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# PERSECUTORY CONFISCATION AMOUNTING TO CRIMES AGAINST HUMANITY: CASE OF THE GÜLEN GROUP



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Definition, Scope, and Limitation  
of the Property Rights

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Systematic Character of the  
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Concrete Cases of Crimes  
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## FOREWORD

The right of property is recognized at the national and international levels. Limitations are possible as long as they are prescribed by law, aiming at a legitimate goal, and executed in a proportional way.

The report about the persecutory confiscation of property belonging to alleged members of the Gulen movement clearly shows that in the case of the persecution of these alleged members, the right to property is clearly violated. Unfortunately, we need to say that this violation is obvious.

However, the report goes further. Indeed, the report is trying to find an answer to the question of whether these violations must be seen as crimes against humanity.

Crimes against humanity are a very specific category of crimes, often described as crimes that shock the international community. One should not easily characterize conduct as crimes against humanity. Answering such a question needs a detailed analysis and a careful evaluation of all factual elements.

That is exactly what the report does. All legal elements are thoroughly analyzed, the facts are described in detail, and the conclusions are logical.

The Turkey Tribunal in September 2022 concluded that the documented cases of torture, enforced disappearance, and arbitrary detention could be evaluated as Crimes against Humanity. The report broadens the analysis. Some of the violations of the right to property that are part of the systematic and widespread persecution of the alleged members of the Gulen movement are committed in Western European countries. Therefore, it is worth examining whether further judicial actions can be taken. The report will be of fundamental help in this action.

*Prof. Em. Dr. Johan Vande Lanotte*

## EXECUTIVE SUMMARY

- This report examines the criminal acts and/or omissions of the Turkish authorities against individuals alleged to be affiliated with, connected to, or members of the Gülen Group in the context of violations of the right to property and concludes that these acts and omissions constitute crimes against humanity. These are scrutinized under Article 7/1(h) of the Rome Statute of the International Criminal Court and proved to correspond to “persecution” committed against the Gülen Group in connection with ongoing arbitrary detentions, whose “crimes against humanity” nature was already elucidated in various semi-judicial decisions and reports of NGOs.
- As part of its crackdown on the Gülen movement, the Erdogan government interfered with properties belonging to the Gülen Group as well as its alleged members in an arbitrary and vengeful way. Not only the institutions, NGOs, and media organs of the Gülen Group but also the private enterprises and assets of alleged Gülenists were trespassed and illegally seized, confiscated, and expropriated despite safeguards stipulated in domestic and international law.
- The report uncovers primarily why those violations of the Erdogan government against the property rights of the Gülen Group cannot fall within the category of lawful interference. Having regard to the national legislation and international mechanisms, this interference with the right to property can neither be considered lawful nor justified since following four criteria were not met: adherence to the principle of legality/lawfulness, adherence to the principle of proportionality, the public interest, and balanced with payment of compensation.
- Noting that systematic and/or widespread conduction of violations is a prerequisite for crimes against humanity, the report establishes in line with the jurisprudence of international courts the systematic nature of those violations. Several statements of state representatives, state practices, and associated occurrences examined throughout the report demonstrate that the severe property rights violations were committed as part of a predetermined plan and policy against the Gülen Group. This policy envisages that the Gülen Movement, physically or as a collection of ideas and ideals, should be weakened, incapacitated, and eradicated by all means and that stripping the group of their financial means is an available and effective vehicle to that end.
- The report turns thereupon its attention to the widespread nature of property rights violations. This nature is indicated by the massive and frequent violations carried out collectively within the framework of the deprivation policy of the Erdogan regime directed against a large number of individuals. The fact that the individuals were targeted not because of their individual attributes but rather due to their alleged affiliation with the Gülen Group reinforces the conclusion that, despite their multiplicity, those individuals have been targeted for a single attribution made by the public authorities, namely being regarded as linked to the Gülen Group. The report offers some figures to convey the collectiveness, seriousness, and large-scale character of the human rights violations endured by the real or perceived Gülen-Group members.



- Finally, the report concludes with the scrutiny of four representative cases that stand out as crimes against humanity in light of the above-cited four criteria for lawful and justified interference with the right to property, none of which have been met in the cases examined. More precisely, in all cases, the consequences of the “terrorist” designation of the Gülen Group were applied retrospectively such that the former activities of victims were affected. Likewise, in regards the proportionality principle, the obligation to resort to less intrusive and invasive measures in the pursuit of the public interest was not observed. Furthermore, the way in which the companies were seized shows that the interference with property rights did not advance, let alone fulfill, the public interest but rather pursued the private interests of those who initiated the interference. Last, contrary to the obligation to compensate the property seizure with payment of an amount commensurate with the market value, none of the victims has received any monetary amount for the severe losses they suffered.
- All in all, the Turkish government has instrumentalized criminal and anti-terror legislation to further and intensify its crackdown on the Gülen movement and regarded all economic activities of the perceived Gülenists as support for a terrorist organization without demonstrating any involvement in criminal conduct.



*Istikbal, owned by Boydak Holding, was one of the illegally seized companies. Istikbal, ranked 206th in the ISO I. 500 list announced by the Istanbul Chamber of Industry in 2021, has the largest integrated furniture production facility in Europe.  
Source: [istikbal.com.tr](http://istikbal.com.tr)*

**“The right of property is the guardian of every other right, and to deprive the people of this, is in fact to deprive them of their liberty.”**

- Arthur Lee

## 1. Introduction

Property has long been perceived as a value worthy of protecting, the restriction or violation of which was referenced to as a sin, misdemeanor, or crime in many sources, ranging from holy books to the oldest legal texts. The protection of this right against arbitrary interventions is crucial for fostering entrepreneurship and innovation, underscoring property protection as a pivotal aspect of constitutional development, particularly in conjunction with the industrial revolution and the advancement of the modern economy in recent centuries. As Hugo Grotius and John Locke proclaim, states have an obligation to protect pre-existing natural rights, including the right to property, according to a universal standard.<sup>01</sup> The right to property has also already passed into customary international law, and it can be considered one of the general principles of law at the international level.<sup>02</sup> Certain international treaties, including the First Protocol to the European Convention on Human Rights, to which Turkey is a party, is also an international instrument codifying the above-mentioned universal standard. Furthermore, it is recognized in the Turkish Constitution and civil code that everyone has the right to property, which is guaranteed through certain safeguards.

Nevertheless, political confiscation and wealth transfer is hardly an exceptional issue but a problem has been existing in various societies across the history. In the case of modern Turkey, the practice of confiscation and seizure of property as a form of collective punishment has been a recurring issue. Namely, several minority groups faced severe asset seizures as part of the nation-building process, which was predicated on the elimination of “undesirable” minority groups. Tragic events targeting non-Muslim minorities during the First World War which were followed by de facto ownership transfers, various persecutory practices aimed at “Turkifying the economy” in the early years of the Republic including the notorious 1942 Wealth Tax, targeted non-Muslim minority communities and resulted in the confiscation of their assets.

Interestingly, this process and associated practices aimed at the assets, properties, and wealth of the “traitors” seem to have perpetuated in the 21st century, despite Turkey’s signature and ratification of international instruments forbidding asset seizures under the watch of the international community.

In that respect, legal obligations arising from international and domestic law regarding the right to property have been ignored by the Erdogan regime to persecute the Gülen Group within a premeditated policy over the past decade, a phenomenon forming the subject matter of this report. Since the attempted coup of July 15, 2016, the intensity, coverage, and mercilessness of measures against the Gülen Group have increased considerably. Non-governmental organizations (NGOs) and foreign states, as well as the judgments of international human rights bodies has established this unfortunate phenomenon in their human rights reports.

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01 - John G. Sprankling, “The Global Right to Property,” 52 *Colum. J. Transnat’l L.* 464 (2014): 3.

02 - *Ibid.*, 21-25.

Moreover, the UN Working Group on Arbitrary Detention (WGAD) ascertained that arbitrary detentions on the grounds of membership to the Gülen Movement since the coup attempt are in violation of fundamental rules of international law and of a systematic and widespread pattern, and accordingly very likely amount to crimes against humanity<sup>03</sup>.

In line with the findings of WGAD, the European Court of Human Rights (ECtHR) highlighted, in its landmark *Yalçinkaya* judgment, the systemic nature of the problems that led up to the violations stemming from the Turkish judiciary’s approach to ByLock evidence.<sup>04</sup> The severity of those systemic violations of the Turkish government induced the Court to find the infringement of, amongst others, Article 7 of the Convention (no punishment without law), representing the 60th violation of the same article in the history of the Court out of over 25000 violations between 1959-2022.<sup>05</sup> Similarly, the Court ruled that the detention of 427 former members of the Turkish judiciary, who were accused of being affiliated with the Gülen Movement and were detained after the July 15 coup attempt, was unlawful<sup>06</sup>. Additionally, based on case law, the ECtHR initiated a procedure of examining similar cases with less detailed scrutiny in response to the increasing number of cases originating from Turkey. This approach was adopted to effectively manage the influx of cases and ensure a more efficient handling of the Court’s workload. Consequently, the Court takes attentions to more than 3000 detainees due to the aforementioned systemic problems, approximately 8,500 applications on its docket involving similar complaints under Articles 7 and/or 6 of the Convention and to tens of thousands of potential applications to come as hinted at by around 100,000 ByLock users.<sup>07</sup>



*ECtHR in Strasbourg Source: Adrian Gryczuk*

In the same vein, that persecution scheme that constituted the subject matter of the hearings held by the Turkey Tribunal, a people’s tribunal held in 2021 in Switzerland, led the Tribunal to lodge a communication with the International Criminal Court. Likewise, the Institute for Diplomacy and Economy (instituDE) defined this persecution scheme as crimes against humanity and detailed their systematic and widespread nature in its report entitled “Human Rights Violations in Turkey Rising to the Level

03 - A/HRC/WGAD/2020/47; A/HRC/WGAD/2020/51; A/HRC/WGAD/2020/66, A/HRC/WGAD/2020/67

04 - *Case of Yüksel Yalçinkaya v. Türkiye, Judgment of the Grand Chamber, Application no. 15669/20*, <https://hudoc.echr.coe.int/#{languageisocode:ENG,appno:15669/20,documentcollectionid:GRANDCHAMBER,itemid:22001-227636}>

05 - *Violations by Article and by State*, [https://www.echr.coe.int/documents/d/echr/stats\\_violation\\_1959\\_2022\\_eng](https://www.echr.coe.int/documents/d/echr/stats_violation_1959_2022_eng)

06 - *Hakan Kaplankaya, “Turan and Others v. Turkey: Mass Arbitrary Detentions of the Purged Members of Judiciary and the White Flag of the Strasbourg,” Opinio Juris, February 9, 2022, accessed June 10, 2023*, <https://opiniojuris.org/2022/02/10/turan-and-others-v-turkey-mass-arbitrary-detentions-of-the-purged-members-of-judiciary-and-the-white-flag-of-the-strasbourg/>.

07 - *Case of Yüksel Yalçinkaya v. Türkiye, Judgment of the Grand Chamber, Application no. 15669/20*



of Crime Against Humanity: Case of  
Gülen Group.”<sup>08</sup>

Against this backdrop, it is clear that violations of the property rights of the Gülen Group are one of the serious subsections of the crimes against humanity perpetrated by the Erdogan regime. Starting from the immediate aftermath of the December 2013 graft probes against the Justice and Development Party (AKP) government, properties belonging to the Gülen Group as well as its alleged members were interfered with in an arbitrary and vengeful way. In



*Bylock App Source: Medyascope.tv*

this context, not only the institutions, NGOs, and media organs of the Gülen Group but also the private enterprises and assets of alleged Gülenists were trespassed and illegally seized, confiscated, and expropriated despite safeguards stipulated in domestic and international law. Decree-laws (KHKs) adopted during the state of emergency (OHAL), which were declared after the 15 July coup attempt, have enabled such interference with the property rights of Gülenists. The market value of affected properties is estimated to exceed 80 billion USD.<sup>09</sup>

This report aims to reveal and analyze the criminal acts and/or omissions of the Turkish authorities against individuals alleged to be affiliated with, connected to, or members of the Gülen Group in the context of violations of the right to property as crimes against humanity. Those violations are scrutinized under Article 7/1(h) of the Rome Statute of the International Criminal Court and regarded as “persecution” committed against the Gülen Group in connection with ongoing arbitrary detentions. As highlighted, the “crimes against humanity” nature of the ongoing arbitrary detentions was elucidated in various decisions and reports, such as those of WGAD, Turkey Tribunal, and instituDE. In that regard, this report first compiles the domestic and international principles and standards protecting the right to property. It then elaborates on the unlawful interventions by the Erdogan regime regarding the properties of the Gülen Group and its alleged members or followers. The following chapter demonstrates the systematic and widespread characteristics of those violations. The last chapter expounds the leading cases of victims whose rights to property have been arbitrarily and unlawfully infringed upon.

Relatedly, the use of the acronym “FETÖ” in lieu of “the Gülen Group,” whose followers call themselves “Gülen Movement” or “Hizmet Movement,” has not been adopted in this report since it is derogatory, stigmatizing, and discouraging of the principle of presumption of innocence. It is an expression that was coined by the Turkish government not only to summarily accuse and convict the individuals allegedly affiliated with the Gülen Group of the crime of terrorism but also to justify the numerous inhumane acts and violations that constitute the subject matter of this report.

<sup>08</sup> - Report by instituDE, “Human Rights Violations in Turkey Rising to the Level of Crimes Against Humanity: Case of Gülen Group,” accessed June 10, 2023, <https://www.instituDE.org/report/human-rights-violations-in-turkey-rising-to-the-level-of-crimes-against-humanity-case-of-gulen-group>.

