AUGUST 2025

OBSERVATIONS ON UCAR V.TÜRKİYE

RIGHTS DEFENDERS INITIATIVE (RDI) OBSERVATIONS ON THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS UCAR V. TÜRKİYE

RDI
RIGHTS DEFENDERS
INITIATIVE

Executive Summary

This report contains comprehensive objections raised by the Rights Defenders Initiative (RDI) regarding the European Court of Human Rights' (ECtHR) decision dated 12 December 2024, in the case of Mahmut Onur Uçar v. Türkiye (Application no. 32565/23), related to the July 15, 2016, coup attempt.

The Rights Defenders Initiative (RDI) argues that the ECtHR based its decision on a first-instance court ruling that contained incomplete, contradictory, and assumption-based information, without notifying the parties or providing an opportunity for submissions. As a result, RDI claims that the ECtHR judgment is factually and legally flawed.

While conducting this review, volunteer soldiers and lawyers of RDI utilized the reasoned judgment in the General Staff Headquarters Trial[1] (prosecuting the leadership cadre of the coup attempt), the reasoned judgment[2] and indictment[3] of the 28th Mechanized Brigade Trial (where the applicant was tried), military laws, regulations, directives, and commands, relevant ECtHR case-law, and undisputed media reports.

Since the early 20th century, there have been nearly 500 coup attempts globally, whether successful or not. Very few cases involving military personnel as applicants have been brought before the ECtHR. In Türkiye specifically, approximately six coup attempts have occurred, roughly once every decade. However, guiding jurisprudence in such cases remains scarce.

The distinct nature of military service — its hierarchical command structure, strictness of orders, and divergences from ordinary civilian life — must be thoroughly examined, including expert opinions from military legal scholars. Otherwise, confusion between lawful military duties and acts constituting a coup attempt could arise.

In this regard, given that the ECtHR's decision impacts not only military personnel but also a broader social group potentially numbering in the hundreds of thousands, procedural fairness — such as communicating the case to the parties and soliciting their defenses — was indispensable for a just outcome.

[1] Ankara 17th Assize Court File No :2017/109 Main Decision No :2019/30 C. Prosecutor's Office Main Decision No :2017/7327
[2] Ankara 18th Assize Court, File No: 2017/165 Esas, Decision No. : 2018/128, Prosecutor's Office No: 2017/13604
[3] Ankara Chief Public Prosecutor's Office Investigation No: 2016/112903 Esas No : 2017/13604 Indictment No : 017/2399

The key objections to the Mahmut Onur Uçar v. Türkiye decision, including fundamental issues reflected as facts by the Court without sufficient scrutiny, are summarized below:

EXISTENCE OF THE "PEACE AT HOME COUNCIL" IS DISPUTED

"The first-instance court explicitly stated that it could not find any concrete document or statement identifying the members of the "Peace at Home Council."

TECHNICAL CLAIMS ABOUT TANKS AND MILITARY MOVEMENT LACK FOUNDATION

"The refueling of tanks at the brigade was part of routine maintenance and training preparations. Interpreting this as coup preparation is arbitrary."

OBEDIENCE TO ORDERS MUST BE EVALUATED DIFFERENTLY IN THE MILITARY CONTEXT

"If an order is not manifestly unlawful, a subordinate is obligated to comply under military customs; this was clearly recognized in the in Turkish military law."

PROCEDURES FOR COLLECTING EVIDENCE WERE UNLAWFUL

"Searches conducted in the offices of the defendants were not lawfully executed."

THE APPLICANT'S ACTIONS WERE WITHIN THE SCOPE OF SUPPORTING PUBLIC ORDER, NOT A COUP

"The applicant was deployed to the General Staff Headquarters on the night of July 15 to support law enforcement. No conclusive evidence was presented to show he acted with coup intent."

LACK OF TECHNICAL EVIDENCE REGARDING CERTAIN INCIDENTS WAS IGNORED

"Radar images, black box data, and voice recordings relating to the bombing of the Gölbaşı Special Operations HQ and the Turkish Parliament raise serious doubts."

ALLEGATIONS OF SHOOTING AT CIVILIANS ARE NOT SUPPORTED BY EVIDENCE

"There is no forensic report, ballistic analysis, or direct evidence indicating that the applicant fired at or harmed civilians."

INCORRECT FIGURES REGARDING NUMBER OF SOLDIERS INVOLVED AND CIVILIAN DEATHS

"Autopsy reports, ballistic analysis, and camera footage indicate that the number of deaths attributed to the coup attempt was inaccurately reported."

A Flagrant Denial of Justice

The effect of the procedural defects, in combination with the failure to address the factual inaccuracies that appear to have affected the Court's reasoning, including procedural deficiencies in domestic judgments, can be considered to amount to a violation of fair and equitable treatment. It is evident that the Turkish judiciary did not succeed in delivering a fair and impartial adjudication process. This constitutes a violation of the minimum standard of treatment and amounts to a flagrant denial of justice.

Outline

1. Introduction

The Rights Defenders Initiative (RDI) prepared this report concerning the case of applicant *First Lieutenant Mahmut Onur Uçar*, who was convicted by Turkish courts during the events of the July 15, 2016, coup attempt. Uçar, the commander of one of the fifteen tanks from the Tank Battalion of the Mamak Twenty-Eighth Mechanized Brigade allegedly deployed at the General Staff Headquarters, was sentenced to aggravated life imprisonment for attempting to overthrow the constitutional order and for causing property damage. However, he was acquitted of charges of murder, attempted murder, and other property damage offenses, due to lack of evidence. The applicant is currently incarcerated at Kırıkkale High Security F-Type Prison.

The applicant alleged that he was subjected to torture and ill-treatment by police while in custody, including the use of reverse handcuffing.

In assessing this claim, the Court noted that the applicant failed to submit any statement records or medical reports supporting his allegations during the investigation or trial stages. Although the applicant stated during the trial that he had been subjected to torture and ill-treatment between July 16 and July 26, he did not provide any detailed description. Moreover, neither his submissions to the Regional Court of Appeal and the Court of Cassation, nor his application to the Constitutional Court, contained sufficient details or supporting documents such as medical reports. Consequently, the Court found this complaint manifestly ill-founded.

The applicant also alleged that his detention was unlawful, arbitrary, and disproportionate. However, since he failed to raise this complaint before the Constitutional Court in a timely manner following the confirmation of his conviction, the ECtHR dismissed the complaint for failure to exhaust domestic remedies. Furthermore, the Court rejected the related claim that national authorities had not objectively assessed his allegations, finding it manifestly ill-founded.

The applicant further claimed that his right to a fair trial had been violated. He argued that defense arguments and evidence favorable to him and other defendants had not been properly considered, that convictions were made without adequate reasoning and were based on manifest errors in assessment, and that the principles of equality of arms and adversarial proceedings were violated as no hearings were held before the Regional Court of Appeal and the Court of Cassation. The ECtHR addressed these complaints separately.

The ECtHR examined the application based solely on the submissions presented by the applicant, without communicating the application to the government for their

comments and ultimately dismissed all the applicants' complaints either for being manifestly ill-founded or for failure to exhaust domestic remedies.

At the time of the alleged events, the applicant was the commander of a tank from the 28th Mechanized Brigade. He denied the charges, asserting that he was ordered by his superiors to secure the General Staff Headquarters against a terrorist threat, that he had acted within the scope of his lawful military duties, and that he had fired upon a truck — not at civilians — following orders. He emphasized that his actions were in accordance with the law and military orders. Nevertheless, these defenses were rejected by the national courts, and the ECtHR, based on the case file, did not find his claims credible.

The applicant also denied any affiliation with the so-called "Gülen Movement" (referred to as "FETÖ" by Turkish authorities) and reiterated that he had been subjected to torture and ill-treatment by police while being held with his hands cuffed behind his back from July 16 to July 26.

It should be noted that the applicant failed to submit even his own statement records to the ECtHR, and thus the Court's decision is based only on the limited information extracted from his submissions.

The Turkish judiciary did not succeed in delivering a fair and impartial adjudication process. Unfortunately, the ECtHR based its decision on a first-instance court ruling that contained incomplete, contradictory, and assumption-based information. The impact of the procedural defects, combined with the failure to address the factual inaccuracies that seem to have influenced the Court's reasoning, including procedural deficiencies in domestic judgments, can be seen as a violation of fair and equitable treatment. This constitutes a breach of the minimum standard of treatment and represents a flagrant denial of justice.

The RDI, consisting of volunteer human rights law experts, military specialists, and lawyers, conducted a detailed review of the case and prepared this report.

Upon their detailed review, the RDI identified numerous factual errors and deficiencies in the Court's judgment after cross-referencing the documents provided by the applicant. These errors have unfortunately led to significant shortcomings in the Court's reasoning. In addition to factual inconsistencies, the Court's reasoning and conclusions in this case also appear inconsistent with its prior jurisprudence.

This report addresses the factual inaccuracies that seem to have affected the Court's reasoning, including procedural deficiencies in the conduct of the applicant's trial, which fell well below fair trial standards.

Moreover, it is observed that the material facts referenced in the judgment are incomplete and misleading, failing to properly reflect the relevant legal context.

RDI respectfully presents these observations to jurists, practitioners, and the Court itself, to encourage further discussion on this important matter.

The RDI remains open to sharing the key documents related to this case, gathered by its volunteers, with relevant academics, lawyers, and human rights organizations.

2. Objections Regarding the Circumstances of the Case

The applicant submitted various documents to the ECtHR, including the first-instance court's decision. Some information contained in that decision was accepted as factual by the ECtHR and formed the basis of the section on the circumstances of the case. Since the Court relied on this section for its legal analysis, its accuracy is critically important.

After reviewing the documents submitted by both parties, we concluded that certain factual omissions — which might seem minor to readers unfamiliar with the case — are actually quite significant. If the facts had been presented more comprehensively, the course of the legal analysis might have been different.

In the following sections, we will first present the misleading or incomplete information we have identified, followed by our specific objections.

A. Background

The misleading or incomplete information in paragraphs 1 and 2 of the ECtHR judgment, and our objections, are outlined below:

In paragraph 1 of the ECtHR judgment, it states:

"On the night of 15 July 2016, a group of members of the Turkish armed forces (also referred to as 'the TAF') calling themselves the 'Peace at Home Council' attempted to carry out a military coup aimed at overthrowing the democratically elected parliament, government and President of Türkiye."

Objection:

The term "Peace at Home Council[1]" appeared in the statement that was allegedly broadcast on behalf of the Turkish Armed Forces on July 15, 2016. However, the actual existence of this council and its membership were never definitively established by independent and impartial judicial authorities. Relying on an unproven entity in the judgment could cast doubt on the Court's impartiality and credibility.

The first-instance court's judgment, referring to the indictment, stated that no concrete evidence or testimony was found regarding the membership of the "Peace at Home

[1] (Ankara 17th Assize Court decision numbered E:2017/109 K:2019/30) (Evaluation of the Actions of the Defendants section - Leadership of an Armed Terrorist Organization -1557. Page 5 paragraph 5)

Council." It was merely alleged that the Council consisted of 38 officers from various branches of the Turkish Armed Forces, but this was based on assumptions about the individuals' roles in organizing and directing the coup attempt.

Furthermore, the Court of Cassation's review judgment repeated these allegations without presenting independent findings.

From this, it is misleading to assume — as the ECtHR seems to have done — that a group called the "Peace at Home Council" consisting of members of the Turkish Armed Forces carried out the attempted coup. This is because:

i) Although this phrase is used in some WhatsApp correspondence or in a few bilateral dialogues, the same decision states that no information such as who it consists of, their possible role in the coup attempt, and the division of tasks was found. Based on the expressions used here, the suspicion of such a structure may be a matter of debate. However, the first instance court's acceptance that no information and documents were found regarding the concrete existence of the council members requires the assumption that such a structure does not exist. Here, the court of first instance determined the existence of the Peace at Home Council based on a possible suspicion and the principle of the accused benefits from suspicion were not complied with.

ii) The structure, which was alleged to consist of 38 people in the indictment, was reduced to 20 people in the reasoned decision as shown in the table below. When we look at the legal evaluation of each of these 20 people, none of them was referred to as being a member of the "Peace at Home Council" and they were deemed to be executives of the organization and punished. Moreover, in an operation that aims to change the regime, such as the coup attempt, people with executive qualifications should have been assigned a task appropriate to their position in the martial law directive. However, the connection and harmony between the assignments in the table and the people who are executives is full of contradictions. Assuming that the martial law directive is correct, for example, General Akın Öztürk, who is alleged to be the No. 1 of the coup, should have been appointed as the head of state, or at least as the chief of general staff, but he was appointed as the second president. Furthermore, the UN Working Group on Arbitrary Detention has decided that Akın Öztürk has not been given a fair trial, that his detention on these charges is arbitrary and that he should be released immediately. It does not seem reasonable to accept the existence of a council for which the UN says that the number 1 was arbitrarily arrested.

Name Surname	Role in Martial Law Directive
General Akın Öztürk	Deputy Chief of General Staff
Maj. Gen. Kubilay Selçuk	Chief of Operations of the General Staff
Maj. Gen. Mehmet Dişli	General Staff Head of Project Management - Continued
Brig. Ali Osman Gürcan	Gendarmerie General Command Director of Human Resources/ General Director of Security
Brig. Erhan Caha	Land Forces Chief of Operations
Brig. Gen. Gökhan Şahin Sönmezateş	Director of National Intelligence Organization
Brig. Gen. Hakan Evrim	4th Main Jet Base Commander / Undersecretary of MoNE
Brig. Gen. Mehmet Partigöç	Deputy of Deputy Chief of General Staff (such a title does not exist in Turkish Armed Forces literature)
Rear Admiral Ömer Faruk Harmancık	Chief of Staff of Turkish Naval Forces
Rear Admiral Sinan Sürer	Chief of the 1st Intelligence Analysis and Evaluation Department of the General Staff
Staff Col. Ahmet Özçetin	No Assignment
Staff Col. Bilal Akyüz	No Assignment
Staff Col. Cemil Turhan	No Assignment
Staff Col. Fırat Alakuş	No Assignment
Staff Col. Murat Koçyiğit	Commander of Gendarmerie Schools
Staff Lt. Col. Mustafa Barış Avıalan	No Assignment
Staff Col. Muzaffer Düzenli	No Assignment

Staff Col. Orhan Yıkılkan	No Assignment
Staff Col. Osman Kılıç	No Assignment
Staff Col. Muhsin Kutsi Baris	No Assignment

Even though the term appeared in some WhatsApp messages and informal dialogues, the first-instance court itself acknowledged the absence of concrete proof regarding the Council's existence or structure.

