Solicitors International Human Rights Group

The Republic of Turkey

v.

Adnan OKTAR and 206 other Defendants

The Special District Court

Silivri - Istanbul - Turkey

Before

Galip Mehmet Perk (Presiding) and Ahmet Tarık Çiftçioğlu and Talip Ergen.

September 2019 - January 2021

A TRIAL OBSERVATION REPORT

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WWW.SIHRG.ORG

SUMMARY

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

In this context, accusations from a former member of the movement snowballed down an official State mountain that was unwilling to undertake a balanced investigation nor to give the defendants a fair trial.

The Judges ignored the requirement for legal certainty of criminal charges and the requirement to avoid guilt by association. The Court intimidated defence lawyers and gave defendants short-shrift when presenting their cases and wrongfully denied the majority of them bail.

The team of SIHRG trial observers did not observe a trial that could be described as fair by international standards nor the standards set by Turkish law.

It is with reluctance that I even use the word "trial" to describe a process that was uninterested in defence evidence or arguments and was manifestly determined to convict the defendants, sentence them to lengthy terms of imprisonment and thus utterly crush the movement.

Terms of Reference of the Delegation

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

- To abide by the Guidelines contained in the Guidelines for Human Rights Fact Finding Missions (A joint publication of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law of the Lund University and International Bar Association – September 2009).

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

1. RIGHT TO PRE-TRIAL LIBERTY

2. RIGHT TO FAIR TREATMENT IN PRE-TRIAL DETENTION

RIGHTS TO FAIR TRIAL in particular

3. IMPARTIAL TRIBUNAL

4. PRESUMPTION OF INNOCENCE

5. RIGHT TO DISCLOSURE OF CASE

6. RIGHT TO BE PRESENT

7. RIGHT TO EXAMINATION OF WITNESSES

8. RIGHT TO LEGAL ASSISTANCE

The Observation Delegation

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

The observation team consisted of:

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

Sarah Hermitage - human rights activist and retired solicitor

Sandip Basu - non-practising Solicitor and Secretary of SIHRG

Suzanne Valentine - Solicitor

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

BACKGROUND and EVALUATIONS

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

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

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

The core of the complaint against Mr Oktar and 78 other adherents of the movement was sexual abuse. The alleged victims, all female, were 51 other adherents or past adherents of the movement or acquaintances of followers of the movement. The alleged offences included rape and sexual assault and 13 offences against complainants aged under 18.

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

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

1. 10 complainants of sexual offences were also charged with being members of the criminal organisation. A "criminal organisation" accused of the purpose of committing sexual offences of which they were victims.

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

3. One former complainant and defendant testified that her complaint of sexual assault had been wrought from her by police through threats and oppression. In doing so she

disavowed the liberty that giving evidence for the prosecution would have earned her and instead attracted a 4 year sentence of imprisonment for membership of a criminal organisation.

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

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

6. Before the failed coup of 2016 adherents of the movement faced several prosecutions for being members of this alleged "criminal organisation" and acquittals followed.

Defence lawyers were intimidated from defending by the threat of being charged with membership of the alleged criminal organisation they were seeking to establish did not exist as such. One defence lawyer was in fact so charged.

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

At the outset I should qualify this report by acknowledging that of 147 days of the trial the observation team was only able to observe proceedings for 19 days. I will summarize only some of the breaches of fair trial rights that were directly observed by the observation team and other reliable sources. It is not appropriate to identify the human sources of third-party information upon which I occasionally rely because of a legitimate fear of recriminations being visited upon such persons for the assistance that they have provided to us. I have only relied on third party or defence related sources that in my opinion are reliable. That is not to say I treat such sources as proof of facts mentioned. Nevertheless, they are cogent and consistent with our own observations and also consistent with established patterns of behaviour of State personnel in Turkey that are widely reported and evidenced in other cases and situations. It will be obvious that pre-trial matters are not matters that the SIHRG team could possibly have observed and thus statements of fact relating thereto have been provided by reliable third party or defence related sources.

I acknowledge that each member of the observation team had to rely upon a locally appointed interpreter to understand the hearing. The SIHRG team of observers had confidence in the interpreters who worked with us but inevitably detail is often lost in translation. Moreover, frequently voices of court participants could not be heard in the vast warehouse sized court room accommodating over two hundred defendants, their lawyers, lawyers for complainants and the prosecution and court staff and security. The public gallery was situated a great

distance from the participants in the trial. Large screens projected a relay of participants when speaking.

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

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

A tabulation of charges, defendants and complaints is appended to this Report.

