held meetings with Undersecretary Kenan İpek Bey. We named the movement the 'Judicial Unity Platform' and continued our work,"* he explained, underlining that the YBP was established under the coordination of the Ministry of Justice.[45]

Abdullah Yaman, the head of 11th Chamber of Court of Cassation, wrote an article titled *"Bearing Witness"* on his social media account, explaining how the foundations of the Judicial Unity Platform were laid. In this article, Yaman stated *that "before December 25, 2013, the Undersecretary of the Ministry of Justice called him to the Ankara Judges' House. Two other Supreme*

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44 https://www.justicesquare.com/wp-content/uploads/2022/12/THE 9TH COURT OF APPEALS' CRIMINAL CHAMBER'S JUSTIFIED DECISION ABOUT BIROL ERDEM.pdf

45 https://www.justicesquare.com/wp-content/uploads/2022/12/THE 9TH COURT OF APPEALS' CRIMINAL CHAMBER'S JUSTIFIED DECISION ABOUT BIROL ERDEM.pdf

Court of Appeals members were present. The Undersecretary asked, 'Could we succeed if we tried to separate the nationalist conservative colleagues who have been aligned with the Gülen Movement? What are our chances?' This is how they began negotiations. At the next meeting, they held a meeting with 20 people, and at the next, with 70 people. This is how they formed the organization that became the Judicial Unity Platform. With this group, they laid the foundations for the first serious struggle against the Movement. "[46]

The YBP, which began its activities with secret meetings coordinated by the Ministry of Justice, as can be seen from the statements above, held its first meeting with broad participation on April 19, 2014, in Konya. The meeting, attended by nearly 300 judges and prosecutors, was reported in the press under the headline [47]*"New Alliance Against Gülen Movement in the Judiciary."* The meeting was also attended by Justice Ministry Deputy Undersecretaries **Selahaddin Menteş and Basri Bağcı,** as well as numerous bureaucrats from the HSK General Secretariat, which was reshaped by the government's intervention after December 17-25. The meeting was reported in pro-government newspapers under the headline *"The Judicial Unity Platform Brought About the Parallel Rebellion."* The report stated, *"Judges and prosecutors known for their Alevi sensitivities, nationalist idealists, and social democratic stances came together and effectively put a stop to the parallel structure. The Judicial Unity Platform also stated that they had initiated work with the Ministry of Justice on improving the personal rights of judges and prosecutors and granting disciplinary amnesty, and that they had made significant progress in this regard.* "[48]

As can be seen from the above explanations, the purpose of the YBD's establishment is not to improve the judiciary, but to identify and profile members of or affiliated with the community. This profiling, which is inherently a crime, was carried out with state support and through the hands of judges and prosecutors.

-Closeness to the government

46 http://www.karar.com/yazarlar/elif-cakir/yargi-camiasinin-vicdanini-rahatsiz-eden-gozalti-4235
47 https://www.cumhuriyet.com.tr/haber/yargida-cemaate-karsi-yeni-ittifak-64117
48 https://m.star.com.tr/guncel/paralel-isyani-yargida-birlik-platformu-getirdi-haber-873991/

Since its inception, the YBD has always acted in concert with the government, making no secret of this and consistently receiving its full support. On September 3, 2014, then-Prime Minister and AKP Chairman Ahmet Davutoğlu publicly demonstrated his support for the group by accepting the appointment request of YBP members and YBP candidates for the HSK (High Council of Judges and Prosecutors). This meeting took place just one month before the HSK elections. The delegation was accompanied by then-Minister of Justice Bekir Bozdağ. Following the meeting, Ankara Public Prosecutor and YBP spokesperson Abbas Özden made a statement to the press. He stated that judges and prosecutors had expressed their demands regarding their statutory rights, criminal record amnesty, the right to enter law schools without an exam, and their military service status. In response to a question, he stated that *"the parallel structure within the state was discussed at the meeting."*[49] Davutoğlu confirmed this visit and shared information about its content on a television program he attended on September 6, 2022.[50]

In his statement, Ahmet Davutoğlu provided important details about the ideology, political affiliation, and beliefs of judges, prosecutors, and groups supporting the YBP. In his statement, Davutoğlu stated, *"There are 2014 HSYK elections. The Judicial Unity Platform came to visit me. They introduced themselves. We created a Judicial Unity Platform… And they introduced themselves one by one. One said, 'I am speaking on behalf of the nationalist and nationalist members of the judiciary, Prime Minister. We are ready to cooperate against them.'" Another said, "I am in the name of social democratic things...", another, "I am in the name of conservatives...", another, "I am in the name of this foundation, that foundation," and so on... I listened... I said, "I'm pleased you've come together in the fight against this structure. Eliminate them in this election. But if you're going to meet with me again after that day, I don't want to see a conservative member of the judiciary, a nationalist member of the judiciary, a social democratic member of the judiciary... a member of the judiciary from this foundation. A member of the judiciary has no foundation, no association, no community, no identity, no politics. They have only one identity: being a judge, being a prosecutor. They have only one*

49 https://m.haberturk.com/gundem/haber/986597-paralel-yapi-da-degerlenendil (ET: 2.12.2023).
50 https://www.youtube.com/watch?v=hPDZjPtUJdo,

value: justice. As Prime Minister, I'm telling you: No one will be able to interfere with you. But if you ever organize under this or that structure within the judiciary, we will never allow it."

In his statement dated October 9, 2019, Bekir Bozdağ, then Minister of Justice, said, *"We established the Union in the Judiciary together with many judges and prosecutors well-known to the public. We purged FETÖ from the judiciary."*[51]

On January 18, 2017, President Erdoğan received the members of the YBD's Founding Board, Board of Directors, Audit Board, Advisory Board, and Ethics Board at the Presidency. YBD announced this reception as follows: " *Our President stated that the Unity in the Judiciary Association, which has undertaken a historic mission in preventing the damage caused by FETÖ within the justice system, is the successful representative of a pluralistic and broad-based movement. He expressed his belief that it will maintain this structure in the coming period and continue its work more effectively as a professional organization that will oversee the functioning of the judiciary, express opinions, offer suggestions, and, when necessary, offer criticism. He also thanked the members of the association for their significant service to our country and the Turkish judiciary. As the Unity in the Judiciary Association family, we extend our gratitude to Mr. President for his warm welcome."*[52]

Sharing a message on October 12, 2020, the anniversary of the 2014 HS(Y)K elections, the YBD clearly laid out its purpose, its commitment to the government, and its role as a subsidiary of the ruling party, rather than a judicial association. The message in question stated: *"Members of the Fethullahist Terrorist Organization, who had infiltrated the judiciary, carried out a judicial coup against the democratically elected government of the Republic of Turkey between December 17-25, 2013."*

Members of the judiciary, who have dedicated themselves and their work to this country and have never rented their minds or bodies to any person or group, came together around unity in the judiciary ***to eliminate this coup and the FETO terrorist elements within the judiciary , and a relentless struggle was launched under the leadership of the then-Prime Minister, our President Recep Tayyip Erdoğan.***

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51 https://www.odatv4.com/guncel/bekir-bozdag-odatvye-konustu-benimle-calisan-insanlardan-bir-tanesi-bile-boyle soylerse-170170

52https://yargidabirlik.org.tr/sayin-cumhurbaskanimiz-recep-tayyip-erdogan-yargida-birlik-dernegini-kabul-etti.html

On October 12, 2014, the plans and projects of members of the Fetullah Terrorist Organization to seize control of the Supreme Board of Judges and Prosecutors were thwarted by the unity, solidarity and courage of the Judicial Unity Platform (Association), and the election of a national Board of Judges and Prosecutors was ensured.