Note:

The "Peace at Home Council" issue represents a fundamental factual gap. Proceeding on the assumption that such a council existed, despite the absence of conclusive judicial findings, undermines the presumption of innocence.

In paragraph 2 of the ECtHR judgment, it states:

"The criminal proceedings at issue in the present application concerned the deployment on the night of 15 July 2016 of fifteen tanks and personnel of the Tank Battalion of the Mamak Twenty-Eighth Mechanised Brigade ('the Tank Battalion'), which was assigned to the Fourth Corps Command of the Land Forces Command, to the General Staff Building (Genelkurmay Başkanlığı Karargâh Binası) with the aim of carrying out a military coup. The defendants were charged with various offences committed during the operation and at the main headquarters in question, namely attempting to overthrow the constitutional order, murder, attempted murder and criminal damage, which resulted in the killing of five people, the injury (including grievous bodily harm) of seventy-two others and criminal damage to public and private property, police cars and private vehicles."

Objection:

The applicant asserts that on the night of July 15, he was deployed to the General Staff Headquarters under the order of his superior within the scope of **the *Supporting Law Enforcement Forces in Social Incidents (Kolluk Kuvvetlerinin Toplumsal Olaylarda Takviyesi – KOKTOD)***, due to a reported terrorist attack on the premises.

Recent years had seen numerous terrorist attacks near military facilities in Ankara and throughout Türkiye, causing considerable alertness within the Turkish Armed Forces[2]. For instance:

[2] https://www.bbc.com/turkce/haberler-turkiye-38365351

i. October 10, 2015 - Ankara Train Station Attack: Two suicide bombings during a peace rally in front of Ankara Train Station killed 109 people and wounded more than 500.

ii. January 12, 2016 - Sultanahmet Attack: 13 people were killed and 16 injured in a suicide attack in Istanbul's Sultanahmet Square.

iii. February 17, 2016- Ankara Merasim Street Attack: **A car bomb attack on a shuttle bus carrying military personnel** on Merasim Street in Ankara **killed 29 people, mostly soldiers, and** wounded 61 others. Since Merasim Street is very close to the General Staff, the Ministry of National Defense and the Force Commands, this attack is one of the most serious incidents that put the members of the Turkish Armed Forces on high alert.

iv. March 13, 2016 - Ankara Kızılay Attack: 37 people were killed and 125 wounded in a car bomb attack near Güvenpark in Kızılay (very close to the General Staff Headquarters).

v. March 19, 2016 - Istiklal Street Attack: 5 people were killed and 36 people were wounded in a suicide attack on Istiklal Street in Istanbul.

vi. May 12, 2016: 16 persons were killed, and 23 persons were wounded when a truck loaded with explosives exploded in Sarıkamış quarter of Sur district in Diyarbakır.

vii. 12 May 2016: **A bomb** attack was organized **during the passage of a shuttle bus carrying military personnel near** Samandıra Barracks in Sancaktepe district of İstanbul. The attack wounded 8 people including 5 soldiers and 3 civilians.

viii. June 28, 2016 - Ataturk Airport Attack: 45 people were killed and 236 injured in an armed and bomb attack by three ISIS terrorists at Istanbul Atatürk Airport

Considering these serious threats, the deployment of armored units to secure military facilities was a lawful and reasonable precaution under Turkish law.

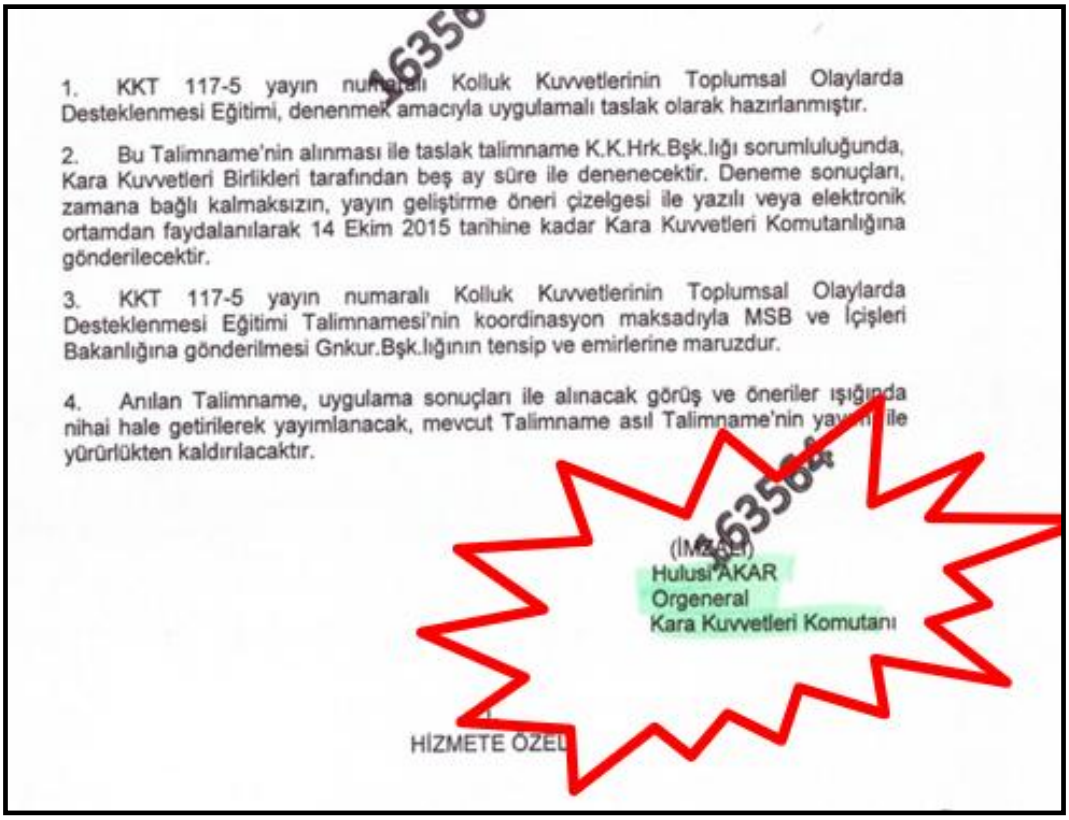
Moreover, under the legal framework — the Provincial Administration Law and related Cabinet Decrees — **military units, such as the 28th Mechanized Brigade, were authorized to support law enforcement in large-scale disturbances or terrorist attacks.** Orders for rapid deployment, including pre-fueling of tanks and pre-prepared mobilization plans, were part of standard emergency procedures, not evidence of coup preparation.

It is therefore undisputed that the 28th Mechanized Infantry Brigade has the duty within the framework of legal legislation, namely KOKTOD. The nature of this task

carried out by soldiers can be defined as follows; Normally, police and gendarmerie forces are authorized to intervene in social incidents with the potential for violence and chaos. However, police and gendarmerie forces may be insufficient, especially in cases of widespread violence and terrorized intense protests. At this point, military forces, which are better equipped and have deterrent defense tools, can support the police and gendarmerie forces. This is based on the Law on Provincial Administration, the Decree of the Council of Ministers prepared within this framework and the military regulations, directives, directives and plans prepared in accordance with them. In fact, military units may even conduct drills several times a year in order to be ready both intellectually and practically when this task is needed. Within the framework of this information, it is understood that the defendant went to the General Staff Headquarters to fulfill the orders he received from his superiors. As a result of the examination of the reasoned verdict and its annexes by the volunteer lawyers of our association, no lawful and conclusive evidence was found that the applicant went to the General Staff Headquarters to participate in the coup attempt. In this context, the unlawful order he received or gave or carried out within the scope of the coup attempt must be found, and the preparatory work he carried out in this context must be clearly revealed. It is both legal and in accordance with the ordinary course of life for the defendant to think that he was carrying out activities within the scope of the KOKTOD and to take actions accordingly. Namely:

Law No. 5442 on Provincial Administration and the Decree of the Council of Ministers dated August 5, 2013 and numbered 2013/5234, it has been determined that supporting law enforcement forces in social incidents is a legal activity.

i. During the mission, Turkish Armed Forces units and personnel fulfill the duties assigned by using the powers specified in the Turkish Armed Forces Internal Service Law and the powers of the law enforcement agencies to ensure general security. Plans for the KOKTOD were prepared by the deployed units and approved by the Supreme Commands.



1. KKT 117-5 yayın numaralı Kolluk Kuvvetlerinin Toplumsal Olaylarda Desteklenmesi Eğitimi, denenmek amacıyla uygulamalı taslak olarak hazırlanmıştır.

2. Bu Talimname'nin alınması ile taslak talimname K.K.Hrk.Bşk.lığı sorumluluğunda, Kara Kuvvetleri Birlikleri tarafından beş ay süre ile denenecektir. Deneme sonuçları, zamana bağlı kalmaksızın, yayın geliştirme öneri çizelgesi ile yazılı veya elektronik ortamdan faydalanılarak 14 Ekim 2015 tarihine kadar Kara Kuvvetleri Komutanlığına gönderilecektir.

3. KKT 117-5 yayın numaralı Kolluk Kuvvetlerinin Toplumsal Olaylarda Desteklenmesi Eğitimi Talimnamesi'nin koordinasyon maksadıyla MSB ve İçişleri Bakanlığına gönderilmesi Gnkur.Bşk.lığının tensip ve emirlerine maruzdur.

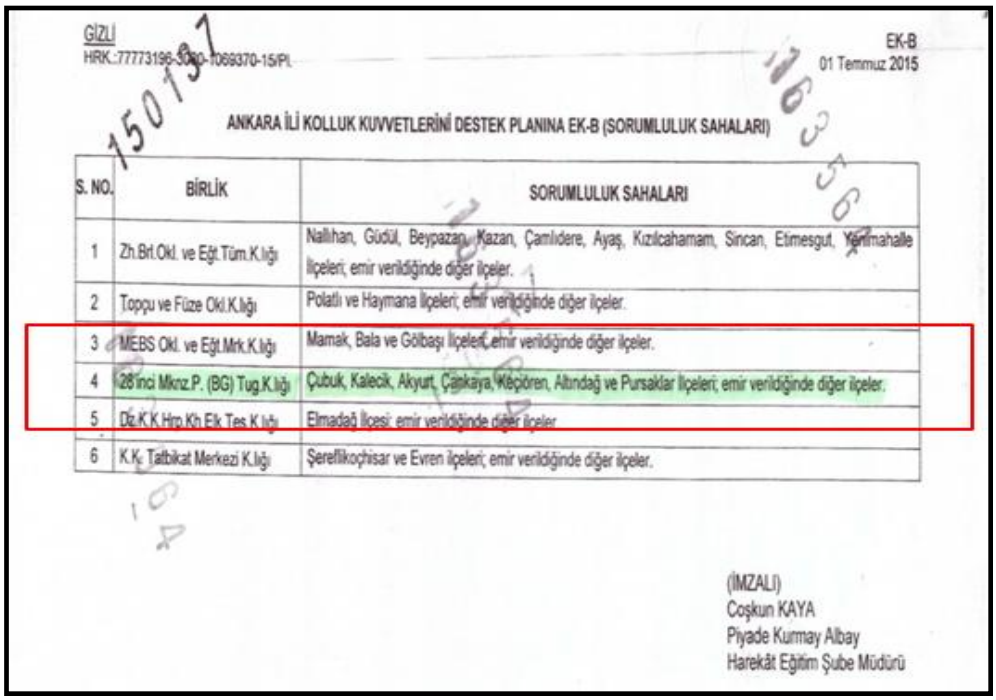
4. Anılan Talimname, uygulama sonuçları ile alınacak görüş ve öneriler ışığında nihai hale getirilerek yayımlanacak, mevcut Talimname asıl Talimname'nin yayımı ile yürürlükten kaldırılacaktır.

(İMZALI)
Hulusi AKAR
Orgeneral
Kara Kuvvetleri Komutanı

HİZMETE ÖZEL

This KOKTOD document photo shows that it is signed and approved by General Hulusi AKAR, then the Commander of the Turkish General Staff.

ii. Built-up areas are allocated to units as areas of responsibility. In this context, the area where the General Staff compound is located has been designated as the 28th Mechanized Brigade's area of responsibility



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HRK:77773196-3000-1069370-15/PL

EK-B
01 Temmuz 2015

ANKARA İLİ KOLLUK KUVVETLERİNİ DESTEK PLANINA EK-B (SORUMLULUK SAHALARI)

S. NO.	BİRLİK	SORUMLULUK SAHALARI
1	Zh.Brt.Okl. ve Eğt.Tüm.K.lığı	Nallıhan, Güdül, Beypazarı, Kazan, Çamlıdere, Ayaş, Kızılcahamam, Sincan, Etimesgut, Yenimahalle İlçeleri; emir verildiğinde diğer ilçeler.
2	Topçu ve Füze Okl.K.lığı	Polatlı ve Haymana İlçeleri; emir verildiğinde diğer ilçeler.
3	MEBS Okl. ve Eğt.Mrk.K.lığı	Mamak, Bala ve Gölbaşı İlçeleri; emir verildiğinde diğer ilçeler.
4	28'inci Mknz.P. (BG) Tug.K.lığı	Çubuk, Kalecik, Akyurt, Çankaya, Keçiören, Altındağ ve Pursaklar İlçeleri; emir verildiğinde diğer ilçeler.
5	Dz.K.K.Hrp.Kh.Elk.Tes.K.lığı	Elmadağ İlçesi; emir verildiğinde diğer ilçeler.
6	K.K. Tatbikat Merkezi K.lığı	Şereflikoçhisar ve Evren İlçeleri; emir verildiğinde diğer ilçeler.