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

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

Forming organized groups with the intention of committing crime

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

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

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

The criminality of the movement was determined ex post facto by the Court during the course of the trial. The movement was not a legally proscribed organization. A terrorist organization, the proscription of which is provided in legislation, places citizens on notice that to join it is illegal. There is then no requirement for the State to prove any specific criminal intent on behalf of an accused other than membership of the organization.

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

PRINCIPAL FINDINGS

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

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

C. The Judges were not impartial. They were evidently bias against the vast majority of defendants. This was evidenced by a range of breaches of fair trial rights including denial of defence witnesses, intimidating defence lawyers, providing insufficient time to present defences etc.

The trial started on the 17th of September 2019 and concluded on the 29 December 2020, judgement being pronounced on the 11th of January 2021. The first hearing we observed was on the 30th October 2019 and the last day attended was on the 17th of December 2020.

Information Concerning the Court

The panel of judges in this case consisted of Galip Mehmet Perk (presiding judge), Ahmet Tarık Çiftçioğlu and Talip Ergen.

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

TRIAL OBSERVATIONS

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

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

The case covers a huge and detailed canvas. I have decided that a "wood for the trees" approach is appropriate for this Report. The breaches of the duty of the Court to be impartial, to uphold the requirement of legal certainty of the charges and to treat defence lawyers with respect, were so blatant that it is not necessary to examine every other infraction of fair trial rights to establish that this "trial" was not a fair one by any standard.

The RIGHTS IN QUESTION:

1. RIGHT TO PRE-TRIAL LIBERTY

ARTICLE 5 Right to liberty and security

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

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

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful

The defendants were arrested on the same day after a well planned, meticulous operation by the State. Most if not all of the arrests followed the same pattern. The defendants were arrested, they were not told why or cautioned or offered legal representation. They were subsequently transferred to varying locations around Turkey. It appeared that a deliberate attempt was made to place the defendants in holding facilities as far away from their families and lawyers as possible.

The arrests followed the same pattern. Defendants were transported to a police station and placed in a cell for a varying number of nights. All defendants were confused and without legal representation. None were initially told why they had been arrested.

Cells were often grossly overcrowded with no windows or lights or adequate water facilities.

After varying nights in the police holding cells the defendants were taken to another part of the building where they saw a State lawyer. The lawyer was advising the defendants to confess as it would be better for them if they did. They were then questioned by the police. Some were asked for handwriting samples. All were asked if they were a member of the Adnan Oktar Criminal Organisation.

The defendants were questioned for hours. They were sleep and food deprived and thirsty. After this time most were transported handcuffed to the Caglayan Court as the others had been taken into a courtroom and placed before a judge. On many occasions this was in the early hours of the morning and they had no legal representation. It was around 4 a.m. in the morning. Questions by the judge were particularly but not exclusively:

a. Were you a member of a terrorist organisation

b. Were you a member of a crime organisation

Whatever the response, the majority of the defendants were taken from the court to prison. All money and possessions were confiscated. Various prisons around Turkey were used to house the defendants. Yet again, seemingly a deliberate attempt was made to place individuals as far away as possible from their families in order to isolate them from their families. With no video link to the detaining judge as required under Turkish law to apply for bail on a monthly basis.

Indictments were issued after twelve months.

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

We regard the following observations made as indicative of a wider pattern of breaches of the right to liberty pending and during trial:

On the 30th October 2019 our observer noted that at the end of the court session the prosecutor made an application to the judge for the defendants to remain in custody. The judge agreed, stood up and walked out of the court without giving the defence lawyers a chance to make any bail applications whatsoever. The session then finished abruptly.

Each defendant and their lawyers had a right to address the court on that date in relation to the issue of bail.

Apparently a reason given by the prosecutor for denial of bail was the assertion that the defendants were charged with being part of *an armed terrorist organisation.* However, the terrorist charge had been dropped from the indictment but the judge kept referring to it as a reason to deny bail.

On 31st October 2019 our observer noted:

"At the end of the evidence for this day a very angry defence lawyer started to address the judge. This defence lawyer was a man called Bahri Bayram Belen. Belen is an extremely senior and respected lawyer. He has served on the Board of the Istanbul Bar Association. He was also one of the defence lawyers on the Gezi Park trial. He has over forty years of experience as a lawyer. He was trying to address the judge on issues relating to his clients. He was waving around the Turkish Book of Criminal Procedure stating that all the defendants had a right to a bail hearing and that to deny them that the day before was unlawful. He stated that the defence lawyers were not just puppets sitting in the court but that they had a right to be heard.