<sup>09</sup> - “The Erosion of Property Rights in Turkey,” [arrestedlawyers.org](https://arrestedlawyers.org/wp-content/uploads/2020/03/erosion-of-property-rights.pdf), accessed June 10, 2023, <https://arrestedlawyers.org/wp-content/uploads/2020/03/erosion-of-property-rights.pdf>.

## 2. Definition, Scope, and Limitation of the Property Rights

It is imperative for a thorough legal analysis to shed light on what the law envisages on the subject matter concerned, namely the law governing the right to property. To that end, this chapter discusses domestic and international law regulating that right with its scope and restrictions.

### 2.1. Recognition and Codification of the Right

This subchapter covers the scope and definition of property within the purview of domestic and international/transnational law. Understanding the scope and restrictions of the law governing the right to property would help one derive the boundaries of the right as well as the restrictions within which an intervention could be carried out lawfully.

#### 2.1.1. Under International and/or Transnational Law

First, the Universal Declaration of Human Rights recognizes the right to property in Article 17, which states that “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”

The peaceful enjoyment of the right to property is also guaranteed by the First Protocol of the European Convention on Human Rights (ECHR). This guarantee has effect in all states that are parties to the Convention. Article 1 of the First Protocol reads as follows:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

This provision sets forth that “no one shall be deprived of his possessions,” but at the same time it introduces certain conditions regarding the deprivation of property: (a) “the public interest” and (b) “the conditions provided for by law and by the general principles of international law.” It also entitles the states to control the use of property in accordance with the general interest.

The EU Charter of Fundamental Rights also registers the right to property in Article 17, which reads as follows:

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property

may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

### **2.1.2. Under Turkish law**

The Turkish Constitution, specifically Article 35, prescribes the right to property and guarantees the right to own and inherit property. According to this article, the right to property can only be limited by law for reasons of public interest.

The right to property regulated in the Constitution is broader in scope than the concept of property in the Turkish Civil Code No. 4721.<sup>10</sup> Pursuant to Article 683 of the Turkish Civil Code no. 4721, anyone who owns a material or immaterial possession bears the authority to utilize, benefit from, and dispose of it as they wish. This right must be used in line with its legal limitations.

## **2.2. Lawful Interference with property rights**

Recognizing the necessity of restricting property rights under certain circumstances, this subchapter draws pertinent boundaries between lawful and unlawful interventions into those rights. Thereby, it aims to demonstrate why the interference by the Erdogan regime falls outside the permissible boundaries of lawful intervention.

### **2.2.1 Under international and/or transnational law**

According to international law, intervention in the right to property is permitted under certain conditions, such as respecting the principles of legality and proportionality and the pursuit and advancement of the public interest. In cases of deprivation, the payment of compensation is required by customary international law and international treaties.

As per Article 1 of Protocol No. 1 to the ECHR and the established jurisprudence of the European Court of Human Rights (ECtHR), interference with the right to property is lawful if it is: (a) prescribed in law; (b) in the public interest; (c) in accordance with the general principles of international law; and (d) reasonably proportionate. As for the prerequisite of the inference being proportionate, the Court rules as follows:

Any interference with property rights must strike a fair balance between the demands of the public or the general interest of the community, and the right to property. In particular, there must be a reasonable relationship of proportionality between the means employed to interfere with the property rights and the aim that it is sought to realize. Compensation terms under the relevant legislation are, on the other hand, material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a

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<sup>10</sup> - *Anayasa Mahkemesi, "Mülkiyet Hakkı," accessed June 10, 2023, [https://www.anayasa.gov.tr/me-dia/3548/06\\_mulkiyet\\_hakki.pdf](https://www.anayasa.gov.tr/me-dia/3548/06_mulkiyet_hakki.pdf).*



disproportionate burden on the applicant.<sup>11</sup>

Intervening with the right to property can be done in two different ways: control and deprivation. Deprivation takes the property away from the owner, such as through expropriation, nationalization, or arbitrary confiscation. Control as a way of interference involves the restriction of property and interferes with the substance of the right without necessarily eliminating or transferring the ownership.<sup>12</sup>

### 2.2.2. Under Turkish law

Safeguards for property rights still remain, even in cases such as the state of emergency declared after the July 15 coup attempt. Therefore, even the most intrusive measures, such as searches and seizures stipulated in penal laws, should comply with basic legal principles such as legality and should be implemented in compliance with due legal procedures.

The right to property can be restricted only for the reasons specified in Article 35 of the Constitution and in accordance with Article 13. In ordinary times, property rights and related restrictions can only be introduced by law in accordance with the Constitution. Therefore, it is not possible to restrict property rights by any regulation other than the law.

Turkish Constitution includes a number of provisions safeguarding the right to property. For instance, general confiscation is prohibited according to Article 38(9) of the



*The private Ipek University in Ankara, which was seized in 2016 on terrorism charges. Source: mgu.edu.tr*

<sup>11</sup> - *Former King of Greece and others v. Greece [GC], no. 25701/94, ECHR 2000-XII*

<sup>12</sup> - *Ibid.*

Constitution and cannot be resorted to as a punishment. Moreover, the Constitution enshrines the principle of individuality of the crime, which prohibits the confiscation of property of a group or minority on ground of offences perpetrated on an individual basis. Last but not the least, it is unconstitutional to confiscate assets that have no bearing on criminal acts perpetrated.

### **2.2.3 Unlawful Trusteeship Practices based on Bogus Terrorism Charges in Turkey**

Before moving on to a detailed analysis of the violations of the afore-cited law, it is worth briefly noting the legal argumentation of the Turkish authorities under Turkish law as well as their beliefs and assumptions which have obviously influenced by political discourse and/or pressure. The Turkish government has instrumentalized criminal and anti-terror legislation as part of its crackdown on the Gülen movement. In terms of restricting access to personal properties, the misuse of Article 133 of the Code on Criminal Procedure (CPC) is noteworthy. This provision, entitled “Appointment of Trustees for Company Management,” states that “if there is a strong reason for suspicion that a crime has been committed within the scope of a company’s activity and it is necessary to reveal the truth, the judge or court may appoint a trustee in relation to the conduct of the company’s business.”

Under the scope of this provision, trustees have been appointed to companies owned by individuals believed to be sympathizers or members of the Gülen movement, and control over the private assets of Gülen group members has been transferred to pro-government trustees, even when legal conditions have not been met.

Indeed, the justification for this practice is that the Gülen Movement has been politically declared a terrorist organization. Thus, Turkish authorities consider all economic activities of the perceived Gülenists support for a terrorist organization without demonstrating any involvement of those enterprises in criminal conduct. However, as stated above, the WGAD and ECtHR have held in numerous cases that there was no plausible evidence that those detained in investigations related to the Gülen Movement had committed an offense.

## **3. Violations of the property rights of the members of the Gülen Group as crimes against humanity**

What differentiates crimes against humanity from “ordinary” human rights violations is, *inter alia*, the fact of violations being committed in either a systematic or widespread manner. Article 7/1 of the Rome Statute enumerates the acts that are to be considered a crime against humanity under the jurisdiction of the International Criminal Court. According to the article, in order for the crimes against humanity to form,

- the existence of an attack
- its systematic and/or widespread character
- the knowledge of the attack

- victim of the attack being a civilian population
- are to be established. In regards the case examined here, an attack in the form of human rights violations has, beyond any doubt, proved to be existent.

As indicated above, such attack, throughout this report, is scrutinized under Article 7/1(h) and regarded as “persecution” committed in connection with ongoing arbitrary detentions. As per Article 7/1(h), “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender [...], or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.” The unlawful, politically motivated, and retaliatory activities of the Turkish government against (perceived) members of the Gülen Group, as discussed above, could be considered as “persecution” under the scope of this provision.

Against this backdrop, the systematic and widespread nature of the property rights violations, here a.k.a. the persecution, as well as the knowledge of the Erdogan government on the conduction/infliction of the persecution are under this chapter revealed. Moreover, the victim of the persecution, namely the Gülen Movement, is ascertained as a certain civilian group thereunder.

### 3.1 Systematic character of the violations

The property rights violations endured by individuals linked with the Gülen Group are of a systematic nature, as they have been committed in such an organized manner that their random occurrence is improbable. The systematic nature of these violations emerges through the statements of government representatives indicating the existence of a preconceived plan or policy against the Gülen Movement, the reliance on the state machinery and the allocation of public resources in the execution of this policy, the repeated and continuous committing of these violations in conjunction with other grave human rights violations, and the political objective of weakening and eventually annihilating the group financially.

- This section examines the systematic nature of the violations as far as those violations pertain to the property rights of individuals affiliated with the Gülen Group. In other words, other human rights violations and persecutions suffered by these group members and the organization are not covered here since overall the systematic nature of the grave human rights violations was already reported in the instituDE report entitled “Human Rights Violations in Turkey Rising to the Level of Crimes Against Humanity: Case Of Gülen Group.”<sup>13</sup> This section here delves into the statements, situations, and occurrences to the extent that they reveal the organized and policy-based character of property rights violations. Some of the statements<sup>14</sup> and

<sup>13</sup> - instituDE, “Report: Human Rights Violations in Turkey Rising to the Level of Crimes Against Humanity: Case of Gülen Group,” accessed June 10, 2023, <https://www.instituDE.org/report/human-rights-violations-in-turkey-rising-to-the-level-of-crimes-against-humanity-case-of-gulen-group>.

<sup>14</sup> - Further information on hate speech intended to demonize the Gülen Group can be found in the Stockholm Center for Freedom report titled “Erdogan’s Vile Campaign Of Hate Speech Case Study: Targeting Of The Gülen Movement”, accessed June 10, 2023, [https://usercontent.one/wp/stockholmcf.org/wp-content/uploads/2017/06/Erdogans-Vile-Campaign-Of-Hate-Speech-Case-Study-Targeting-Of-The-Gulen-Movement\\_2017.pdf?media=1685028663](https://usercontent.one/wp/stockholmcf.org/wp-content/uploads/2017/06/Erdogans-Vile-Campaign-Of-Hate-Speech-Case-Study-Targeting-Of-The-Gulen-Movement_2017.pdf?media=1685028663)

occurrences that reveal the persecution policy of the Erdogan government are listed below:

- the resolution adopted by the Turkish National Security Council on 20 May 2016 (also endorsed by the council of ministers) that designated the Gülen Movement as a terrorist organization despite the absence of an underlying court decision;
- the official 2004 resolution of the National Security Council of Turkey entitled “Measures against the activities of the Fethullah Gülen Group,”<sup>15</sup> whose signatories include several members of the Erdogan government, including Erdogan himself;
- Erdogan’s statement that “I can declare them (referring to the Gülen Group) as a terrorist organization with a police officer and two prosecutors”;<sup>16</sup>
- the statement of the then-Prime Minister Ahmet Davutoglu justifying Erdogan’s appeal to Mr. Gülen to return to Turkey as part of a broader strategy to bring him back to Turkey, subsequently arrest him, and eventually initiate further measures against the group<sup>17</sup> (this strategy was also confirmed by Aydin Unal, one of the top former aides of President Erdogan);
- a report by the Religious Affairs Directorate of Turkey released in July 2017 depicting the Gülen Group as a congregation that has gone astray and fundamentally deviated from the core Islamic principles;<sup>18</sup>
- the immediate and groundless dismissal and arrest of thousands of officials, including judicial personnel, after the 15 July coup attempt based on profiling lists that have become clear to have been created long before the attempt;



*The statement of the then-Prime Minister Ahmet Davutoglu  
Source: rudaw.net*

<sup>15</sup> - CNN TÜRK, “Gülen’i Bitirme Kararı 2004’te Mğk’da Alındı,” accessed August 3, 2021, <https://www.cnnturk.com/guncel/guleni-bitirme-karari-2004te-mgkda-alindi>.

<sup>16</sup> - BBC News Türkçe, “Gülen Cemaati’ne Dava ‘Uzak İhtimal Değil,’” accessed August 3, 2021, [https://www.bbc.com/turkce/haberler/2013/12/131220\\_rengin\\_analiz](https://www.bbc.com/turkce/haberler/2013/12/131220_rengin_analiz).

<sup>17</sup> - TR724, “Davutoğlu, Fethullah Gülen’e Kumpas Kurduklarını 8 Yıl Sonra İTİRAF Etti,” accessed June 10, 2023, <https://www.tr724.com/davutoglu-fethullah-gulene-kumpas-kurduklarini-8-yil-sonra-itiraf-etti/>.

<sup>18</sup> - “Kendi Dilinden Fetö”, Anadolu Ajansı. Accessed August 3, 2021. <https://www.aa.com.tr/uploads/TempUserFiles/haber%2F2017%2F07%2FKENDI-DILINDEN-FETO-20170725son.pdf>.



- the long and detailed indictment by Ankara’s then-chief prosecutor Harun Kodalak, citing numerous individuals as suspects, which was submitted on the night of the 15th of July (in response to questions as to how he managed to identify all suspects and write an indictment containing hundreds of pages, he asserted that he had foreseen it coming)<sup>19</sup>; and
- the approximately 50-page official narrative concerning the Gülen Movement and portraying it as a threat, which was placed at the beginning of every indictment of individuals charged with membership to a terrorist organization (this introduction reveals official viewpoints and approaches vis-à-vis the Gülen Group and depicts lawful activities such as attending religious ceremonies of the group, subscribing to the group-affiliated magazines, or enrolling in the group-affiliated schools as retrospectively illegal).



*The Zaman newspaper, which had over 1 million daily subscribers at the time, was seen as one of the most important factors in the accusations of membership of the alleged terrorist organization.*

After this brief summary of the persecution policy of the Erdogan government, it is worth noting the pioneering jurisprudence of international courts, which have established benchmarks and principles around the “systematic” criterion. The systematic character refers to the commission of illegal acts in accordance with a predetermined plan or policy, as well as “the organized nature of the acts of violence and the improbability of their random occurrence.”<sup>20</sup> The recurring or continuous nature of the acts forming the violations points to the fact that they were perpetrated in line with a plan. That means, the existence of a plan or policy or the acts having been committed in line with a policy doesn’t necessarily have to be proved by furnishing them before a court of law. Such existence can also be proved by reference to other matters<sup>21</sup>.