(İMZALI)
Coşkun KAYA
Piyade Kurmay Albay
Harekât Eğitim Şube Müdürü

ANKARA PROVINCE LAW ENFORCEMENT SUPPORT PLAN ADDENDUM B
(AREAS OF RESPONSIBILITY)

S.NO	MILITARY UNIT	AREAS OF RESPONSIBILITY
1		
2		
3		
4	28th Mechanized Infantry Brigade	Çubuk, Kalecik, Akyurt, Çankaya, Keçiören, Altındağ ve Pursaklar when the order is given to other districts
5		
6		

This photo shows 28th Mechanized Brigade's area of responsibility. In the right column there are the names of Provinces in Ankara. The General Staff Headquarters in Çankaya.

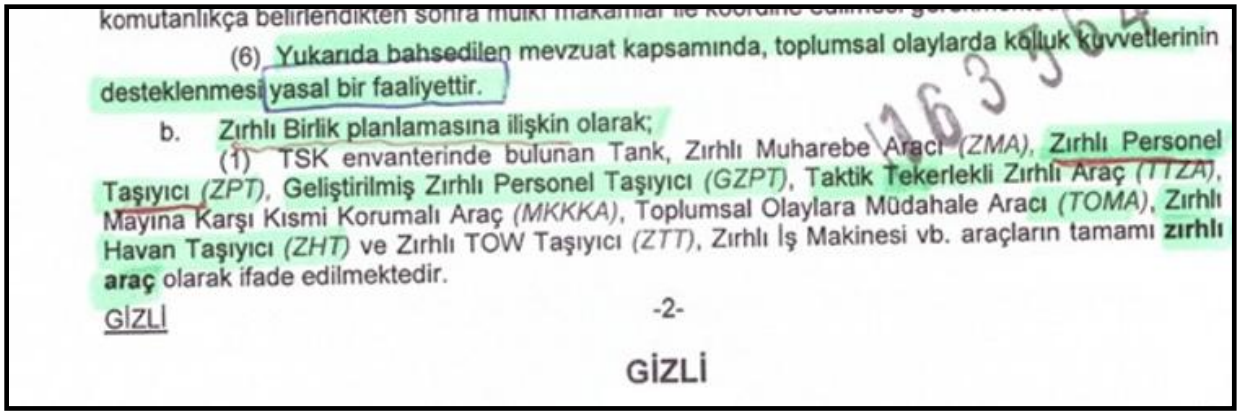
iii. Although the use of foot elements is essential, the use of armored units, including tanks, is also envisaged, and it has been determined that armored vehicles will be used within the logic of tank-infantry cooperation.

(6) Supporting law enforcement agencies within the scope of the above-mentioned legislation is a legal activity.

b. Regarding armored unit planning

(1) The Turkish Armed Forces inventory includes **tanks**, armored combat vehicles, armored personnel carriers, upgraded armored personnel carriers, tactical wheeled armored vehicles, mine-protected vehicles, riot control vehicles, armored mortar carriers, armored TOW carriers, armored construction vehicles, etc. will be classified as armored vehicles.

SECRET



komutanlıkça belirlendikten sonra mülki makamlar ile koordine edilmesi gerekmektedir.

(6) Yukarıda bahsedilen mevzuat kapsamında, toplumsal olaylarda kolluk kuvvetlerinin desteklenmesi yasal bir faaliyettir.

b. Zırhlı Birlik planlamasına ilişkin olarak;

(1) TSK envanterinde bulunan Tank, Zırhlı Muharebe Aracı *(ZMA)*, Zırhlı Personel Taşıyıcı *(ZPT)*, Geliştirilmiş Zırhlı Personel Taşıyıcı *(GZPT)*, Taktik Tekerlekli Zırhlı Araç *(TTZA)*, Mayına Karşı Kısmi Korumalı Araç *(MKKKA)*, Toplumsal Olaylara Müdahale Aracı *(TOMA)*, Zırhlı Havan Taşıyıcı *(ZHT)* ve Zırhlı TOW Taşıyıcı *(ZTT)*, Zırhlı İş Makinesi vb. araçların tamamı **zırhlı araç** olarak ifade edilmektedir.

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This document photo proves that armoured vehicles were planned to use in KOKTOD operations.

iv. It was stated that the units would operate with their own organization, organization and material, that their state of readiness could vary from 30 minutes to a few days, and that weapons could be used when conditions arose.

v. Perhaps the most critical issue in terms of the legality of the KOKTOD is the requirement for Governors to request forces. The Governor will normally make this request to the Garrison Commands or to the Commands designated by the General Staff. For example, for Ankara, this authority is the 4th Corps Command. The 28th Mechanized Brigade is a military unit under this command. In other words, the request will be made to the 4th Corps Command, and from there it will be forwarded to the relevant unit through hierarchical channels. Considering that the preparation time is 30 minutes as per the directive, in order to minimize the drawbacks that may arise from delay, it is likely that the activity will be initiated by telephone first, and then a written order will be sent. In terms of the established military practices in the Turkish Armed Forces, questioning a verbal order to carry out an activity for which plans have been made and approved by the higher command would be perceived as unwillingness and disobedience to the mission. Moreover, these evaluations are only valid for personnel who are unit commanders (brigade commanders). For lower ranks, such a questioning would already be interpreted as a disciplinary weakness. In fact, the text of the law states that "The request for assistance made by the governor shall be fulfilled without delay. In urgent cases, this request may be made orally, provided that it is later converted into written form." The statement is also in line with this. It is also important to know that NATO and Turkish Armed Forces directives, to which Türkiye is affiliated, classify order levels as orders at the strategic level, orders at the operative level and orders at the tactical level.[3] Orders at the strategic level are given by the Minister of National

[3] NATO STANAG (Standardization Agreement) and TAF Operations and Training Directive

Defense or the Chief of the General Staff to Force Commands, Joint Operations Center Commands; orders at the operative level are given by Army Commands / Joint Force Commands to Corps Commands, Naval Task Group Commands, Air Base Commands; orders at the tactical level are given by Division and Brigade Commands to Colonels and below. The important point here is that soldiers who receive orders at the tactical level can only check whether the order they receive is a criminal order or not. Other than asking for a repetition of the order to understand the order, they do not have the right to ask for all the details and intentions of the order and must follow the order. If he fails to follow the order, the least he will face is a disciplinary offense. According to all this information, since the applicant is a tactical personnel who receives orders at the tactical level and does not have the authority to ask for all the details of the order, it is lawful for him to carry out the orders unless the subject matter is clearly criminal, and in this context, he also has the authority to use weapons. It is also important to know that the orders he received on July 15th were from his immediate superiors

Within the framework of an internal chain of command within the TAF, a personnel who acts in accordance with an order based on legal legislation (KOKTOD) that does not explicitly constitute a crime cannot be expected to foresee that the action will constitute a crime. Lower-ranking military personnel have the obligation to fulfill ordinary orders within the internal order system and disciplinary structure of the TAF. It is contrary to the principle of foreseeability to criminalize orders that do not explicitly constitute a crime when it is later understood or revealed that the circumstances are different and to accept the criminal responsibility of the individual. In accordance with the basic principle of criminal law, which is seen as a fundamental guarantee of the right to a fair trial in the established practices of the ECHR, the accused should benefit from the benefit of the doubt. Acting on suspicions and substituting these suspicions for the element of intent in July 15 cases, where tens of life sentences are easily given, will be a reason for victimization and violation. In the following sections, the terrorist elements in the General Staff Headquarters and their unlawful actions against innocents will be discussed in detail.

Thus, interpreting the tank deployments as preparation for a military coup, without solid evidence, represents a speculative and arbitrary conclusion.

B. Misrepresentation of key incidents

In paragraph 9 of the ECtHR judgment, it states:

"At 9 p.m., fighter jets had flown at low altitude in order to intimidate the civilian population and inform them that a military coup had begun, and military helicopters had taken off and attacked public institutions."

Objection:

According to the primary judgment in the "General Staff Headquarters Main Trial" (*Çatı Davası*), the time of the first low-altitude fighter jet flights was determined to be 22:08 (10:08 p.m.), not 9:00 p.m. as stated by the ECtHR.

This misrepresentation of the timeline is significant because it may mislead the interpretation of when and how the public became aware of the events, thus affecting the applicant's criminal liability assessment.

C. The Trial Court's conclusions regarding the attempted coup

In paragraph 9 of the ECtHR judgment it is stated:

"At 9 p.m. fighter jets had flown at low altitude in order to intimidate the civilian population and informing them that a military coup had begun, and military helicopters had taken off and attacked public institutions. In that context, the trial court noted the following incidents."

Objection:

As explained earlier, the first low-altitude flights by fighter jets occurred at 22:08 according to the main trial judgment (*Çatı Davası*)[4]. Therefore, the ECtHR's reference to 9:00 p.m. is factually incorrect and may distort the context of events.

In paragraph 9/d of the ECtHR judgment, it is stated:

"Military helicopters had carried out air strikes on the Intelligence Department of the General Directorate of Security."

Objection:

The Intelligence Department of the General Directorate of Security (Emniyet Genel Müdürlüğü İstihbarat Başkanlığı) is located at Turan Güneş Boulevard No:184, Çankaya, Ankara.

There is no judicial finding in any of the finalized July 15 trials indicating that this facility was attacked by helicopters or by any other means. No indictment, court decision, or independent investigation has confirmed such an attack. This assertion seems to stem from an early, unverified claim and was not substantiated by evidence in any official proceeding.

[4] Ankara 17th High Criminal Court Decision No. E:2017/109 K:2019/30 The main events that took place across Türkiye on the night of the coup attempt section P.1528-1529 -1530

Thus, the ECtHR's reliance on this claim is factually inaccurate and undermines the credibility of the judgment.

In paragraph 9/e of the ECtHR judgment, it is stated:

"Fighter jets had bombed the Special Operations Department of the General Directorate of Security based in Gölbaşı, Ankara, resulting in deaths."

Objection:

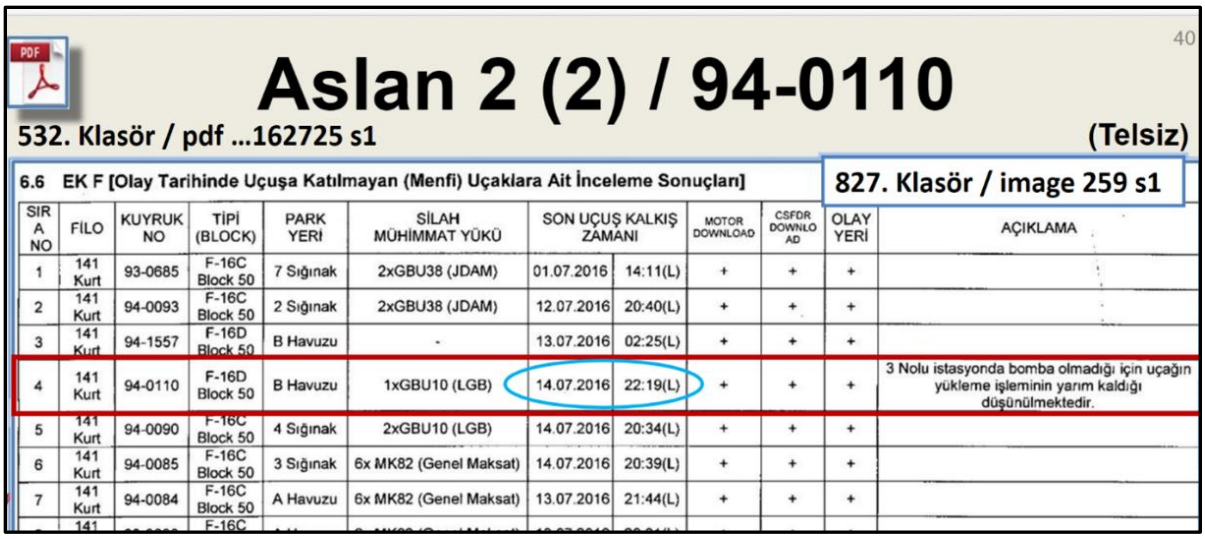
While it is undisputed that explosions occurred at the Gölbaşı facilities resulting in fatalities, the available technical and forensic evidence raises serious doubts regarding the alleged circumstances. The information listed below justifies our objection:

i. The initial statements of the defendants were taken under severe torture, the defendants were threatened with their families, and the statements taken under these circumstances were used by the first instance court to form the judgment in violation of ECHR case law[5]

ii. Gölbaşı Security Aviation Department was allegedly attacked with a GBU-10 bomb at 23:08 on July 15, 2016 and 7 police officers were martyred. The court ruled that this attack was carried out by a D-type F16 aircraft flown by two pilots together. However, while the accused pilots should have been on the same plane, they clearly refuted this possibility in court with camera recordings and radio conversations

iii. According to the black box (CSFDR) records of the plane (tail number 94-0110) that allegedly bombed the Gölbaşı Security Aviation Department, it was determined that it last flew one day before the incident . This determination was clearly revealed in the report of the experts assigned by the prosecutor's office and included in the court file

[5] https://rightsdefenders.org/wp-content/uploads/2024/10/240901_Report_to_The_UN_Human_Rights_Committee.pdf