The High Council of Judges and Prosecutors elected on October 12, 2014, and the members of the judiciary affiliated to this council, ensured that the traitors who fought against the treacherous coup attempt on July 15, 2016, within the framework of international and national law, were brought to justice from the very first night.

The Judicial Unity Association (platform) has undertaken significant duties in the fight against the Fetullah Terrorist Organization, forming the cornerstone and backbone of the ongoing struggle. As the Judicial Unity Association, we extend our gratitude and appreciation to all members of the judiciary, especially the ministers, undersecretaries, and members of the Council of Judges and Prosecutors (HSK), who contributed to this sacred struggle.[53]

-Association for Unity in the Judiciary through the Eyes of International Institutions and Organizations

International judicial associations have rejected YBD as a member, citing its close ties with the government, its failure to defend the rights of judges and prosecutors, and its failure to support the independence and impartiality of the judiciary. They have also not participated in YBD's organizations.[54]

The European Judges' Association has established a relief fund for judges and prosecutors and their families who were dismissed from their profession in the mass dismissals following the July 15 coup attempt. Thomas Stadelmann, a member of the *Swiss Judges and Prosecutors' Association,* called for support, saying, [55]*"We believe that the small amount of financial assistance we will provide some relief to these wounded families."* However, this initiative was met with criticism

53 https://www.facebook.com/yargidabirlik/posts/yarg%C4%B1-i%C3%A7erisine-s%C4%B1zm%C4%B1%C5%9F-fetullahc%C4%B1-ter%C3%B6r-%C3%B6rg%C3%BCt%C3%BC-mensuplar%C4%B1nca-17-25-aral%C4%B1k-2013-t/1854791087994123/

54 https://t24.com.tr/haber/avrupa-yargiclar-birligi-yargida-birlik-dernegini-yarginiz-bagimsiz-degil-dyerek rejected,309486

55 https://www.sabah.com.tr/avrupa/2016/11/7/fetocuhain

by the YBD in Turkey, which labeled it "aiding terrorism." The YBD statement read: *"We have learned that the European Judges' Association has launched an aid campaign in the name of human rights. We must state that this is clearly a crime. Furthermore, under what category of human rights can knowingly and willingly support those who usurp human rights through terrorism be included? The aid campaign was declared by the President of the World Judges' Association, and we would like to emphasize that the leaders of this association will be held accountable before history as well as before the law.*"[56] This statement demonstrates that the YBD's goal is not judicial independence or impartiality. YBD went so far in its reaction that an aid initiative initiated by European judges, who were not parties to the dispute in Turkey, with purely humanitarian feelings was described as *"aiding terrorism"* and a warning was made to the European judges that they would be held responsible.

Christophe Regnard, *President of the International Association of Judges (IAJ)* and a member of the Paris Court of Appeals, wrote an article titled *"Turkey: The End of the Rule of Law"* (March 29, 2019) that contains important warnings and observations on this matter. Regnard discussed the efforts to restructure the High Council of Judges and Prosecutors (HSK), which would have created a compliant judiciary in 2013, and the Judicial Unity Platform, which the government openly supports. He explained that a vote counting system identified those who did not vote for the YBP and that these individuals were purged. He emphasized that judges and prosecutors were dismissed from their profession based on questionable decisions, held in detention under appalling conditions, and that cases of torture were reported. The article stated, *"The rule of law has disappeared in Turkey. The apparent indifference of European authorities, likely motivated by geopolitical considerations, is disturbing and shocking*."[57]

He concluded that the Council of Judges and Prosecutors *(HSK) did not meet the standards required for observer status,* citing the lack of satisfactory information regarding the compliance with international standards in its decisions regarding the situation of thousands of dismissed judges and prosecutors.[58] Immediately following this decision, Erdoğan invited the YBD (Unity of Judges and Prosecutors Association) and addressed them, noting the reactions to the

56 https://www.sabah.com.tr/avrupa/2016/11/16/fetocu-hakimlere-yardim-suctur
57 https://silencedturkey.org/wp content/uploads/2021/07/Turkiyede-yargi-raporu.pdf
58 https://bianet.org/haber/avrupa-yargi-konseyleri-agi-HSK-nin-gozlemciligini-askiya-aldi-181535

ENJC decision from Western judicial institutions and organizations. He said, "As the Union of Judges and Prosecutors Association, in many different places in the West, some may not open the way for you, may not see it, may not give you a pass. Don't worry; the dogs bark, the caravan moves on."[59]

European Commission's 2018 Turkey Report evaluated the YBD. The report stated: *"The closure of two important organizations, the Association of Judges and Prosecutors and the Judges' Union, under the state of emergency has had an impact on pluralism within judges' associations. The largest association, YBD, with approximately 9,145 members, is known for its closeness to the government."*[60]

The European Commission's 2020 Turkey Report also included findings regarding the Judicial Unity Association. The report highlighted the freedom of association of judges and prosecutors and YBD's pressure on the system, stating: *"The pluralism within judges' associations has been severely affected by the chilling effect on members of the judiciary caused by the closure of a number of associations during the state of emergency. There are reports that membership in an association perceived to oppose the government constitutes an obstacle to professional advancement. The Judicial Unity Association, the largest association in Turkey with approximately 9,300 members, is known for its close ties to the government. Newly recruited judges and prosecutors are provided with membership applications to the Judicial Unity Association as soon as they begin their work. "*[61]

As can be seen from the foregoing, the YBD emerged through an organized process targeting the 2014 HSYK elections, involving meetings coordinated by the Ministry of Justice, organized contacts in provincial courthouses, and alliances with ideological groups. It was positioned within a framework prioritizing the identification and purge of members of the judiciary associated with the "*religious community*." The founding actors' own statements and high-level contacts with the government reveal that this structure functions as a cadre aligned with executive policies. International assessments have also emphasized the YBD's close positioning to the government and its deterrent pressure on members of the judiciary. Within

59 https://t24.com.tr/video/cumhurbaskani-erdogan-it-urur-kervan-yurur-biz-yolumuza-devam-ediyoruz,5017

60 https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/

61 https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/

this framework, despite its official rhetoric of "confidence in the judiciary," the YBD appears in practice as an actor focused on purges and redesign.

This situation regarding YBD is incompatible with the objective impartiality (apparent impartiality) criterion required under Article 6 of the ECHR for the association's founding members. The founders' inherent role in their founding purpose increases the risk of bias and affiliation with the state's argument, particularly in individual applications related to the community. It is understood that generalizations based on group affiliation can hinder the individualized assessment of evidence. Impartiality must not only be achieved but also visibly maintained; however, close contacts with the executive branch and purge-oriented rhetoric weaken the perception of judicial distance in the eyes of a reasonable observer and undermine confidence in the right to a fair trial. Therefore, it is concluded that the founding members of YBD have exceeded the reasonable suspicion threshold that requires hesitation in such disputes and have failed to provide the appearance of an independent and impartial trial.