As an international court which previously dealt with the systematic criterion for crimes against humanity, the International Criminal Tribunal for the Former Yugoslavia (ICTY) rules in that regard in the Kunarac Appeal Judgment as follows:

The Blaskic Trial Chamber clarified the meaning of the ‘systematic’ requirement. It held

<sup>19</sup> - “15 Temmuz Gecesi İlk Soruşturmayı Açan Başsavcı Harun Kodalak Anlattı.” YouTube, July 15, 2017. <https://www.youtube.com/watch?v=gbzD7FkGvU4>.

<sup>20</sup> - International Criminal Tribunal for the former Yugoslavia, accessed June 10, 2023, [https://www.icty.org/x/cases/karadzic/tjug/en/160324\\_judgement.pdf](https://www.icty.org/x/cases/karadzic/tjug/en/160324_judgement.pdf), Para. 477.

<sup>21</sup> - Report of the International Law Commission on the work of its forty-eighth session, 6 May - 26 July 1996, Official Records of the General Assembly, Fifty-first session, Supplement No.10 1. Topic: , accessed June 10, 2023, [https://legal.un.org/ilc/documentation/english/reports/a\\_51\\_10.pdf](https://legal.un.org/ilc/documentation/english/reports/a_51_10.pdf).

that this requirement refers to the following four elements: (1) the existence of a political objective, that is, to destroy, persecute or weaken a community; (2) the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another; (3) the preparation and use of significant public or private resources, whether military or other; (4) the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan. Moreover, a crime may be widespread or committed on a large scale by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude”<sup>22</sup>

In its Akayesu Judgment, the International Criminal Tribunal for Rwanda (ICTR) endorses this finding in the following statement:

The concept of systematic may be defined as thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.

In a similar vein, ICTY reiterates below that the systematic nature of the acts of violence can be deduced from the repeated pattern through which the acts are committed:

The adjective ‘systematic’ signifies the organized nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes – that is, the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence.<sup>23</sup>

Considering the aforementioned case law around the description of the systematic criterion as well as the statements and occurrences enumerated above, it can reasonably be asserted that the severe violations of property rights have been committed as a part of a predetermined plan and policy against the Gülen Group. This policy envisages aims to weaken, incapacitate, and possibly eradicate the Gülen Movement, physically or as a collection of ideas and ideals, by all means, including financially, and stripping the group of their financial and budgetary means is an available and effective vehicle to that end. The way, in which this deprivation policy was executed, demonstrates that the Erdogan regime targeted first the properties belonging to the institutions on which the group socially and economically thrived and then, when the institutions no longer had assets worth looting, turned its attention to the Gülen Movement-affiliated individuals and their properties. The following section briefly depicts the course of execution of this deprivation policy.

### **3.1.1. Shutdown of tuition centers linked with the Gülen Group**

The tuition centers (dershane) were among the educational institutions that the Gülen Movement employed to ensure that the unprivileged people in Turkey could receive high-

<sup>22</sup> - ICTY, *Prosecutor v. Kordić and Cerkez*, “Judgement”, IT-95-14/2-T, 26 February 2001, para. 179.

<sup>23</sup> - ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic*, “Judgement”, IT-96-23-T and IT-96-23/1-T, 22 February 2001, para. 429 (footnote omitted), ICTY; *Prosecutor v. Kunarac, Kovac and Vukovic*, “Appeals Judgement”, IT-96-23-T and IT-96-23/1-A, 12 June 2001, para. 94.



quality education and thereby access higher education.<sup>24</sup> In other words, these tuition centers were the institutions from which the movement extracted highly educated and talented social capital. The tuition centers linked to the Gülen Group were reported to comprise 60 percent of the sector. Furthermore, these centers were responsible for publishing education exam preparation books, which were estimated to make up 80 percent of the publication sector in that field.<sup>25</sup> These centers not only generated employment opportunities for educators affiliated with the group but also represented a significant economic value.

Having been aware of this fact, the Erdogan government shut down these institutions in March 2014 via an amendment to the Law on Private Education Institutions no. 5580. In July 2015, the Constitutional Court found this amendment unconstitutional, but the tense political atmosphere in Turkey that culminated in a coup attempt did not allow the tuition centers to reopen. Four thousand tuition centers are estimated to have been closed down through this unconstitutional law, and they had no chance to carry on education activities in form of private schools or coaching before and after the 15 July event.<sup>26</sup>



Source: [bartin.info](http://bartin.info)

### 3.1.2. Dissolution of BankAsya

The Erdogan government's next target was a bank named BankAsya, which was founded by businesspeople affiliated with the movement. Starting in 2014, the government prohibited public institutions from using BankAsya in any financial transactions, which resulted in the termination of contractual relationships of these institutions with the bank. Then the Erdogan government urged and/or threatened certain significant depositors to withdraw their funds from BankAsya in an effort to trigger financial hardships for the bank. In 2015, the Savings Deposit Insurance Fund (SDIF) seized the bank on the flimsy pretext of missing signatures on founding documentation and decisions made without a quorum. After the coup attempt, the bank's license was revoked and liquidated. Thereby, a financial enabler which facilitates the financial growth of the Movement and, amongst other, of the affiliated businesspeople were eliminated.

<sup>24</sup> - "The roots of Fethullah Gulen's theory of education and the role of the educator," *ForumDialog*, accessed June 10, 2023, <https://www.forumdialog.org/the-roots-of-fethullah-gulens-theory-of-education-and-the-role-of-the-educator/>.

<sup>25</sup> - *Cumhuriyet*, "Cemaat Tedirgin Oldu", September 14, 2012, accessed June 10, 2023, <https://www.cumhuriyet.com.tr/haber/cemaat-tedirgin-oldu-370314>.

<sup>26</sup> - *Türk Eğitim-Sen*, "Dershanelerin Kapatılması Güçler Savaşına Dönüştü," November 26, 2013, accessed June 10, 2023 <https://turkegitimsen.org.tr/dershanelerin-kapatilmasi-gucler-savasina-donustu/>.



Source: [dunya.com](https://www.dunya.com)

### 3.1.3. Criminal Peace Judgeships as a means for confiscations, appropriations, and takeovers

The first systematic method of seizing properties of the Gülen Movement or individuals affiliated with the movement involved placing them under the trusteeship of individuals appointed by the Criminal Peace Judgeships (CPJ). CPJs were established by Law No. 6545 on 28 June 2014 after Erdogan’s announcement on 22 June 2014 about a “project” consisting of several legislative acts and constituting the basis for an operation against the parallel structure, an derogatory term that he coined to refer to the Gülen Group.<sup>27</sup> In addition to several considerable powers such as detentions and arrests, CPJs were empowered to decide on searches, seizures, and appointments of trustees and to examine objections lodged against the decisions of these proceedings. With the establishment of CPJs, the Erdogan regime gained the ability to appoint judges who would trial and rule in line with its political interests. The closed-circuit system of CPJs, which strips individuals of the opportunity to bring judgments to the upper courts, enabled the CPJs to dominate the judicial sphere and perpetuate their rulings fraught with ill will and grave mistakes. For instance, many of the property rights violations examined below were initiated and maintained by the CPJs’ regime-affiliated judges. The International Commission of Jurists opines on the CPJs that “The system of the criminal peace judges in Turkey does not meet international standards for independent and impartial review of detention.”<sup>28</sup> The Venice Commission echoes the same concerns:

... the Turkish system of “opposition” to a single peace judge of the same level does not

<sup>27</sup> - Human Rights Foundation, “The Collapse of the Rule of Law and Human Rights in Turkey: The Ineffectiveness of Domestic Remedies and the Failure of The ECtHR’s Response”, 2019, [https://hrf.org/wp-content/uploads/2021/05/Turkey-ECtHR-Report\\_April-2019.pdf](https://hrf.org/wp-content/uploads/2021/05/Turkey-ECtHR-Report_April-2019.pdf)

<sup>28</sup> - The Turkish Criminal Peace Judgeships and International Law, accessed June 10, 2023, <https://www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf>



offer sufficient guarantees that the appeal will be impartially examined. Criminal peace judges are colleagues of equivalent experience and qualifications, sharing premises and examining each other’s appeals; they form a closed circuit.<sup>29</sup>

The mechanism of trusteeship was used as a legal disguise to transfer the assets of the group or its members to Erdogan’s close circle and his political allies. CPJs appointed trustees to holdings, companies, associations, and even personal possessions, and their owners’ disposition powers were either terminated or considerably restricted. These powers were arbitrarily enjoyed by trustees without regard for due diligence.

Furthermore, trustees were emboldened in their unlawful practices by Decree-Law No. 674, promulgated right after the declaration of the state of emergency. The Decree-Law absolved them of any criminal, administrative, and financial responsibility stemming from their activities in relation to the trusteeship.

### **3.1.4. Instrumentalization of the Savings Deposit Insurance Fund (SDIF/TMSF) to perpetuate violations**

The Savings Deposit Insurance Fund (SDIF) is a public authority that functions mainly under the duties and powers entrusted to it as per the Banking Law. The SDIF is authorized to manage, strengthen, and restructure the banks that are envisaged to be transferred to it by the Banking Regulation and Supervision Agency, as well as conduct transfers, mergers, sales, and liquidations and to follow up on and collect the fund receivables. However, as per emergency Decree-Law No. 674, the powers of trustees in companies with trustee appointments pursuant to Article 133 of the Criminal Procedure Law were transferred to the SDIF. Considering the expertise of the SDIF, immediately following the declaration of the state of emergency, the government opted to utilize this public agency for the liquidation of assets associated with the Gülen Group.



TMSF, Source: AA

<sup>29</sup> - Venice Commission, “Turkey: Opinion on the Duties, Competences and Functioning of the Criminal Peace Judgeships,” para. 71-72.

The SDIF was empowered to sell those assets or dissolve and liquidate them, although prosecutions and criminal proceedings in relation to those companies and their owners had not been finalized. Moreover, the decree-law did not require transparency throughout the liquidation procedure carried out by the SDIF nor stipulate any safeguards to protect the interests of the asset owners concerned. Within the context of new authorities bestowed upon the SDIF with the Presidential Decree No. 674, the SDIF took over the full administration and management of 697 companies and 101 personal assets and the partial administration of 96 companies with an active worth of 76.25 billion TL (according to SDIF figures, approximately 9 billion USD as of September 2021) via 287 trustees who were appointed to the respective executive boards of these companies.<sup>30</sup>

The primary mission of the trustees was to prevent the use of the company for any criminal activities, which was also the purpose of their appointment. The trustees were expected to act impartially, exercising the due care and diligence of a prudent merchant and safeguarding the interests and benefits of the company. They should not exceed their authority. However, the appointed trustees often managed the companies as if they were the rightful owners, which necessitates them to be held responsible for their actions.

### **3.1.5. Confiscation of Private Assets of the Group: Kaynak Holding case**

Within the Gülenist community, a densely populated social group, numerous private companies operated across diverse sectors. Notably, Kaynak Holding, known for its affiliation with the aforementioned group,<sup>31</sup> was established in 1979 and started as a publisher before, later diversifying into various sectors such as retail, distribution, printing, paper production, and media. Over time, it expanded its operations to include educational tools, stationery, school uniforms, logistics, cargo, and food products. With an annual turnover of TL 1.5 billion (approximately 600 million USD as of 2015), Kaynak Holding operated 31 companies across 16 different sectors and employed approximately 10,304 people. It had a wide reach within Turkey, offering services to all parts of the country, and conducted business with more than 100 foreign countries.<sup>32</sup>

Kaynak Holding initially found itself under scrutiny in a financial fraud investigation three months after the notorious 17–25 December graft probes.<sup>33</sup> In November 2015, the Istanbul Criminal Peace Judgeship assigned seven trustees to Kaynak Holding due to its connection with the Gülen Movement, one of whom received a monthly salary of 105 thousand TL (approximately 36 thousand USD). This decision affected 19 subsidiaries, one foundation, and one association linked to the holding. Subsequently, in November 2017, the Anadolu Chief Public Prosecutor's Office in Istanbul issued arrest warrants for 102 Kaynak Holding

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30 - "Kayyım Olunan Şirketlere İlişkin Veriler," TMSF, accessed June 10, 2023, <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.veri>.

31 - T24, "Cemaat Operasyonu Başladı, Kaynak Holding'E Baskın," T24, March 26, 2014, accessed June 10, 2023, <https://t24.com.tr/haber/cemaat-operasyonu-basladi-kaynak-holdinge-baskin,254435>.

32 - "A Predatory Approach to Individual Rights: Erdogan Government's Unlawful Seizures of Private Properties and Companies in Turkey", *Advocates for Silenced Turkey*, 2018, available at: [https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS\\_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf](https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf)

33 - "Hükümetin Hedefindeki Şirket: Kaynak Holding," *Diken*, accessed June 10, 2023, <https://www.diken.com.tr/hukümetin-hedefindeki-sirket-kaynak-holding/>.

*Kaynak Holding included many large companies such as NT, Sürat Kargo, Zambak and Işık Yayınları.*

*Photo: NT Store, Source: haberler.com*



employees who were being investigated for their ties to the Gülen Movement. The prosecutors sought 22.5 years of imprisonment for each employee.<sup>34</sup>

It is highly probable that any company affiliated with Kaynak Holding will be subject to confiscation and subsequent sale through public auctions in the near future, if this has not already occurred.