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Aslan 2 (2) / 94-0110

532. Klasör / pdf ...162725 s1 (Telsiz)

827. Klasör / image 259 s1

6.6 EK F [Olay Tarihinde Uçuşa Katılmayan (Menfi) Uçaklara Ait İnceleme Sonuçları]

SIRA NO	FİLO	KUYRUK NO	TİPİ (BLOCK)	PARK YERİ	SİLAH MÜHİMMAT YÜKÜ	SON UÇUŞ KALKIŞ ZAMANI		MOTOR DOWNLOAD	CSFDR DOWNLOAD	OLAY YERİ	AÇIKLAMA
1	141 Kurt	93-0685	F-16C Block 50	7 Sığınak	2xGBU38 (JDAM)	01.07.2016	14:11(L)	+	+	+	
2	141 Kurt	94-0093	F-16C Block 50	2 Sığınak	2xGBU38 (JDAM)	12.07.2016	20:40(L)	+	+	+	
3	141 Kurt	94-1557	F-16D Block 50	B Havuzu	-	13.07.2016	02:25(L)	+	+	+	
4	141 Kurt	94-0110	F-16D Block 50	B Havuzu	1xGBU10 (LGB)	14.07.2016	22:19(L)	+	+	+	3 Nolu istasyonda bomba olmadığı için uçağın yükleme işleminin yarım kaldığı düşünülmektedir.
5	141 Kurt	94-0090	F-16C Block 50	4 Sığınak	2xGBU10 (LGB)	14.07.2016	20:34(L)	+	+	+	
6	141 Kurt	94-0085	F-16C Block 50	3 Sığınak	6x MK82 (Genel Maksat)	14.07.2016	20:39(L)	+	+	+	
7	141 Kurt	94-0084	F-16C Block 50	A Havuzu	6x MK82 (Genel Maksat)	13.07.2016	21:44(L)	+	+	+	
	141		F-16C								

In addition, no physical evidence (DNA, fingerprints, etc.) of the suspected pilots was found on the plane. On the other hand, CSFDR reports denied the information that laser marking was made by one of the pilots. There are unexplained contradictions between security camera footage and witness statements about the time of the explosion. Although it was stated that the attack was carried out with a GBU-10 bomb, aviation experts determined that a GBU10 bomb could never have been used, considering the crater of the explosion seen in the crime scene photographs and the destruction in the surrounding area

iv. It was claimed that a GBU 10 bomb was dropped on the Gölbaşı Special Operations Department at around 00:00 on July 15, 2016 and 44 police officers and 1 imam were killed as a result of this explosion. It was stated in the court's decision that this attack was carried out by a D-type F16 aircraft flown by two pilots together. One of the pilots was filmed on the ground (in the squadron) close to the time of the attack. It was proved by the court that the pilot, who was seen in the squadron, could not have carried out this attack considering the times such as going to the aircraft, flight preparations and take-off time. It was also revealed that radio coordination was required for such a bombing and that there were no conversations of the second pilot in the radio conversations.

v. No bombing data was reported in the black box (CSFDR) of the aircraft (tail no. 94-0691) and no coordinates close to Gölbaş were detected. While the fuel should have been depleted after the flight in question and there was no refueling in the air, the fuel level determined in the expert report also confirmed that no flight was made. An examination of the aircraft revealed that 1 GBU bomb was attached to the wing. Although the court claimed that 1 bomb was dropped and the plane landed on the ground, it was technically proven that it was not possible to land with 1 ton bomb due to the balance risk.

vi. According to allegations, in both incidents, the operation was managed from the DESK unit at 141st Squadron. Although it was stated that the DESK unit did not have operational capabilities such as radar, radio infrastructure and air picture and that it was technically impossible to manage an operation of this magnitude, it was ignored.

vii. Although the most important evidence of both incidents was some statements in radio and telephone voice recordings, the raw data of these voice recordings was not presented to the court or to the defendants. Reports prepared on data copied to a laptop computer were taken into consideration. Many objections of the defendants that the HASH value[6] was not the same were not taken into consideration by the court. The experts who analyzed the audio recordings were jet pilots without the necessary training and competence. The reports prepared by the jet pilots on the sound analysis did not contain scientific analysis and the experts were appointed in violation of the legal procedures specified in the regulations. Some of the experts were later tried in the same context, became defendants and were sentenced. Despite the change in the legal status of this expert, his name and signature continued to appear in expert reports, and this expert report was used as the basis for the reasoned decision when sentencing.

viii. The most important data to help understand both incidents was the airborne radar images. Although the official voice recordings of the military personnel who prepared the air radar images for the prosecutor's office, indicating that they manually interfered with the radar data, were presented to the court, they were not taken into consideration. Air radar data showing the take-off from Akıncı airbase, movements in the air, the Gölbaşı region and the return to Akıncı airbase were not presented. The defendants' requests in this regard were not taken into consideration. The report was created only by cutting out some photo frames, and the fact that the detailed movements of the jet planes in the air were not determined further increased the doubts.

ix. In the official letter[7] submitted to the court of first instance by the General Directorate of Security of the Ministry of Interior within the scope of the investigation, it was stated that of the 97 aircraft that were detected to have flown without authorization on July 15, 16, 17, 2016, the pilot identity information of 40 of them could be reached and the pilot identity information of 57 of them could not be determined. This means the following. In order to prove a bombing incident, the aircraft must be identified, the technical examination of the aircraft must be carried out, the suspected aircraft pilots must be clearly identified and the air radar records must be clearly revealed. Airborne radar

[6] It is the value based on the fact that the copied data is identical to the properly confiscated raw data.

[7] Akıncı case investigation file, folder 547, 134224.pdf, P.1

records and aerial photographs show that there was more than one aircraft in the air at the time of the incident and that some aircraft could not be identified. Unless these unidentified aircraft are identified and the suspected pilots and the aircraft used by them are identified beyond any doubt, it is not possible to identify the perpetrator, and this is the case in the relevant proceedings.

In summary:

• The flight data recorders (black boxes) of the accused pilots' aircraft showed discrepancies inconsistent with the alleged bombing operations

• Physical and forensic examinations failed to establish a direct link between the accused pilots and the alleged bombings.

• Radar images and voice recordings, essential for verifying air traffic movements, were incomplete and, in some instances, possibly manipulated.

• Critical evidence (raw radar and communication data) was never disclosed to the defense or to the court in its original form.

Furthermore, no ballistic evidence matching GBU-10 bombs to the alleged explosion sites was properly presented. Experts concluded that the scale of damage at Gölbaşı did not match the expected destruction from a GBU-10 bomb.

Thus, serious procedural and evidential flaws cast substantial doubt on the official narrative of the Gölbaşı bombings.

In paragraph 9/k of the ECtHR judgment, it is stated:

"Fighter jets had bombed the Turkish Grand National Assembly ('the National Assembly') at midnight when members of parliament were holding an emergency session concerning the coup attempt."

Objection:

No VTR/DVR recordings capturing the alleged bombing of the Parliament by fighter jets on the night of July 15, 2016, have been presented. The absence of such direct evidence alone raises significant doubts about the claim.

According to the indictment, the explosion at the Turkish Grand National Assembly (TGNA) allegedly occurred at 03:24 due to the dropping of two unguided MK-82 general-purpose bombs. However, security camera footage shows the explosion occurred at 03:22:15. This time discrepancy undermines the prosecution's narrative.

Moreover, based on aviation physics, if a fighter jet dropped a bomb resulting in an explosion at 03:22:15, the aircraft would have to be within approximately one mile of the target at that precise time. However, radar images examined show that no aircraft

were within one mile of the Parliament building at the moment of the explosion — all were at least five miles away.

Furthermore, considering standard military procedures, a night bombing with unguided munitions would involve low-altitude diving maneuvers, which would produce distinctive jet engine noises. Yet, journalists covering the event (e.g., a FOX TV reporter) explicitly stated that no aircraft noise was heard immediately before or after the explosion.

According to the indictment, the explosion mentioned in paragraph 9/k occurred at 03:24 due to 2 MK-82 (unguided) general purpose bombs. However, unlike the indictment, the time of this explosion is seen as 03:22:15 in the security camera recordings. Since 03:22:15 was found to be the clearest available time indicating the time of the explosion, this time was taken as a reference for the analysis of the aerial picture. Let us remind you that we need to take seconds into account when evaluating the shots fired from the aircraft. For this reason, analyzing the 20-second section before the explosion will provide us with a realistic evaluation. In order for an F-16 aircraft to drop an unguided munition on its target, a minimum of 5 seconds is required for the aircraft to aim at the target (target tracking) and 10 seconds of bomb flight time is required depending on the altitude. In other words, according to this information, it must fly towards the target in the last 15 seconds before the explosion. The security camera footage showing the time of the explosion is shown below.

For an accurate analysis, it is necessary to evaluate the aerial picture information together with the visuals of the moment of the explosion. While analyzing the aerial image, the 20-second section before the explosion was analyzed in 5-second segments in order to evaluate the movements of the aircraft over Ankara. In order to determine the location of the parliament building on the screen in the obtained aerial image, the location of the parliament building on the real aerial map was placed on the aerial

image by taking the information of Akıncı, Esenboğa, Güvercinlik and Etimesgut airports as reference. In the aerial images taken in 5-second segments, 3 hours were added for Türkiye time since the time in the aerial image is seen as "Z" standard time.

Run Time" shows the actual time of the tracks.

00:21:55 Z (Türkiye Standard Time 03:21:55)

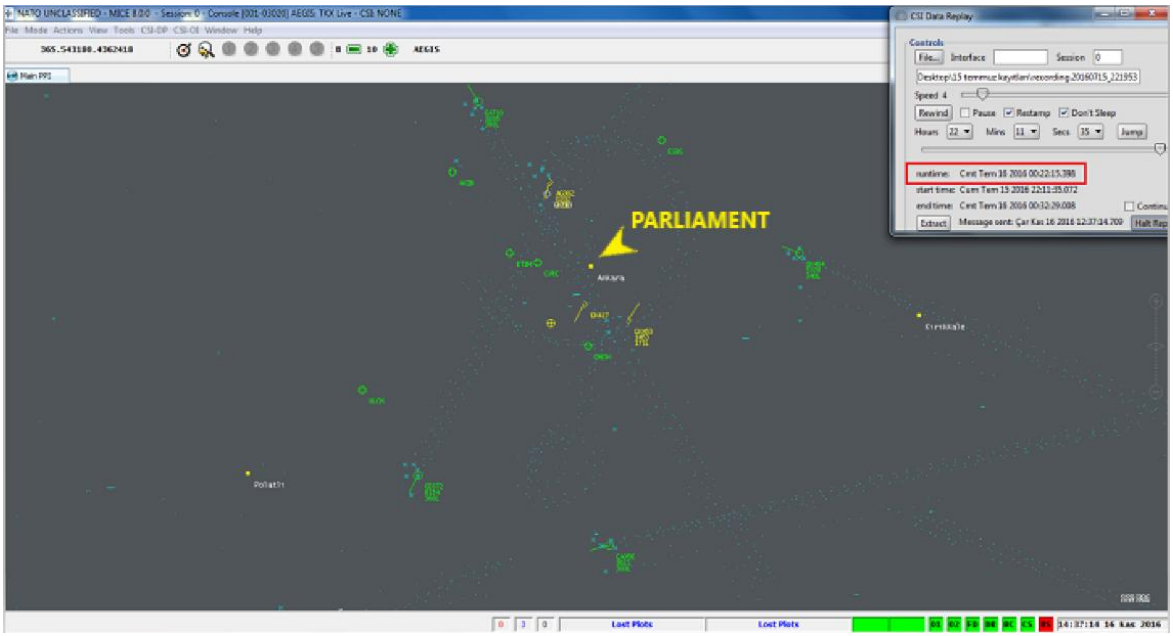
00:22:00 Z (Türkiye Standard Time 03:22:00)

00:22:05 Z (Türkiye Standard Time 03:22:05)

00:22:10 Z (Türkiye Standard Time 03:22:10)

Aerial images similar to the one below were analyzed and there is no trace of any movement towards the assembly position in the interval 20 seconds before the time of the explosion.

At the time of the explosion, as indicated by the yellow arrow in the picture, there was no aircraft over the parliament building. The claim that an explosion occurred in the parliament due to an ammunition dropped from an airplane that was not flying towards the parliament is incompatible with neither the laws of physics nor the rules of aerodynamics. If an ammunition had been dropped from an airplane as claimed, the bomb should have been within 1 mile of the plane that dropped the bomb at the time of the explosion. All of the traces on the aerial picture show that at the time of the explosion it was 5 miles away from the parliament building. Since conventional ammunition firing at night is carried out in a diving manner to drop bombs from altitudes of 3000-5000 feet in order to ensure a more precise hit, the sound of the aircraft would have been expected to be heard before and after the explosion. FOX TV reporter's statement on live broadcast that no airplane sound was heard before and after the explosion confirms this information.



Position of aircraft at the time of the explosion in Parliament 00:22:15 Z (Türkiye Standard Time 03:22:15

These and similar strong objections were raised by the defendants in the court of first instance. When technical records, camera footage and aerial images are analyzed, there are very strong doubts against the claim that the Turkish Grand National Assembly was bombed by warplanes.

Thus, there is a strong factual contradiction between the claimed bombing and the available physical, radar, and audio evidence.

In paragraphs 9/m and 9/o of the ECtHR judgment, it is stated:

"Military helicopters and putschist soldiers had fired on and shot dead or injured civilians attempting to regain control of the General Staff Building from the putschist soldiers who had taken control of it and Fetullahist soldiers, with the help of helicopters, had brought armed and equipped trainee second lieutenants, students at the Turkish Military Academy, to the General Staff Building with a view to succeeding in the coup attempt."

