REPUBLIC OF TURKEY

CONSTITUTIONAL COURT

GENERAL ASSEMBLY

DECISION

Application No: 2013/7800

Date of Judgment: 18/6/2014

GENERAL ASSEMBLY

DECISION

President : Haşim KILIÇ
Deputy President : Serruh KALELİ
Deputy President : Alparslan ALTAN
Members : Serdar ÖZGÜLDÜR
Osman Alifeyyaz PAKSÜT
Zehra Ayla PERKTAŞ
Recep KÖMÜRCÜ
Burhan ÜSTÜN
Engin YILDIRIM
Nuri NECİPOĞLU
Hicabi DURSUN

CelalMümtaz AKINCI
Erdal TERCAN
Muammer TOPAL
Zühtü ARSLAN
M. Emin KUZ
Hasan Tahsin GÖKCAN

Rapporteurs : Serhat ALTINKÖK
Yunus HEPER
Recep ÜNAL
MuharremİlhanKOÇ
Özcan ÖZBEY

1st	**Applicant**	:	Sencer BAŞAT
2nd	**Applicant**	:	Aşkın ÖZTÜRK
	Counsel	:	Att. Kemal Nevzat GÜLEŞEN
3rd	**Applicant**	:	Turgut KETKEN
4th	**Applicant**	:	Yavuz KILIÇ
	Counsel	:	Att. Kemal Nevzat GÜLEŞEN
5th	**Applicant**	:	Ökkeş Alp KIRIKKANAT
6th	**Applicant**	:	Ali Cengiz ŞİRİN
	Counsel	:	Att. Ayfer UZUNIRMAK
7.	**Applicant**	:	Bulut Ömer MİMİROĞLU
	Counsel	:	Att. Kazım GÖZÜŞİRİN
8.	**Applicant**	:	Bayram Ali TAVLAYAN
	Counsel	:	Att. Mustafa BAŞAR ENGİN
9.	**Applicant**	:	Korcan PULATSÜ
	Counsel	:	Att. Ali Fahir KAYACAN
10.	**Applicant**	:	Ziya
	Counsel	:	GÜLER Att. Ali Fahir KAYACAN
11.	**Applicant**	:	Rıdvan
	Counsel	:	ULUGÜLER

			Att. Ali Fahir KAYACAN
12.	**Applicant**	:	Beyazıt KARATAŞ
	Counsel	:	Att. Ali Fahir KAYACAN
13.	**Applicant**	:	Mehmet ELDEM
	Counsel	:	Att. Ali Fahir KAYACAN
14.	**Applicant**	:	Hüseyin ÇINAR
	Counsel	:	Att. Ali Fahir KAYACAN
15.	**Applicant**	:	Sefer KURNAZ
	Counsel	:	Att. Ali Fahir KAYACAN
16.	**Applicant**	:	Berna DÖNMEZ
	Counsel	:	Att. Ali Fahir KAYACAN
17.	**Applicant**	:	Mehmet Cem ÇAĞLAR
	Counsel	:	Att. Ali Fahir KAYACAN
18.	**Applicant**	:	Ali Deniz KUTLUK
	Counsel	:	Att. Ayşe Gül HANYALOĞLU
19.	**Applicant**	:	Mustafa Aydın GÜRÜL
	Counsel	:	Att. Ayşe Gül HANYALOĞLU
20.	**Applicant**	:	Hasan HOŞGİT
21.	**Applicant**	:	Ahmet Sinan ERTUĞRUL
	Counsel	:	Att. Günizi DİZDAR
22.	**Applicant**	:	Fikret GÜNEŞ
23.	**Applicant**	:	Taner BALKIŞ
24.	**Applicant**	:	Mustafa KARASABUN
25.	**Applicant**	:	Bülent KOCABABUÇ
	Counsel	:	Att. Kemal Yener SARAÇOĞLU
26.	**Applicant**	:	Osman KAYALAR
	Counsel	:	Att. Kemal Yener SARAÇOĞLU
27.	**Applicant**	:	Recep YILDIZ
	Counsel	:	Att. Kemal Yener SARAÇOĞLU

28.	**Applicant**	:	Alpar KARAAHMET
	Counsel	:	Att. Kemal Yener SARAÇOĞLU
29.	**Applicant**	:	Nihat ALTUNBULAK
	Counsel	:	Att. Kemal Yener SARAÇOĞLU
30.	**Applicant**	:	Hakan Mehmet KÖKTÜRK
	Counsel	:	Att. Kemal Yener SARAÇOĞLU
31.	**Applicant**	:	Ayhan ÜSTBAŞ
	Counsel	:	Att. Kemal Yener SARAÇOĞLU
32.	**Applicant**	:	Ali Semih ÇETİN
	Counsel	:	Att. Şule EROL
33.	**Applicant**	:	Cem Aziz ÇAKMAK
	Counsel	:	Att. Şule EROL
34.	**Applicant**	:	Faruk DOĞAN
	Counsel	:	Att. Şule EROL
35.	**Applicant**	:	Metin Yavuz YALÇIN
	Counsel	:	Att. Şule EROL
36.	**Applicant**	:	Ramazan Cem GÜRDENİZ
	Counsel	:	Att. Şule EROL
37.	**Applicant**	:	Soner POLAT
	Counsel	:	Att. Şule EROL
38.	**Applicant**	:	Fatih Uluç YEĞİN
	Counsel	:	Att. Şule EROL
39.	**Applicant**	:	Kürşad Güven ERTAŞ
	Counsel	:	Att. Şule EROL
40.	**Applicant**	:	Murat ÖZENALP
	Counsel	:	Att. Şule EROL
41.	**Applicant**	:	Utku ARSLAN
	Counsel	:	Att. Şule EROL
42.	**Applicant**	:	Hakan İsmail ÇELİKCAN
	Counsel	:	Att. Şule EROL
43.	**Applicant**	:	Nadir Hakan ERAYDIN
44.	**Applicant**	:	İsmail TAŞ
45.	**Applicant**	:	Emin KÜÇÜKKILIÇ

46.	**Applicant**	:	Ali TÜRKŞEN
	Counsel	:	Att. İbrahim ŞAHİNKAYA Att. Şeref DEDE
47.	**Applicant**	:	Tayfun DUMAN
	Counsel	:	Att. Şeref DEDE
48.	**Applicant**	:	İbrahim Koray ÖZYURT
	Counsel	:	Att. İbrahim ŞAHİNKAYA Att. Şeref DEDE
49.	**Applicant**	:	Muharrem Nuri ALACALI
	Counsel	:	Att. Şeref DEDE
50.	**Applicant**	:	Dora SUNGUNAY
	Counsel	:	Att. İbrahim ŞAHİNKAYA Att. Şeref DEDE
51.	**Applicant**	:	Şafak YÜREKLİ
	Counsel	:	Att. İbrahim ŞAHİNKAYA
52.	**Applicant**	:	İsmail TAYLAN
53.	**Applicant**	:	Binali AYDOĞDU
	Counsel	:	Att. Nihat Taner ÇATALSAKAL
54.	**Applicant**	:	Oğuz TÜRKSOYU
	Counsel	:	Att. Osman OĞUZHAN
55.	**Applicant**	:	Cemal TEMİZÖZ
	Counsel	:	Att. Ünsal AKTAŞ
56.	**Applicant**	:	Uğur UZAL
	Counsel	:	Att. Emiş Özgür ERYILMAZ
57.	**Applicant**	:	Nuri Selçuk GÜNERİ
58.	**Applicant**	:	Yusuf AFAT
59.	**Applicant**	:	Celal Kerem EREN
60.	**Applicant**	:	Berker Emre TOK
61.	**Applicant**	:	Erhan KUBAT
62nd	**Applicant**	:	Ergin SAYGUN
	Counsel	:	Att. Metin KAYAÇAĞLAYAN
63.	**Applicant**	:	Kubilay AKTAŞ
	Counsel	:	Att. Metin

			KAYAÇAĞLAYAN
64.	**Applicant**	:	Armağan AKSAKAL
	Counsel	:	Att. Levent TÜRKOĞLU
65.	**Applicant**	:	Sinan TOPUZ
	Counsel	:	Att. Ali ALTAY
66.	**Applicant**	:	Recep Rıfkı DURUSOY
		:	Att. Deniz ATA
	Counsel		
67.	**Applicant**	:	Doğan TEMEL
68.	**Applicant**	:	Mete DEMİRGİL
69.	**Applicant**	:	Aşkın ÜREDİ
	Counsel	:	Att. Rahile HORZUM
70.	**Applicant**	:	Çetin DOĞAN
	Counsel	:	Att. Hüseyin ERSÖZ
71.	**Applicant**	:	Ahmet YAVUZ
	Counsel	:	Att. Duygun YARSUVAT
			Att. Mehmet Selim YAVUZ
72.	**Applicant**	:	Mehmet
	Counsel	:	OTUZBİROĞLU
			Att. Ahmet KÖKSAL
73.	**Applicant**	:	Devrim REHBER
	Counsel	:	Att. Abdullah KAYA
74.	**Applicant**	:	Mustafa KOÇ
	Counsel	:	Att. Abdullah KAYA
75.	**Applicant**	:	Erdal AKYAZAN
	Counsel	:	Att. Selda Uğur AKYAZAN
76.	**Applicant**	:	Cenk HATUNOĞLU
	Counsel	:	Att. Haluk PEKŞEN
77.	**Applicant**	:	Namık SEVİNÇ
		:	Att. Haluk PEKŞEN
	Counsel		
78.	**Applicant**	:	Mustafa İLHAN
	Counsel	:	Att. Haluk PEKŞEN
79.	**Applicant**	:	Süleyman Namık
	Counsel	:	KURŞUNCU
			Att. Haluk PEKŞEN
80.	**Applicant**	:	Yalçın ERGÜL