### 3.1.6. Forced closure of Feza Media and censorship

Also exemplifying the abovementioned deprivation policy is what happened to Feza Media and its employees as well as subscribers. Zaman newspaper, which had a daily circulation of nearly 1 million and was Turkey's top-selling national daily newspaper, was forcefully shut down by the ruling party. Pressure from the ruling party led to the confiscation of Zaman's assets by the state through a State of Emergency Decree-Law. The ruling party's pressure on the newspaper began escalating in late 2013. Businesspeople who advertised in Zaman were coerced by ruling party affiliates to cease advertising, and Turkish Airlines, the state-owned airliner, stopped distributing the newspaper to its passengers.

Following major graft and bribery scandals that became public on December 17, 2013, the Prime Ministry began denying accreditation to Zaman reporters for coverage of events at the Prime Ministry. This practice was soon adopted by all ministries and public institutions.



Source: tr724.com

<sup>34</sup> - "Operations launched to detain 110 FETÖ suspects," *Hürriyet Daily News*, accessed June 10, 2023, <https://www.hurriyetdailynews.com/operations-launched-to-detain-110-feto-suspects-121165>.



On March 4, 2016, trustees were appointed to Feza Gazetecilik A.Ş., the company that owned Zaman, the Today's Zaman newspaper, and the Aksiyon newsweekly, under the pretense of preventing the newspaper from engaging in propaganda for a terrorist organization. However, at that time, no investigations had been initiated nor had court decisions been made against the newspaper or its columnists. Following the takeover of administration by the trustees, this largest media outlet shifted its stance completely, aligning itself with the government.<sup>35</sup> This takeover was seen as clear censorship, violating the freedom of the press enshrined in the Constitution.

After the failed coup attempt, a State of Emergency Decree-Law numbered 668 was enacted on July 27, 2016, leading to the closure of three news agencies, 45 newspapers, and 15 periodicals, including the Cihan news agency, the Zaman newspaper, the Today's Zaman newspaper, and the Aksiyon newsweekly. The Decree-Law stated that these media outlets were shut down due to their alleged affiliation with the Gülen Movement, and their assets were transferred to the Treasury without compensation.<sup>36</sup>

### **3.1.7. Thousands of institutions confiscated after the declaration of the state of emergency**

The first emergency decree-law, namely Decree-Law No. 667, resulted in the closure of numerous institutions listed in its annex.<sup>37</sup> Article 2(2) of this provision states the following:<sup>38</sup>

All movables and real estate as well as all assets, receivables and rights, and all documents and papers of foundations closed down shall be deemed to have been transferred to the General Directorate of Foundations without cost. Health application and research centers that belong to the foundation-run higher education institutions closed down, and all movable properties as well as all assets, receivables and rights and all documents and papers that belong to other institutions and organizations closed down shall be deemed to have been transferred to the Treasury without cost, and all real estate that belong to them shall directly be registered, free and clear of any restrictions and encumbrances on the immovables, in the name of the Treasury in the land registry. Under no circumstances shall any claim or demand related to all kinds of debts of those listed in paragraph one be made against the Treasury.

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<sup>35</sup> - "Seized anti-Erdogan newspaper 'Zaman' toes government line in latest edition," DW, accessed June 10, 2023, <https://www.dw.com/en/seized-anti-erdogan-newspaper-zaman-toes-government-line-in-latest-edition/a-19097459>.

<sup>36</sup> - Advocates for Silenced Turkey, "A Predatory Approach to Individual Rights: Erdogan Government's Unlawful Seizures of Private Properties and Companies in Turkey," Silenced Turkey, accessed June 10, 2023, <https://silencedturkey.org/a-predatory-approach-to-individual-rights-erdogan-governments-unlawful-seizures-of-private-properties-and-companies-in-turkey>.

<sup>37</sup> - Article 2 (1) of the decree-law no. 677 is as follows:  
a) Private health institutions and organizations listed in the Annex I,  
b) Private education institutions and organizations as well as private dormitories and lodgings for students listed in the Annex II,  
c) Foundations and associations and their commercial enterprises listed in the Annex III,  
d) Foundation-run higher education institutions listed in the Article IV,  
e) Unions, federations and confederations listed in the Article V, which belong to, connect to, or contact with the Fetullahist Terrorist Organization (FETÖ/PDY), established posing a threat to the national security, have been found to exist, have been closed down.

Accessible at: <https://www.venice.coe.int/webforms/documents/default.aspx?pdf-file=CDL-REF%282016%29061-e>

<sup>38</sup> - Article 2 (1) of the decree-law no. 677..



With several similar provisions enacted in subsequent decree-laws, the practice of shutdown of institutions ensued. Thus, having made the most of the chilling effect created by and after the botched coup attempt, the Erdogan government shut down, via a series of emergency decree-laws, 1064 private educational institutions (kindergartens, primary, secondary, and high schools), 360 private courses and tuition centers, 847 student dormitories, 47 private health centers, 15 private foundation universities, 29 trade unions linked to two confederations, 1419 associations, 145 foundations, and 174 media and broadcasting organizations, all of which were regarded as Gülen Movement-affiliated.<sup>39</sup>

The property rights of individuals and/or entities over these assets were terminated through various procedures, and although those assets were initially registered in the name of the Turkish State Treasury, they were eventually transferred to individuals or associations belonging to Erdogan's close circle. The net worth of these assets is estimated to be around 32.25 billion USD.<sup>40</sup>

The Turkish Constitutional Court has played a crucial role in exacerbating these severe human rights violations by failing to address them effectively. The Court has consistently dismissed individual applications submitted by victims of the Gülen Group and has upheld numerous and significant provisions of the illegal state of emergency decree-laws in annulment proceedings. Consequently, these unlawful practices have become entrenched and permanent in nature.

In this context, the Constitutional Court rejected the annulment action against Law No. 7083, which approves Decree-Law No. 677 as a law. Article 3 of this provision resulted in the closure of specific associations and media organizations, as well as the transfer of their assets to the Treasury.<sup>41</sup> However, it is worth noting that five esteemed members of the Court, including the President and Vice President, did not agree with the majority opinion and criticized the decision in their dissenting opinions, arguing that the contested provision is unconstitutional.<sup>42</sup>

### 3.1.8. Takeover of schools abroad affiliated with the Gülen Group

The Turkish government established the Maarif Foundation in June 2016 to struggle with

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39 - See the Factsheet *State of Emergency Measure in Turkey*, IHOP, [http://www.ihop.org.tr/wp-content/uploads/2017/03/Fact-Sheet-of-SoE\\_23022017.pdf](http://www.ihop.org.tr/wp-content/uploads/2017/03/Fact-Sheet-of-SoE_23022017.pdf)

40 - Leighann Spencer & Ali Yildiz, "Erosion of Property Rights," *Arrested Lawyers Initiative*, accessed June 10, 2023, <https://arrestedlawyers.org/wp-content/uploads/2020/03/erosion-of-property-rights.pdf>.

41 - KHK no. 677 ARTICLE 3 –(1) a) *The associations listed in Annex (6) b) Media organs listed in Annex (7) which have membership to, affiliation or connection with the terrorist organizations or structures, formations or groups determined by the National Security Council to carry out activities against the national security have been closed.*  
(2) *Movable properties and all kinds of assets, claims and rights, documents and instruments belonging to the associations and media organs closed within the scope of the first paragraph shall be deemed to be transferred to the Treasury free of charge. Immovable properties of these institutions and organizations shall be ex officio registered in the title deed in the name of Treasury being free and clear of all kinds of restrictions and right of encumbrance. Any right or claim cannot be demanded from the Treasury on account of any kind of obligations of such institutions and organizations. All procedures pertaining to such transfer shall be performed by the Ministry of Finance by means of receiving necessary assistance from all institutions, accessible at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2017\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2017)011-e).*

42 - AYM, E.2018/78, K.2022/114, 13/10/2022

the Gülen Group in the education sector and to take over their activities in this domain.<sup>43</sup> So far, the Turkish government has managed to have 234 schools in 20 countries handed over to the Maarif Foundation by local authorities. Among those countries where Erdogan succeeded are Somalia, Sudan, Mali, Chad, Gabon, Afghanistan, Pakistan, and Ethiopia, which rank low on indexes concerning the rule of law and democratic principles. The Erdogan government has often used bribes, political pressure, blackmail, and promises of investment and trade deals to convince foreign governments to seize and hand over these schools to the Maarif Foundation.<sup>44</sup>

*President Recep Tayyip Erdoğan said the following in the Press statement he made with Ethiopian Prime Minister Abiy Ahmed in August 2021: "I am pleased to share with you the information that all FETO's schools in Ethiopia were transferred to the Turkish Maarif Foundation last week. I thank the Prime Minister for our fight against this terrorist organization. I thank you for your support." Source: turkiyemaarif.org*



### **3.1.9. Deprivations of property rights of individuals affiliated with the Gülen Group**

The last category of measures adopted by the Erdogan regime as part of its deprivation policy against the Gülen Movement aims at compounding and/or obstructing the maintenance of the livelihood of individuals affiliated with the movement. As was touched upon in the previous sections and is covered in detail below, businesspeople and their wealth were targeted through the CPJs, the CPJ-appointed trustees, and the SDIF.

Apart from these businesspeople, ordinary people with no significant wealth also could not escape the scope of the regime's deprivation policy. With a series of decree-laws, hundreds of thousands of individuals who had never been involved in a crime, let alone the coup attempt, were dismissed from their public or semi-public services. They were deprived of their vested pension entitlements for a significant time period. Furthermore, they were prevented from using their occupational permits or licenses that they inherited from their public services in their private capacity.

The funds in their bank accounts and their personal assets were frozen with warrants issued by CPJs within the scope of criminal proceedings initiated for "terrorism" charges. In its landmark Yalcinkaya judgment, the ECtHR has revealed the systemic problematic nature of

<sup>43</sup> - Law no. 6721, accessed accessed June 10, 2023, <https://turkiyemaarif.org/page/51-TMV-Kanunu-11>.

<sup>44</sup> - Abdullah Bozkurt, "Turkey's Maarif, Erdoğan's long arm in exporting political Islam, granted huge funding," *Nordic Monitor*, September 29, 2022, accessed June 10, 2023, <https://nordicmonitor.com/2022/09/tuk-ey-s-maarif-erdogans-long-arm-in-exporting-political-islam-granted-huge-funding/>.

the unilateral approach and attitude of the Turkish judiciary towards the individuals who were presumed to be a member of terrorist organization over any ounce of affiliation alleged by the Government, such as the Bylock use, membership of a lawfully established trade union or an association. The Court pointed out how sweepingly the domestic courts were induced by the Turkish government to convict those individuals of terrorist membership, a sobering finding which led the Court to rule the violation of Article 7 of the Convention (no punishment without law).<sup>45</sup> The Turkish government, by the way, deliberately distilled such problematic approach of systemic nature in the Turkish judiciary, as a part of its predetermined policy, by dictating the Bylock Technical Report of the MIT as the sole authoritative document on this matter in each and every Bylock-related case or similar government-initiated expert reports that establish the link between the accused individual and Gülen Group over the membership of, or registration to, a lawfully founded organization, subscription to a lawfully publishing magazine, or transacting in a lawfully established bank, and eventually by denying the victims any chance to challenge the essential findings in those official reports.

That being said, the Gülen Group-affiliated individuals' social security records, which are available to their current or prospective employers, were tainted with records noting that the concerned individuals were charged or affiliated with a terrorist organization. Thereby, those employers were dissuaded and deterred from employing individuals with such records or maintaining an employment relationship with them. Last but not the least, they were subjected to travel bans and thus prevented from seeking a dignified life abroad. This policy was succinctly summarized by a representative of the ruling party who callously remarked, "let them eat tree barks."<sup>46</sup>

All in all, in addition to violating other fundamental human rights, the measures executed as part of the Erdogan regime's deprivation policy have been targeting the properties, assets, funds, and other financial means of the Gülen Group-affiliated individuals, which are necessary to maintain their livelihood in minimum conditions.

### **3.1.10. Targeting individuals who support already financially distressed Gülen-Group members**

Yet another practice of the Erdogan regime that reveals its deprivation policy is the intimidation of conscientious people touched by the plight of the Gülen-Group members and who feel duty-bound to help them. Even if they are immediate relatives or close friends of the victims, those who have attempted to financially support the families of the detained victims have been dissuaded from doing so through investigations, prosecutions, or eventual arrests with an illegal presumption that those who care for "terrorists" may be deemed "terrorists."



*AK Party Isparta Provincial Chairman Osman Zabun stated that there were discussions about the dismissed public servants, "What should they eat or drink?" and said, "They should eat tree roots."*

*Source: Mehmet ERÇAKIR- Ali ÇEVİKBAŞ/ İSPARTA (DHA), hurriyet.com.tr*

<sup>45</sup> - *Case of Yüksel Yalçınkaya v. Türkiye, Judgment of the Grand Chamber, Application no. 15669/20*

<sup>46</sup> - "AK Parti İl Başkanından FETÖ'cülere 'Ağaç Koku' Yesinler!," *Hürriyet*, accessed June 10, 2023, <https://www.hurriyet.com.tr/gundem/ak-parti-il-baskanindan-fetoculere-agac-koku-yesinler-40242531>.