After providing this information about YBD, it is necessary to touch upon the issues regarding why the three Constitutional Court members, who are founding members of YBD, cannot be impartial and independent in cases related to the community.

b) Members of the Constitutional Court who are founding members of the Association for Unity in the Judiciary

I. Basri Bağcı

While serving as deputy undersecretary of the Ministry of Justice, Basri Bağcı was elected to the Court of Cassation by the Council of Judges and Prosecutors (HSK) on July 5, 2017, and to the Constitutional Court by the President on April 2, 2020. [62]Bağcı, a founding member of the YBD, established to monitor the judiciary and purge members of the judiciary close to the Gülen movement, played an active role in this process.

The 9th Criminal Chamber of the Supreme Court of Appeals' decision regarding Birol Erdem detailed Bağcı's role in the establishment of the YBD, and how he was involved in profiling activities within the judiciary from the very beginning. The decision, in its assessment

62 https://yargidabirlik.org.tr/ybd-hakkinda/kurucu-uyeler

of Birol Erdem's tenure as Undersecretary, stated the following: *"One of the important works he carried out in the fight against the organization was to bring the idea of a Unity Group in the Judiciary to the agenda, that in the summer of 2013 - to work on the 2014 HSYK elections - he formed the core of this group with his friends in the Ministry, that in later meetings Harun KODALAK from the Ankara Courthouse, Halil KOÇ, İsmail AYDIN and Rasim AYTİN from the HSYK also participated, that Metin KIRATLI, Aytekin SAKARYA, Feyzullah TAŞKIN, Muharrem ÜRGÜP, Veysel BEKTAŞ, Serdar MUTTA, Bilgin BAŞARAN and* ***Basri BAĞCI*** *took part in these activities in the Ministry, that in the meetings they held with the aforementioned, they first initiated a study to get to know the members of the parallel structure in the organization, that his friends in the Ministry prepared a list of those in the Ministry, and two friends from the administrative judiciary prepared a list of the administrative judiciary, that he left his post while the work on the list of the judiciary was still continuing,*

He sent the lists of the Ministry and the Administrative Judiciary to both these colleagues and the board, ***and gave a copy of the administrative judiciary list, along with the names of the members of the Supreme Court of Appeals Council of State, to MİT Undersecretary Hakan FİDAN,***

He stated that shortly before leaving office, he persistently requested from Justice Minister Sadullah ERGİN ***that Basri BAĞCI be appointed as Deputy Undersecretary to carry out the work of the Unity in the Judiciary. He*** *stated that he had known Basri BAĞCI since the faculty as he was a classmate of his, and that* ***Basri BAĞCI had successfully carried out the activities of the Unity in the Judiciary. He also presented as evidence the lists of the Ministry, the Administrative Judiciary, the Council of State and the Court of Cassation prepared in late 2013 to identify members of the parallel structure within the scope of these activities.***[63]

In the decision, regarding the appointment of BAĞCI as deputy undersecretary, it was stated that Bağcı was appointed to the position with the idea that *he would be "successful and could bring everyone together"* during the establishment of the Unity in the Judiciary group, since he had previously worked as an inspector (p.201).

63 https://www.justicesquare.com/wp-content/uploads/2022/12/YARGITAY-9.-CEZA-DAIRESININ-BIROL-ERDEM-HAKKındaKI-GEREKCELI-KARARI.pdf , p.124-125.

Court of Cassation member Harun Kodalak, whose testimony was taken as a witness in the file, stated regarding the meetings during the founding and subsequent stages of the YBD: *"He told Birol ERDEM that Basri BAĞCI was the first person to be invited, that the decision to invite him was made first, that he did not recall whether any meetings were held with Basri BAĞCI during Birol ERDEM's term, that* ***after Birol ERDEM was dismissed, they held the meetings together with Basri BAĞCI, and that after December 17-25, Basri BAĞCI consistently chaired these meetings,*** *and that in this way, they gradually expanded and enlarged that platform"* (p. 205). These statements were also confirmed by Birol Erdem and then-Minister of Justice Sadullah Ergin (p. 257).

Bağcı's status as a founding member of the YBD and his leadership role in profiling and purging members of the community during his time as Deputy Undersecretary of the Ministry of Justice raise serious doubts about his judicial objectivity. Birol Erdem's statements and the 9th Criminal Chamber of the Court of Cassation's decision clearly demonstrate that Bağcı held a key position in the preparation of lists to identify community members at the YBD's founding meetings, that these lists were then forwarded to the National Intelligence Organization (MİT) and the Prime Ministry, and that he was part of the process that led to the dismissal of approximately 5,000 members of the judiciary. These activities demonstrate Bağcı's prejudiced attitude toward the community and directly served government policies.

Bağcı's appointment to the Court of Cassation by the YBD (High Council of Judges and Prosecutors) on July 5, 2017, and to the Constitutional Court by the President on April 2, 2020, reinforce the perception that these activities are being viewed as a form of reward. These appointments reveal Bağcı's close ties to the government and his position as an actor supporting anti-Gülenist policies. In accordance with the "reasonable observer" criterion emphasized in Article 6 of the ECHR, Bağcı's leading role in profiling activities undermines the appearance of impartiality. Bağcı's active position within the YBD stands out as a factor that seriously questions his ability to objectively assess individual applications related to the Gülenist movement.

Ultimately, Bağcı's founding role in the YBD, his leadership in profiling activities, and his political appointment process raise legitimate doubts about his objective impartiality in cases involving the Gülen movement. This situation makes it difficult for Bağcı to maintain an

unbiased stance in individual applications concerning the Gülen movement, undermines the institutional credibility of the Constitutional Court, and conflicts with the guarantees of the principle of fair trial. Therefore, it appears unlikely that Bağcı will be able to serve as an independent and impartial judge in these cases.

ii. Selahaddin Menteş

Selahaddin Menteş served as Deputy Undersecretary of the Ministry of Justice between February 2014 and May 2017, as Chairman of the State of Emergency Measures Investigation Commission between May 2017 and October 2017, and as Undersecretary of the Minister of Justice between October 18, 2017, and July 1, 2018. He was appointed Deputy Minister of Justice on July 21, 2018. Menteş was elected as a member of the Constitutional Court by President Erdoğan on July 6, 2019.

A founding member of the YBD, Menteş was nominated for HSYK membership from the judiciary in the YBD's 2014 HSYK elections and was elected as an alternate member. In other words, he is one of YBD's most trusted figures. Menteş, who served in top positions within the Ministry of Justice, also chaired the State of Emergency Commission, established to review dismissals issued under state of emergency decrees.