I saw the judge begin to get very angry but he then seemed to compose himself.

The judge listened to the lawyer for about five minutes and then stood up to leave the court. The lawyer continued to address him and the judge stated to him "if you do not shut up, I will have you thrown out of this court."

I was informed in the lawyer's room that normally; the judge would have ejected the lawyer but it was felt this was not done as there was a trial observer in the court".

1st November 2019

Our observer reported:

"At the end of the day there was a significant address from an eminent defence lawyer Prof. Umit Kocasakal's (who was President of the Istanbul Bar Association for three terms).

Ümit Kocasakal stated the Court must give proper reasons for continuing to remand the defendants in custody.

He stated that each defendant had the right to be heard on a bail application.

He referred to the fact that there were 250 Supreme Court decisions dealing with the issue of bail and of the right of the individuals to make a bail application that had been refused the previous day. He said he was disgusted by the court for not following the law. It was an extraordinary display of anger from this advocate who was literally shouting at the judge.

At the end the Judge dismissed all that had been said and told the lawyer to take it up with the higher courts and ended the session".

29th November 2019

Our observer noted the following at the end of the session.

a. Three different lawyers asked for the defendants to be released. All requests were denied on the following bases:
    - That some of the defendants had not been questioned yet, so all defendants needed to be detained until all defendants had been questioned;
    - The nature of the charges were so serious as to warrant continued detention
    - There was a risk of the defendants absconding if they were released.

b. A defence lawyer sought to make an effective request for release of the prisoners under the constitution. No answer was given to the request.

c. A Defence lawyer requested the verdict of the judge (to refuse release) in writing. No answer was given.

2. RIGHT TO FAIR TREATMENT IN PRE-TRIAL DETENTION

ICCPR - Article 10

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

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

ECHR

ARTICLE 3 Prohibition of torture - No one shall be subjected to torture or to inhuman or degrading treatment or punishment

Conditions In Prison - (based on reliable third party information)

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

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

There was little or no regular exercise.

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

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

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

3. IMPARTIAL TRIBUNAL

ARTICLE 6 Right to a fair trial

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

The case was heard by a panel of three Judges. Only the central Judge appeared to have any engagement with the proceedings. The Public Prosecutor sat approximately 5 yards to the left of the Judges facing the court and within close proximity of the complainants lawyers.

We acknowledge that the physical proximity in courts of prosecutors and judges is commonplace in many legal jurisdictions around the world. Nevertheless, the positioning of the Public Prosecutor in such close proximity to the judges and complainants' lawyers could be said to give the appearance of a lack of separation between prosecution and judiciary.

The observers noted that the judge continuously pushed the defendants when giving evidence to hurry them up, confuse and frighten them.

The observers witnessed defence lawyers being sent out of court by the Judge and abuse of them by the Judge shouting. Their microphones were frequently switched off and attempts by defence lawyers to defend their clients were frequently shut down by the Judge. The observers witnessed a clear bias on the part of the Judge who allowed the complainants' lawyers freedom to argue without focus and ask seemingly irrelevant questions to any defendant. The complainants' lawyers did not identify themselves to the defendants they were questioning or indeed state who they were representing. Protests from defence lawyers on this issue were shut down by the Judge.The defendants were not allowed to be present at the time the complainants gave evidence. Their lawyers could be present but the defendants themselves could not witness the accusations made against them.The observers did not note any incident where the judge found in favour of a defence objection.

The selection of the Judges involved a process that was not observable by any of the observation team. However, we have been provided a detailed account by defence lawyers that demonstrates that judges that would have been appointed in the ordinary course of selection were removed from the case and were replaced by judges that would not ordinarily have been assigned to the case. We regard the account that we have been provided as a reliable account. The circumstances surrounding the exceptional or special appointment of the judges when considered together with their obviously bias conduct against the Defendants we regard as powerful evidence showing partiality and a breach of the right to the Defendants to a fair hearing by an independent and impartial tribunal established by law.

1st November 2019

Our observer reported:

"At the end of the day there was a significant address from an eminent defence lawyer Prof. Umit Kocasakal's. He stated that he doesn't bother to object to questions as it was futile and that the Criminal Code of Turkey was not being applied to the court proceedings.

He complained of the fact that seemingly anyone was being allowed to address the court.

He stated that indictments prepared in response to a complainant statement are not valid under the laws of Turkey.

He said he was disgusted by the court for not following the law. He stated that he saw no law in the court room just gossip. He stated the judge allowed any questions to be asked by complainant lawyers but that this was not the case for the defendant lawyers. He stated that the judge allowed the complainant lawyers to question the defendants as if they were judges.