For instance, in October 2022, an operation called “Gazi Turgut Aslan” was conducted nationwide in Turkey. During this operation, which took place in 59 provinces, 704 individuals were issued arrest warrants after being accused of terrorism for providing support to the families of detainees, of whom 599 were placed in custody as part of an investigation into financial activities related to the Gülen movement.<sup>47</sup> Amid the Maras Earthquakes that occurred in February 2023, 20 alleged members were detained in Manisa on terrorism charges for assisting their imprisoned friends and relatives.<sup>48</sup> As a continuation of the operation Gazi Turgut Aslan, in March 2023, 47 individuals were detained in Izmir, and their monetary assets were confiscated based on the suspicion that they provided financial assistance to members of the group.<sup>49</sup> In what seems to be a retaliation to the landmark judgment of the ECtHR, operations were carried out in October 2023 under the pretext of counter-terrorism against those who provided humanitarian aid to people who were imprisoned and dismissed from their jobs over their links with the Gülen Movement. Within the scope of the operations announced by the Interior Minister, 52 people were detained in Antalya province and 25 people were detained in Balıkesir province for helping people in prison.<sup>50</sup>

The obvious motivation behind this practice is to strip the Gülen Group members and affiliates and their families, who are already in financial distress, of basic monetary means to survive and maintain a dignified life. Thus, the victims whose jobs and properties were torn away from them have been deprived of possibilities for their livelihood and financial survival.

### **3.1.11. Abuse of International Cooperation Mechanisms Against Financing of Terrorism**

Erdogan’s government has been known to employ oppressive tactics against members of the Gülen Group within Turkey as well as in antidemocratic countries abroad. However, when it comes to cracking down on dissidents and Gülen Group members residing in democratic Western countries, the task becomes more challenging. In response, the Turkish government has resorted to the abuse of international cooperation mechanisms, particularly those related to combating financial crimes.

In this context, the Law on the Prevention of Financing Terrorism (Law No. 6415), which was enacted in 2013, was significantly amended with the introduction of the Law on the Prevention of Financing of Proliferation of Weapons of Mass Destruction (Law No. 7262) in 2020.<sup>51</sup> With the recent amendments, the Turkish government has effectively opened the

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47 - SCF, “Mass detention of Gülen followers over donations sparks condemnation and anger,” October 19, 2022, accessed June 10, 2023, <https://stockholmcf.org/mass-detention-of-gulen-followers-over-donations-sparks-condemnation-and-anger/>.

48 - BOLD, “Mağdurlara yardım edenler yine hedefte: Manisa’da 20 gözaltı,” February 22, 2023, accessed June 10, 2023, <https://www.boldmedya.com/2023/02/22/magdurlara-yardim-edenler-yine-hedefte-manisada-20-gozalti/>.

49 - AA, “İzmir merkezli FETÖ operasyonunda 47 şüpheli yakalandı,” March 19, 2023, accessed June 10, 2023, <https://www.aa.com.tr/tr/gundem/izmir-merkezli-feto-operasyonunda-47-supheli-yakalandi/2849394>.

50 - TR724 Haber, “AİHM YALÇINKAYA KARARI | Türkiye’de insan hakları krizi yaşanıyor,” 2 Ekim 2023, <https://www.tr724.com/aihm-yalcinkaya-karari-turkiyede-insan-haklari-krizi-yasaniyor/>

51 - Stockholm Center for Freedom, “Turkey’s Transnational Repression: Abuse of asset freezing mechanisms under the pretext of prevention of terrorist financing,” 2022, accessed June 10, 2023, <https://usercontent.one/wp/stockholmcf.org/wp-content/uploads/2022/05/Turkeys-abuse-of-asset-freezing-mechanisms.pdf?media=1685028663>.



door to include individuals associated with the Gülen Group or prominent dissidents facing baseless terrorism charges on the list of terrorists subject to UN resolutions or widely accepted terrorist designations. This action allows the government to label these individuals as terrorists domestically and internationally, leading to their marginalization and targeting under the guise of counterterrorism. It also hinders their economic activities, as they face asset freezes and banking service bans.

Furthermore, these amendments have been criticized for exceeding the intended scope and restricting freedom of association. In a joint letter sent to the Turkish government on February 11, 2021, UN Special Rapporteurs criticized Turkey’s new terrorism financing legislation for its provisions that exceed the scope of the law and target freedom of association in the country.<sup>52</sup> Human Rights Watch<sup>53</sup> and Amnesty International<sup>54</sup> have also highlighted the law’s potential to curtail civil society activities and suppress freedom of association and expression.

On the pretext of preventing terrorism financing, the Turkish government has published lists of Turkish citizens whose assets have been frozen. The freezing of assets primarily targets Turkish nationals accused of association with the Gülen Group, indicating a concerted effort by the government to financially restrain and stigmatize them, ultimately harming their economic lives abroad. The asset freezing decisions, such as the one made on April 6, 2021, include various categories, with the largest category consisting of 215 persons associated with the Gülen group, as well as individuals associated with ISIL (Daesh/ISIS), the PKK/KCK, and the DHKP/C. A similar pattern is observed in the asset freezing decision of December 20, 2021, which applies to 454 individuals and an association linked to the Gülen movement. The list comprises businesspeople with alleged ties to the group, as well as exiled journalists, academics, and human rights activists.<sup>55</sup>



On December 24, 2020, the Turkish parliament voted on a new law that would increase the Ministry of Internal Affairs’ powers to restrict the activities of NGOs and threaten the right to freedom of association and it entered into force on December 31, 2020.  
Source: hrw.org Photo: Burhan Ozbilici

52 - Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders, Reference: OL TUR 3/2021, February 11, 2021, accessed June 10, 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublic-CommunicationFile?gId=26004>.

53 - Human Rights Watch (HRW), ‘Turkey: Draft Law Threatens Civil Society, Bill on Preventing Terrorism Financing Targets Freedom of Association, December 24, 2020, accessed June 10, 2023, <https://www.hrw.org/news/2020/12/24/turkey-draft-law-threatens-civil-society>

54 - Amnesty International, “Turkey: Terrorism Financing Law Has Immediate ‘Chilling Effect’ on Civil Society: Impact of Law No. 7262 on Non-Profit Organizations,” October 19, 2021, accessed June 10, 2023, <https://www.amnesty.org/en/wp-content/uploads/2021/10/EUR4448642021ENGLISH.pdf>.

55 - Stockholm Center for Freedom, “New Report Sheds Light on How Erdoğan Gov’t Weaponizes Mechanisms to Prevent Terrorist Financing to Target His Opponents,” Stockholm Center for Freedom, accessed June 10, 2023, <https://stockholmcf.org/new-report-sheds-light-on-how-erdogan-govt-weaponizes-mechanisms-to-prevent-terrorist-financing-to-target-his-opponents/>.

These decisions, authorized by the Minister of Treasury and Finance and co-signed by the Minister of the Interior, have severe repercussions for those affected. Individuals on these lists face frozen or closed accounts, negative credit scores, and various personal and financial difficulties, even in Western countries. Financial risk intelligence databases label these individuals as “terrorists” or “persons financing terrorism” solely based on their presence on an arbitrary list published by the Turkish government, without due judicial process.

### 3.2 Widespread character of the violations

Another requirement that the ICTR articulated for crimes against humanity in its various judgments is being widespread. Accordingly, the ICTR defined widespread requirement as “a massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against multiple victims.”<sup>56</sup> Moreover, in ICC’s Ruto, Kosgey, and Sang case, which demonstrates how the widespread character of the violations can be derived from this definition, ICC refers to the breadth of the geographical scope of the violations as well as the way in which the victims are profiled in the preparatory and execution phases of the violations. According to the ICC, the fact that the perpetrators approached the targeted individuals simultaneously, in large numbers, and from different directions play a decisive role in determining whether the violations meet the widespread requirement.<sup>57</sup>

In light of the Ruto, Kosget, and Sang case law around the widespread requirement, the massive and frequent violations carried out collectively within the framework of the deprivation policy of the Erdogan regime with considerable seriousness and directed against a large number and multiplicity of individuals allegedly affiliated with the Gülen Group can fairly be assessed as meeting this requirement. The fact that the targeted individuals were victimized not because of their individual attributes but rather due to their alleged affiliation with the Gülen Group reinforces the conclusion that, despite their multiplicity, those individuals were targeted for a single attribution made by the public authorities linking them to the Gülen Group. The involvement or even the authorship of the violations by public authorities (the foremost of whom are the CPJs) with public resources at their disposal is a further factor exacerbating the consequences of the violations, which impact a large number of people related to the Gülen Group. The indicative factors utilized by the ICC in the Ruto, Kosgey, and Sang judgment are useful in identifying the widespread character of the violations against the Gülen Group. Among those factors are the geographical scope of the illegal acts, which cover the entire Turkish territory, the large number of violations that show no signs of ceasing, and the ultimate aim of the violations, which is to deprive the victims of the fundamental financial means to maintain their livelihood.

The following figures indicate the collectiveness, seriousness, massiveness, and large-scale character of the human rights violations endured by the real or perceived Gülen Group members:

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<sup>56</sup> - *International Criminal Court, Prosecutor v. Ruto et al., “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute,” ICC-01/09-01/11, January 23, 2012, para. 185, accessed August 6, 2021, <https://www.legal-tools.org/doc/96c3c2/>.*

*International Criminal Tribunal for Rwanda, Prosecutor v. Musema, “Judgment,” ICTR-96-13-T, January 27, 2000, para. 204.*

<sup>57</sup> - *International Criminal Court, Prosecutor v. Ruto, Koshey and Sang, “Pre-Trial Judgement,” ICC-01/09-01/11, January 23, 2012, para. 179.*



- Total value of properties having illegally and forcefully been transferred from individuals linked with the Gülen Group: 50 billion USD<sup>58</sup>

- Number of institutions shut down via emergency decree-laws: 1064 private educational institutions (kindergarten, primary, secondary, and high school); 360 tuition and study centers; 847 student dormitories; 47 private health centers; 15 private foundation universities, 29 trade unions affiliated with 2 confederations; 1419 associations; 145 foundations; and 177 media and broadcasting organizations, including 34 televisions, 38 radio stations, 73 newspapers-magazines and printing houses, and 6 news agencies.<sup>59</sup>

- Number of individuals affected by administrative procedures initiated on account of the Gülen-Group affiliation: approximately 230,000<sup>60</sup> with direct decree-laws and approximately 30 thousand educators whose teaching licenses were revoked<sup>61</sup>

- Number of individuals affected by criminal proceedings initiated on account of the Gülen-Group membership: more than 1.5 million<sup>62</sup>

Factory of İstikbal brand  
belonging to Boydak Holding,  
which was illegally seized.



58 - Leighann Spencer & Ali Yildiz, “The Erosion of Property Rights in Turkey: In the Pretext of the State of Emergency and Counter-Terrorism Measures”, *Arrested Lawyers*, <https://arrestedlawyers.org/wp-content/uploads/2020/03/erosion-of-property-rights.pdf>

59 - 667 Sayılı Kanun Hükmünde Kararname [Decree with the Force of Law No. 667], July 22, 2016.  
668 Sayılı Kanun Hükmünde Kararname [Decree with the Force of Law No. 668], July 25, 2016.  
674 Sayılı Kanun Hükmünde Kararname [Decree with the Force of Law No. 674], August 15, 2016.

60 - ‘Human Rights Violations in Turkey Rising to the Level of Crimes Against Humanity: Case of Gülen Group’, *Institute for Diplomacy and Economy (instituteDE)*, 2021, accessed June 10, 2023, <https://www.institute.org/report/human-rights-violations-in-turkey-rising-to-the-level-of-crimes-against-humanity-case-of-gulen-group>

61 - “Kapatılan FETÖ Okullarında Çalışan Öğretmenlere Çalışma İzni,” *Kamudan Sesler*, accessed June 10, 2023, <https://www.kamudanses.com/kapatilan-feto-okullarinda-calisan-ogretmenlere-calisma-izni/>.

62 - “Bakanlık verileri doğruladı: Her 52 kişiden biri terörist ilan edilmiş”, *BOLD*, 23/04/2023, accessed June 10, 2023, <https://www.boldmedya.com/2023/04/23/bakanlik-verileri-dogruladi-her-52-kisiden-biri-terorist-ilan-edilmis/>; Announcement by MP Mustafa Yeneroglu on twitter, referring to the statistics of the Ministry of Justice, accessed June 10, 2023, [https://twitter.com/myeneroglu/status/1463974412311568386?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweet-embed%7Ctwtterm%5E1463974412311568386%7Ctwgr%5Ef57033d1801f1f8fe26ccd8cf1b46013a-b228a4b%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.indyrturk.com%2Fnode%2F440846](https://twitter.com/myeneroglu/status/1463974412311568386?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweet-embed%7Ctwtterm%5E1463974412311568386%7Ctwgr%5Ef57033d1801f1f8fe26ccd8cf1b46013a-b228a4b%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.indyrturk.com%2Fnode%2F440846)

### 3.3. The Gülen Movement as a victim group within the meaning of crimes against humanity

Rome Statute Article 7(2)(a) states: “Attack directed against any civilian population’ means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

This definition includes the following elements:<sup>63</sup>

- These crimes can occur in times of peace.
- The target of the crime can be any civilian population.
- The perpetrators of these crimes can be anyone, including a head of state.
- The conduct of the crime must involve the multiple commission of the acts referred to in the first paragraph of the same article.
- These acts must be pursuant to or in furtherance of a state or organizational policy to commit such an attack.

The term “population,” which is mentioned in Article 7(2)(a), suggests that the attack is directed against a relatively large group of people who share distinctive features that identify them as targets. A prototypical example of a civilian population would be a particular national, ethnic, or religious group.<sup>64</sup> Provided that the elements of scale and seriousness are satisfied, a state’s attacks on, for example, demonstrators, political dissidents, members of a political party, members of a trade union, or even the inmates of a prison camp can be considered an attack against a “population.”<sup>65</sup>

In this respect, the Gülen Movement can fairly be assessed to qualify as a group within the meaning of the Rome Statute. The movement is an international faith-based civic group that developed a multi-sectoral network both in Turkey and abroad in pursuance of the ideals and aims defined by scholar and preacher Fethullah Gülen.<sup>66</sup> The core values promoted by the group are tolerance, peace, intercultural dialogue, and altruism. The group is known for its hundreds of schools and other educational institutions all over the world and has inferentially millions of followers who are being severely persecuted in Turkey and also abroad by the incumbent Turkish government, which has blamed the group for orchestrating the controversial July 15 coup attempt.