In the speeches he gave at the meetings he attended, Menteş clearly stated his perspective on the Gülen movement and why he could not take a side in cases related to it. Speaking at the Cihannüma Istanbul Lawyers' Meeting on January 14, 2018, during his time as Deputy Undersecretary, Menteş said: *"FETÖ is just a stop in history, a glitch, and thank God, our nation's brave sons and daughters risked their lives to wage this struggle. They are all heroes. We will wage this struggle as a society, a nation, and the judiciary, and this burden falls largely on the judiciary. Our colleagues are already doing just that. Our lawyer colleagues are constantly on duty at courthouses, perhaps without receiving any payment. Let me tell you, the work our judges and prosecutors have done regarding FETÖ is beyond measure. Perhaps we need to protect them with thousands of bodyguards each. Because our colleagues are waging this struggle against a global espionage organization (FETÖ), America's representative here, without any fear or concern. Moreover, our judges and prosecutors, in*

particular, initiated this struggle when FETÖ members were in control of the judiciary. If that process hadn't happened, I believe we wouldn't have been able to get through the July 15th process so easily . "[64]

Continuing his speech, Menteş stated that they held "terror meetings" after consulting with legal experts. *"As a result of these meetings, we concluded that this fight needs to proceed on the right footing; the guilty need to be distinguished from the innocent. The guilty need to receive the punishment they deserve, which is crucial. The innocent also needs to be cleared of the allegations against them. Ultimately, FETÖ isn't an organization that exists today. It's a structure that, especially at the state level, has established communication, both overt and covert, with all the parties that came to power after the 1980 coup. After the December 17-25 period, it's actually a structure that has established some sort of communication and established relationships with all the parties currently in opposition. Therefore, it's difficult to distinguish this structure at once, like a litmus test. Our colleagues are asking, 'Which activities qualify as an organization?' "We are meticulously working on this issue. As the fight against the organization continues and organizational documents are obtained, we become somewhat more comfortable in this regard. But this structure is so corrupt that we even experienced it with the ByLock organization documents; there, they committed a wicked act and added innocent people to the list, but our state's own organs came forward and tried to resolve the grievances. This struggle will continue with this logic.*"

Menteş's founding membership in the YBD (Union of Progressive Trade Unions), his election as an alternate member in the 2014 HSK elections, his holding critical positions such as deputy undersecretary at the Ministry of Justice and chairman of the State of Emergency Procedures Investigation Commission, and his characterization of the Gülen Movement as a "global espionage organization" and "a glitch in history" at the Cihannüma Istanbul Lawyers' Meeting on January 14, 2018, demonstrate his prejudiced stance against the Gülen Movement. Menteş's review of the dismissals issued by statutory decrees on the State of Emergency Commission demonstrates his direct involvement in the implementation of anti-Gülenist state policies and his internalization of these policies.

64 https://www.trthaber.com/haber/gundem/adalet-bakanligi-mustesari-selahaddin-mentes-hakim-ve-savci-arkadaslari-biner-korumayla-korumamiz-lazim-346491.html

While Menteş's 2018 speech emphasized the need to "separate the guilty from the innocent," which may initially suggest a neutral stance, it contradicts his blanket and accusatory approach towards the Gülen movement. This rhetoric reinforces the perception that individuals affiliated with the movement can disregard the presumption of innocence and make decisions in line with state policies. In terms of the principle of the visibility of justice, as emphasized in Article 6 of the ECHR, this rhetoric casts doubt on Menteş's impartiality. Menteş's founding role in the YBD and his candidacy in the 2014 HSK elections demonstrate his close cooperation with the government and his anti-Gülenist approach.

Consequently, Menteş's founding position in the YBD, his executive duties on the State of Emergency Commission, and his accusatory language toward the community constitute legitimate grounds for doubt regarding his objective impartiality in cases involving the community. This situation makes it difficult for Menteş to maintain an unbiased stance in individual applications concerning the community, undermines the institutional credibility of the Constitutional Court, and conflicts with the guarantees of the principle of fair trial. Therefore, it appears unlikely that Menteş will be able to serve as an independent and impartial judge in these cases.

iii. Metin Kıratlı

After serving as the General Directorate of Criminal Affairs of the Ministry of Justice, Deputy Secretary General of the Presidency, a member of the Council of Higher Education and Head of Administrative Affairs of the Presidency, Metin Kıratlı was elected as a member of the Constitutional Court by the President on July 18, 2024.

Kıratlı is a founding member of YBD and has been actively involved in it. Birol Erdem, in his statement to the Ankara Chief Public Prosecutor's Office on November 28, 2016, stated the following regarding Kıratlı's role in the founding of YBD: *The elections (HSYK) were actually around 13-14 months away. Therefore, it was necessary to do something quickly. I told my colleagues that we would first conduct an evaluation on this matter with our colleagues within the ministry, and then we planned to expand this topic, starting with the HSK and the Ankara Courthouse. They reminded us that we shouldn't delay in this matter and left. Thereupon, I summoned General Director of Personnel Muharrem Ürgüp, Deputy General Director Veysel Bektaş, General Director of Penal Affairs Metin Kıratlı, Deputy General Director of Penal Affairs Aytekin Sakarya, and Deputy General Director of*

Legal Affairs Feyzullah Taşkın to discuss the matter and explained the situation. I told them that we needed to take action and asked them to make preliminary preparations on a few matters. These issues included the name and form of this alliance we would establish, who we could contact from nationalist, conservative, and social democratic circles, and with whom we could work together. I believe we held this meeting in late August. I called the colleagues back in September. At the second or third meeting, I told my colleagues: " We need to quickly contact our colleagues in the provinces and clarify the situation of the judiciary as soon as possible. First, meet with colleagues in the ministry and the Supreme Court of Appeals, and if necessary, meet with them in groups at the Courthouse. There are judges and prosecutors of all levels of seniority and ranks within the ministry and the Supreme Court of Appeals. If you can reach enough of them, I said, you can remove a significant portion of the provincial members of this structure with the help of colleagues at the central level. For the rest, I said, conduct provincial visits and meet face-to-face with colleagues at the courthouses to gather information about the situation of the judges and prosecutors there. ***The Director General of Criminal Affairs (Metin Kıratlı) said there are serious problems and shortcomings in the investigations conducted against civil servants, and we were already planning to conduct training on this issue. If you wish, we can conduct this training in the provinces under the supervision of certain committees, and while we're there, we can try to assess the situation of the courthouses and surrounding courthouses there.*** *" I said, "That would be great. Get started right away. Prepare and bring the necessary approvals. I believe the Council of Judges and Prosecutors (HSK) was contacted on this matter, and first,* ***colleagues organized regional meetings within the larger committees, conducting training activities and trying to get to know the judges and prosecutors in that area.*** *" In December, I held the fifth meeting of the Judicial Unity Group. I asked how many colleagues in the judiciary had you met with, or how many people you had identified. They told me a figure of 1,500, but I don't remember now whether this figure represented the number of people they had met with or the number of community members they had identified. Because the work wasn't completed, they hadn't given me the list yet. At the time, I had the lists for the Council of State and the Court of Cassation, which I had compiled, and the lists for the ministries and administrative courts, which I had commissioned from these colleagues. (pp. 57-59)*