It was an extraordinary display of anger from this advocate who was literally shouting at the judge. The address went on for at least 6 or seven minutes and at times the judge seemed to treat him with contempt by turning to his side judges and looking bored.

At the end he dismissed all that had been said and told the lawyer to take it up with the higher courts and ended the session".

15th October 2020

Our observer reported: "Adnan Oktar's lawyer Enes Akbas addressed the court. He stated that it was pointless for any defence lawyer to be in court. They were not allowed to be heard, present evidence or have access to or cross examine complainants.

He stated that he had waited for days to object to the questioning of Adnan Oktar on that particular week. He stated that Oktar had been placed into the witness box and asked to answer questions without his lawyers knowing he was going to be required to do so. The lawyer stated that the only people who knew that he was going to be in the dock that particular week, was the press; who had reported in abundance the next day.

The lawyer stated that the questioning had been irrelevant and against the constitution in some aspects (i.e., he was questioned on his personal life and sexual competence) and totally unlawful as no one except the judge could see what he was reading from or who was making the allegations.

The lawyer submitted that the printed copies of the evidence should be given to the lawyer and the defendant so he could prepare some kind of defence.

The judge told him to shut up and just give him his bail application.

4. RIGHT TO BE PRESUMED INNOCENT

ARTICLE 6 Right to a fair trial

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law

The defendants were arrested and held in pre-trial detention for over fourteen months. This period exceeded the time allowed under Turkish Law. Most defendants remanded in custody constantly appealed this decision when allowed by video link to a judge. Many defendants were not afforded this right in accordance with Turkish law. The Defendants lawyers constantly raised the issue of bail with the Judge; however, the Judge often refused to make any further order in respect of bail as required on a monthly basis during the trial.

On several occasions observers witnessed defence lawyers asking the judge to hear individual bail applications at the appropriate times and the Judge shut down the defence lawyers. He switched off their microphones and on occasions sent the lawyers out of court. On many occasions the observers witnessed the Judge directing the defence lawyers to "shut up or you will be thrown out of court".

The Public Prosecutor failed to answer written submissions on the issue of bail from the defence lawyers and the issue of them not being allowed to be heard.

Our observer was present in court each day of the week commencing 14th -17th December 2020 inclusive.

The observer reported:

I think if any part of the trial showed what a miscarriage of justice these proceedings amount to then it was this week. It was an absolute farce and the consequences horrific.

In four days, I witnessed over forty men give evidence on multiple allegations of rape and serious criminal and sexual offences.

In the context of this lengthy trial just minutes were given to each defendant to defend themselves. At least five defendants were interrupted from giving their evidence by the Judge and all were treated impatiently and with little interest in what they were saying. All requests to bring witnesses were refused.

It is my view that there was no search for innocence by the Court in this trial. The outcome was pre-determined."

5. RIGHT TO BE INFORMED OF CHARGES AND DISCLOSURE OF EVIDENCE AND ADEQUATE TIME AND FACILITIES TO PREPARE DEFENCE

ARTICLE 6 Right to a fair trial

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

Almost all of the defendants were not informed of the charges against them at the time of their arrest and in some cases for months after.

The defendants' lawyers constantly raised concerns with the Judge concerning the failure of the Prosecutor to disclose evidence and in particular the digital evidence relied on by the prosecution.

Several applications were made to the Court to rule on applications that evidence was not admissible on the ground that it had not been sealed in accordance with Turkish law. The Judge refused to rule on these applications.

The Public Prosecutor persistently denied lawyers and defendants access to court files.

The indictments were not issued to them for twelve months after their arrests. The document was 4,000 pages long and served just two months before the trial.

> 28th November 2019 our observer reported:
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> "A complainant lawyer showed a video to the court which was handed to the judge who allowed it to be submitted without any reference to the defence. One defence lawyer objected stating that all the evidence should be given to the defence so they can prepare. The judge says it is all in the indictment and they've had 16 months to prepare."

6. RIGHT TO BE PRESENT

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

ECHR - ARTICLE 6 Right to a fair trial

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

We were informed that none of the defendants were given a right to be present when the complainants gave their evidence. Whilst there is a right for their lawyers to be present they often were not there. This was due to many factors within the control of the court i.e. time schedules and providing extremely short notice that a complainant was to give evidence. Generally, timetabling was unpredictable. No trial management hearing was ever held to establish a timetable for stages of the trial and the order of witnesses etc. For such a massive trial this failure denied lawyers, many of whom had to travel from other cities, reasonable notice to prepare their appearances.