Objection:

The allegation that the General Staff Barracks was seized by putschist soldiers, that the civilians there fought against the putschist soldiers who took control of the General Staff and that all other military units subject to the case supported the putschist soldiers does not reflect the truth. Namely:

In the event of a coup attempt, it is the duty of the police force under the command of the prosecutor's office to intervene. The police force can carry out this intervention in harmony with the Central Command, which assumes the role of military police. The

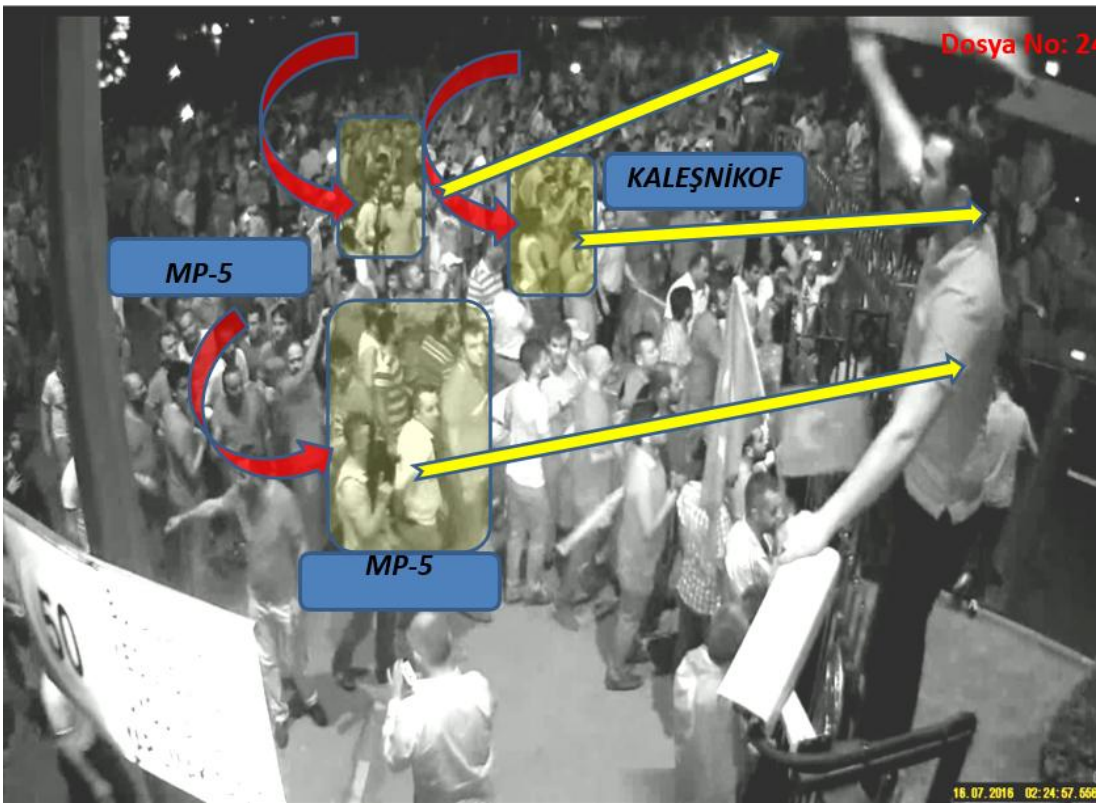
statement that the General Staff Headquarters was taken over by putschist soldiers is a statement that has no legal basis. Because what happened in the General Staff compound at the time of the incident says otherwise.

i) In the General Staff Barracks, there are nearly 1,000 conscripts and privates staying in the compound as boarders. Apart from these privates and conscripts, there are also ranking personnel on night shifts who were acquitted of the coup attempt allegation. In other words, even if it is assumed that there was a small group of coup plotters, the compound is still a barracks as defined in Article 51 of the Turkish Armed Forces Internal Service Law. As long as this characteristic continues, it is lawful for military personnel to take the initiative to ensure the security of the compound.

ii) The same conditions apply to any unauthorized and suspicious civilian attempting to occupy the compound as they apply to the military today. This is because unless military personnel are certain that the people intervening are police (the police can identify themselves, show their police ID and state the purpose of the intervention), they must follow all procedures related to the security of military units. For example, the presence of an ex-convict with a criminal past, nicknamed Apo[8] from Muş, linked to intelligence and a member of the criminal world, with the nickname Apo[9] , who reached Ankara, entered the compound with piercing and cutting tools, and who stated in his video on social media that he was on his way when there was no incident , and the presence of unknown people with long-barreled weapons who tried to force their way into the compound confirms that there were unauthorized and provocateurs among those present. Several examples can be seen in the images below.

[8] https://medium.com/@platform15temmuz/20-%C5%9Fai%CC%87beli%CC%87-%C5%9Fahis-mu%C5%9Flu-apo-bbcad8d41f03

[9] https://www.youtube.com/watch?v=FRDEalb1G4Y

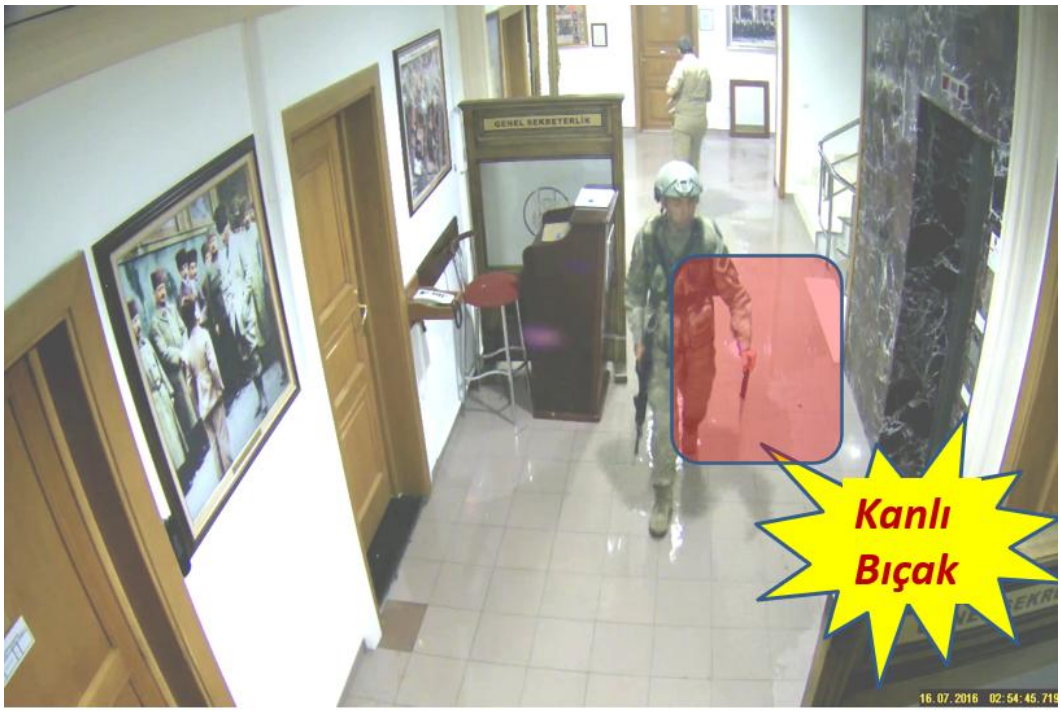


The General Staff Headquarters' Eastern Gate - Armed Unknown Persons

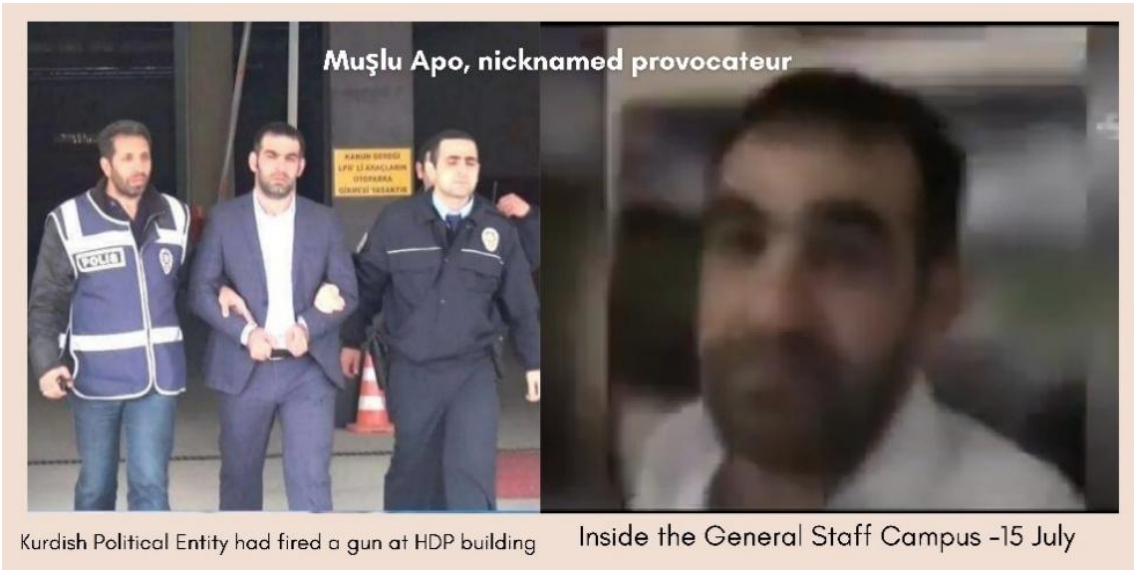
The General Staff Headquarters' Garden-Lynched Military Personnel

A Cadet Wounded by External Bullet

An Unauthorized Person with a Pistol in the General Staff Headquarters



Knife Attack on Soldier - Bloody Knife



iii) These suspicious person(s) destroyed the wire fences of the compound, started to lynch the soldiers there and the moments when they fired their weapons were reflected in the camera footage. At this point, the police force, which was supposed to ensure the security of the compound, took the approach that civilians should go in and neutralize the soldiers, as reflected in radio conversations. Sample radio conversation;

[10] Public order circle at 03:09

> 2036 (Deputy Provincial Police Chief): "I am calling on all our stations to dispatch our citizens to the General Staff, Land Forces Command and the air unit in Etimesgut... all citizens... to the Land Aviation School. All ranks and non-ranked personnel, citizens should neutralize them and inform us."
>
> This is a violation of the Law on Police Duties and a criminal act that endangers the safety of innocent protesters and innocent soldiers. Article 24 of the Law on Military Prohibited Zones states that those who demolish or destroy or disrupt or change the location of signs, fences, walls or ditches and similar facilities inside or on the border of military prohibited zones shall be sentenced to imprisonment from 2 years to 7 years and a heavy fine of up to 50 thousand liras. Under those circumstances, it is a crime for unauthorized and armed persons to destroy the outer fences of the General Staff.

iv) It is about a compound that has nothing to do with the military coup attempt and where there are over 1000 privates, conscripts and ranks, and which is still a barracks in accordance with military law and in legal terms. In the face of armed and unauthorized persons, who are known not to be police officers and whose details are given in the visuals, endangering the safety of innocent soldiers there, it is lawful for the military to ensure security and to request reinforcement from external troops. The ECHR, which accepts the findings of the court of first instance as data, should clearly answer the following question. If the police were insufficient to intervene, or if the police themselves were jeopardizing security, as indicated in the radio transcripts, who was to ensure the security of over 1,000 innocent soldiers?

In conclusion, the portrayal of the General Staff Headquarters as having been "seized" by coup plotters and of civilians "reclaiming" it by force is legally and factually problematic.

Key points:

• At the General Staff premises, nearly 1,000 conscripts (privates and corporals) and several officers were already present as part of the normal duty roster, many of whom were later acquitted of coup-related charges.

• The facility retained its legal status as a military zone governed by the Turkish Armed Forces Internal Service Code (Article 51), meaning that any unauthorized entry into the premises could lawfully trigger defensive measures by military personnel.

[10] Ankara Provincial Police Radio Records, General Staff Roof Case, File 26

• Reports indicate that some individuals who stormed the premises were armed, including known criminals and provocateurs, as evidenced by photographic and video documentation.

• Radio communications suggest that police forces, instead of organizing a lawful intervention, encouraged civilians to forcibly enter military zones, risking chaotic violence.

It is also important to note that military personnel are required to use force to protect military zones unless they can clearly identify opposing forces (e.g., recognized police units).

Therefore, the ECtHR's depiction of the General Staff building's events disregards the complex and dangerous situation on the ground, blurring the lines between lawful military defense and alleged unlawful actions.

In paragraph 10 of the ECtHR judgment, it is stated:

The coup attempt had therefore been carried out by the "Peace at Home Council", which had acted outside the chain of command of the TAF and used approximately 9,000 military personnel, thirty-five fighter jets, thirty-seven military helicopters, seventy-four tanks, 162 other armoured combat vehicles and 4,000 small arms and light weapons, resulting in 249 deaths and thousands of injuries, the ECHR in paragraph 10 of the judgment.

Objection:

The claim that 9000 people participated in the coup attempt, as claimed by the court of first instance, does not reflect the truth. In the trials within the scope of the coup attempt, all 289 cases were concluded and a total of 1634 defendants were sentenced to aggravated life imprisonment and 1366 defendants were sentenced to life imprisonment. In the context of aiding the coup attempt, 1891 defendants were also sentenced to various periods of imprisonment. [11] According to the Erdoğan government, 162 coup plotters are on the run. [12] However, there are no finalized judicial decisions on these so-called fugitives and Türkiye has rejected their extradition requests. Considering these figures, even the Turkish judiciary, which is known to be under political pressure[13] , has been able to link approximately 5000 people to the coup attempt. This figure does not include overturning decisions from higher courts in

[11] https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/darbe-girisimi-davalarinin-ceza-bilancosu/3275584

[12] https://tr.euronews.com/2016/08/12/milli-savunma-bakani-162-asker-halen-firari

[13] https://www.aa.com.tr/tr/gunun-basliklari/cumhurbaskani-erdogan-feto-davalarinin-gunbegun-raporlarini-aliyorum/836794

favor of the accused. When these are included in the calculation, the figure remains below 5000.