In the evaluation section of the decision regarding Birol Erdem, given by the 9th Criminal Chamber of the Supreme Court of Appeals, the following issue was included regarding the regional meetings, which Kıratlı was the initiator of and where profiling was carried out under

the guise of education activities with state resources; *"In order to identify the members of FETO working in the provincial organization of the judiciary of the defendant, the General Directorate of Criminal Affairs of the Ministry of Justice, on the grounds that "there are serious deficiencies in the implementation of disciplinary investigations and in the files referred to the disciplinary boards and in the procedures of personnel appointed by the commission", with the participation of the managers, judges and assigned personnel from the Inspection Board, General Directorate of Personnel, General Directorate of Prisons and Detention Houses, General Directorate of Legal Affairs and Education Department, between 19-21 February 2014 in Antalya, between 05-07 March 2014 in İzmir, between 19-21 March 2014 in Gaziantep, between 02-04 April 2014 in İstanbul, between 16-18 April 2014 in Diyarbakır, between 07-09 May 2014 in Bursa, between 21-23 May 2014 in Kayseri, between 28-30 May 2014 in Trabzon, "That he planned meetings under the name of "Disciplinary and Commission Procedures" in Samsun between 4-6 June 2014, in Van between 11-13 June 2014, in Erzurum between 18-20 June 2014, and in Ankara between 25-27 June 2014, and that he sent them to the HSYK with the undersecretariat's "APPROVAL" dated 16/12/2013, and that the aim was to identify the members of the parallel structure by contacting colleagues who were not members of the organization and who were working in those regions through reliable unit heads who would attend these meetings on behalf of the ministry, and that after the defendant left office on 31/12/2013, this request was approved and announced to the organization with a letter from the HSYK General Secretariat dated 17/01/2014, and that the meetings in question were held in accordance with the schedule determined during the term of Minister of Justice Bekir BOZDAĞ,"*[65]

As can be understood from these statements, Kıratlı personally participated in the founding meetings of YBD, and as a result of the meetings in which he was the initiator, thousands of judges and prosecutors were blacklisted – as Birol Erdem stated and presented as evidence in the case file in which he was tried.

Kıratlı's founding as a member of the YBD, his leadership of meetings coordinating profiling activities targeting members of the community during his tenure as the General Directorate of Criminal Affairs at the Ministry of Justice, and his proposal for the preparation

65 https://www.justicesquare.com/wp-content/uploads/2022/12/YARGITAY-9.-CEZA-DAIRESININ-BIROL-ERDEM-HAKKındaKI-GEREKCELI-KARARI.pdf , p.257.

of profiling lists under the guise of *"training activities"* demonstrate his prejudiced stance against the community. Birol Erdem's statements and the 9th Criminal Chamber of the Supreme Court of Appeals' decision indicate that Kıratlı masterminded these activities and was part of the process that led to the dismissal of approximately 5,000 members of the judiciary. These actions indicate that Kıratlı viewed individuals affiliated with the community with a mindset of collective accusations.

Kıratlı's stint in high-level positions within the Presidency, including Deputy Secretary General, YÖK (Council of Higher Education), and Administrative Affairs Director, and his appointment by the President to the Constitutional Court on July 18, 2024, demonstrate his engagement with government policies. This close political connection reinforces the perception that Kıratlı may exhibit a biased approach in favor of the state in cases concerning the Gülen movement at the Constitutional Court. In accordance with the *"reasonable observer"* criterion emphasized in Article 6 of the ECHR, Kıratlı's leading role in profiling activities undermines the appearance of impartiality. Kıratlı's role in the YBD and his political appointments seriously question his ability to conduct objective assessments of individual applications concerning the Gülen movement.

In conclusion, Kıratlı's founding role in the YBD, his leadership in profiling activities, and his political appointments raise legitimate doubts about his objective impartiality in cases involving the Gülen movement. This situation makes it difficult for Kıratlı to maintain an unbiased stance in individual applications concerning the Gülen movement, undermines the institutional credibility of the Constitutional Court, and conflicts with the guarantees of the principle of fair trial. Therefore, Kıratlı appears unlikely to serve as an independent and impartial judge in these cases.

II. IS INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT AN EFFECTIVE METHOD?

A. RIGHT TO AN EFFECTIVE REMEDY UNDER ARTICLE 13 OF THE ECHR

Article 13 of the European Convention on Human Rights (ECHR, Convention) grants individuals whose rights and freedoms recognized in the Convention have been violated the right to an effective remedy before a national authority, even if these violations are perpetrated by official authorities. Within the ECHR system, the protection of rights and freedoms is

primarily the responsibility of national authorities and judicial authorities. While states have the authority to determine the methods of implementing the provisions of the Convention, these remedies must be effective, adequate, and accessible, both in theory and in practice. A state that claims that a domestic remedy should be exhausted has the burden of proving to the European Court of Human Rights (ECtHR) that such a remedy is effective, adequate, accessible, and capable of redressing the violation. [66]

B. THE PLACE OF INDIVIDUAL APPLICATION TO THE CONSTITUTIONAL COURT IN THE ECHR'S JURISPRUDENCE

In its decision, Hasan Uzun v. Turkey, the ECtHR considered individual application to the Constitutional Court (AYM) under Law No. 6216 on the Establishment and Trial Procedures of the Constitutional Court as a mechanism, in principle, suitable for examining and resolving claims of rights violations related to the ECHR. However, in this decision, the Court emphasized that it reserved the right to review the consistency of the AYM's jurisprudence with its own and that the burden of proving the practical effectiveness of this remedy rests with the state. Therefore, while the ECtHR may consider individual application to the AYM an effective remedy in some cases, it may find it ineffective in others. [67]

C. CONSTITUTIONAL COURT PRACTICES AND RE-EVALUATION OF THE EVENT AFTER JULY 15

Because the ECtHR generally recognizes individual application to the Constitutional Court as an effective avenue, it is mandatory to apply to the Constitutional Court before applying to the ECtHR. However, the conscious and negative attitude of the ECtHR towards applications related to the Gülen Movement after July 15, 2016, creates a serious obstacle preventing the identification and remediation of violations of fundamental rights and freedoms. Rather than redressing violations of rights in such applications, the ECtHR fabricates justifications for unlawful practices and deliberately delays applications from reaching the ECtHR by delaying their access to the ECtHR for extended periods. This situation

66 Hasan Uzun v. Turkey, B.No: 10755/13, 30/04/2013, § 71.
67 Sürmeli/Germany Decision, B. No: 75529/01, 08/6/2006, § 115.

highlights the need for the ECtHR to reassess the effectiveness of individual application to the Constitutional Court.