Related to this we have been reliably informed that records of hearings and minutes of the proceedings should have been provided or made available to Defendants and their lawyers and were not. Thus the Defence were continuously placed at great disadvantage in preparing their Defences. Because of the unpredictable timetabling and consequent logistical obstacles faced by lawyers attending hearings and the removal of Defendants during complainants' testimonies the Defence were constantly working in ignorance of what evidence had been provided to the Court previously.

7. RIGHT TO CALL AND EXAMINE WITNESSES

ARTICLE 6 Right to a fair trial

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

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

The Judge refused all requests from the defendants to call witnesses in their defence at any stage in the proceedings and did not provide reasons to support this refusal.

8. RIGHT TO LEGAL ASSISTANCE

ARTICLE 6 Right to a fair trial

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

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

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

The defendants were significantly and consistently denied access to legal representation at all stages of the proceedings: upon arrest, post arrest, during detention and during the trial process.

> 28th November 2019 our observer reported:
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> "One witness was asked if she breastfed her child or if Adnan Oktar told her not to.
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> Her defence counsel stood up and objected to this line of personal questioning. The judge shouted at her and instructed the Gendarme to remove her from the court. She is removed with around 20 military police and Gendarme surrounding her.
>
> Another defence counsel was allowed to object and question the relevance of the breastfeeding question."

TABLE OF CHARGES, DEFENDANTS AND COMPLAINTS

Charges	The number of defendants who faced that charge	The number of defence lawyers that have been charged	The number of those complainants who were also defendants	The number of defendants who were on trial ONLY for being a member of a criminal organisation	The number of defendants who applied to benefit from the remorse provisions	The number of defendants found not guilty
Attempt for Political or Military Espionage (Art. 328),	1	-	-		-	-
Establishing and Managing Organisations for the Purpose of Committing Crimes (Art. 220/1),	14	-	-		-	-
Being a member of a Criminal Organization (220/2),	207	10	10	123 (ONLY for being a member)	27, but 1 of them withdrew her former testimony stating that she was verbally and psychologically coerced into giving a testimony that she did not want to.	None, but the sentences against 25 defendants who applied to benefit from remorse provisions are deferred
Aiding a Criminal organisation although he does not belong to the structure of that organisation (220/7),	15	-	-	13 (ONLY for aiding)	-	3
Sexual abuse (Art. 103)	46	-	-		-	-
Sexual assault (Art. 102)	75	-	-		1 (but effective remorse provisions do not apply to sexual crimes)	9 defendants found not guilty re one complainant, but all found guilty re other complainants
Disobeidance of LAW ON FIREARMS, KNIVES AND OTHER TOOLS (Law 6136),	3	-	-		-	-
Prevention of the Right to Education and Training (Article 112),	1	-	-		-	-
Blackmailing (Art. 107)	4	-	-		-	1
Causes suffering of another person (Art. 96)	1	-	-		-	-
Prevention of freedom, (Art. 109)	3	-	-		-	-
Laundering of Assets Acquired from an Offence (Article 282),	1	-	-		-	-
Insult (Art. 125)	1	-	-		-	-
Disobediance The Law 3628 On declaration of Property and Fight Against Bribery and Corruption;	7	-	-		-	1 due to statute of limitation
Eavesdropping and Recording of Conversations between Persons (Article 133),	1	-	-		-	The same person found guilty against one complainant, and not guilty against another complainant
Fraud (Art. 158)	1	-	-		-	-
Threatening (Art. 106)	5	1	-		-	-
Recording of Personal Data (Article 135),	1	-	-		-	-
Attempt to killing intentionally (Art. 82)	1	-	-		-	-
Aiding an Armed Terror Organization without being a member, (Art. 314)	2	-	-		-	-
disobediance of Law 5607 on An of Law 5607 on Anti-Smuggling,	1	-	-		-	-

Charges	The number of defendants who faced that charge	The number of defence lawyers that have been charged	The number of those complainants who were also defendants	The number of defendants who were on trial ONLY for being a member of a criminal organisation	The number of defendants who applied to benefit from the remorse provisions	The number of defendants found not guilty
Damage, Destruction or Concealment of an Official Document, Counterfeiting Official Documents, (Art. 205)	1	-	-		-	-
Favouritism of a Criminal (Art. 283)	2	-	-		-	-
Untrue declaration during issuance of an official document (Art. 206)	1	-	-		-	-
Unlawful delivery or acquisition of data (Art. 136)	1	-	-		-	-