In the aftermath of the July 15, 2016, the Turkish Government has put forward the claim that suspected soldiers killed 249 (some reports say it is 251) To share this information with international reports, the Government submitted false documentation. However, subsequent autopsy and ballistics reports and the consistent defense of the defendants have led to the conclusion that this information may not be entirely accurate. At this juncture, researchers and journalists researching this claim have determined that 70 deaths were not soldier-related. Further studies suggest that this number may be higher. Unfortunately, the Turkish government has chosen to turn a social group into an object of hatred by foaming this information with media campaigns. This is even confirmed by the fact that Turkish prosecutors' offices or courts have acquitted the soldiers in 11 cases in the face of claims that the soldiers were responsible for 249 deaths. Please find below a table detailing the 70 deaths that cannot be linked to suspects.[14] (research on this issue is ongoing)

Cause of Death	Number of Incidents
Death from a heart attack	5
Vehicle or motorcycle accident	9
Friendly fire or by ammunition not in military inventory	3
Deaths without bullets, shrapnel, or metallic objects	5
Death after July 15 due to a judicial incident	1
Accidental self-harm	1
Ballistics report did not match the bullet core with the suspects' weapon	10
Deaths that cannot be attributed to the suspect due to analysis of causes such as ballistics, autopsy, location of the deceased/suspects, distance, bullet trajectory, or lack of HTS (Historical Traffic Search) / Security Camera/ Scene Investigation/ Dress Inspection	33
Deaths in which the suspects proved their alibi	3

D. Specific incident forming the basis of the Applicant's conviction

In paragraph 12 of the ECtHR judgment, it is stated:

"According to the trial court, preparations for the military coup had already begun in the Tank Battalion at the end of May 2016. Malfunctioning tanks had been repaired, weapons installed in the tanks had been serviced, shortages and equipment needs had

[14] https://15julynotes.com/News/70-deaths-were-not-soldier-related-369

been addressed and the Tank Battalion had given the impression to the outside world that such preparations were being made because it was carrying out drills or preparing for a possible deployment on the Syrian border. In reality, it had been preparing to provide tanks and armoured combat vehicles for the military coup, as evidenced by the fact that tanks had been refuelled the day before the coup attempt."

Objection:

The applicant stated that since May 2016, 28.Mkz.Brigade has been working under the name of the KOKTOD, that this is in accordance with the law, and that there is a possibility that the Brigade may be deployed due to the war in Syria. [15] Gen. Metin Gürak, who raised the alarm, monitored the deployment time and conducted drills with live ammunition within the scope of this activity, was serving as the Chief of General Staff of Türkiye at the time these lines were written. If this action is to be considered a crime, Gen. Metin Gürak should also be investigated. The court, on the other hand, relied on the assumption that the refueling of tanks one day before the coup attempt meant preparation for a military coup. The fact that the tanks were refueled one day before the coup attempt, when there had been such activity in the brigade for about 2 months, cannot be considered within the scope of the specific event that constitutes the basis for the conviction. In addition, the verbal orders and alarms given within the scope of the KOKTOD regulation, the details of which have been presented, set the duration as 30 minutes. In a situation where armored vehicles must be mobilized within 30 minutes, the fact that the fuel tanks of armored vehicles are full should not be attributed any meaning. Moreover, armored vehicles are constantly deployed for training purposes in the units in question. In this context, or as is often the case, as part of an unannounced unit inspection by a senior commander, armored vehicles must be kept full of fuel at all times

What could be more natural than for the 28th Mkz.Brigade, which is a reserve unit, to keep the vehicles of the unit, which can take part in both cross-border operations and the fight against terrorism, well-maintained? The issue is also a clear legal obligation. Article 42 of the Turkish Armed Forces Internal Service Law and Article 97 of the Turkish Armed Forces Internal Service Regulation, in summary, order the maintenance of all kinds of state property and state that no excuse will be accepted in this regard. Moreover, the number of tanks that left the barracks that night was 15, which corresponds to approximately one third of a tank battalion. If the number of tanks needed is 15, it is quite possible for a tank brigade to obtain 15 tanks that are maintained and ready for operation at any time. For example, if one were to go to the same tank brigade even now, it is possible to find 15 tanks ready for action and maintained. In other words, if it is assumed that tanks are needed for a coup attempt

[15] The lawsuit filed by Ankara 20th Assize Court regarding the actions at the 4th Corps and 28th Mechanized Infantry Brigade Command

and the requirement is 15 tanks, it is not necessary to plan and prepare for maintenance in advance.

In brief, the applicant consistently maintained that activities at the 28th Mechanized Brigade from May 2016 onward were conducted under the framework of the KOKTOD regulation and lawful preparations for potential cross-border operations due to the ongoing conflict in Syria.

During this period:

• General Metin Gürak, now the Chief of the General Staff of Türkiye, authorized real ammunition exercises and immediate deployment readiness at this brigade.

• If these activities were to be considered as evidence of illegal preparation, General Gürak himself would also need to be investigated, which clearly highlights the absurdity of this assumption.

• Furthermore, the refueling of tanks one day before the alleged coup attempt cannot be considered conclusive evidence of coup preparations.

• Emergency deployment protocols required units to be fully fueled at all times to respond within 30 minutes to any crisis, including terrorist attacks.

• Routine drills, unannounced inspections, and operational readiness checks routinely mandated the maintenance of fully fueled vehicles.

Thus, the conclusion that fueling tanks was part of a coup conspiracy lacks any direct and legally sound basis.

In paragraph 13 of the ECtHR judgment, it is stated:

"During a search of the office and the locker of the defendant A.Ö., several items had been found, including (i) four copies of a map of Ankara, which divided the city into three sections marked red and blue and indicating the number of tanks to be placed at certain intersections; (ii) aerial photographs of Ankara on which certain major intersections, the headquarters of the Intelligence Department and the Special Operations Department of the General Directorate of Security and the former Presidential Palace (Çankaya Köşkü) had been marked; and (iii) six copies of a map of the Altındağ district. A search at defendant N.B.'s office had resulted in the discovery of handwritten notes such as 'how many trustworthy personnel are needed?', 'vehicle + driver + gunner + three crew members, 9 x 3 = 27' and certain other notes indicating the number of tanks to be placed at various intersections in Ankara. Similarly, 1,400 plastic handcuffs were found during the search of his private car."

Objection:

In the previous sections, detailed information has been provided on the legal basis and implementation of the KOKTOD regulations. Within this framework, the area of responsibility of the 28th Mknz.P. Brigade Command, which is the subject of the trial, is the districts of Çubuk, Kalecik, Akyurt, Çankaya, Keçiören, Altındağ and Pursaklar, and other districts when ordered. The maps in question show the areas of responsibility of the military unit subject to trial within the framework of the KOKTOD regulation and are used in scenario-based field exercises. The aforementioned military maps are kept in the rooms of all platoon, company, battalion and brigade commanders for use in the performance of their duties, during training and exercises, and in real situations when necessary. To consider the routine preparations for a military unit's activities and the documents related to these preparations within the scope of coup preparations would mean taking the issue out of its context and making an arbitrary judgment. In addition, the Brigade's KOKTOD Training and Execution Order and file, the company file, the personnel name list, vehicle status chart, and training brochure, which are not included in the indictment but support this point, are also available.

Handwritten notes such as "how many reliable personnel are needed?", "vehicle + driver + gunner + three crew members, 9 x 3 = 27" and some other notes indicating the number of tanks to be placed at various intersections in Ankara were found in the office of the defendant N.B. Similarly, with regard to the allegation that 1,400 plastic handcuffs were found during a search of his private vehicle:

First of all, in order for the evidence obtained as a result of search and seizure to be used in the trial, the procedure must be carried out in accordance with the procedure. Search and seizure is regulated under the Code of Criminal Procedure No. 5271. Accordingly, in order for the search and seizure to be lawful, there must be a search warrant or order obtained in accordance with the law, and the search itself must be carried out in accordance with the law. In order to prevent the allegation that the search procedure is carried out unlawfully and is shady, Article 120 of the Code of Criminal Procedure regulates who may be present during the search procedure as search witnesses. Accordingly

"They can be present at the search

Article 120 - (1) The owner of the places to be searched or the possessor of the goods may be present at the search; if he is not present, his representative or one of his relatives with the power of discernment or a person who lives with him or his neighbor shall be present.

(2) In the cases specified in the first paragraph of Article 117, the possessor and the person to be called in his place if he is not found shall be informed about the purpose of the search before the search begins.

(3) The lawyer of the person shall not be prevented from being present during the search."

In this framework, it is unclear which of the persons listed in the article as witnesses to the search were present at the search, and whether the person to be searched was notified and his/her representative was allowed to be present at the search. Furthermore, the search was conducted approximately one month after the defendant N.B. was taken into custody. During this time, it is not explained whether measures were taken to prevent someone else from entering the room and planting objects. Therefore, the use of the unlawfully conducted search and the evidence obtained therefrom in the trial is unlawful in accordance with Article 38 of the Constitution and Article 217/2 of the Criminal Procedure Code "The charged crime can be proven by any evidence obtained in accordance with the law." Moreover, the defendant stated that not all of the items seized during the search belonged to him and that if he had acted with the intention of coup d'état as alleged, he should have carried the handcuffs with him on July 15th, not in his private vehicle. However, as stated in the crime scene report and the expert report annexed to the indictment, plastic handcuffs were not found in the tanks received in the General Staff area. In addition, it was also recorded that the tank ammunition was training ammunition (which only makes noise and does not cause damage) and not live ammunition, and it was understood that priority was given to ammunition intended to intervene in social incidents.

In brief:

The maps found were standard operational documents prepared as part of KOKTOD activities.

• The 28th Mechanized Brigade had a legal duty to prepare for scenarios involving support to law enforcement in case of large-scale public disturbances or terrorist attacks.

• Planning the deployment of vehicles at strategic locations, including intersections, was a lawful and necessary part of this operational readiness.

• Such maps and plans were required to be available in all command offices, as per standing orders.

As for the handwritten notes:

• They were generic tactical notes relating to personnel organization, a standard practice during internal exercises and contingency planning.

• There is no evidence that these notes were prepared for or related to a coup attempt.

Regarding the 1,400 plastic handcuffs:

• Serious doubts exist regarding the lawfulness of the search procedures, violating Turkish Criminal Procedure Law (CMK) Articles 120 and 217.

• **The search was conducted about one month after the defendant N.B.'s detention**, raising the possibility of unauthorized access to the premises and planting of evidence.

• **No plastic handcuffs were found on the tanks that arrived at the General Staff Headquarters.**

Moreover, ballistics and technical reports confirmed that the tank munitions were blank training rounds (producing sound only), not live ammunition, further supporting the argument that the mission was not intended for a combat or coup operation.

In paragraph 15 of the ECtHR judgment, it is stated:

"The trial court further observed that while the defendants, tank crew members acting 'in unity of thought and action' under the command of N.B., had been on their way to the General Staff building, civilians had started protesting against them around the Ulus neighbourhood and had tried in vain to persuade them to stop their actions. Despite knowing why the crowds had gathered in the Sıhhiye neighbourhood and in front of the Ankara Courthouse, the defendants had continued their actions, disregarding the civilians' warnings and opening fire on them. In the Kızılay neighbourhood, the defendants had broken the barricades by running over cars, firing at civilians and driving into crowds. According to the trial court, civilians had frequently stopped the defendants on their way to the General Staff building and warned them that their actions were wrong, that it was a coup attempt and not a terrorist attack as claimed, and that they should therefore return to their barracks and not kill or injure any civilians or damage property. Nevertheless, the accused had ignored these warnings and had continued with their actions in order to achieve their aim of carrying out a military coup."

Objection:

According to the TAF Internal Service Law;

Article 88 - Any soldier authorized to use weapons or any commander authorized to order the use of weapons who fails to make proper and timely use of the permissions granted by law or fails to make full use of his weapons shall be punished according to the nature of the act.

Article 89 - Every soldier is authorized and obliged to use arms if it becomes necessary to use arms in order to eliminate a resistance he/she is exposed to while performing a

duty of service or to resist a violation against the soldier or military property, other than the cases specified in Article 87.

Article 90 - Every soldier is authorized to use arms in self-defense, except for the cases specified in Articles 87 and 89.

In this framework, when the above allegations are evaluated one by one:

i. Evaluation of the allegation that civilians warned the defendants on the road that this was not a terrorist attack, that it was a coup attempt, that they should return to their barracks and not harm anyone or property, but the defendants ignored these warnings and continued their actions by opening fire on civilians and also crushed cars and demolished barricades; In the incident subject to the allegation, the applicant, upon the order given, arrived at the General Staff Headquarters, which was said to have been attacked, as a reinforcement force, together with the unit he commanded, with the personnel and armored vehicles under his command. During the deployment, the defendant overcame the barricades that prevented the performance of his duty. He did not drive vehicles on civilians, on the contrary, he tried to use places where there were no civilians. In the face of the fact of fulfilling the order and absolute obedience, it is a requirement of the nature of the military profession that the soldier should not accept the words of those who advise him, other than his superior, as essential during the performance of the duty. Otherwise, the execution of the military profession is out of the question and military personnel may be deceived by people with malicious intentions and the execution of the duty may be disrupted. In addition, the accused states that he did not fire at anyone during the execution of his duty and that he did not give any order to that effect. Even if it is accepted for a moment that the defendant used a weapon, according to Article 87 of the above-mentioned Internal Service Law, it is lawful to use a weapon to eliminate resistance encountered during the execution of the duty. Moreover, it is not stated that any civilian was killed during this use of weapons. This shows that the manner of use of weapons regulated in the same Law was complied with. Finally, it is imperative that a forensic medical report and a ballistic examination of the weapons be conducted to establish that people were injured or killed as a result of the shooting by the defendant or other defendants. However, no such report was submitted during the trial.

ii. Evaluation of the allegation that the defendants came to the General Staff Headquarters building at 01.00 on July 16, 2016 and forcibly entered the building by destroying barricades, walls and barbed wire and damaging the buildings; The order given to the applicant was to prevent the terrorist attack on the General Staff Headquarters and to ensure the security of the perimeter. For this purpose, when the defendant tried to enter the duty zone, he had to

overcome the barricades and other obstacles that prevented the execution of the order. Therefore, overcoming obstacles in order to protect the General Staff Headquarters, which is the heart of the Turkish Armed Forces, upon a report of a terrorist attack is in accordance with the ordinary course of military service.