	Counsel	:	Att. Haluk PEKŞEN
81.	**Applicant**	:	Mehmet ERKORKMAZ
	Counsel	:	Att. Haluk PEKŞEN
82.	**Applicant**	:	Hüseyin DİLAVER
	Counsel	:	Att. Haluk PEKŞEN
83.	**Applicant**	:	Şenol BÜYÜKÇAKIR
	Counsel	:	Att. Haluk PEKŞEN
84.	**Applicant**	:	Erhan ŞENSOY
85.	**Applicant**	:	Bülent GÜNÇAL
	Counsel	:	Att. Haluk PEKŞEN
86.	**Applicant**	:	Gürkan YILDIZ
	Counsel	:	Att. Haluk PEKŞEN
87.	**Applicant**	:	Ayhan GÜMÜŞ
	Counsel	:	Att. Haluk PEKŞEN
88.	**Applicant**	:	Ahmet ERDEM
	Counsel	:	Att. Haluk PEKŞEN
89.	**Applicant**	:	Kubilay BALOĞLU
	Counsel	:	Att. Haluk PEKŞEN
90.	**Applicant**	:	Atilla ÖZLER
	Counsel	:	Att. Haluk PEKŞEN
91.	**Applicant**	:	Rasim ARSLAN
	Counsel	:	Att. Haluk PEKŞEN
92.	**Applicant**	:	Çetin CAN
	Counsel	:	Att. Haluk PEKŞEN
93.	**Applicant**	:	Turgut ATMAN
	Counsel	:	Att. Haluk PEKŞEN
94.	**Applicant**	:	Cengiz KÖYLÜ
	Counsel	:	Att. Haluk PEKŞEN
95.	**Applicant**	:	Yusuf Volkan YÜCEL
	Counsel	:	Att. Haluk PEKŞEN
96.	**Applicant**	:	Necdet Tunç SÖZEN
	Counsel	:	Att. Haluk PEKŞEN
97.	**Applicant**	:	Osman BAŞIBÜYÜK
	Counsel	:	Att. Haluk PEKŞEN
98.	**Applicant**	:	Cahit Serdar GÖKGÖZ
	Counsel	:	Att. Serhad ZENGİNPEDÜK
99.	**Applicant**	:	Halit Nejat AKGÜNER
	Counsel	:	Att. Refik Ali UÇARCI
100.	**Applicant**	:	Dursun ÇİÇEK
	Counsel	:	Att. İrem ÇİÇEK

101.	**Applicant**	:	Hayri GÜNER
102.	**Applicant**	:	Ahmet Feyyaz ÖĞÜTCÜ
103.	**Applicant**	:	Hüseyin HOŞGİT
104.	**Applicant**	:	Ali Yasin TÜRKER
105.	**Applicant**	:	Levent Kerim UÇA
106.	**Applicant**	:	Bülent OLCAY
107.	**Applicant**	:	Zafer Erdim İNAL
108.	**Applicant**	:	Erdinç ALTINER
109.	**Applicant**	:	Mehmet Cem OKYAY
110.	**Applicant**	:	Mehmet Baybars KÜÇÜKATAY
111.	**Applicant**	:	Mustafa Erhan PAMUK
112.	**Applicant**	:	Ümit ÖZCAN
113.	**Applicant**	:	Engin BAYKAL
114.	**Applicant**	:	Lütfü SANCAR
115.	**Applicant**	:	Nuri ÜSTÜNER
116.	**Applicant**	:	Ahmet KÜÇÜKŞAHİN
117.	**Applicant**	:	Nuri Ali KARABABA
118.	**Applicant**	:	Haldun ERMİN
	Counsel	:	Att. Ali SEZENOĞLU
119.	**Applicant**	:	Derya ÖN
	Counsel	:	Att. Haluk PEKŞEN
120.	**Applicant**	:	Mehmet AYGÜN
	Counsel	:	Att. Mete KUBİLAY
121.	**Applicant**		Aykar TEKİN
122.	**Applicant**	:	Mustafa ÖNSEL
		:	Att. Ziya KARA
	Counsel		
123.	**Applicant**	:	Erdem Caner BENER
	Counsel	:	Att. Abdullah Alp ARSLANKURT
124.	**Applicant**	:	Engin KILIÇ
125.	**Applicant**	:	Refik Levent TEZCAN
126.	**Applicant**	:	Kemalettin YAKAR
127.	**Applicant**	:	Yaşar Barbaros BÜYÜKSAĞNAK
128.	**Applicant**	:	Kıvanç KIRMACI
129.	**Applicant**	:	Mustafa Haluk BAYBAŞ
130.	**Applicant**	:	Levent ÇEHRELİ
131.	**Applicant**	:	Ayhan Türker

			KOÇPINAR
132.	**Applicant**	:	Fahri Can YILDIRIM
133.	**Applicant**	:	Bahadır Mustafa KAYALI
134.	**Applicant**	:	Ertuğrul UÇAR
135.	**Applicant**	:	Mesut Zafer SARI
136.	**Applicant**	:	Ercan İRENÇİN
137.	**Applicant**	:	İhsan BALABANLI
	Counsel	:	Att. Ziya KARA Att. Ramazan BULUT
138.	**Applicant**	:	Hanifi YILDIRIM
	Counsel	:	Att. Ziya KARA
139.	**Applicant**	:	Bekir MEMİŞ
	Counsel	:	Att. Ramazan BULUT
140.	**Applicant**	:	Kahraman DİKMEN
	Counsel	:	Att. Mahir IŞIKAY
141.	**Applicant**	:	Hüseyin TOPUZ
	Counsel	:	Att. Mahir IŞIKAY
142.	**Applicant**	:	Mehmet Cem KIZIL
143.	**Applicant**	:	Taylan ÇAKIR
	Counsel	:	Att. Hasan Adil ATABAY
144.	**Applicant**	:	Hasan ÖZYURT
145.	**Applicant**	:	Murat ÜNLÜ
146.	**Applicant**	:	Hannan ŞAYAN
147.	**Applicant**	:	Alpay ÇAKARCAN
148.	**Applicant**	:	İbrahim Özdem KOÇER
149.	**Applicant**	:	Mehmet Ferhat ÇOLPAN
150.	**Applicant**	:	Aydın SEZENOĞLU
151.	**Applicant**	:	Aziz YILMAZ
	Counsel	:	Att. Mahir IŞIKAY
152.	**Applicant**	:	Rafet OKTAR
153.	**Applicant**	:	Nail İLBEY
	Counsel	:	Att. Mahir IŞIKAY
154.	**Applicant**	:	Ahmet DİKMEN
155.	**Applicant**	:	Ergün BALABAN
156.	**Applicant**	:	Ayhan GEDİK
157.	**Applicant**	:	Bülent TUNÇAY

	Counsel	:	Att. Cengiz ERDOĞAN
158.	**Applicant**	:	Önder ÇELEBİ
159.	**Applicant**	:	Yusuf
	Counsel	:	KELLELİ
			Att. Mahir IŞIKAY
160.	**Applicant**	:	Servet BİLGİN
161.	**Applicant**	:	Ali DEMİR
	Counsel	:	Att. Mahir IŞIKAY
162.	**Applicant**	:	Hakan SARGIN
	Counsel	:	Att. Mahir IŞIKAY
163.	**Applicant**	:	Erdinç ATİK
	Counsel	:	Att. Mahir IŞIKAY
164.	**Applicant**	:	Murat ÖZÇELİK
	Counsel	:	Att. Mahir IŞIKAY
165.	**Applicant**	:	Ümit
	Counsel	:	METİN
			Att. Naim KARAKAYA
166.	**Applicant**	:	Hüseyin
	Counsel	:	ÖZÇOBAN
			Att. Mahir IŞIKAY
167.	**Applicant**	:	Mücahit ERAKYOL
168.	**Applicant**	:	Salim Erkal BEKTAŞ
	Counsel	:	Att. İlkay SEZER
169.	**Applicant**	:	Şükrü SARIIŞIK
	Counsel	:	Att. Osman TOPÇU
170.	**Applicant**	:	Nejat BEK
	Counsel	:	Att. İlkay SEZER
171.	**Applicant**	:	Bilgin BALANLI
	Counsel	:	Att. İlkay SEZER
172.	**Applicant**	:	Meftun HIRACA
		:	Att. Naim KARAKAYA
	Counsel		
173.	**Applicant**	:	Deniz CORA
	Counsel	:	Att. Naim KARAKAYA
174.	**Applicant**	:	Engin ALAN
	Counsel	:	Att. Yakup AKYÜZ
175.	**Applicant**	:	Serdar Okan KIRÇİÇEK
	Counsel	:	Att. İhsan Nuri TEZEL
176.	**Applicant**	:	Taner GÜL
	Counsel	:	Att. Atakay BALA
			Att. Şule EROL
177.	**Applicant**	:	Halil İbrahim FIRTINA