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<sup>63</sup> - Dubler, SC R, and Kalyk, M. *Crimes against Humanity in the 21st Century: Law, Practice and Threats to International Peace and Security*. Brill Nijhoff, 2018, 638 - 639.

<sup>64</sup> - *Mugesera v Canada (Minister of Citizenship and Immigration)*, [2005] 2 S.C.R. 100 (Can.), para. 161 (referred to as “Mugesera – Supreme Court”).

<sup>65</sup> - Dubler, SC R, and Kalyk, M. *Crimes against Humanity in the 21st Century: Law, Practice and Threats to International Peace and Security*. Brill Nijhoff, 2018, 617.

<sup>66</sup> - Helen Rose Ebaugh, *The Gülen Movement: A Sociological Analysis of a Civic Movement Rooted in Moderate Islam* (New York: Springer Science & Business Media, 2009), 111.

## 4. Concrete cases of crimes against humanity

Considering the national legislation and international mechanisms examined above, interference with the right to property can be regarded as lawful or justified if the interference

- is proscribed by law (adherence to the principle of legality/lawfulness),
- is proportional (adherence to the principle of proportionality),
- is aimed at public interest (advances the public interest), and
- is sufficiently compensated (balanced with payment of compensation).

The following sections analyze various prominent cases within the above-cited legal purview. The case of Akin Ipek will be analyzed in greater depth, as more information is available thanks to Ipek's judicial procedures which are accessible to the public.<sup>67</sup> His case serves as a clear illustration of how the judicial and administrative trusteeship mechanism is employed to impede the peaceful enjoyment of the right to property and to seize the wealth of a particular social group. Similar illegal practices are being applied to thousands of businesspeople who are allegedly members and followers of the Gülen Group.<sup>68</sup>

### 4.1. Akin Ipek Case

Mr. Akin Ipek is the chairman of Koza-Ipek Holding, a conglomerate that consists of 22 companies, including a media group with two TV channels and two daily newspapers. During the oppression endured by the Gülen Movement, the control of his companies was transferred to trustees, assets belonging to these companies were seized, and legal entities established by him were shut down. Currently, all decisions of the lower courts sentencing Mr. Ipek and his family to terrorism charges and confiscating Koza-Ipek Holding and its affiliates have been upheld and finalized by the



*Himmetdede facility belonging to Koza Gold Enterprise, one of the illegally seized enterprises.*

Source: <https://kozaaltin.com.tr>

<sup>67</sup> - <https://www.akinipek.info/>

<sup>68</sup> - Further examples can be found in the report by Advocates for Silenced Turkey, "A Predatory Approach to Individual Rights: Erdogan Government's Unlawful Seizures of Private Properties and Companies in Turkey", 2018, available at: [https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS\\_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf](https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf)



Third Criminal Chamber of the Court of Cassation.<sup>69</sup> When one applies the above-mentioned criteria to the case of Mr. Ipek, it can be established that the acts limiting and/or removing his enjoyment of his property rights exceed the boundaries of lawful intervention and thereby constitute a property rights violation.

### Disregard of the principle of lawfulness (legality)

The interference with Mr. Ipek's right to property does not fulfill the first "proscribed by law (lawfulness)" criterion and has no legal basis. Even before the July 15 coup attempt, in October 2015, media channels belonging to Mr. Ipek (Bugün TV, Kanaltürk TV, and Radio) were removed from all digital broadcasting platforms without any court decision; they were afterwards controlled by trustees appointed by CPJs and then handed over to the SDIF. Their legal personality was terminated by statutory decree-laws.

According to the ECtHR, a license for nationwide terrestrial television broadcasting without the allocation of broadcasting frequencies was deprived of its substance (Centro Europa 7 S.R.L. and di Stefano v. Italy [GC], § 177). In the same vein, the removal from digital broadcasting platforms has rendered Mr. Ipek's media channels devoid of substance and meaning with no reference to a court decision, which is a legal prerequisite stipulated in Article 133 of the Turkish Criminal Procedure Code (TCPC) for the restriction of property rights. This interference exceeds a violation of the law and represents a flagrant infringement of a constitutional provision (Article 30) which reads, "The press tools and printing house and additions which were founded according to law, cannot be confiscated, sold or stopped to be operating because they are the means of crime." As observed, Turkish law governing property rights over media channels is considerably protective against the government's infringement on that right. Turkish authorities, disregarding Turkish law on this matter, have intervened with Mr. Ipek's right to property in a breach of the legality principle.



Source: arti49.com

Likewise, the appointment of trustees by Ankara's 5th Criminal Peace judgeship (CPJ), to 18 companies belonging to Mr. Ipek in October 2015 was also problematic as per the "legality" criterion. In the decision, the judge made lots of references to the Gulen Movement

69 - Among the affected affiliates are Koza İpek Holding Anonim Şirketi, İpek Doğal Enerji Kaynakları Araştırma ve Üretim Anonim Şirketi, Koza Anadolu Metal Anonim Şirketi, ATP İnşaat ve Ticaret Anonim Şirketi, ATP Havacılık ve Ticaret Anonim Şirketi, ATP Koza Turizm Seyehat ve Ticaret Anonim Şirketi, Koza İpek Basın ve Basım Sanayi Ticaret Anonim Şirketi, Yaşam Televizyon Yayın Hizmetleri Anonim Şirketi, Rek-Tur Reklam Pazarlama ve Ticaret Limited Şirketi, Koza Prodüksiyon ve Ticaret Anonim Şirketi, İpek Online Bilişim Hizmetleri Limited Şirketi, Bugün Televizyon ve Radyo Prodüksiyon Anonim Şirketi, Koza Altın İşletmeleri Anonim Şirketi, Özdemir Antimuan Madenleri Anonim Şirketi, Koza İpek Tedarik Danışmanlık ve Araç Kiralama Ticaret Anonim Şirketi and İK Akademi Anonim Şirketi;

'Yargıtay, Koza İpek Holding Davasında Verilen Mahkumiyet ve Müsadere Kararlarını Onadı', Habertürk, accessed June 13, 2023, <https://www.haberturk.com/yargitay-koza-ipek-holding-davasinda-verilen-mahkumiyet-ve-musadere-kararlarini-onadi-3583084>.



as a terrorist organization – references which indicate the underlying logic behind the appointment of trustees. According to the reasoning of the judgeship, Mr. Ipek financed the Gülen Movement and allocated his media channels for the benefit of the movement. Nevertheless, the Gülen Movement was politically declared a terrorist organization for the first time on 30 May 2016 – seven months after the court decision – by the Council of Ministers under the name of “FETÖ/PDY” based on a National Security Council Resolution. Furthermore, as emphasized by the ECtHR in the Taş case, when the trusteeship decision was imposed on the media outlet owned by Mr. Ipek, there was no court ruling that definitively established their affiliation or control by a “terrorist organization.”<sup>70</sup> The alleged activities of Mr. Ipek were regarded as “criminal” by the judgeship and penalized accordingly, yet those activities, as of their commission, had not been envisaged and criminalized in any penal code. Lastly, with its decision to uphold the retrospective application of the penal provisions as well as the conviction of Mr. Ipek and his family of aiding, abetting, and financing “terrorism,” the Court of Cassation approved and finalized the legal proceedings while disregarding numerous fundamental principles of law. The application of such qualification retrospectively put the appointment of trustees to the companies in plain violation of the “legality” principle.

The erroneous application of Article 133 of the CPC to Mr. Ipek’s Case by Turkish judicial authorities has similarly led to various breaches of the “legality” principle. Paragraph 4 of the Article catalogs the crimes that represent the scope of the article. Some crimes referenced by the Ankara 5th CPJ as having been committed by Mr. Ipek, such as propagandizing, veiling, or financing terrorism, are not enumerated in para. 4 of Article 133 of the CPC. In the same vein, other conditions stipulated by the law, such as “continuing activities” or “strong suspicion,” were not satisfied since the judgeship had failed to establish with any reliable evidence who conducted the continuing activities or which companies financed the impugned activities. Given the underlying characteristics of Mr. Ipek’s case, in which no elements of the attributed criminal activity were present, the principle of legality was violated.



The headline of a Bugün Newspaper dated October 28, 2015 was “The fact that the expert who stated that İpek Koza Holding had an ‘excellent’ financial and accounting system had ‘suspicions about this perfection’ was used as a reason for the unlawful decision.”

<sup>70</sup> - Attila Taş v. Turkey, § 134, App. no: 72/17, 19 January 2021, accessed June 10, 2023, <https://hudoc.echr.coe.int/eng/?i=001-207367>

## Disregard of the principle of proportionality

As the interference with Mr. Ipek’s property was based on the unlawful retrospective application of the criminal law , such illegality does not merit any consideration of proportionality. However, for the sake of analysis, the interference with the right to property of Mr. Ipek appears to be problematic also from the perspective of the principle of proportionality. The acts of state authorities intervening with his right to property are far from striking a “fair balance” between the demands of the general interest of the community and the requirements of the protection of his fundamental rights (*Beyeler v. Italy [GC]*, § 107). It can be fairly asserted that Mr. Ipek has had to bear a disproportionate and excessive burden arising out of accused acts.

First and foremost, according to Mr. Ipek,<sup>71</sup> the Ankara 5th CPJ and the appellate courts insistently overlooked and/or ignored the fact that the alleged activities, which had been the subject matter of the prosecutions, pertained to only two out of 18 companies belonging to Mr. Ipek. Nevertheless, trustees were appointed by the judgeship to all 18 companies, including the ones which had had no bearing on the allegations. According to the judicial authorities, the crimes allegedly committed by Mr. Ipek were enabled by the organs of two mining companies and/or were financed through the resources of the same two companies. There had been no reference in court decisions to the involvement of the remaining 16 companies in the commission of the alleged crimes. Having restricted the property rights of Mr. Ipek more than necessary through the appointment of trustees to all companies, the Ankara 5th CPJ violated the proportionality principle.



*Founded in 2011, İpek University was unlawfully seized in 2016 and the campus is now called Ankara Music and Fine Arts University.*

On top of that, legal entities founded by Mr. Ipek, such as İpek University and Koza İpek Foundation, were shut down with all their financial assets confiscated, in accordance with decree-law No. 667 on 23 July 2016. As pointed out in the report by the Council of Europe Commissioner for Human Rights Nils Muižnieks,<sup>72</sup> the initial suspension of the activities of these legal entities that temporarily reduced or removed the managerial powers of Mr. Ipek over the entities or the appointment of auditorial trustees to these entities would have relatively been more proportional. As less intrusive and invasive measures existed that could reasonably have been implemented by the public authorities in the pursuance of the public

<sup>71</sup> - *Judicial documents concerning, and announcements/explanations made by, Akin Ipek in <https://www.akinipek.info/>*

<sup>72</sup> - *‘The Commissioner publishes a memorandum on the human rights implications of the emergency measures in Turkey’, Council of Europe, accessed June 10, 2023, [https://www.coe.int/en/web/portal/news-2016/-/asset\\_publisher/StEVosr24HJ2/content/the-commissioner-publishes-a-memorandum-on-the-human-rights-implications-of-the-emergency-measures-in-turkey?inheritRedirect=false](https://www.coe.int/en/web/portal/news-2016/-/asset_publisher/StEVosr24HJ2/content/the-commissioner-publishes-a-memorandum-on-the-human-rights-implications-of-the-emergency-measures-in-turkey?inheritRedirect=false)*



interest, the direct closure of the legal entities breached the proportionality principle (James and Others v. United Kingdom, § 51).

## **Lack of indication to any public interest**

It is for the national authorities to make the initial assessment of a problem of public concern warranting measures of deprivation of property or interfering with the peaceful enjoyment of “possessions” (Guide on Article 1 of Protocol No. 1 to the ECHR). In various acts and decisions of Turkish authorities concerning the case of Mr. Ipek, public concern requiring the removal of his property rights is either missing or obviously not evident. The most salient example of this deficiency is that there is no reasoning in the typically one-page decisions of the Ankara 5th CPJ as to the existence of a public interest justifying the severe deprivation of the right to property.

The public concern noted in Presidential Decree no. 667, which shut down the legal entities (İpek University and Koza İpek Foundation) founded by Mr. Ipek, was that those entities allegedly posed a threat to national security. According to the established jurisprudence of the ECtHR, the legislature’s judgment has to explain “the public interest” unless that judgment is manifestly without reasonable foundation (Béláné Nagy v. Hungary [GC], § 113). It has not been explained in any legislative documentation, nor can it reasonably be appreciated by any objective third party, how these legal entities destined for the purpose of research, science, and education could have jeopardized national security. In this regard, the legislative judgment behind the presidential decree shutting down these entities was manifestly devoid of a reasonable foundation, and the condition of a public interest has not been met in the legislative act interfering with Mr. Ipek’s property rights.

Moreover, contrary to the fulfillment of the public interest, state acts restricting or removing Mr. Ipek’s property rights appear to serve the private interests of the Erdogan administration and its allies in the political and bureaucratic sphere. For instance, it has become evident during the investigation that President Erdogan had reportedly urged Mr. Ipek to transfer his hotel to President Erdogan himself so that “he can make things easier for him.”<sup>73</sup> Likewise, the emails of Berat Albayrak, Erdogan son-in-law and the then-Minister of Energy and Natural Resources, were published in WikiLeaks and revealed that the Erdogan administration did research on the economic structure of the Koza-Ipek Group in 2013. The emails also reveal that both Erdogan and his son-in-law had the prosecutor in charge, and the trustees reported to them on a regular basis about Mr. Ipek’s possessions and the progress of the case. Further reinforcing this point is the fact that private jets, luxury cars, and the Angel’s Peninsula Hotel belonging to Mr. Ipek were transferred to Erdogan’s close circle for considerably below their market value while the judicial process was still in progress. In short, it is possible to conclude that the measures taken against Mr. Ipek relied on President Erdogan’s personal motivations rather than public interest.