D. FLEXIBILITY OF THE RULE OF EXHAUSTION OF DOMESTIC REMEDIES AND THE CIRCUMSTANCES OF THE EVENT

When assessing the effectiveness of the Constitutional Court's individual application mechanisms, the ECtHR bases its decisions on the general jurisprudence on the effectiveness of domestic remedies.[68] However, the rule of exhaustion of domestic remedies is not an absolute principle that applies automatically or rigidly. The fact that a remedy is generally considered effective or applicable to a specific complaint does not necessarily mean that it is effective in all cases. For example, in the Hasan Uzun v. Turkey decision, the ECtHR stated that its decision regarding the recognition of individual application as a mandatory domestic remedy was not final and that it reserved its supervisory authority in this matter. Therefore, when assessing compliance with this rule, the ECtHR takes into account the specific circumstances of the case and examines whether a remedy, while theoretically available, is actually functional in practice. This analysis takes into account not only the legal rules but also the legal environment prevailing at the time of the events, the political conditions, and, where appropriate, the applicants' personal circumstances. [69]

E. FAIR TRIAL GUARANTEES AND REASONABLE TIME

The ECtHR emphasizes that the state party, which offers domestic remedies, has an obligation to provide individuals seeking their rights with the fundamental guarantees of the right to a fair trial. [70]Therefore, it is a requirement of the ECtHR's established jurisprudence that individual applications to the Constitutional Court comply with the requirements of the right to a fair trial under Article 6 of the ECHR. For example, in the Soto Sanchez v. Spain decision, it was determined that the constitutional complaint process, which lasted 5 years, 5

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68 Işıl KARAKAŞ: Effective Recourse in the Jurisprudence of the European Court of Human Rights: Observations within the Framework of Individual Application to the Constitutional Court, (https://anayasader.org/wp-content/uploads/2020/05/Karaka%C5%9F-AYHD-7.pdf).

69 Van Oosterwijck v. Belgium, B.No: 7654/76, 06/11/1980, § 35, Akdivar and others v. Turkey, B.No: 21893/93, 16/9/1996, CEDH 1996-IV, p.1210,65-69.

70 Süssman v. Germany, B.No: 20024/92, 30/8/1994, § 39.

months, and 18 days, violated the right to a fair trial guaranteed under Article 6 of the ECHR due to excessively long trial durations. [71]

F. ADMINISTRATIVE APPLICATION DOCTRINE AND EXEMPTION FROM CONSUMPTION

According to the ECtHR, if violations of rights protected by the ECHR occur systematically, extensively, and continuously in a party state, this situation qualifies as *an "administrative practice,"* and the applicant may be exempted from the obligation to exhaust domestic remedies. In other words, where a rights violation becomes an administrative practice, the requirement to exhaust domestic remedies is not required. The ECtHR considers such cases as unnecessary and ineffective remedies in preventing violations. [72]The concept of administrative practice was first codified in the Ireland/UK decision. This decision established two criteria for a party state's actions in response to rights violations to qualify as administrative practices: first, the same type of rights violation occurring repeatedly in the state; second, the state's tolerance rather than punishment of those who commit rights violations, which renders legal proceedings ineffective or futile.[73] When administrative practice is detected, domestic remedies are deemed ineffective and ineffective, and the applicant is not expected to exhaust them. [74]

G. JUDICIAL PRACTICES IN Türkiye AND THE PROBLEM OF COMPLIANCE WITH ECHR JUDICIAL LAW

A review of judicial practices in Turkey reveals that the clear provision in Article 90 of the Constitution has not been internalized. Especially in cases and applications following the July 15th coup, the actions of lower courts, which ruled under the clear influence and instructions of the political power, have led to rights violations, and are also supported by higher courts. [75]The judicial and administrative practices that emerged following the ECtHR's Yalçınkaya v. Turkey decision reflect the recurrence of actions incompatible with the

71 Soto Sanchez/Spain, B.No: 66990/01, 25.11.2003.
72 Ireland/England, B.No: 5310/71, 18/01/1978: Aydın/Türkiye, B.No: 23178/94, 25/9/1997.
73 Ireland/England, B.No: 5310/71, 18/01/1978
74 Akdivar and others v. Türkiye, B.No: 21893/93, 16/)/1996.
75 https://hudoc.echr.coe.int/?i=001-227636

Convention, as well as demonstrating the existence of an administrative practice stemming from official tolerance by state authorities, rendering judicial proceedings ineffective.

However, the Constitutional Court's stance of not implementing ECHR rulings is not new. For example, in its Yıldırım Turan decision, the Constitutional Court rejected the ECHR's findings in the Alparslan Altan and Hakan Baş rulings, stating, contrary to Article 46 of the ECHR, that *"Turkish courts are in a better position than the ECHR in interpreting and interpreting the legal provisions in Turkish law."*[76]By saying, "The Constitutional Court has not complied with the binding decisions of the ECHR." This controversial stance of the Constitutional Court is not an isolated incident, but rather a strategic approach adopted in cases related to the Gülen Movement. Furthermore, in addition to the Yalçınkaya decision, the Constitutional Court also ignored the decisions regarding ByLock in the Akgün v. Turkey case and the dismissals in the Pişkin v. Turkey case.

H. YALÇINKAYA/Türkiye: SYSTEMIC PROBLEM AND GENERAL MEASURES

The ECtHR addressed important points in paragraphs 413 and following of its Yalçınkaya v. Turkey judgment, titled *"Measures to be taken in similar cases*." The Court held that the situation that gave rise to a violation of Articles 6 and 7 of the Convention in this case stemmed not from an isolated incident or a specific chain of events, but from a systemic problem. This problem has affected, and has the potential to continue to affect, a large number of individuals. The fact that more than 8,000 applications are before the ECtHR containing similar complaints under Articles 6 and/or 7 of the Convention concerning convictions based on the use of ByLock demonstrates this systemic problem (§ 414).

In its Yalçınkaya v. Turkey decision, the ECtHR noted that, considering the approximately one hundred thousand ByLock users identified by the authorities, many more applications containing similar complaints under Articles 6 and/or 7 of the ECHR could be brought before the court (§ 415). The ECtHR emphasized that, to prevent similar violations from being identified in the future, the issues raised in this decision should be addressed by

76 Constitutional Court's Yıldırım Turan Decision, No: 2017/10536 04/6/2020, § 117.

the Turkish authorities within a broader framework, not limited to the applicant's specific situation. In this context, in accordance with Turkey's obligations under Article 46 of the ECHR, the domestic authorities are required to draw the necessary conclusions from this decision and take appropriate general measures to address the identified systemic problem. In particular, domestic courts are required to take into account the Convention standards interpreted and applied by the ECtHR in this decision. The Court reiterated Article 90/5 of the Constitution. Referring to Article 46 of the ECHR, the Court reminded that international agreements that have been duly entered into force have the force of law and that no application can be made to the Constitutional Court on the grounds that they are unconstitutional, and stated that Article 46 of the ECHR is a constitutional rule in Türkiye (§418).

The primary reason why there are over 8,000 cases pending before the ECtHR is that the Constitutional Court found no violations in the files it reviewed. If the systemic problem identified by the ECtHR remains unresolved, it is likely that over one hundred thousand more similar cases will come before the courts. Despite the considerable time that has passed since the Yalçınkaya decision, neither the Constitutional Court, nor other judicial authorities, nor state authorities have taken any steps to resolve this systemic problem. Practices incompatible with the Convention have continued as if the decision had never been rendered. High Criminal Courts have issued convictions;[77] the Courts of Appeal rejected the requests to overturn these decisions,[78] while the Court of Cassation upheld the convictions.[79] This is *in line with the finding of the Committee of Ministers of the Council of Europe in the Ireland v. United Kingdom case that "a*

77 Istanbul 24th High Criminal Court dated 12/3/2024, numbered 2023/233 E., 2024/75 K.; Istanbul 32nd High Criminal Court dated 04/7/2024, numbered 2024/322 E., 2024/352 K.; Osmaniye High Criminal Court dated 16/5/2024, numbered 2021/317 E., 2024/123 K.; Diyarbakır 9th High Criminal Court dated 26/02/2024, numbered 2023/321 E., 2024/118 K.; Gaziantep High Criminal Court dated 29/02/2024, numbered 2022/255 E., 2024/34 K.