	Counsel	:	Att. Hasan Fehmi DEMİR
			Att. Kazım Yiğit AKALIN
178.	**Applicant**	:	Osman Fevzi GÜNEŞ
		:	Att. İlkay SEZER
	Counsel		
179.	**Applicant**	:	Turgay
	Counsel	:	ERDAĞ
			Att. İhsan Nuri TEZEL
180.	**Applicant**	:	Memiş Yüksel YALÇIN
	Counsel	:	Att. İlkay SEZER
181.	**Applicant**	:	Özden ÖRNEK
	Counsel	:	Att. Turgay SARIAKÇALI
182.	**Applicant**	:	Ayhan TAŞ
	Counsel	:	Att. Hilal DEMİRELLİ
			Att. İlkay SEZER
183.	**Applicant**	:	Mehmet Cenk
	Counsel	:	DALKANAT
			Att. Turgay SARIAKÇALI
184.	**Applicant**	:	Ramazan Kamüran
	Counsel	:	GÖKSEL
			Att. Hüseyin Mitat TOMBAK
185.	**Applicant**	:	Tuncay ÇAKAN
186.	**Applicant**	:	Ali Sadi ÜNSAL
	Counsel	:	Att. Hüseyin Mitat TOMBAK
187.	**Applicant**	:	Behzat BALTA
	Counsel	:	Att. Salim ŞEN
188.	**Applicant**	:	Gürkan KOLDAŞ
		:	Att. Derya ERDOĞAN
	Counsel		
189.	**Applicant**	:	Mehmet Seyfettin
	Counsel	:	ALEVCAN
			Att. İhsan Nuri TEZEL
190.	**Applicant**	:	Kadri Sonay AKPOLAT
191.	**Applicant**	:	Ahmet HACIOĞLU
	Counsel	:	Att. Mustafa KARADENİZ

192.	**Applicant**	:	Mehmet ÖRGEN
	Counsel	:	Att. İhsan Nuri TEZEL
193.	**Applicant**	:	Abdullah GAVREMOĞLU
194.	**Applicant**	:	Ender GÜNGÖR
	Counsel	:	Att. İhsan Nuri TEZEL
195.	**Applicant**	:	Onur ULUOCAK
196.	**Applicant**	:	Özgür Ecevit TAŞCI
197.	**Applicant**	:	Murat SAKA
	Counsel	:	Att. İhsan Nuri TEZEL
198.	**Applicant**	:	Hakan BÜYÜK
	Counsel	:	Att. Celal ÜLGEN
199.	**Applicant**	:	Ahmet Bertan NOGAYLAROĞLU
	Counsel	:	Att. Celal ÜLGEN
200.	**Applicant**	:	Süha TANYERİ
	Counsel	:	Att. Celal ÜLGEN
201.	**Applicant**	:	Cemalettin BOZDAĞ
	Counsel	:	Att. İhsan Nuri TEZEL
202.	**Applicant**	:	Ahmet Zeki ÜÇOK
	Counsel	:	Att. Celal ÜLGEN Att. Serkan GÜNEL
203.	**Applicant**	:	Mehmet Koray ERYAŞA
	Counsel		Att. Murat ERGÜN
204.	**Applicant**	:	Turgay YAMAÇ
	Counsel	:	Att. Murat ERGÜN
205.	**Applicant**	:	Abdullah Can ERENOĞLU
	Counsel	:	Att. Murat ERGÜN
206.	**Applicant**	:	Kadir SAĞDIÇ
	Counsel	:	Att. Murat ERGÜN
207.	**Applicant**	:	Mehmetfatih İLĞAR
	Counsel	:	Att. Murat ERGÜN
208.	**Applicant**	:	Davut İsmet ÇINKI
	Counsel	:	Att. Hasan Fehmi DEMİR
209.	**Applicant**	:	Özer KARABULUT
210.	**Applicant**	:	Nedim Güngör

		:	KURUBAŞ
	Counsel		Att. Haluk PEKŞEN
211.	**Applicant**	:	Mehmet Fikri
	Counsel	:	KARADAĞ Att. Nevzat ÇETİN
212.	**Applicant**	:	Yusuf Ziya TOKER
	Counsel	:	Att. Yahya KOÇ
213.	**Applicant**		Derya GÜNERGİN
214.	**Applicant**	:	Hasan Fehmi CANAN
	Counsel	:	Att. Ahmet KOÇ
215.	**Applicant**	:	Mehmet Kaya VAROL
	Counsel	:	Att. Muzaffer DEĞİRMENCİ
216.	**Applicant**	:	Gürbüz KAYA
	Counsel	:	Att. Ahmet KOÇ
217.	**Applicant**	:	İzzet OCAK
		:	Att. Muammer KÜÇÜK
	Counsel		
218.	**Applicant**	:	Mustafa Korkut
	Counsel	:	ÖZARSLAN Att. Mehmet Tolga AKALIN
219.	**Applicant**	:	Haydar Mücahit ŞİŞLİOĞLU
220.	**Applicant**	:	Yurdaer OLCAN
221.	**Applicant**	:	Halil KALKANLI
222.	**Applicant**	:	Suat AYTIN
	Counsel	:	Att. Muammer KÜÇÜK
223.	**Applicant**	:	Abdülkadir ERYILMAZ
224.	**Applicant**	:	Mehmet YOLERİ
	Counsel	:	Att. Eyyup Sabri GÜRSOY
225.	**Applicant**	:	Fahri Yavuz URAS
226.	**Applicant**	:	Faruk Oktay MEMİOĞLU
227.	**Applicant**	:	Ender KAHYA
228.	**Applicant**	:	Gürsel ÇAYPINAR
	Counsel	:	Att. Alp ÇAKMUT
229.	**Applicant**	:	Mehmet ULUTAŞ
	Counsel	:	Att. Durgut CAN
230.	**Applicant**	:	Mustafa ÇALIŞ

I. SUBJECT OF APPLICATON

1. The applicants alleged that the right to a fair trial which is enshrined in Article 36 of the Constitution and the right to liberty and security which is enshrined in Article 19 of the Constitution had been violated due to the trial conducted in the 10th Assize Court of Istanbul because of attempting the crime of the Forcible Overthrow of the Council of Ministers of the Republic of Turkey or Banning Them From the Execution of Duty as regulated in Article 147 of the Turkish Criminal Code No: 765 and due to the criminal sentence delivered at the end of the trial.

II. APPLICATION PROCESS

2. As a result of the preliminary examination of the application petitions and annexes thereof conducted in terms of administrative aspects, it was found out that there was no deficiency that would prevent referral thereof to the Commissions.

3. It was decided by the Commissions that the examination of admissibility be carried out by the Sections and that the files be sent to the Sections. As regards to the application no. 2013/7800, the First Section decided in the session held on 14/1/2014 that the examination of admissibility and merits be carried out together. As regards the application no. 2013/8282, the Second Section decided in the session held on 7/1/2014 that the examination of admissibility and merits be carried out together.

4. The facts and cases, which are the subject matter of the applications no. 2013/7800 and 2013/8282, were notified to the Ministry of Justice and the Ministry of Justice submitted its opinions pertaining to the application to the Constitutional Court on 10/3/2014. The opinions submitted by the Ministry of Justice to the Constitutional Court were notified to the applicants and the applicants submitted their counter statements against the opinion of the Ministry of Justice to the Constitutional Court.

5. As the Sections considered it necessary that the applicants be examined without waiting for the responses from the Ministry and that they be finalized by the General Assembly due to the quality of the application by deeming it necessary that the decision be immediately delivered on the applications in accordance with paragraph (2) of Article 71 of the Internal Regulation of the Constitutional Court, they decided that the applications be referred to the General Assembly for

deliberations in accordance with paragraph (3) of Article 28 of the Internal Regulation of the Constitutional Court.