The way in which Mr. Ipek’s media outlets were run by trustees is yet another indicator of how far they deviated from the purpose of the public interest. The editorial policies and practices employed right after the transfer of control of the media outlets to the Erdogan-instructed trustees connote that the private interests of the Erdogan administration were pursued throughout the judicial process. The first move of the trustees was to dismiss

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<sup>73</sup> - *Judicial documents concerning, and announcements/explanations made by, Akin Ipek in <https://www.akinipek.info/>*

more than 100 press employees, including journalists, news presenters, and domestic and foreign representatives, as well as general editorial managers. Having lost their editorial independence, these media outlets were transformed into Erdogan's mouthpiece. Thus, the media outlets lost 90% of their daily circulation and rating records (among readers, audience, and advertisers), and it became financially infeasible to sustain these outlets, which led to their eventual closure. Based on this information, it can be reasonably concluded that depriving Mr. Ipek of the ownership of these media outlets created an opportunity for Erdogan to take punitive actions against the journalists and other employees of these media outlets who expressed criticism towards his administration, leading to their termination. It also enabled Erdogan to transform these media outlets into platforms for disseminating his propaganda. The eventual closure of these outlets was a form of retaliation for Ipek Media's editorial policies. In sum, the interference with Mr. Ipek's property rights failed to fulfill public interest and, in contrast, pursued exactly the personal motivations of those who had conducted the interference.



*Akin İPEK*

### **Lack of payment of compensation**

The deprivation of a property right without payment of an amount commensurate with its value constitutes a disproportionate interference (Former King of Greece and Others v. Greece (just satisfaction) [GC], § 89). Compensation, or the lack thereof, is a factor to consider in determining whether a fair balance has been achieved (Depalle v. France [GC], § 91). The balance between the general interest of the community and the requirements of the protection of individual fundamental rights mentioned above is generally achieved when the compensation paid to the person whose property has been taken is reasonably comparable to its “market” value, as determined at the time of the expropriation (Pincová and Pinc v. Czech Republic, § 53, Gashi v. Croatia, § 41). Any other approach could open the door to a degree of uncertainty or even arbitrariness in the valuation of the property (Vistiņš and Perepjolkins v. Latvia [GC], § 111).

Against this backdrop, despite the severity of the deprivation of Mr. Ipek's property



rights, he was never compensated whatsoever for his losses, let alone the monetary worth of the seized properties being commensurate to their market value. After the takeover of the companies by trustees, dramatic falls took place in their shares in stock markets. For instance, Koza Altın İşletmeleri A.Ş., İpek Doğal Enerji Kaynakları Araştırma ve Üretim A.Ş. and Koza Anadolu Metal Madencilik İşletmeleri A.Ş. had a loss of 1 billion dollars in value just in three months after their seizure.<sup>74</sup>

In the same vein, the ratings of the media outlets belonging to Mr. Ipek (Bugün TV, Kanaltürk TV, and Radio) plummeted after they were removed in October 2015 from the Türksat digital broadcasting platform, which has a state monopoly over satellite broadcasting. These media outlets lost 90% of their daily circulation and rating records (among readers, audience, and advertisers). The dailies (Bugün and Millet), which started to publish pro-government news right after the trustee appointment, had their daily circulation number decreased from 165,000 to 14,000 sales. Likewise, the TV stations substantially lost their audience. All in all, the market value of these outlets was 200-250 million dollars right before the appointment of trustees, yet as of 8 December 2015, they had lost 90% of their value.<sup>75</sup>

Prior to the conclusion of the judicial process, movables and assets belonging to these media outlets were sold off. Some politicians seized Mr. Ipek's private jet and employed it for their private use, while his luxury cars were sold below their value. The Angel's Peninsula Hotel, which had an almost 100-million-dollar market value, was transferred to someone in Erdogan's close circle even before the main proceedings were concluded. All in all, Mr. Ipek's right to—and reasonable expectation of—compensation has been violated, as he has received no monetary amount for the severe losses he suffered, let alone this amount being commensurate with the interference.

## 4.2. The Dumankaya Case

Among the businesspeople targeted by the regime's deprivation policy was Halit Dumankaya, an executive board member of Dumankaya Holding. Just over a month after the controversial coup in 2016, an İstanbul CPJ ordered the seizure of the assets of Mr. Dumankaya and five others over alleged links to the Gülen movement and put the assets and companies under the management of trustees it had appointed. Polat Sağır, a candidate for mayor of AKP's Üsküdar municipality, and İsmail Bülbül, a member of the Sarıyer Municipality Council of the AKP, were appointed as trustees.<sup>76</sup>

Those assets were subsequently transferred to the SDIF/TMSF. On May 2018, the SDIF decided to liquidate six companies belonging to Dumankaya Holding: namely Dumankaya Dış Ticaret ve Pazarlama, Dumankaya Holding, Dumankaya Kentsel Dönüşüm Proje Geliştirme, Dumankaya ve Mazaya İnşaat, Show Oto Sanayi ve Ticaret, and Dumankaya Teknoloji.<sup>77</sup>

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<sup>74</sup> - *Judicial documents concerning, and announcements/explanations made by, Akin Ipek in* <https://www.akinipek.info/>

<sup>75</sup> - *Judicial documents concerning, and announcements/explanations made by, Akin Ipek in* <https://www.akinipek.info/>

<sup>76</sup> - *Ismail Ari, 'FETÖ'nün Şirketleri AKP'ye Ekmek Kapısı', BirGün, 15.08.2019, accessed June 10, 2023, https://www.birgun.net/haber/feto-nun-sirketleri-akp-ye-ekmek-kapisi-265014.*

<sup>77</sup> - *'Turkish gov't to liquidate 6 companies seized from businessman over Gülen links', SCF -May 16, 2018, accessed June 10, 2023, https://stockholmcf.org/turkish-govt-to-liquidate-6-companies-seized-from-businessman-over-gulen-links/*



*Dumankaya Ikon building in Istanbul, built by Dumankaya İnşaat.*

The unlawful seizure of Mr. Dumankaya’s companies by the Istanbul CPJ through the appointment of trustees violates the principle of legality. The appointment was rationalized by the judgeship with an abundance of references to deposits and transactions made through BankAsya in favor of the Gülen Movement. Nevertheless, BankAsya had been completely taken over by the SDIF one year before the date on which the Council of Ministers declared the Gülen a terrorist organization on the 30th of May 2016. In other words, the transactions via BankAsya were considered “criminal” by the judgeship and penalized accordingly, whereas those transactions were totally lawful at the time they were conducted. The retrospective application of the designation of the Gülen Group as a terrorist organization to the previous business activities of the Dumankaya family renders both the seizure of companies and the appointment of trustees to the companies plain violations of the principle of legality.

As the interference with the property of the Dumankaya family was based on the unlawful retrospective application of the criminal law to their case, such illegality does not merit any proportionality consideration. However, as in Mr. Ipek’s case, the intervention into property rights in the form of asset seizures is also problematic from the purview of the principle of proportionality. Mr. Dumankaya was accused of financing the Gülen Group and enabling financial assistance by allowing the use of his bank accounts by the group-affiliated individuals. To prevent the continuous commission of such “financial crime,” the CPJ decided on the seizure of all assets belonging to the Dumankaya Family. Even under the inappropriate assumption that financial assistance for the Gülen Group constituted an offence, such alleged “illegality” could have been addressed via much less intrusive judicial and administrative measures such as freezing or shutting down the bank accounts concerned, observing the transactions made by Mr. Dumankaya, etc. Since Mr. Dumankaya has had to bear a disproportionate and excessive burden arising out of the asset seizure, such interference with his property rights has breached the proportionality principle.

### **4.3. The Boydak Case**

Boydak Holding was a leading corporation that carried out its activities in various sectors, including furniture, textiles, chemistry, banking, marketing, iron-steel, logistics, energy, and informatics. Known for its most recognizable brands such as Istikbal, Bellona, and Mondi, the

holding had a turnover of 5.5 billion TL (approximately 2.2 billion USD) in 2015.<sup>78</sup>

Many members of the Boydak Family, including Memduh, Hacı, Şükrü and Mustafa Boydak, were charged in July 2018 with several offenses ranging from financing terrorism to running a terrorist organization over their links and donations to the Gülen Movement. Kayseri 1st CPJ ordered on March 8, 2016 the seizure of all moveable, immovable, and monetary assets of these businesspeople as well as their monetizable rights and receivables, and it transferred the management of Boydak companies to trustees that it had appointed.<sup>79</sup> The companies belonging to the Boydak Holding were subsequently transferred to the administration of the SDIF.<sup>80</sup>

The Boydak case serves as an example of trustees carrying out their duties in a hostile manner, seemingly motivated by a political agenda. Troubling reports indicate that the initial chief trustee, Ertunç Laçinel, disappeared with \$20 million USD.<sup>81</sup> The subsequent chief trustee, Alpaslan Baki Ertekin who became a candidate for AKP's Istanbul



Boydak Holding building in Kayseri, 2016, Photo: AA

78 - 'A Predatory Approach to Individual Rights: Erdogan Government's Unlawful Seizures of Private Properties and Companies in Turkey', An Advocates of Silenced Turkey Special Report: November, 2018, accessed June 10, 2023, [https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS\\_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf](https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf)

79 - Hürriyet, 'Boydak'ların hesaplarındaki tedbir vergi ödeyebilmeleri için kısmen kalktı', 07.04.2017, accessed June 10, 2023, <https://www.hurriyet.com.tr/yerel-haberler/kayseri/boydaklarin-hesaplarindaki-tedbir-vergi-odeyeb-40420642>

80 - CNN Türk, 'Yargıtay'dan "Boydak Holding" kararı: 35 şirkete ait hisselerin müsaderesi onandı', 25.01.2023, accessed June 10, 2023, <https://www.cnnurk.com/turkiye/yargitaydan-boydak-holding-karari-35-sirkete-ait-hisselerin-musaderesi-onandi>

81 - Cumhuriyet, 'TMSF'nin atadığı kayyum 20 milyon Euro ile kayıplara karıştı', 16.06.2022, accessed June 10, 2023, <https://www.cumhuriyet.com.tr/turkiye/tmsfnin-atadigi-kayyum-20-milyon-euro-ile-kayıplara-karisti-1947825>; BOLD, 'TMSF Başkanı, Boydak Holding'de yaptığı 20 milyon euroluk yolsuzluğu gizlemek için şahsi bağlantılarını kullanıyor', 24.09.2019, accessed June 10, 2023, <https://boldmedya.com/2019/09/24/tmsf-baskani-boydak-holdingde-yaptigi-20-milyon-euroluk-yolsuzlugu-gizlemek-icin-sahsi-baglanti-larini-kullaniyor/>



deputy in the June 7, 2015 elections,<sup>82</sup> acted as if he were the owner of the company, even going so far as to change the name of Boydak Holding to Erciyas Anadolu Holding despite opposition from the Boydak family. Furthermore, the trustee allocated 2.5% of the holding's profits as donations to associations and foundations aligned with the ruling party.<sup>83</sup> Large payments were also made to universities, sports clubs, and even close relatives of the trustees, which further underscores the excessive and criminal nature of their actions, surpassing the legitimate scope of trusteeship.<sup>84</sup>

As was the case with the previously examined businesspeople, the CPJ's decision to seize all assets of Boydak Holding, the transfer of the management of its affiliated companies first to trustees and then to the SDIF, and those assets' eventual liquidation by the SDIF constitute a severe violation of the right to property. The alleged criminal acts attributed to the Boydak family members, namely the donations to the Gulen Movement, were completely lawful activities as the Movement was declared as a terrorist organization much later those donations. During the period in which those donations were made, it was not possible for a reasonable person to foresee that the impugned acts could be considered criminal in the future.

As the seizure of the assets of Boydak Holding was not based on evidence that the companies were used to commit any unlawful acts, such illegality does not merit any consideration of proportionality, so there is no need to consider whether the seizure of Boydak companies was disproportionate to the ends that should have been legitimately pursued by the government. However, for the sake of analysis, it would be safe to assume that the Boydak family has had to bear a disproportionate and excessive burden arising from the wholesale confiscation of their assets, rendering the intervention unlawful under the proportionality criterion. Similarly, the two-page Kayseri CPJ confiscation warrant does not contain any reasoning concerning the public interest being pursued with such intervention. Finally, as of the publication date of this report, the Boydak family has not been compensated for their losses stemming from this intervention into their property rights. Hence, the deprivation of property rights without payment of an amount commensurate with their value constitutes a disproportionate interference.

#### 4.4. The Nakıboğlu Case

The Nakıboğlu family is yet another conglomerate that could not escape the regime's retribution policy owing to their alleged link to the Gülen Movement. The family owned Naksan Holding was known for its strong economic structure and ranked the 25th biggest company in Turkey before it was confiscated by the Erdogan regime,

Shortly after the coup attempt, the owner of the holding, Cahit Nakıboğlu, and his son Taner Nakıboğlu were arrested in Gaziantep and a board of trustees was appointed to Naksan Holding by the Gaziantep CPJ. Mahmut Birlik, the deputy chairman of the AKP Gaziantep

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<sup>82</sup> - Ismail Ari, 'FETÖ'nün Şirketleri AKP'ye Ekmek Kapısı', *BirGün*, 15.08.2019, accessed June 10, 2023, <https://www.birgun.net/haber/feto-nun-sirketleri-akp-ye-ekmek-kapisi-265014>.