78 Gaziantep Regional Court of Justice 4th Criminal Chamber dated 09/5/2024, 2024/341 E., 2024/552 K.; Kayseri Regional Court of Justice 2nd Criminal Chamber dated 25/4/2024, 2024/524 E., 2024/11 K.; Adana Regional Court of Justice 2nd Criminal Chamber dated 17/7/2024, 2024/655 E., 2024/1351 K.; Ankara Regional Court of Justice 4th Criminal Chamber dated 25/3/2024, 2023/150 E., 2024/233 K.; Konya Regional Court of Justice 2nd Criminal Chamber, 17/01/2024 T., 2024/13 E., 2024/44 K.

79 Court of Cassation 3rd Criminal Chamber dated 11/3/2024 T. 2021/21659 E., 2024/3737 K.; Court of Cassation 3rd Criminal Chamber dated 04/4/2024 T. 2022/2159 E., 2024/5187 K.; Court of Cassation 3rd Criminal Chamber dated 27/5/2024 T. 2022/22320 E., 2024/7039 K.; Court of Cassation 3rd Criminal Chamber dated 03/4/2024 T. 2022/1052 E., 2024/5055 K.

violation may be considered more serious if it is not a single incident but part of a series of similar incidents that may form a pattern."

I. PRACTICES AFTER YALÇINKAYA AND PROBLEMS RELATED TO THE PRINCIPLE OF LEGALITY

As seen in the decisions of the Turkish judiciary, both the lower courts and the Constitutional Court, there is no difference between the practices of the pre-Yalçınkaya and post-Yalçınkaya cases. Specifically, the Constitutional Court focused on seeking connections to the Gülen Movement rather than the elements of the crime; it failed to investigate the coercion and violence that are essential elements of the crime of membership in an armed organization; it used legal and routine activities as justification for sentencing and used a wide range of non-criminal justifications, called *"criteria,"* as grounds for conviction. These criteria are broad enough to punish almost anyone in the country. The ECHR has clearly stated that this judicial practice violates the principle of "no crime without law" and is the source of a systemic problem.

In the current situation, individual applications to the Constitutional Court for applications related to the Gülen Movement are clearly not an effective legal remedy for applicants to address their complaints. This determination is not merely a suspicion, but an objective fact based on numerous court and Constitutional Court decisions. Therefore, applicants should not be expected to exhaust Constitutional Court Avenue.[80] The Constitutional Court's interim violation decisions, or the Court of Cassation's reversal decisions, do not meet the ECtHR's grounds for violations under Articles 6 and 7 of the Convention. Furthermore, the Constitutional Court disregarded the principle of "no crime without law," and ruled solely on the right to a fair trial, and subsequently issued violation decisions, resulting in retrials where defendants were still penalized. [81]This situation, due to the Constitutional Court's failure to consider the principle of legality, which underlies the systemic problem, has exacerbated the problem rather than resolved it.

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80 Sejdovic v. Italy, App. No: 56581/00, 01/3/2006, § 55.

81 Uşak High Criminal Court's decision dated 12/3/2024, numbered 2023/420 E., 2024/75 K., Manisa 3rd High Criminal Court's decision dated 12/12/2023, numbered 2023/244 E., 2023/255 K.

Moreover, in its decisions in Ürün v. Turkey [82]and Sağlam v. Turkey [83], the ECtHR questioned the government on whether the Constitutional Court had responded to the applicants' complaints under the Convention and provided an effective domestic remedy. This demonstrates that the ECtHR already views the effectiveness of the Constitutional Court as problematic. For these reasons, it is clear that applicants should be exempted from the obligation to exhaust domestic remedies even if they have applied to the Constitutional Court.[84] The United Nations Human Rights Committee also stated in its decisions on Mukadder Alakuş [85]and Gökhan Açıkkollu [86]that, considering the circumstances of the applicants' cases and the value of the Constitutional Court's decisions in the eyes of lower-instance courts, Turkey has failed to demonstrate that an individual application to the Constitutional Court would be effective in practice in challenging the lawfulness of Açıkkolu's detention and subsequent death in custody, and in challenging Alakuş's detention .

J. REASONABLE TIME CRITERIA, DELAYS AND SYSTEMATIC VIOLATIONS IN THE CONSTITUTIONAL COURT

Another crucial factor in the effectiveness of individual applications to the Constitutional Court is the requirement that allegations of violations be examined and remedied within a reasonable timeframe. According to Article 35 of the ECHR, domestic legal remedies must be expedited; otherwise, this remedy will not be considered effective. [87]However, in Turkey, especially in applications following the July 15th coup attempt, the Constitutional Court deliberately delays these applications as much as possible, in an effort to establish legal justifications for rights violations. It also appears that tens of thousands of dismissal applications submitted after July 15, 2016, were deliberately kept pending by administrative courts, the Council of State, and the Constitutional Court. By mid-2025, the Constitutional

82 B. No: 15013/20, 19/02/2021.

83 B. No: 14894/20, 19/02/2021.

84 Aksoy v. Turkey, B.No: 21987/93, 18/12/1996, § 57; Akdivar v. Turkey, § 76.

85 https://yasambellekozgurluk.org/wp-content/uploads/2023/09/TR.BM-Mukadder-ALAKUS-CCPR-C-135-D-3736-2020-karar.pdf , § 9.5

86 https://ccprcentre.org/files/decisions/G2301281_(1).pdf , § 7.4

87 De Souza and Ribeiro v. France, 22689/07, 13/12/2012 § 81: Bulatovic v. Karadag, 67320/10, in its decision dated 22.7.2014, the ECtHR did not accept the individual application remedy as effective in the context of the continuation of the case before the Constitutional Court for 3 years, § 110.

Court had ruled on only three applications. The [88] *"inadmissibility" decisions* it issued on August 15, 2025, in dismissal cases based on ByLock use , and its indication that it would adopt the same approach for similar cases, demonstrate that the Constitutional Court has completely ceased to be an effective remedy for such applications. Despite over nine years having passed since the dismissal decisions issued under state of emergency decrees, applications to the ECtHR have not even been filed due to the deliberate delay of the files by national courts and the Constitutional Court. The Constitutional Court has become the biggest obstacle to potential applications reaching the ECtHR, both in cases of conviction and dismissal, and continues to issue decisions without considering ECtHR rulings. This clearly demonstrates that the ECtHR should directly examine applications due to the ineffectiveness of domestic legal remedies. Furthermore, because the Constitutional Court has outlined how it will rule on cases alleging ByLock use, **those accused of ByLock use and whose applications are pending before the Constitutional Court can apply directly to the ECtHR without waiting for the Constitutional Court's decision. Furthermore, new applicants can apply to the ECtHR simultaneously with the Constitutional Court.** These individuals may cite the Constitutional Court's inadmissibility decisions in the AS and NE applications as justification for not exhausting the Constitutional Court's remedies.