6. As the applications, whose numbers are given below, have the same quality in terms of the subject, it was decided that they be joined with the application no. 2013/7800 and the examination be carried out based on this file:

2013/7742, 2013/7743, 2013/7796, 2013/7801, 2013/7814, 2013/7818, 2013/7867, 2013/7878, 2013/7879, 2013/7880, 2013/7881, 2013/7882, 2013/7883, 2013/7884, 2013/7885, 2013/7886, 2013/7891, 2013/7892, 2013/7897, 2013/7914, 2013/7955, 2013/7956, 2013/7957, 2013/7972, 2013/7973, 2013/7974, 2013/7975, 2013/7976, 2013/7978, 2013/7980, 2013/7981, 2013/7982, 2013/7993, 2013/7995, 2013/7997, 2013/7999, 2013/8000, 2013/8001, 2013/8002, 2013/8003, 2013/8004, 2013/8005, 2013/8008, 2013/8009, 2013/8012, 2013/8014, 2013/8015, 2013/8016, 2013/8017, 2013/8018, 2013/8019, 2013/8020, 2013/8021, 2013/8022, 2013/8023, 2013/8024, 2013/8025, 2013/8026, 2013/8027, 2013/8050, 2013/8051, 2013/8052, 2013/8066, 2013/8067, 2013/8072, 2013/8076, 2013/8077, 2013/8078, 2013/8079, 2013/8080, 2013/8081, 2013/8082, 2013/8083, 2013/8084, 2013/8085, 2013/8086, 2013/8087, 2013/8088, 2013/8089, 2013/8092, 2013/8093, 2013/8094, 2013/8095, 2013/8096, 2013/8097, 2013/8099, 2013/8101, 2013/8103, 2013/8197, 2013/8198, 2013/8205, 2013/8206, 2013/8208, 2013/8209, 2013/8205, 2013/8206, 2013/8208, 2013/8209, 2013/8210, 2013/8211, 2013/8212, 2013/8213, 2013/8214, 2013/8215, 2013/8216, 2013/8217, 2013/8218, 2013/8219, 2013/8220, 2013/8221, 2013/8224, 2013/8225, 2013/8226, 2013/8227, 2013/8228, 2013/8229, 2013/8230, 2013/8231, 2013/8232, 2013/8233, 2013/8234, 2013/8235, 2013/8236, 2013/8237, 2013/8238, 2013/8239, 2013/8240, 2013/8241, 2013/8242, 2013/8243, 2013/8244, 2013/8245, 2013/8246, 2013/8247, 2013/8248, 2013/8249, 2013/8250, 2013/8251, 2013/8252, 2013/8253, 2013/8254, 2013/8257, 2013/8258, 2013/8259, 2013/8260, 2013/8261, 2013/8262, 2013/8263, 2013/8264, 2013/8265, 2013/8266, 2013/8267, 2013/8268, 2013/8269, 2013/8270, 2013/8271, 2013/8272, 2013/8273, 2013/8274, 2013/8275, 2013/8276, 2013/8277, 2013/8278, 2013/8279, 2013/8280, 2013/8281, 2013/8282, 2013/8283, 2013/8284, 2013/8285, 2013/8286, 2013/8287, 2013/8288, 2013/8289, 2013/8290, 2013/8291, 2013/8292, 2013/8293, 2013/8294, 2013/8295, 2013/8296, 2013/8297, 2013/8298, 2013/8299, 2013/8300, 2013/8301, 2013/8302, 2013/8303, 2013/8304, 2013/8305, 2013/8306, 2013/8307, 2013/8308, 2013/8309, 2013/8310, 2013/8311, 2013/8312, 2013/8313, 2013/8314, 2013/8315, 2013/8317, 2013/8327, 2013/8328, 2013/8340, 2013/8352, 2013/8375, 2013/8376, 2013/8377, 2013/8383, 2013/8401, 2013/8436, 2013/8439, 2013/8440, 2013/8441, 2013/8453, 2013/8468, 2013/8993, 2013/9109, 2014/188, 2014/263, 2014/1223, 2014/1335, 2014/2723, 2014/5035.

III. FACTS AND CASES

A. Facts

7. As expressed in the application forms and the annexes thereof, the facts are summarized as follows:

8. After the publication of the news article titled "*Fatih Mosque Would Have Been Bombed - Detention for Two Hundred Thousand People"* in a daily newspaper, which is distributed at national level, on 20-21 January 2010, 3 DVDs and 1 CD that form the basis of the news were delivered by the journalist, who reported the news, to the Chief Public Prosecutor's Office of Istanbul on 21/1/2010 and 19 CDs, 10 voice tapes and 2229 pages of document on 29/1/2010.

9. It was evaluated that there were operation and terror plans, lists prepared by the 1st Army Command, the 2nd, 3rd, 5th and 15th Army Corps, Navy, War Colleges, Bursa and Istanbul Gendarmerie Regional Commands and some correspondence as regards to the planning seminar of 2013 in the CD no: 11 seized by the Chief Public Prosecutor's Office of Istanbul within the investigation, the information about some appointments made by the Government of the Justice and Development Party in the CD no: 16, the operation and terror plans, which are present in the CD no: 11, in the CD no: 17.

10. Through the bill of indictment dated 2/7/2010 and no: 2010/420 of the Chief Public Prosecutor's Office of Istanbul, the public case was filed on 196 accused in line with articles 147, 61/1, 31, 33, 40 of the Turkish Criminal Code. Following the acceptance of the bill of indictment dated 23/7/2010 and the scheduling order by the 10th Assize Court of Istanbul, the trial commenced with the hearing dated 16/12/2010.

11. During the trial process, the cases filed on 28 accused through the bill of indictment dated 16/6/2011 and no: 2011/288 of the Chief Public Prosecutor's Office of Istanbul and about 143 accused through the bill of indictment dated 11/11/2011 and no: 2011/554 thereof due to the crime on the attempt of the forcible overthrow of the Council of Ministers of the Republic of Turkey or banning them from the execution of duty were joined in the file with the Merits No: 2010/283 of the 10th Assize Court of Istanbul. The trial was conducted on 367 accused within the case, which was filed with three separate bills of indictment and joined.

12. Through the decision dated 21/9/2012 and no: M.2010/283, D.2012/245 of the 10th Assize Court of Istanbul, the decision of acquittal was issued on 36 accused that were tried, the verdict of conviction was delivered on 325 accused including the applicants due to the crime on the attempt of the forcible overthrow of the Council of Ministers of the Republic of Turkey or banning them from the execution of duty in accordance with Articles 147 and 61 of the Turkish Criminal Code No: 765.

13. As a result of the appeal examination, the criminal sentence on 237 accused including the applicants was corrected and approved through the writ dated 9/10/2013 and no: M.2013/9110, D.2013/12351 of the 9th Criminal Chamber of the Supreme Court. Moreover, the decision of acquittal on 36 accused was approved, the criminal sentence on 88 accused was reversed on the grounds that there was no ground for imposing a penalty or a decision of acquittal needed to be issued.

B. Relevant Law

14. Article 147 of the Turkish Criminal Code dated 1/3/1926 and no. 765, which was in force on the date of the crime taken as the basis for the conviction, is as follows:

> *"The aggravated heavy life imprisonment shall be imposed on those who forcibly overthrow the Council of Ministers of the Republic of Turkey or forcibly ban them from executing the duty and those who encourage them."*

15. Article 171 of the Turkish Criminal Code no. 765 is as follows:

> *If several people establish a conspiracy in order to commit one or some of the misdemeanors stipulated in articles 125, 131, 133, 146, 147, 149 and 156 through private means, each of them shall be imposed with the following punishments.*
>
> *1 - If the conspiracy stipulated in the foregoing paragraph is related to the committal of the misdemeanors stipulated in articles 125, 131, 133 and 156, heavy imprisonment from eight years to fifteen years shall be imposed.*
>
> *2 - If this conspiracy is related to the committal of the misdemeanors shown in articles 146 and 147, heavy imprisonment from four years to twelve years shall be imposed and if it is related to the committal of the crimes shown in article 149, heavy imprisonment from three years to seven years be imposed.*
>
> *No punishment shall be imposed for those who withdraw from this conspiracy before the commencement of the committal of the crime and the criminal prosecution."*

IV. EXAMINATION AND JUSTIFICATION

16. The application file was examined during the session of the court on 18/6/2014 and the following were ordered and adjudged:

A. Claims of the Applicants

17. The applicants, by claiming that:

i. they were kept under detention during the investigation and prosecution, their requests for the judicial control were dismissed with cliché justifications and in a systematic way and for this reason, Article 19 of the Constitution was violated,

ii. The expert examination conducted over the digital evidence was not sufficient and the requests for the repetition thereof were dismissed,

iii. They were convicted in spite of the hesitation on the authenticity of the revealed evidence due to the contradictions between the expert reports,

iv. Their requests for the invitation of the Chief of the General Staff and the Commander of the Land Forces, as it was accepted that the crime, which was alleged to them, was prevented by these persons, who were on duty on the aforementioned date, for testifying were dismissed,,

v. The phase of the presentation and discussion of the evidence was not duly conducted,

vi. The judgment was delivered in the absence of the counsel of the accused and the accused were not granted a sufficient period of time in order to make statements against the opinion of the Public Prosecutor on the merits,

vii. They were not able to make use of the assistance of the counsel by establishing contact with the attorney without being heard by the others because of the seating order applied in the hearing room and the voice recording made during the hearing,

viii. They were convicted based on unrealistic evidence, which was obtained in contrary to the law,

ix. The principle of impartiality of the court was violated due to the fact that the judges, who had issued the warrant of arrest during the investigation phase, took part in the trial,

x. The Court of First Instance was not competent and did not have venue,

xi. Distance of the hearing room due to its location, the difficulty in the access to the hearing room, the security measures taken in the entrance violated the publicity of the trial,

xii. They were convicted based on collective justifications without sufficient concrete evidence about them, they did not participate in the planning seminar, where the coup plans were submitted, or they had preventive reasons such as being abroad on the related dates, the causal relation of the digital data with them could not be proven,

xiii. The justification of the decision of the approval through correction issued by the Supreme Court as a result of the appeal examination of the decision of the court of instance was not sufficient,

xiv. The decision of no ground for the prosecution was issued about some suspects, who are in the same state with them, the decision of acquittal was issued about some suspects, they did not participate in the aforementioned planning seminar, but the criminal sentences of some accused, who participated in the aforementioned planning seminar, who accepted the revealed voice recordings, whose names were included in the metadata paths of the digital data that is the

subject matter of the case and who were convicted as their actions were deemed to be proven, were reversed by the Supreme Court without any justification,

xv. Their actions deemed to be proven were misqualified, the preparation actions were considered as execution actions and the principal sentence was wrongly determined,

xvi. The criminal sentence was delivered based on the digital evidence although the expert reports received by the applicants and the statements of the experts, who were heard upon the request of the applicants, revealed that this evidence, which formed the basis of the criminal sentence, was open to manipulation,

alleged that the principle of equality enshrined in Article 10 of the Constitution, the right to a fair trial enshrined in Article 36 of the Constitution and the presumption of innocence enshrined in Article 38 of the Constitution were violated.