<sup>83</sup> - Cumhuriyet, 'Kayyumdan TÜGVA ve TÜRGEV itirafı: 'Tabi ki para veriyoruz'', 21.06.2022, accessed June 10, 2023, <https://www.cumhuriyet.com.tr/siyaset/kayyumdan-tugva-ve-turgev-itirafi-tabi-ki-para-veriyoruz-1949710>

<sup>84</sup> - Ahval, 'Kayyım, Boydak'ta 'bağış' adı altında şirket dışına para aktarıyor', 05.11.2019, accessed June 10, 2023, <https://ahvalnews.com/tr/boydak-holding/kayyim-boydakta-bagis-adi-altinda-sirket-disina-para-aktariyor>



province, Ülker Güzel, a former member of the parliament of AKP, and Yaşar Atılğan, a candidate for parliament for the AKP, were appointed as trustees to Naksan Holding.<sup>85</sup>

In January 2018, Naksan Holding, along with its 51 affiliates, was transferred to the SDIF and liquidated.<sup>86</sup> Some of the companies belonging to the holding were returned to the Nakiboglu family at the end of the prosecution conducted by the Gaziantep 9th High Criminal Court in December 2018.<sup>87</sup>

Similar to previous cases that are discussed above, Naksan Holding and its affiliated companies were seized on account of trumped-up terrorism charges, such as financing a terrorist organization, as well as nonconformity with the law on laundering proceeds from crime. Neither the two-page CPJ decision warranting the seizure of assets nor the subsequent communiqué on the transfer of the Naksan holding to the SDIF contained a reasoned legal examination regarding the restriction and deprivation of property rights on the assets of the Nakıboğlu family, apart from the rote recitation of the norms and bylaws authorizing the seizure. Therefore, it appears futile to carry out an analysis from the perspective of international human rights law governing lawful intervention with property rights. However, in the face of the disregard thereof by the Turkish authorities, it would be safe to argue that the intervention into the property rights of the Nakıboğlu family has not pursued any public interest, nor has it satisfied the legality criteria, as the actions attributed to the family members were lawful not only under the laws of the country but also under the laws of any civilized nation. In the same vein, the family members were not compensated for the losses caused by the state's intervention. As for the proportionality criterion, the handover of some companies back to the Nakıboğlu family could be considered an extenuating reason. Although it does not eliminate it altogether, such a restitution of property does reduce the unlawfulness of the intervention to some extent. All in all, the seizure of Naksan companies was disproportionate to the ends that should have been legitimately pursued by the government, as the seizure of the assets of Naksan Holding was not based on evidence that the companies were used to commit any unlawful acts.



*Cahit Nakıboğlu*

<sup>85</sup> - İsmail Ari, 'FETÖ'nün Şirketleri AKP'ye Ekmek Kapısı', *BirGün*, 15.08.2019, accessed June 10, 2023, <https://www.birgun.net/haber/feto-nun-sirketleri-akp-ye-ekmek-kapisi-265014>.

<sup>86</sup> - *Advocates of Silenced Turkey*, 'A Predatory Approach to Individual Rights: Erdogan Government's Unlawful Seizures of Private Properties and Companies in Turkey', accessed June 10, 2023, [https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS\\_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf](https://silencedturkey.org/wp-content/uploads/2018/11/A-PREDATORY-APPROACH-TO-INDIVIDUAL-RIGHTS_-ERDOGAN-GOVERNMENT%E2%80%99S-UNLAWFUL-SEIZURES-OF-PRIVATE-PROPERTIES-AND-COMPANIES-IN-TURKEY.pdf).

<sup>87</sup> - "FETÖ'nün zengin davasında Erdoğan ve Fatma Şahin'in adını verdi," *Oda TV*, accessed June 10, 2023, <https://www.odatv4.com/guncell/fetonun-zengin-davasinda-erdogan-ve-fatma-sahinin-adini-verdi-08111807-149802>.

## 4.5. Last Stage of the Political Confiscation

The initial appointment of trustees to private companies marked the beginning of unlawful interventions, which have escalated into the destruction and political transfer of wealth. The criminal proceedings targeting company owners have been finalized, and decisions regarding the confiscation of assets are to be upheld by the Court of Cassation in several cases. Thus, the SDIF has initiated the sale of these companies at significantly reduced rates, often allegedly favoring supporters of Erdogan. Consequently, the assets of businesspeople believed to be members or sympathizers of the Gülen Group, including Ipek Holding, Anadolu Erciyes (Boydak), Aynes, Alfemo, Aydinli Group, Dumankaya, and Naksan Holding, are being subjected to forced sales.

## Conclusion

The practice of confiscation and seizure of property as a form of collective punishment has been a recurring issue in Turkey's history, particularly during times of political instability and government repression. Several minority groups faced severe asset seizures as part of the nation-building process, which was predicated on the elimination of groups or citizens who have been considered unwanted for various reasons, be it "the need for an enemy" or "the justification of own failures".

As the last victim of this scheme, the foremost target of the current crackdown of the Erdogan regime, the Gülen Movement could not escape this recurring practice of the illegal confiscation of assets by the state at the beginning of the 21st century. Property rights and assets belonging to legal entities established by the movement or to individuals allegedly linked with the movement were denied through false pretexts, such as "aiding and abetting terrorism" and "financial gain from terrorism" or even without any explanation or reason at all.

Considering the widespread and systematic characteristics of the violations of the property rights of the perceived members of the Gülen Movement, this report concludes that the Turkish Government's practice of confiscating properties of its dissidents has amounted to the crimes against humanity prescribed under international law, more specifically under the Rome Statute. This conclusion is mainly based on the following facts about this practice and its concurrence with the Rome Statute's characterization of crimes against humanity:

First, the Gülen Movement is a group that could be a victim of crimes against humanity. As the foremost target of the Erdogan regime's current crackdown, the movement can fairly be characterized as a "civilian population" within the meaning of the Statute. The movement has developed a multi-sectoral network both in Turkey and abroad in pursuance of the ideals and aims defined by scholar and preacher Fethullah Gülen. Based on official and unofficial links to such multi-sectoral networks, the Turkish Government has profiled individuals affiliated with the movement and blacklisted them as members or components of a single target group.

Second, in line with the jurisprudence of international courts, this paper has established the systematic nature of the property rights violations endured by individuals linked with the Gülen Group. Several statements of state representatives, state practices, and associated occurrences examined throughout the report demonstrate that the severe property rights violations were committed as part of a predetermined plan and policy against the Gülen

Group. This policy envisages that the Gülen Movement, physically or as a collection of ideas and ideals, should be weakened, incapacitated, and eradicated by all means and that stripping the group of their financial means is an available and effective vehicle to that end. The execution of this deprivation policy demonstrates that the Erdogan regime targeted first the properties belonging to the institutions on which the group socially and economically thrived and then turned its attention to Gülen Movement-affiliated individuals and their properties once the institutions no longer had assets worth looting. The execution of this deprivation policy includes among others the establishment of Criminal Peace Judgeships to circumvent judicial safeguards, the dissolution of the BankAsya, and the takeover of numerous institutions affiliated with the Gülen Group, such as schools, trade unions, foundations, and media and broadcasting organizations.

Third, this paper has established the widespread nature of property rights violations in light of the case law around that requirement. The widespread nature of these violations is indicated by the massive and frequent violations carried out collectively within the framework of the deprivation policy of the Erdogan regime directed against a large number of individuals allegedly affiliated with the movement. The fact that the individuals were targeted not because of their individual attributes but rather due to their alleged affiliation with the Gülen Group reinforces the conclusion that, despite their multiplicity, those individuals have been targeted for a single attribution made by the public authorities, namely being regarded as linked to the Gülen Group. This report offers some figures to convey the collectiveness, seriousness, and large-scale character of the human rights violations endured by the real or perceived Gülen-Group members. In this regard, the total net worth of properties illegally and forcefully transferred from individuals linked with the Gülen Group is estimated to be 50 billion USD. Additionally, the number of individuals affected by administrative procedures initiated on account of the Gülen-Group affiliation is approximately 230,000, whereas individuals affected by criminal proceedings initiated on account of Gülen Group membership is much higher, hovering around 1.5 million.

Finally, the report has scrutinized four representative cases that stand out as crimes against humanity in light of the four requirements for lawful and justified interference with the right to property: (a) adherence to the principle of lawfulness (legality), (b) adherence to the principle of proportionality, (c) advancing the public interest, and (d) the payment of compensation. Applied these requirements to the cases examined, the report concludes that none of these requirements have been met. For instance, in all cases, the consequences of the “terrorist” designation of the Gülen Group were applied retrospectively such that the former activities of victims were affected. This persistent practice of the Erdogan regime has put the property seizures in plain violation of the legality principle. In the case of Akin Ipek, the flagrant violation of laws was taken one step further with the seizure and shutdown of the media channels belonging to Mr. Ipek despite the explicit constitutional provision prohibiting the confiscation of any broadcasting platforms. Regarding the principle of proportionality, since the seizure cases examined are devoid of lawfulness, they do not merit an evaluation under the purview of the proportionality principle. However, it is safe to say that, in those cases, the obligation to resort to less intrusive and invasive measures in the pursuit of the public interest was not observed. For instance, in almost all the cases examined, the criminal peace courts did not limit the scope of the seizures to the subject-matter of the prosecutions but restricted or removed the property rights over assets that had no bearing on the allegations. Furthermore, the way in which the companies were seized shows that the interference with property rights did not advance, let alone fulfill, the public interest but rather pursued the private interests of those who initiated the interference. Thus, the representatives and employees were dismissed after the seizure of Ipek Media as a punishment for their critical editorial policy. Afterwards, the media channels were transformed into the mouthpiece of the Erdogan regime, transferred

to the SDIF/TMSF, and eventually shut down. Lastly, after the takeover of companies by trustees, dramatic falls took place in all cases in their stock prices. Contrary to the obligation to compensate the property seizure with payment of an amount commensurate with the market value, none of the victims has received any monetary amount for the severe losses they suffered.

In a nutshell, with the accusation of having Gülen affiliation, the assets of businesspeople have been seized through trusteeship practices, depriving their rightful owners of control. Trustees appointed by the ruling party have made arbitrary decisions that exceed the scope of their responsibilities. Ultimately, following the final confiscation decisions, these assets are being publicly auctioned off, with bidders believed to be closely aligned with the ruling party and Erdogan enjoying preferential treatment.

All in all, this report makes clear that the systematic and widespread practice of the deprivation of property rights of individuals affiliated with the Gülen group constitutes a flagrant violation of domestic and international law, amounting to crimes against humanity. The perpetration of such crimes shocks the conscience of the international community and demeans all members of humanity, regardless of where they live or which culture or creed they belong to. Holding perpetrators to account starts with the correct legal characterization of the acts concerned in order to help victims get their voice heard, increase awareness among domestic and international stakeholders alike, inspire action to prevent crimes that deeply hurt victims' conscience, and prioritize resources accordingly.



## ABOUT THE AUTHORS



Dr. iur. **YASIR GÖKÇE** obtained his Ph.D. from Bucerius Law School in Hamburg, with a focus on international law governing the use of force. He served as an In-house Legal Counsel in the International Law Department of the Ministry of Foreign Affairs of Turkey for several

years, providing legal opinions for various disputes in which Turkey was involved before foreign courts. During his tenure at the Ministry, he also served as a diplomat in Vietnam, Egypt, and Uzbekistan. Both before and after his tenure, he worked as a practicing attorney. His articles on international law were published by several esteemed peer-reviewed journals including but not limited to the Cambridge Journals.

Dr. Gökçe obtained an MPA degree from Harvard University, an LL.M. degree from Ankara University and LL.B. degree from Bilkent University. He currently resides in Germany, where he is pursuing research and studies, amongst others, in international human rights law, while also serving as the Director at instituDE.



**HAKAN KAPLANKAYA** is a legal practitioner admitted to the Luxembourg Bar and a former Turkish diplomat. He specializes in litigating before the European Court of Human Rights (ECtHR), United Nations mechanisms, and international commercial arbitration. He has contributed articles on human

rights issues to various international academic law blogs.

During his tenure at the Turkish Foreign Ministry, he was involved with the NATO Desk and held roles as the Deputy Chief of Mission at the Turkish Embassy in Djibouti, as well as serving as a vice-consul in Paris. Preceding his Ministry role, he worked as an assistant lawyer at the ECtHR.

Mr. Kaplankaya obtained an M.A. in human rights law from Robert Schuman University (Strasbourg) **and** an LL.M. in international arbitration law from Paris-Est Créteil University. He completed his LL.B. at Galatasaray University (Istanbul). He currently resides in France.



**HARUN RESIT HALISOGLU** is a policy officer at the Ministry of Economic Affairs and Climate of the Netherlands. He started his career as a legal advisor at the Turkish Foreign Ministry. He was a member of the Regulations Drafting Committee as well. Later he had been

posted to the Turkish Diplomatic missions in Tripoli (Libya) and the Hague as diplomat. He obtained his LL.M. degree in public international law from Leiden University, and has also a master's degree in public international law from Ankara University. His area of specializations as a jurist are human rights law, international criminal law and international humanitarian law. He currently lives in the Netherlands.



**MEHMET BOZKAYA** is an international law and human rights law researcher and former Turkish diplomat. He worked as a legal counsel in the Legal Consultancy Unit and the Human Resources Department at the headquarters of Turkish Foreign Ministry. At these positions, he actively participated in personnel

investigations, institutional development projects, drafting new regulations and judicial procedures against the Ministry and submitted legal opinions with regard to draft texts of international agreements. Before the end of his duty at the Ministry in September 2016, he was serving with the title of Second Secretary at the Turkish Embassy in the Hague.

He conducts studies on contemporary legal issues, among others, data privacy, corporate social responsibility and financial crimes. He also counsels private entities on various legal matters. Bozkaya has an LL.M. degree in human rights law from Maastricht University and an LL.B. degree from Bilkent University. He currently lives in the Netherlands.