To put it briefly, it can be said:

The Turkish Armed Forces Internal Service Law provides that:

• Article 88: Military personnel authorized to use firearms must do so when necessary, and failure to act may be punishable depending on the circumstances.

• Article 89: Military personnel must use weapons when faced with resistance during the performance of their official duties or in defense of military personnel and property.

• Article 90: Military personnel are authorized to use weapons in legitimate self-defense beyond the scope of official duties.

In this framework:

• The applicant was executing an order to secure the General Staff Headquarters against a perceived terrorist threat.

• During the movement, the applicant and his unit encountered barricades, which they had to overcome to fulfill their assigned duties.

• The applicant made efforts to avoid civilians, maneuvering tanks through less crowded areas whenever possible.

Regarding claims that the applicant disregarded civilian warnings:

• Soldiers are not expected to base their operational decisions on instructions or pleas from civilians while executing a lawful military order.

• To do so would violate the essential discipline and functionality of the armed forces and risk operational chaos.

Regarding allegations of firing on civilians:

• The applicant denied firing at civilians or ordering anyone to do so.

• Even assuming that force was used, such force would be lawful under the Internal Service Law if it was to remove resistance to the execution of lawful orders or to protect military personnel and property.

• There is no forensic evidence (autopsy or ballistic reports) linking any injuries or deaths to actions taken by the applicant or his unit.

Regarding the destruction of property (e.g., running over cars):

• Actions taken to clear blockades in the context of an urgent military mission aimed at protecting a critical state institution are justified under both national law and military operational principles.

Thus, the trial court's portrayal of the applicant's conduct disregards the military context, misinterprets the legal obligations of a soldier under emergency conditions, and fails to distinguish between lawful military activity and criminal conduct.

In paragraph 17 of the ECtHR judgment, it is stated:

"In assessing the situation of each of the defendants who were in the same tank as the applicant, the trial court found that the messages on defendant S.K.'s mobile telephone showed that he had been aware of the coup attempt and that he had been in contact with a director of the FETÖ/PDY."

Objection:

It has been inferred from this statement that S.K., who is a soldier, was in active contact with the organization's leader T.D., exchanged messages with him on the night of July 15 and received instructions from him. However, the real situation is quite different. First of all, there is no evidence that the defendant S.K. has ties with the Gülen Movement. Although the reasoned verdict includes findings regarding some of his relatives, there is no finding regarding S.K. The connection between S.K. and T.D. can be explained as follows; T.D. is a renowned professor of medicine. He has studies especially in the field of cancer[16] . Defendant S.K.'s brother is also undergoing cancer treatment[17] . It is considered that this telephone communication had no purpose other than requesting an appointment for his brother's cancer treatment and medical advice. T.D., the alleged organization manager, is a target of the Turkish State because he is the private doctor of Fethullah Gülen, the leader of the Gülen Movement.[18]–According to the established political understanding in Türkiye, merely having this characteristic is a sufficient criterion to be an organization manager. Moreover, there is no case against T.D., who is alleged to be an organizational leader, for planning, instigating, directing and managing July 15. The fact that the court of first instance did not analyze the concrete incidents sufficiently and did not examine the time of the incident in detail created an irrelevant situation between the concrete incidents and the crime. The ECtHR's acceptance of this incompletely analyzed incident as data has also created a further victimization. Furthermore, it is alleged that the messages of the day of the

[16] https://www.upstate.edu/healthcare/providers/doctor.php?docID=delibast

[17] Ankara 18th Assize Court, File No: 2017/165 Main, Decision No. : 2018/128, Prosecutor's Office Main No: 2017/13604 page.304

[18] https://www.yeniakit.com.tr/foto-galeri/y-4166/53

incident contained messages that S.K. knew about the coup. The messages referred to in the reasoned verdict are messages obtained from the WhatsApp application and the defendants' phones. Before explaining this issue, it is necessary to state the following. The group created is never a WhatsApp group outside the hierarchy, for an unlawful purpose and in which some selected people are members. The WhatsApp application is an application that has been used extensively in recent times and is used by commanders at company or battalion level in military units by forming groups and enables coordination in a practical way. In this context, the messages in question are the WhatsApp group of the 2nd Tank Company of the Tank Battalion created by the company commander. This group was not created specifically for the night of July 15, but was used for the coordination of many trainings and tasks before July 15. None of the conversations that constitute a criminal offense in these messages are included in the reasoned decision. It is understood that the correspondences in the WhatsApp group contain normal orders such as alert, urgent deployment to duty stations, and cancellation of leaves, which are in accordance with the nature of the military profession.[19]

To sum up:

The ECtHR's judgment implies that because defendant S.K., a soldier who shared the same tank with the applicant, allegedly exchanged messages with a senior figure of the so-called "FETÖ/PDY" organization, this fact can be attributed to the applicant as well.

However, this reasoning is fundamentally flawed for several reasons:

• **Individual Criminal Responsibility Principle**: Under both international human rights law and the European Convention on Human Rights, criminal responsibility is strictly personal. One individual's alleged connections or intentions cannot automatically be imputed to another simply because of proximity or association.

• There is no evidence indicating that the applicant, Mahmut Onur Uçar, was aware of or participated in any such communication or had any personal contact with alleged members of "FETÖ/PDY."

• The applicant has consistently denied any organizational affiliation, and there is no contrary evidence presented in the case file.

Thus, using the alleged actions of S.K. to infer criminal intent or knowledge on the part of the applicant constitutes a clear violation of the principle of personal culpability.

[19] Ankara 18th Assize Court, File No: 2017/165 Main, Decision No. : 2018/128, Prosecutor's Office Main No: 2017/13604 page.301

E. Assessment of the Defendants' Submissions that they had acted in the belief that a terrorist attack had taken place at the General Staff Building

In paragraph 20 of the ECtHR judgment, it is stated:

The ECHR, at paragraph 20 of the judgment, the trial court observed that at the initial stages of the proceedings, some of the defendants alleged that they had acted in the belief that a terrorist attack had taken place at the General Staff building, some of them claiming that "Daesh" (the so-called "Islamic State in Iraq and the Levant" or "ISIL", also known as "ISIS") had been responsible. However, they had changed those statements after being placed in pre-trial detention and had categorically stated that the FETO/PDY had carried out an attack on the General Staff building and that they had gone there to provide security. According to the trial court, those allegations did not reflect the truth for the following reasons. Taking into consideration the developments that took place on the night of the incident, the trial court found that members of the FETÖ/PDY armed terrorist organization had initiated the coup attempt at 9 p.m. by taking control of the General Staff Building, taking the Chief of Staff and other commanders who had opposed the coup as hostages and transferring them to the Akıncı Air Base. At about the same time, fighter jets were flying at low altitude in Ankara and the sound of gunfire, similar to that of an armed conflict, had been heard coming from the General Staff building. At 11 p.m. the Prime Minister had appeared on a nationwide television program and declared the incident to be an attempted coup, and the Ankara Chief Public Prosecutor's Office had issued arrest warrants for those taking part. At 11.45 p.m. certain putschist soldiers had stormed the TRT building and read out the so-called coup declaration. At 12.25 a.m. the President of the Republic had appeared on a nationwide television channel and denounced the move as a coup attempt conducted by a small group in the TAF incited by the "parallel structure". Subsequently, many important public institutions, such as the General Assembly, the National Intelligence Service, the General Directorate of Security, the Special Operations Department of the General Directorate of Security, TÜRKSAT and the Presidential Palace had been bombed and shelled. Against the above background, and bearing in mind that it was undisputed that the tanks had left the military barracks at 11.45 p.m. on 15 July 2016, at a time when even the entire civilian population had been aware of an ongoing coup attempt, the trial court found it unlikely that the defendants, who had also had their mobile phones in their possession, had not been aware of it.

Objection:

It has already been explained that the applicant received an order from his immediate superior within the scope of the KOKTOD and the manner in which this order was implemented. The basic logic of this practice is that military units assume the function

of assistance in the event that the law enforcement forces (police and gendarmerie) are insufficient in the face of widespread acts of terrorism. On the night of July 15th, there was chaos with multiple incidents that fit this concept. The police force was inadequate in different situations and conditions arose that required the military to provide support. Namely

i. Military units with personnel, conscripts and privates carrying out their routine activities were attacked by provocateurs mixed in with the protesting public, and innocent soldiers were killed and injured by gunfire or lynching. The police force was inadequate at some points or, as previously reported in radio recordings, was part of a situation in which the public and the military were pitted against each other, in violation of its own code of conduct. The post-July 15 decree law that closed the way for investigations into actions against the military and created conditions of impunity also confirms this fact. To say that there was no terrorist attack under the circumstances, the images of which we have shared above, would be to obscure the truth.

ii. In addition, Ümit Dündar, who was assigned as the acting Chief of General Staff, gave many orders, both verbally and through the TSK message system, to counter the coup attempt and take security measures until noon the next day. The personnel who received orders that night may have given or received orders with the idea of opposing or suppressing the coup. As long as there was no unlawful giving or receiving of orders, it is most reasonable to evaluate what happened within this framework. After all, it is the duty of the police to suppress the coup attempt, it is quite possible that the police forces will be insufficient in fulfilling this duty, and this means that the conditions for the KOKTOD have been created. Already, some military units in the Beştepe area and Güvercinlik area came out of their barracks and acted under the belief that they were carrying out activities against the coup and were not even investigated, let alone prosecuted. These were people who took to the streets after the prime minister's statement and had the opportunity to follow what was happening on their cell phones.

iii. In other words, taking to the streets after the Prime Minister's statement, following the events on the phone or not are insufficient, unconnected criteria to determine whether a person is a coup plotter or not. The court of first instance sentenced him to life imprisonment on the basis of suspicion, replacing the element of intent with suspicion. Considering that the death penalty used to be imposed instead of life imprisonment, would such a severe sentence have been imposed on the grounds of suspicious actions? Here, the manner and form of the events should be considered in terms of whether there was a coup attempt or not, and the ECHR should not accept life sentences on abstract

grounds such as whether state leaders made statements or not, whether they watched the events on their phones or not.

iv. [20] In the reasoned verdict [21] it is mentioned that some defendants initially testified that they had received orders for an ISIS terrorist attack, but later changed their testimony to say that they had received orders in the context of the FETO/PDY coup attempt. First of all, it should have been examined whether there was a contradiction between the statements of the applicant Mahmut Onur Uçar at the investigation and court stage. There is no specific finding on this in the ECtHR judgment. The table below compares the statements of both the applicant Mahmut Onur Uçar and some of the defendants who stated in the reasoned judgment that they had changed their testimony (even if the effect of the change of testimony of these defendants on the individual situation of the applicant is not understood) at the investigation and court stages. As can be seen from the table, there is no inconsistency between the two statements that creates a deep contradiction and raises serious doubts.

Defendant Name	Testimony at the Investigation Stage	Court Statement
Applicant Mahmut Onur Uçar	...that there was talk among the personnel that there was a terrorist attack in Ankara, that while they were waiting there, the Company Commander Captain Hüseyin Nişancı came up to the personnel and told them that there was a terrorist attack on the General Staff Headquarters and that they should go there and take security, ...	The company commander came to our company area from another part of the garage and told us that the General Staff Headquarters was under attack and that we were going to secure it. I don't remember if there was anyone else with me at that time. Anyway, the training we did under the name of KOKDOT was for this purpose. I did not find it strange that law enforcement forces were supported in social incidents because the EMASYA protocol, which gave us the same task, was abolished for a while, and after the Gezi events, it was needed and came back under the name of KOKDOT.
Mustafa Töker	...previously used the Law Enforcement Agencies	I saw Specialized Sergeant Mehmet Levent ÖZER and asked him what had happened and he said that he did not

[20] Ankara 18th Assize Court, File No: 2017/165 Main, Decision No. : 2018/128, Prosecutor's Office Main No: 2017/13604

[21] Ankara 18th Assize Court, File No: 2017/165 Main, Decision No. : 2018/128, Prosecutor's Office Main No: 2017/13604 relevant sections of the decision

	He said that a unit was formed under the name of Support in Social Events, that he thought the alarm was for such a reason, ...at that time he heard from the surroundings that there was a terrorist attack,	know what had happened, but that he had heard the company commander Hüseyin NİŞANCI say that there had been a terrorist attack on the General Staff.
Şerafettin Atmaca	Normally the tank commander was Ensign Ersel Yaşar, but they made the captain the tank commander and he said that he was in command, and while the commanders were talking, he heard that there was an ISIS attack on the General Staff,	On my way to Adil captain, I saw Nuri BÜYÜKYAZICI, Turan BAYSAL and a few other people I didn't know talking and I overheard them about something like ISIS terrorist attack and I went to Adil BAYKAL.
Süleyman Erkaç	Company Commander Captain Hüseyin Nişancı wrote that an alarm had been sounded, that everyone should join their units immediately, that commanders and other personnel had gathered, and that there was talk of an ISIS attack on the General Staff,	He said that an order was given from the whatsapp group run by Hüseyin NİŞANCI that the personnel should join the unit immediately. So I got up, put on my camouflage and went to the company. ... there was a state of chaos with tanks running. There was talk of a terrorist attack.
Ismail Gokturk	1. He saw the Company Commander Captain Adil Baykal and asked him what was going on and he said "I don't know, there was a terrorist attack", he saw Company Petty Officer Ünal Alsancak and asked him what was going on and he said there was a terrorist attack and he heard from someone he didn't remember who he was that ISIS was attacking everywhere, After a while, he saw Battalion Commander Nuri Büyükyazıcı organizing the personnel, and when he saw him, he said, "The General Staff Headquarters was attacked by ISIS and Fetöist terrorists, our Chief of Staff was taken prisoner, that place is our honor, we will go and take security there.	I also saw the battalion commander there. He put his hand on my shoulder next to the tanks and said Ismail terrorists raided the General Staff Headquarters, they kidnapped the Chief of Staff, it is our honor, we will go and secure it immediately, you are coming too.