B. Evaluation

1. In Terms of Admissibility

a. Complaints About Detention

18. They alleged that they had been kept under detention during the investigation and prosecution, their requests for the judicial control had been dismissed with cliché justifications and for this reason, Article 19 of the Constitution was violated,

19. Paragraph (8) of provisional article 1 of the Law no. 6216 is as follows:

> *"The court shall examine the individual applications to be lodged against the last actions and decisions that were finalized after 23/9/2012."*

20. In accordance with this provision, the Constitutional Court shall examine the individual applications to be lodged against the last actions and decisions that were finalized after 23/9/2012. Therefore, the authority of the court in terms of *ratione temporis* shall only be limited to the individual applications that are lodged against the last actions and decisions that were finalized after this date. In view of this regulation pertaining to the public order, it is not possible to extend the coverage of the authority in a way that will also cover the lastactions and decisions that were finalized before the aforementioned date (App. No: 2012/832, § 14, 12/2/2013).

21. In the individual applications that are lodged with the claim that the ongoing detention is contrary to the law, the main aim of the complaints is to determine that the detention is contrary to the law or that there is no reason or reasons that justify the continuation thereof. In the event that this determination is made, accordingly, the presence of the legal grounds shown as the justification for

the continuation of the state of detention will come to an end and thus, it will pave the way for the person to be released. In an application lodged for this purpose, it will be taken into account whether an examination has been conducted over the objection remedy in accordance with the principles such as the adversarial trial and/or the equality of arms. Therefore, it is possible to lodge the individual applications to be lodged due to the aforementioned reasons and in order to issue a decision that will ensure the release as long as the state of detention continues on the condition that the ordinary legal remedies are exhausted (App. No: 2012/726, 2/7/2013, § 30).

22. However, in order for the application to be considered as admissible, it is also necessary that the last actions or decisions that form the basis for the claim of violation be finalized before 23/9/2012. It is possible to make this determination as regards to the jurisdiction of the court at every phase of the examination of the individual application.

23. In the concrete incident, the detention of the applicants came to an end on 21/9/2012, on which the criminal sentence was announced. According to this, it is obvious that the complaints as regards to the detention as a whole are related to the decisions that were finalized within the period before a verdict was issued about the applicants.

24. The detention of the applicants came to an end as the decision on the merits of the case was announced and the crime, which was alleged to the applicants, was deemed to be proven and it was adjudged that they be punished. Therefore, the fact that the objection examination as regards to the automatic detention was carried out before 23/9/2012 does not have any effect on the authority of the Constitutional Court in terms of *ratione temporis* (App. No: 2012/239, 2/7/2013, § 35).

25. Due to the reasons explained, as it is understood that the decisions that are subject to the complaints of the applicants as regards to the detention were finalized before the date on which the authority of the Constitutional Court commenced, it should be decided that this part of the applications is inadmissible due to *"the rejection of authority in terms of ratione temporis"*.

b. Requests for Hearing of Witness and Complaints About Evaluation of Digital Evidence

26. It should be decided that this part of the application, which is not openly devoid of grounds and where no other reason that will require making a decision ofinadmissibility is found, is admissible.

2. In Terms of Merits

a. *Complaints About Evaluation of Digital Evidence*

27. The complaints of the applicants under this heading are summarized as follows:

i. It was alleged that, although the flash memory seized in Eskişehir, CDs and hard disks seized in Gölcük Navy Command, which formed the basis for the criminal sentence, were claimed to have been created in 2003, through the expert reports, the fact that the data included in these storage means was written in the software program, Microsoft Office 2007, a software program of 2007, proved the falsehood of the documents,

ii. That, although the expert reports received by the defense party from various universities and independent institutions within the country and in other countries exposed the manipulations in the digital data, which formed the basis for the criminal sentence, and revealed nearly two thousand contradictions over the digital files, these reports were not taken into account by the Court of First Instance and the Supreme Court and they relied on the TÜBİTAK report indicating that the digital documents were as original as when they were created for the first time,

iii. That it is a violation of the right to a fair trial that the unsigned digital data included in the CDs no. 11, 16 and 17 delivered by M.B., who is a journalist, to the prosecutor's office be accepted as evidence obtained in accordance with the law in terms of the persons and accused, whose names are written in the data, in spite of the reality as to the fact that the user file paths, creation dates and last saved dates of digital data can be easily changed or manipulated or edited to be saved on a former date later on as expressed in the form of a joint opinion in the reports arranged by the officials of TÜBİTAK, which were accepted and stated to be considered by the court in the justified verdict, and the expert reports submitted to the court,

iv. That it is the limitation of the right of defense that the requests for having a comprehensive expert examination made as regards all digital materials presented as the evidence be dismissed on the grounds that it would not make any contribution to the case.

28. Paragraph one of Article 36 with the side heading *"Freedom to claim rights"* of the Constitution is as follows:

"Everyone has the right to make claims and defend themselves either as plaintiff or defendant and the right to a fair trial before judicial bodies through the use of legitimate ways and means."

29. Paragraph (1) of article 6 titled *"Right to a fair trial"* of the ECHR is as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.

30. In order to protect the rights in the Constitution in an effective way, the courts that try the case shall be *"tasked with examining the bases, claims and evidence of the parties in an effective way"* according to Article 36 of the Constitution (for a judgment of the ECtHR in the same vein, see *Dulaurans v. France,* App. No: 34553/97, 21/3/2000, § 33). According to the ECtHR case law, if the approach of a court towards the case results in the fact that they avoid responding to the claims of the applicants and examining the main complaints of the applicants, Article 6 of the Contract is violated in terms of the due examination of the case (see *Kuznetsov v. Russia,* App. No: 184/02, 11/4/2007, §§ 84-85).

31. On the other hand, the failure of the courts to respond to some important claims of the applicants is associated with both the right of examination of the claims of the person and the court's obligation to justify the decision, which is one of the important requirements of the right to a fair trial. For as much as, the right to

a reasoned decision, which is one of the important elements of the right to a fair trial ensuring protection as regards the procedure in a trial, aims to ensure and control that the persons are fairly tried.

32. As a matter of fact, the Constitutional Court, in its previous decisions, stated that it was necessary to consider Article 141 of the Constitution, which indicates that all types of decisions of all courts be written as reasoned, in the determination of the scope about the right to a fair trial (see App. No: 2013/3351, 18/9/2013, § 49).

33. The Courts of Instance have broad discretionary power as regards to the structure and content of the decisions. The acceptance and evaluation of the evidence presented by the parties is especially the duty of the courts of instance (see *Van Mechelen and Others v. the Netherlands*, App. No: 21363/93, 21364/93, 21427/93 and 22056/93, 23/4/1997, § 50). For this reason, unless it is clearly arbitrary, deciding on whether a certain type of evidence is admissible, on the form of evaluation or on whether the applicant is indeed guilty or not is not the duty of the Constitutional Court (for similar considerations, see *Garcia Ruiz v. Spain, App.* No. 30544/96, 21/1/1996, § 28).

34. However, the courts are obliged to *"indicate the basis, on which they predicate their decisions, in a sufficiently clear manner"*. In addition to the fact that this obligation is necessary for the parties to exercise their right of appeal (see *Hadjianastassiou v. Greece,* App. No: 12945/87, 16/12/1992, § 33), it is also necessary for the parties to know whether the claims they have asserted during the trial are examined in accordance with the rules and also for the society to be informed on the reasons for the decisions of the judiciary issued on its behalf in a democratic society.

35. This obligation of the courts may not be construed as responding to all types of claims and defenses asserted during the trial in a detailed way in the justification of the decision (see App. No: 2013/1213, 4/12/2013, § 26). For this reason, which elements need to be exactly included in a decision depends on the quality and conditions of the case. Nevertheless, in the event that the claims and defenses, which are asserted in a clear and concrete way during the trial, are effective on the result of the case, in other words, they are found to have the quality of changing the result of the case, then it is necessary that these matters which are directly related to the case be responded to by the courts with a reasonable justification.