In Turkey, the sheer number of individuals and institutions being subjected to legal proceedings in Gülen Movement-related cases and applications, coupled with the serious and persistent violations of the law suffered by the victims, necessitates the discussion of not ordinary violations but a situation that has reached the level of a witch hunt and hate crime targeting hundreds of thousands, amounting to a *"crime against humanity* ." As the United Nations Working Group on Arbitrary Detention emphasized in its Akın Öztürk decision [89], arbitrary detentions have become widespread and systematic in Turkey in recent years, and these practices may constitute crimes against humanity. The Working Group based this determination on 24 unlawful detention orders. The ECtHR, in 68 cases consolidated after July

88 Constitutional Court's AS decision, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/30928 ; Constitutional Court's NE decision, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2022/62466 ; Constitutional Court's Halit İnciroğlu decision, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/38006.

89 Opinion regarding Akın Öztürk, numbered 33/2024, published on 29.11.2024; https://documents.un.org/doc/undoc/gen/g24/208/07/pdf/g2420807.pdf , §87.

15th, found that 3,310 individuals, including 1,225 former judges and prosecutors, were arbitrarily deprived of their liberty. The Demirhan v. Others decision [90]exacerbates this situation, clearly demonstrating that judicial practices in Turkey constitute crimes against humanity. This decision relates not only to unjust detentions but also to direct convictions. Under Turkish law , while *"strong suspicion of a crime"* is sufficient for arrest, *"conclusive and convincing evidence beyond all reasonable doubt"* is required for conviction. However, the 239 applicants subject to the Demirhan decision were not only arrested but also sentenced to at least six years and three months in prison, and the vast majority have completed their sentences. This demonstrates that the act of *"deprivation of liberty," as defined in Article 77/1(d) of the Turkish Penal Code,* was committed against a community in a planned and systematic manner with political, philosophical, racial, or religious motives, constituting a crime against humanity. The fact that courts across the country have issued unlawful decisions violating Article 7 of the ECHR in similar cases is the strongest evidence that these decisions are the result of a planned and systematic practice. Recognizing this systemic structure, the ECtHR did not even feel the need to request a defense from the government before issuing such a grave decision as a violation of Article 7. In a country that defines itself as a state governed by the rule of law, the finding of violations of Article 7 against 239 individuals in a single case can only be explained by the existence of a planned and systematic practice. The Yalçınkaya and Demirhan decisions are a concrete reflection of judicial practices that United Nations Committees and Special Rapporteurs have characterized as *"persecution."*

K. EVALUATION

While the ECtHR considers individual application to the Constitutional Court a suitable mechanism for examining rights violations under the ECHR, the stance taken by the Constitutional Court, particularly after the July 15th coup, has seriously questioned its effectiveness. The Constitutional Court's fabrication of justifications for unlawful practices in cases related to the Gülen Movement, its deliberate delay in applications, and its failure to address the systemic problems identified by the ECtHR in its Yalçınkaya v. Turkey decision demonstrate that the Constitutional Court has ceased to be an effective legal remedy. This

90 https://hudoc.echr.coe.int/?i=001-244217

situation necessitates the ECtHR's reconsideration of its approach to viewing the Constitutional Court as a domestic remedy that must be exhausted.

A similar mistake was made by the ECtHR in the past [91]when it deemed the State of Emergency Commission a necessary avenue to be exhausted in its ruling in Gökhan Köksal v. Turkey. The ineffectiveness of this Commission, which had not even established its working procedures, delayed the legal proceedings of over a hundred thousand people for years and led to mass victimization. While the ECtHR issued this decision to reduce the caseload, it not only undermined the court's credibility but also paved the way for further violations.

The Constitutional Court's failure to consider ECtHR rulings, particularly in the post-July 15th period, in both conviction and dismissal cases, its decisions violating the principle of "no crime without law," and its failure to finalize applications within a reasonable timeframe clearly demonstrate its ineffectiveness. The ECtHR's continued reliance on the Constitutional Court as an effective remedy puts the fundamental rights of tens of thousands of people at risk, effectively leaving them to "a civil death." This situation casts a shadow over the ECtHR's mission to protect human rights.

What is expected from the ECtHR is to reassess the effectiveness of the Constitutional Court, regardless of workload concerns, to lift the requirement to exhaust this avenue, and to offer solutions to systemic problems in Türkiye through its rulings. This is a vital step to address current grievances and prevent similar violations in the future.

91 Gökhan Köksal/Türkiye, B.No:70478/16, 12/6/2017.

CONCLUSION

As Türkiye's constitutional oversight body, the Constitutional Court is obligated to play a central role in protecting fundamental rights and freedoms. However, in the period following July 15, 2016, particularly in cases related to the Gülen movement, the close political ties of the majority members of the Constitutional Court to the government, their prejudicial and accusatory rhetoric against the Gülen movement, their role in direct actions such as profiling, and their engagement with state policies clearly demonstrate that the court has not acted in accordance with the principle of an independent and impartial court enshrined in Article 6 of the ECHR. These members' ties to the executive branch, their wholesale criminalization of individuals affiliated with the movement, and their disregard for the presumption of innocence undermine the Constitutional Court's objective impartiality and independence, preventing not only the delivery of justice but also its visibility to the public. This situation seriously undermines the Constitutional Court's capacity to fulfill its constitutional oversight mission and undermines public confidence in the judiciary.

Furthermore, the validity of individual application to the Constitutional Court (AYM) as an effective remedy under Article 13 of the ECHR is seriously questioned, particularly in cases related to religious communities. The AYM's justification for unlawful practices in these cases, its deliberate delay in filing applications for extended periods, its ignorance of the systemic problems highlighted by the ECtHR in the Yalçınkaya v. Turkey decision rather than its resolution of them, and its decisions that violate the principle of "no crime without law" all undermine the effectiveness of this remedy. The ECtHR's approach to viewing the AYM as a domestic remedy that must be exhausted should be reevaluated in light of the fact that judicial practices in Türkiye have devolved into a systematic and deliberate witch hunt that violates fundamental rights. The Constitutional Court's decisions, particularly in cases of conviction and dismissal based on ByLock use, that contradict ECtHR precedents, its failure to finalize applications within reasonable timeframes, and its failure to take any general measures to address systemic problems, are effectively leaving individuals' legal remedies to a "civil death." When assessing the effectiveness of domestic legal remedies, the ECtHR should consider the specific circumstances of the case and the doctrine of administrative practice. Removing the requirement to apply to the Constitutional Court and reviewing applications directly is a vital necessity for addressing existing grievances and preventing similar violations

in the future. The Constitutional Court's current structure and stance demonstrate that it is a judicial body that complies neither with the principle of a fair trial nor with the guarantee of an effective remedy. Therefore, the ECtHR's recognition of this reality and shaping its decisions accordingly is a requirement of its mission to protect human rights.