F. Assessment of the plea of obedience to superiors' orders

In paragraph 22 of the ECtHR judgment, it is stated:

The trial court further noted that most of the defendants, in their defence against the charges against them, had argued that they had acted lawfully by following orders in accordance with the strict obedience prevailing in the military. According to the court, several criteria had to be met in order to accept the defense of obedience to superior orders, which was set forth in the Criminal Code as a circumstance that extinguished or reduced the criminal responsibility of an accused. In that regard, no lawful order had been given to the defendants requiring them to save the General Staff Building from a terrorist attack on the night of 15 July 2016. In the absence of such an order, the defendants had not been in a position to assess its formal requirements. Moreover, a binding order could only be lawfully issued by a competent body or superior authorized by law, and an order to deploy armoured fighting vehicles with live weapons in the capital at night could only have been issued by the Committee of Ministers and not by a brigade commander. Assuming that there had been a lawful order, its object and the reasons for it had not been lawful. In any event, even in a system requiring absolute obedience to superior orders, such as in the military and the police, no officer had been under an obligation to carry out an order the subject of which constituted an offense. In such cases, both the subordinate who carried out the order and the superior who issued it would be criminally liable and a plea of obedience to superior orders would not relieve the former of such liability. In view of the foregoing, the trial court observed that the defendants had known that they had not been authorized to carry out a night operation at the General Staff Building on 15 July 2016, Even assuming that the building in question had been attacked by terrorists, the question of how to intervene in such an attack would have had to be decided by the civilian authorities, which were empowered by law in the fight against terrorism, and not by the military forces, as the law clearly regulated the circumstances and the manner in which the military could intervene in terror attacks. Therefore, it was not legally possible for the Mamak Twenty-Eighth Mechanised Brigade to intervene in a so-called terrorist attack by assuming itself authorized to do so in the absence of a written order to that effect. In fact, none of the competent authorities had authorized the Brigade to use armoured combat vehicles, including tanks. Even though there had recently been other terrorist attacks in Ankara, the military had not been asked to intervene in them, and it was against logic in the circumstances prevailing in Turkey for the military to have been abruptly authorized to do so at midnight at the capital.

Objection:

The fact that the action carried out by the military was not based on a proper order, that the Council of Ministers was authorized in this matter and that the Council of Ministers did not make such a call does not reflect the truth, and the incident has been

misinterpreted. The intention here is not for the Council of Ministers to give an order at the time of the incident. Otherwise, it would not be possible for military units to prepare, deploy and intervene in emergency situations. This instruction was determined by a decree of the Council of Ministers and published in the official gazette as Decree No. 2013/5234 dated August 5, 2013. This provision was in force at the time, and the sub-regulations prepared within this scope were notified to all relevant units by the military units, taking the opinion of the governorate. Accordingly, all regulations, including areas of responsibility, maps of the region, which weapons and vehicles will be used, the manner of using weapons and their authorizations, are kept ready within the 4th Corps to which the 28th Mkz Brigade is attached.

The governorate's call and request for assistance may be in writing or, in emergencies, verbally. If an alarm is sounded, an urgent assembly order has been given and subordinate personnel do not have to seek written orders. In addition, in the Land Forces, verbal orders are generally given in emergencies, operations requiring quick action, or when written orders need to be implemented immediately. Such orders are often used to quickly carry out directives given by a commander. Verbal orders can be given especially in the following situations:

i. Emergencies When an unplanned or unexpected situation arises, orders may need to be issued quickly.

ii. Time Constraints: In some cases, written orders can take a long time to prepare, so verbal orders may be more appropriate when fast action is required.

iii. Communication Failure: Verbal orders can be used when access to written orders is not possible or the communication infrastructure is faulty.

iv. Situations Requiring Rapid Execution: Some operations or tactical actions may require immediate decisions and execution.

In the concrete case, the applicant received a verbal order which did not contain any element of water. For example, the order is not an order against human rights, an order that may lead to war crimes, an order to harm civilians, an order for torture, an order for unlawful punishment, an order for a military coup or an order for criminal acts. As mentioned in the previous section, personnel at lower (tactical) ranks do not have to be familiar with all the details of the order. They are obliged to check the nature of the order. Moreover, within the framework of the requirements of the military profession, even if the subject of the order is against the law, as stated in Turkish legislation, the subordinate is obliged to fulfill the order and the responsibility lies with the superior commander who gave the order.

The existence of dozens of previous terrorist attacks against the military, including by ISIS, in the immediate vicinity of the General Staff Headquarters, and the fact that

some civilians in the General Staff area, as reflected in CCTV footage, fired at the military and military vehicles without questioning their intentions, The applicant's rank, his analysis of what happened and his execution of the order in the face of the detection of 2 bullet entries in the office room of the 2nd Chief of General Staff as a result of the shooting of civilian provocateurs and the raid of the General Staff barracks by armed provocateurs are in accordance with the ordinary course of life and at the same time legal, in a way that an objective observer looking from the outside would not find it strange.

3. Alleged Violations of Article 6

In paragraph 58 of the ECtHR judgment, it is stated:

As regards the applicant, the Court found that the applicant had fired at the headquarters of the Turkish Air Force and at the tops of trucks on İnönü Caddesi between 5.30 and 6 a.m. on 16 July 2016 in order to disperse civilians resisting the coup attempt. The Court also found that, when it became clear that the coup attempt had failed, the applicant had the hard disks of the security cameras in the General Staff building destroyed by tanks.

Objection:

As stated before, it should be considered that the authorizations to use weapons are also valid within the same scope, depending on both the legal basis of the orders the applicant received and the applicant's belief that he was fulfilling a lawful duty. If there is an attack on a military unit, failure to use weapons to the extent necessary to eliminate this attack (which the applicant did by shooting in the air and at empty walls and not causing loss of life) is a reason for punishment according to the military penal code. It is arbitrary and unfounded to consider this action, which took place within the scope of self-defense, as a coup attempt

In the context of the destruction of the hard drives, the person driving the tank was Specialized Sergeant Vedat İpek, and he stated that the person he had received the order from was a lieutenant colonel in a safari suit whom he had never seen before, and that he said, "The Chief of General Staff will land here by helicopter. He stated that he asked them to move the tank forward, saying, "Move the tank a little bit towards the guard post so that he can land here by helicopter.[22] The applicant Mahmut Onur Uçar did not order the tank driver to destroy the hard drives. He was only nearby at the time of the incident. While the suspects who gave the order and the suspects who carried out the act - the nature of is not yet fully understood - are different, it is

[22] Ankara 18th Assize Court, File No: 2017/165 Main, Decision No. : 2018/128, Prosecutor's Office Main No: 2017/13604 page 249

not understood how the individual legal situation of the applicant Mahmut Onur Uçar is affected by this incident.

In paragraph 61 of the ECtHR judgment, it is stated:

In view of the foregoing considerations, the trial court's establishment of the facts, assessment of the evidence and interpretation and application of domestic law in the criminal proceedings against the applicant cannot be regarded as arbitrary or manifestly unreasonable. Similarly, the applicant's contention that the trial court committed a manifest error in its assessment of the facts and law remains wholly unsubstantiated.

Objection:

How should the applicant's actions be interpreted? There is no difference between the applicant's actions on July 15th and our answer to the question: If there was an attack on the General Staff Barracks today, how would the military units be used? As set out in the relevant sections, the applicant's actions were legal actions in accordance with the military legislation, the requirements and customs of the military profession. As stated earlier, distinguishing between an attempted coup d'état and the lawful acts of military personnel is a challenging process. Since the military courts, which were established for this purpose, were closed and military judges were dismissed, this trial was conducted by civilian legal authorities. Both the political pressure on the judiciary in the country and the lack of experience in specific cases led to the interpretation of actions within the scope of the requirements of the military profession as a coup attempt. Considering the evidence we have presented; we conclude that the verdict is manifestly ill-founded and arbitrary interpretation of the facts.

According to the case-law of the ECtHR, although national courts have the power of discretion of evidence, the arbitrary exercise of this power and its leading to manifestly unfair results lead to a violation of the right to a fair trial. In the concrete case, the court did not put forward sufficient, conclusive and convincing evidence of the defendant's guilt, but based its judgment solely on hypothetical assessments. In particular, the principle that the accused benefits from the doubt were ignored and interpreted against the accused, and doubt replaced the element of intent.

In this context, it is clear that the applicant's conviction was not the result of a fair trial. There was a lack of reasoning between the facts and the criminal provisions which **constitutes a flagrant denial of justice.** The RDI thinks that a decision should have been rendered in which the conditions for a violation of a fair trial under Article 6 of the ECHRC were met.

4. Conclusion

The July 15, 2016 coup attempt initiated an extraordinary process that deeply affected the social and political structure in Türkiye. The trials initiated during this process have been subject to serious allegations of human rights violations in terms of both content and form, and have been discussed in the national and international legal community for a long time. The applications filed before the ECtHR are of great importance in terms of evaluating these proceedings within the framework of international human rights standards.

This report sets out detailed objections to the factual findings and legal assessments on which the ECtHR based its judgment. These objections raise serious doubts not only as to the formal elements, but also as to the material facts and evidence that led directly to the applicant's guilty verdict. In particular, the following points stand out:

1. The ECtHR's unquestioning acceptance of incomplete, contradictory or hypothetical information and assessments in the first instance judgment weakened the objectivity of the judgment.

2. While no concrete and legally valid evidence of the applicant's coup intentions could be presented, his actions within the framework of his duty and command and control relationship justified heavy sentences.

3. The reliability of the technical evidence used and the manner in which it was obtained are legally questionable and there are strong indications that the proceedings were conducted in violation of the principle of fair trial.

4. The construction of the entire judicial process on a hypothetical organization such as the "Peace at Home Council" has opened the door to arbitrariness in sentencing and violated the presumption of innocence.

5. While the correct perception and interpretation of orders in the chaotic environment during the events is ambiguous even for ranking personnel, the fact that the intent of lower-ranking personnel is accepted as fixed points to a severe practice of interpretation and punishment.

In the Mahmut Onur Uçar v. Türkiye judgment, both the procedural and substantive assessments of the European Court of Human Rights contain serious deficiencies incompatible with the fundamental principles of the Convention. In assessing the charges against the applicant, the Court did not sufficiently analyze the context of the incident, his position in the military hierarchy, the nature of the order he received and the circumstances of his execution of the order; in particular, it appears that it did not exercise due diligence as to the existence of criminal intent and whether the acts clearly constituted a crime.

More importantly, the conclusion of the application without communication to the government undermined the effective exercise of the right of individual application under Articles 34 and 35 of the Convention. Thus, the Court departed from the principle of "granting the parties the right to an effective defense and reply" as laid down in its established case-law.

At the same time, this judgment raises important concerns with regard to compliance with the ECtHR's past case law. Sentencing a soldier serving at the tactical level under military discipline to aggravated life imprisonment for executing an order that does not clearly constitute a crime is clearly contrary to both the principle of legality and foreseeability of punishments and the principle of the benefit of the doubt. While the national judicial authorities should make evaluations based on concrete and legally obtained evidence, not on hypothetical interpretations, in this case, as in many others, heavy sentences were given based on hypothetical interpretations.

It is therefore of the utmost importance that the Court pays particular attention to the following points in order to reach conclusions in cases relating to the July 15 coup trials that do not undermine its institutional credibility and violate the fundamental rights of the applicants.

1. **Tactical personnel should not be held criminally liable** for the execution of a "not clearly criminal order".

While performing their duties within the chain of command, lower-ranking soldiers have limited authority to assess whether an order is unlawful or not. Therefore, it is unacceptable in terms of human rights law for them to be sentenced to heavy penalties for an act that is not clearly a crime.

2. When deciding on applications with far-reaching and systemic consequences, **the ECtHR should give the parties the opportunity to present their defenses and arguments before rejecting the application**, and should ensure that such cases are evaluated more thoroughly in the Chamber, rather than being concluded in a committee format and without justification. Particularly in view of the fact that the remedy of appeal to the Grand Chamber is closed, decisions rendered in Committee form have final and irreversible consequences for the applicant, which not only undermines the effectiveness of the right of individual application but also poses a risk to the unity of jurisprudence and institutional credibility of the Court itself.

In this context**, in applications reflecting a systemic crisis of justice, such as the July 15 cases**, in which tens of thousands of people are directly affected, the failure to consult the Government and to allow the applicant the opportunity to elaborate on his or her allegations may result in a violation of the right to a fair trial and the right to individual application guaranteed under Articles 6 and 34 of the ECHR.

3. **Turkish judicial bodies should refrain from punishments based on conjecture and reading intentions and should establish the material and moral elements of the act with clear,** convincing and lawful evidence. It should as soon as possible clearly set out the principles that will shed light on the jurisprudence of the ECHR and the practices of the Turkish judicial authorities.

The "element of intent", "alternative legitimate scenarios" and "the context of the action" should be carefully analyzed in trials; any doubt should be removed, especially for sentences such as aggravated life imprisonment.

4. **The ECtHR should seek the views of military law experts** in order to make a more accurate assessment of the nature of the military system, the chain of command and the limits of the soldier's freedom of action.

This is because, in such cases, establishing a direct transitivity between civilian legal norms and military disciplinary rules leads to weaknesses in terms of both the principles of justice and contextual appropriateness.

For these reasons, the Mahmut Onur Uçar v. Türkiye judgment is an example that should be reconsidered in the case law of the ECtHR. Both the ECtHR's failure to provide the parties with the opportunity to defend themselves and the fact that it based its jurisdiction on assumptions rather than on an analysis of evidence and context have rendered both the legal and conscientious legitimacy of this judgment questionable. In this context, a reconsideration of the judgment and the development of more inclusive and fair standards at the jurisprudential level for similar cases is critical for the right to a fair trial not only for the applicant but also for hundreds of others in similar situations.