36. Moreover, it is necessary to provide the guarantees as regards human rights not in an abstract and theoretical way, but in practice and in an effective way. According to this, while the fact that the courts formally respond to the asserted claims and defenses is not sufficient, it is also necessary that the responses given to the claims and defenses are not without a basis, logical and consistent. In other words, the justifications indicated by the courts must be reasonable when the conditions of the case are considered.

37. The reasonable justification must have the quality of putting forth how the facts and cases, which are the subject matter of the case, are characterized by the court, on which reasons and legal regulations the delivered judgment is predicated, of showing the relation between the facts and cases and the judgment (see App. No: 2013/1235, 13/6/2013, § 24). While the justification is the obligation of explaining the facts, phenomena and arguments that are effective on the result of the case, it is not compulsory that this type of justification be certainly detailed. However, the justification needs to have a measure and care that will provide information with reasonable bases as regards the reason for preferring one of the prosecution and defense over the other and, as for the evidence produced by the parties of the case, the acceptance of those, which are taken as the basis for the decision, and rejection of the others by the courts.

38. Yet, in order for the parties of a case to understand and evaluate by which reason they are found to be rightful or wrongful by the legal order, it is obligatory, in terms of *"the right to a reasoned decision"*, that a justification section, which is duly formed, which shows the content and scope of the judgment and what the court takes or does not take into account while delivering this judgment, whose expressions are meticulously selected and which is clear in a way that will not leave any doubt, and the paragraphs of provisions compliant therewith be included.

39. The fact that the court fails to give a *"relevant and sufficient response"* about a matter, which it accepts to be effective on the result of the case, or the claims regarding the procedure and principles that require giving a response are left unresponded with a contrary approach may result in a violation of right.

40. The applicants, in the concrete case, alleged that the the digital data included in the CDs no. 11, 16 and 17 delivered by a journalist to the Public Prosecutor's Office and the hard disk no. 5 found in Gölcük Navy Command and the flash memory found in the house of an accused in Eskişehir had been fictitiously created, that many manipulations had been made over this data, that the manipulations over the digital data, which formed the main basis of the criminal sentence, had been revealed and nearly two thousand contradictions had been exposed in the expert reports received by the defense party from various universities and independent institutions within the country and in other countries, that, in spite of this, the Court of First Instance and the Supreme Court had not taken these reports into account and they had not explained the reasons of not having them taken into account with a reasonable justification.

41. It is necessary to examine the expert reports and expert opinions presented by the applicants and to give a reasonable response in order to determine whether the justifications of the Court, which are summarized below, against the defenses of the applicants as to the fact that they were accused based on the digital documents, which were not mainly obtained from the accused, were not proven to have been prepared in a computer present in Turkish Armed Forces, had contradictions in terms of time, place and content and were fictitiously created in

essence due to this reason, are reasonable or, in other words, sufficiently clear and sufficient or not (see *reasoned decision*, p. 874-904).

42. In summary, the Court of First Instance only took as the basis for the judgment the expert report prepared by TÜBİTAK experts during the prosecution phase of the Public prosecutor's office and three reports for the determination of the evidence obtained during the search and seizure measures among the expert reports prepared as regards the obtained digital documents, took into account none of the expert reports received by the applicants and the opinions of the experts heard in the trial. The Court stated that the essence of all reports and opinions presented by the applicants was as to the fact that changes were made over the digital files; that it had already accepted this act of change, that these expert reports and expert opinions would not be taken as the basis for the judgment because the reports and the expert opinions *"made detailed determinations just as the defense counsel as to the fact that the digital data could not be considered to be evidence and tried to refute this evidence through all their efforts"* in the parts other than this.

43. The Court of First Instance based its reason for taking the digital data as the basis for the judgment in spite of the reports and opinions presented by the applicants on the following matters (see *justified decision*, p.1036-1044)

The Court

made the following explanations.

a. The digital evidence obtained from three separate places had contents that substantiated each other;

b. Even if it was correct that there were contradictions in terms of time and the informations as regards the incidents on the dates after 2003, the documents created after 2003 were just related to the fulfillment of the instructions as to the fact that the information included in the Sledgehammer Operation Plan, Action Plans and voice recordings would be updated and the plans, information and lists were updated after 2003;

c. The misspellings or the spelling errors may exist in every place, where the human element is present, it will not be expected that the correspondence will be orderly and regular and the military correspondence principles will be valid within an illegal structure against the claim that the rules of correspondence were not complied with in the Sledgehammer Plan, and the contrarieties with the military correspondence principles were existing in the documents, for this reason, the Sledgehammer Operation Plan was false;

d. The presence of incompliance in the data paths, author information of the digital documents possessed by the junta structure within the Sledgehammer Operation Plan would not by itself eliminate the quality of the digital data of being the evidence, the accused envisaged many issues and organized legislative work in this sense, prepared error code tables and possibility plans, there is a possibility that many contradictions were personally and willingly made by the accused in the digital data both at the phase of creation of the documents by the accused and during the activities for updating the accused and the junta structures for use in the event that they were arrested in order to form the basis of their current defenses;

e. While it was proven that the CDs, which formed the merits of the case, remained in the planning room until 2007-2008 and removed therefrom in some way later on,

the planning room was a place which was accessible by everyone and whose control was poor;

f. While some of the digital documents were written in 2007 Microsoft Office software, after the data was prepared by using the previous versions of Microsoft Office, it is possible that the computer could open the old-dated data by transforming it just as it was written with the new version on the opening date; for this reason, when a word document, which was concretely written in 2003, was opened in a computer, in which the new version was installed, in 2007, this document written in 2003 could appear just as it was prepared and written in 2007;

g. Even if it was claimed that the reconnaissance and planning sketches, which were claimed to be arranged in 2003, were drawn after these names were officially given to the streets as some of the street names in the sketches were officially given after 2007, the names of these streets had been used in public with their names before the change for 40-50 years as could be seen in the open sources;

h. Even if it was alleged that the presence of the name of a ship, which was actually added into the fleet of the Turkish Armed Forces in 2005-2006, in a CD prepared in 2003 had indicated the falsehood of the CD, the name of a ship could be given after the finalization of a shipbuilding and purchase contract;

ı. The mistakes and contradictions, which the accused willingly or unwillingly made in a coup activity prepared by them in one way or another would not affect the certainty of the attempted coup crime given the entire file.

44. It is necessary to understand the essence of the reports and opinions presented by the applicants so as to determine whether the Court of First Instance fulfilled its obligation to evaluate the views asserted in the reports and opinions in a sufficiently clear manner in its justification.

45. In the reports and opinions presented by both the prosecution and the defense, it was stated that it was possible to easily create the documents in the CDs no. 11, 16 and 17, the documents included in the hard disk no. 5 and the flash memory, which formed the basis of the criminal sentence, or to easily make manipulations over this type of data, that it could not be said that this digital data certainly represented the reality. As a matter of fact, the Court of First Instance stated that it did not base its decision only on the digital data for this reason, that it decided on the conviction of the applicants together with other evidence.

46. In the expert reports presented to the Court of First Instance, it is seen that the CD no. 17 was created on 04/03/2003 at 23:52:02, the CD no. 11 was created on 05/03/2003 at 23:50:42 and the CD no. 16 was created on 14/10/2003 at 12:14:34. In the same reports, while the creation dates and the last saved dates of the files included in the CDs belonged to the dates before 04/03/2003, 05/03/2003 and 14/10/2003, on which the CDs were burned, it was determined that many documents were indeed created after these dates, the software programs that were released after 2003 were used or the information pertaining to the years after 2003 was present in the contents of the documents. Upon these determinations, the experts expressed the opinion that the aforementioned documents were burned in

the CDs at once on a computer, whose system clock was not up-to-date. The Court of First Instance accepted that the documents, which were created after 2003, showed that the plans, information and lists were updated. However, the Court did not give an answer about how the documents, which it accepted as "*updated*" after 2003, showed the dates before the creation dates of the CDs.

47. In the expert report, which was prepared by the experts of the Police Department assigned by the Chief Public Prosecutor's Office of Istanbul and which the Court of First Instance took as the basis for its decision (*reasoned decision,* p.887); it was stated that the creation date and time of the CD was "05/03/2003, 23:50:42", a total of 287 files were present within 68 folders in the CD and all the files were created between "08.04.1996 16:39:44" and "04.03.2003 13:01", from this point of view, the creation dates of all the files were before the creation date of the CD and the file with the latest modified date was the MS Word file modified on "04.03.2003, 22:07" and called "EK-M LAHİKA-İ BİRLEŞTİRİLMİŞ LİSTE.doc", the last modified date of this file was also before the creation date of the CD.

48. The Court put forth the possibility that these contradictions were personally and deliberately created by the accused against the possibility of being tried later on as the justification for its decision and also, stated that such documents were not the documents on which the criminal sentence was based, were not many in number and did not have the quality of affecting the result of the decision.

49. In spite of this justification of the Court, in the report dated 28/06/2010, which was prepared by the panel of experts assigned by the Military Prosecutor's Office of the 1st Army Command and which the Court did not take into account (*reasoned decision,* p.888), it was shown that the excerpts from the documents, presentations and speech texts, which were created on the dates after 02/12/2002 seen as the last saved date of the document called "*BALYOZ Güvenlik Harekat Planı*", one of the essential documents, and which were shown in the annex of the report, were included in the Document Text, the name of a Non-Governmental Organization established in 2006 was used in the document text. It was stated that the document called "*milli mutabakat hükümeti programı*", which is another important document, contained the excerpts from 25 paragraphs of the Closing Speech text of an International Congress of National Economy Model delivered by the Chairman of the Independent Turkey Party after 03/03/2003, which was seen as the last saved date and this situation showed that the document was created after 2005.

50. In the expert opinion dated 28/03/2011 received from the instructors Prof. Dr. A. Coşkun Sönmez and Dr. Ö. Özgür Bozkurt from the Faculty of Computer Engineering of Yıldız Technical University, it was shown that a total of 80 files in the CDs no. 11, 16 and 17 were prepared with the software programs released in the years after the date of preparation of the CDs or contained features, which were not available on the dates, on which the CDs were prepared.

51. Moreover, in the reports received from the firm called Arsenal Consulting (*reasoned decision*, p.896 and onwards), it was found out that there were contradictions with the dates and times of at least 76 documents included in the CDs. According to Arsenal, it is not possible that the documents, which seem to be saved into the CD in 2003 after the last saves were made, contain references to the XML schemata and Calibri font, which were not available before Microsoft Office 2007 software program, and the creation date for the CDs no. 11 and 17 can be in the middle of 2006 at the earliest. Arsenal stated that (at least) 120 files and folders, whose dates were set back, were copied into the Samsung brand hard disk no. 5 obtained from Gölcük. One of the date and time inconsistencies that Arsenal has determined in the DATA MFT is the fact that 120 files and folders, which were last saved into the Samsung Hard Disk, seem to have been created on 8 April 2004. According to Arsenal, this matter is not possible as the Samsung hard disk was in use until 28 July 2009. Moreover, Arsenal concluded that there were contradictions with the dates and times of at least 65 documents included in the CD no. 1 obtained from Gölcük. According to Arsenal, it is not possible that the documents, which seem to be saved into the CD in 2003 after the last saves were made, contain references to ClearType fonts and the XML schemata, which were not available before Microsoft Office 2007 software program. Gölcük CD no. 1 may have been created in the middle of 2006 at the earliest.

52. The date and time contradictions, which are similar to the aforementioned one, are also repeated in the reports and opinions of the Expert Tevfik Koray Peksayar and the Expert Türker Gülüm (*reasoned decision*, p.898). The Court took none of these reports and opinions as the basis for the judgment.

53. The Court of First Instance summarized the presence of the documents from the subsequent years in the CDs created in 2003 as follows:

> *"It is understood that the documents included in the existing digital means were created before the 1st Army Planning Seminar dated 5-7 March 2003, the documents were conveyed to the related units in written form with original signatures, one of these documents, which was signed by the accused Yüksel Gürcan, was captured, the updates were made over the documents on the subsequent dates, the creation dates of some documents were changed and in this way, the possibility of defense was tried to be prepared by putting forward the existing contradictions against the possibility that the documents be captured, on the other hand, the junta structures that continued to exist after 2003 kept them ready for use." (reasoned decision,* p.1044*)*

54. The Court of First Instance accepts the contradictions in the digital data and the fact that some documents may have been created after the saved date of the CDs. However, the Court does not exclude the possibility that the documents, which had the contradictions with the time and content, may have been partly or wholly updated in order to stage a coup later on while the data was possessed by the accused and the non-party persons for a long time. The Court, which accepted that some documents may have been created or updated after the creation date of the CDs, explained the time contradictions, which are present as regards to the fact that these documents seem to have been created on the dates before the creation

date of the CDs, with the possibility that such contradictions may have been deliberately made by the accused.

55. As the aforementioned CDs form the basis of the criminal sentence, even if it was accepted that they were created in a computer, whose system clock was not up-to-date, on a date after 2003 and possibly after 2007, how some documents, which were possessed by the accused or some non-party persons until the creation date of the CDs and updated according to the acknowledgment of the Court, were created before the creation date of the CDs needs to be explained by the Court in a manner which will not leave any doubt and in a convincing way.

56. Another important claim asserted by the applicants against the assumption of update of the Court of First Instance is that it is not seen that the update was made in the metadata information of the documents, which are the subject matter of the case. According to the expert reports and opinions presented to the Court of First Instance (for example, the opinion of Prof. Dr. Ahmet Coşkun Sönmez), it is natural that a document, which was written in 2003, be opened with a software program developed in 2007. However, it was claimed that this matter was certainly saved in the metadata information of the document, but this was not seen in the documents, which are the subject matter of the case. In other words, even if the applicants asserted, in the courts of instance, that a document "*which was created in 2003 and opened with a software program of 2007*" and "*a document created in 2007*" were different, when a document created in 2003 was opened with a software program of 2007, the original version of this document would not transform into a version of 2007 and presented them with the expert reports and expert opinions, the courts of instance did not make any explanation about these reports and opinions.

57. On the other hand, the expert report of the firm called American Forensic Laboratory and the expert opinion of Dr. Jale Bafra, one of the experts from Istanbul Institution of Forensic Medicine, which indicate that the handwritings "*Or.K.na*" and "*K.Özel*" that are written on the CDs no. 11 and 17 out of the CDs which form the basis of the case and which create an impression of being the handwriting of the accused Süha Tanyeri were not the handwritings of a human, but written with a typewriter, were not mentioned either. Although the aforementioned report and opinion were discussed in the hearing dated 2/5/2011 and it was claimed that the writings on the CDs were copied from the handwriting of Süha Tanyeri that he used during the 1st Army Planning Seminar, which is the subject matter of the case, no explanation was made about this matter by the Court of First Instance and the Supreme Court.

58. The courts shall be obliged to state the bases that result in passing of the judgment in a sufficiently clear manner in order to ensure impartiality and to prevent arbitrariness, the avoidance of review and concealment. The freedom of the courts not to consider every claim and request submitted to them during the trial may not be construed in a way that will eliminate their duty to touch upon the

bases, which result in the passing of the judgment, in a manner that is minimally clear.

59. In terms of the individual applications, the quality of the justifications of the courts of instance may only be reviewed in cases where it creates an apparent arbitrariness or error of discretion or a justification including reasonable and convincing explanations is not shown, an "*appropriate causal relation*" is not established between the alleged action and the judgment. Whether the decisions of the court of instance are explained with the justification with a measure and quality that will be sufficient to meet the requirement of justice or not falls under the scope of the review to be carried out by the Constitutional Court in the individual applications lodged with the claim of the violation of the right to a fair trial.

60. In the concrete application, claims pertaining to the reliability of the digital documents, which were included in the CDs no. 11, 16 and 17 delivered by a journalist to the Public Prosecutor's Office and the hard disk no. 5 found in Gölcük Navy Command and the flash memory found in the house of an accused in Eskişehir, which the Court of First Instance took as the basis for the judgment and which were accepted to have proven that the applicants had attempted to commit the crime of the Forcible Overthrow of the Council of Ministers of the Republic of Turkey or Banning Them From the Execution of Duty, were asserted and defenses were presented. The Court of First Instance accepted the existence of these contradictions, based its judgment on the possibility that some of the time contradictions may have occurred due to the fact that the documents, which are the subject matter of the case, were updated by the accused and the possibility that some of them may have been personally and deliberately created by the accused against the possibility of being tried later on and stated that such documents were not the documents, on which the criminal sentence was based, were not many in number and did not have the quality of affecting the result of the decision. However, as in the example of the expert report of the firm named American Forensic Laboratory, some defense evidence that would affect the merits of the case was never mentioned in the reasoned decision, no explanation was included as regards why some reports were not taken into account.

61. When the expert reports and expert opinions, which form the basis of the defenses and result in casting serious doubts on the reliability of the digital data, are considered, the justification of the decision delivered by the Court of First Instance, which is significantly based on the digital data and contents thereof, may not be evaluated as being in a way and having a quality that will meet the requirement of justice and as sufficient and reasonable. For this reason, the "*right to a reasoned decision*" was violated.

62. The fact that the evidence evaluation was carried out by replacing the Court in the reports and expert opinions presented by the applicants to the court was shown by the Court of First Instance as the justification for not taking these reports and opinions as the basis for the judgment. According to the Court, *"the*

detailed determinations were made just as the defense counsel as to the fact that the digital data could not be considered to be evidence" in these reports and statements and the experts *"tried to refute this evidence through all their efforts"*. The Court reminded the provision, which is stipulated in paragraph (3) of Article 67 of the Law No. 5271 and states that the legal evaluation to be made by the judge cannot be carried out in the reports of the experts, and stated that the reports and opinions presented by the applicants created the conviction "*that they are not impartial as they are putting forth such an effort while they need to make scientific determinations and leave the evaluation to the Court*". In the decision delivered by the Court of First Instance, it was said that "*the expert reports, which constitute the evidence evaluation by replacing the Court and which were prepared with a method that was insufficient and free from impartiality, were not taken into account, the Court did not have an expert examination made as a new expert opinion is not needed for the evaluation that our Court will carry out within its legal knowledge*" (*reasoned decision*, p.1043-1044). In other words, the Court of First Instance did not take into account any report and opinion presented by the applicants by stating that the legal evaluations in the expert reports and opinions showed that those, who prepared these reports and opinions, were not impartial.

63. The Court of First Instance did not indicate what the legal evaluations, which were present in the expert reports and expert opinions and needed to be carried out by the judge, were, did not show in its decision why the parts of the presented reports and opinions, in which highly complex technical problems were addressed and which contained technical information, were not taken into account.

64. As shown above, the Court of First Instance ignored the expert reports and expert opinions presented by the applicants through insufficient justifications. As set forth in the ECtHR case law, the principle of "equality of arms", one of the main elements of the right to a fair trial, requires equal treatment of the witnesses or experts of the prosecution and the witnesses and experts of the accused (see *Bönisch v. Austria*, App. No: 8658/79, 6/5/1985, §§ 32-33).

65. The principle of equality of arms applied in both criminal cases and non-criminal cases requires the parties to be given an opportunity to present their requests and statements under conditions that do not place them at a disadvantage vis-à-vis their opponents (*Kress v. France*, App. No: 39594/98, 7/6/2001, § 72). As a result of this requirement, although there is no special provision in the Convention as regards the hearing of the experts before the court, the ECtHR evaluated the entity of expert by relating it to the "*principle of equality of arms*" considering the right of having witness examined as stipulated in subparagraph (d) of paragraph (3) of Article 6 of the Convention (see *Bönisch v. Austria*, App. No: 8658/79, 6/5/1985, § 32;*Brandstetter v. Austria*, App. No: 11170/84, 12876/87, 13468/87, 28/8/1991, § 42).

66. The ECtHR interprets the scope of expert reports in a rather broad manner. It accepts that the expert reports could be written or oral, that they could

also be scientific, in the form of technical analyses or analysis of the facts in terms of the examination subjects (*Khodorkovskiy and Lebedev v. Russia*, App. No: 11082/06, 13772/05, 25/7/2013, § 717).

67. The Court of First Instance did not take into account any of the expert reports presented by the applicants and the opinions of the experts heard in the hearing, but it took into account all of the expert reports received by the Chief Public Prosecutor's Office during the prosecution (*reasoned decision*, p. 1042-1043). Thereupon, the applicants asserted that the expert reports received by the Public Prosecutor were missing and insufficient in ascertaining the fact, the reports and opinions presented by them were not taken into account and lodged a request for the Court to have the expert report received as regards to the digital evidence, which formed the basis of the trial. The Court of First Instance dismissed these requests as there was no need for receiving the expert report for "*the evaluation of the subjects which can be solved through the general and legal knowledge that the profession of judgeship requires*" (*reasoned decision*, p.1042).

68. The duty of the Constitutional Court is not to decide whether an expert report or expert opinion is necessary in any case. The issues of the necessity of the requests of the defense for having witnessed heard or the admissibility or evaluation of evidence such as an expert report shall fall within the authority of the courts of instance (see *S.N. v. Sweden*, App. No: 34209/96, 2/7/2002, § 44). According to the ECtHR, the courts of instance may dismiss, subject to compliance with the terms of the Convention, the request for hearing witnesses proposed by the defense, on the ground that the court considers their evidence unlikely to assist in ascertaining the truth in the concrete case (see *Huseyn and Others v. Azerbaijan*, App. No: 35485/05, 45553/05, 35680/05 and 36085/05, 26/7/2011, § 196).

69. However, the Constitutional Court should examine whether the decision of dismissal of the request for the hearing of the witnesses of the defense requested by the applicants within the defense and the decision of dismissal of the request for receiving the expert report were delivered within a procedure that contains sufficient guarantees aimed at protecting the rights of the accused.

70. As a rule, while the reports and opinions presented by the experts are not binding for the courts of instance, the expert reports presented by the Public Prosecutor had a decisive effect when the evaluation on the merits was carried out by the Court of First Instance. In other words, in the concrete case, the Court of First Instance only took into account the expert reports presented by the Public Prosecutor and did not take into account the expert reports and expert opinions that the applicants presented against these reports as a part of their defense. Moreover, the Court dismissed, with an insufficient justification, the requests of the applicants from the court to assign a panel of experts and to have a report prepared in order to evaluate the claims as to the point that the digital data, which formed the basis of the verdict of conviction, did not reflect the truth.

71. Thus, the rights of the applicants to claim extension of the prosecution against the evidence, which formed the basis of the allegations about them, were restricted and the principle of "*equality of arms*" of the criminal trial aimed at ascertaining the material fact was violated.

72. Due to the reasons explained, in terms of the complaints as regards the evaluation of the digital data, as the fact that the expert reports and expert opinions that the applicants presented were not accepted by the Court of First Instance and dismissal of their requests from the Court to have the expert examination made about these issues with insufficient justifications were contrary to "*the right to a reasoned decision*" and the principle of "*equality of arms*", the right to a fair trial enshrined in Article 36 of the Constitution was violated.

b. In Terms of Requests for Hearing of Witnesses

73. The applicants alleged that their right to a fair trial was violated as the request for the testimony of the then Chief of the General Staff Hilmi Özkök and the then Land Forces Commander Aytaç Yalman, who were accepted to have prevented the committal of the crime through which their conviction was decided by the court of first instance, was dismissed.

74. Paragraph (1) and subparagraph (d) of paragraph (3) of article 6 titled *"Right to a fair trial"* of the ECHR is as follows:

> *"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal established by law.*
>
> *…*
>
> *3. Everyone charged with a criminal offence has the following minimum rights:*
>
> *…*
>
> *d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;"*

75. In subparagraph (d) of paragraph (3) of article 6 of the ECHR, the right of the accused to examine or have examined witnesses against him is guaranteed. In order for all the evidence to be discussed during the prosecution, as a rule, it is necessary to set forth this evidence in a public hearing and before the accused. While this rule is not without exceptions, if a conviction is, only or to a decisive extent, based on the statements given by a person, whom the accused could not have the opportunity of examining or having examined during the phase of investigation or trial, the rights of the accused are restricted in a way that does not comply with the guarantees in Article 6 of the ECHR (App. No: 2013/99, 20/3/2014, § 46).

76. The courts may dismiss the request for calling witnesses proposed by the defense, on the ground that the court considers their evidence unlikely to assist in ascertaining the truth in the concrete case (see *Huseyn and Others v. Azerbaijan*, App. No: 35485/05, 45553/05, 35680/05 and 36085/05, 26/7/2011, § 196).

77. As a rule, the evaluation of appropriateness of calling witnesses for hearing is within the discretionary power of the courts of instance. Therefore, it is not sufficient for an accused to complain about the fact that s/he could not have some witnesses examined, s/he should also substantiate the request for having the witnesses examined by explaining why it is important to examine these witnesses and why it is necessary for ascertaining the truth (App. No: 2013/99, 20/3/2014, § 54).

78. The right to a fair trial provides the individuals with the opportunity to have reviewed whether the trial process and procedure rather than the decision delivered at the end of the case are fair or not. For this reason, in order for the complaints as regards the fair trial to be examined in the individual application, it is necessary to assert a claim, together with the bases thereof, as regards the deficiency, which is not evaluated, negligence or apparent arbitrariness, as for the elements that result in the creation of the court decision such as the fact that the rights of the applicant are not respected during the trial, in this context, s/he is not informed about the evidence and opinions that the prosecution presents during the trial or could not find the opportunity to oppose against them in an effective manner, could not present his/her own evidence and claims or his/her claims as regards settlement of the dispute were not heard by the court of instance or the decision is null and void (App. No: 2013/2767, 2/10/2013, § 22).

79. The judicial authorities have to duly examine the claims asserted and the evidence demonstrated by the parties of the trial. However, the authority of evaluating the evidence as regards a certain case and deciding whether the evidence to be demonstrated is related to the case essentially belongs to the courts of instance. Reviewing whether the evidence presentation and examination methods, which are valid in the current trial, comply with the right to a fair trial is not within the scope of the duty of the Constitutional Court and the duty of the Constitutional Court is to evaluate whether the trial, which is the subject matter of the application, is fair as a whole (App. No: 2013/1213, 4/12/2013, § 27).

80. In order for a trial, which is equitable in general terms, to be conducted, in the evidence of the principles of *"equality of arms"* and *"adversarial trial"*, it is obligatory to provide the parties with the appropriate opportunities to present their claims. It is necessary to provide the parties with the appropriate opportunities as regards presenting and having examined their evidence including the witness evidence. In this sense, it is necessary to evaluate the claims of imbalance and lack of equity as regards to the evidence in the light of the entire trial (App. No: 2013/1213, 4/12/2013, § 27).

81. In the decision of the Court of First Instance,

the following is stated (*reasoned decision*, p.1022).

> *"In order to ensure the creation of the environment required for implementation of the Sledgehammer Coup Plan, Air elements prepared the operation plan called Oraj and Marine elements prepared the operation plan called Suga, it was aimed to create tension with Greece*

in the Aegean through these plans and this situation would be used as a means of pressure for withdrawal on the executive authority,

Bombing plans called Çarşaf and Sakal were prepared by the Gendarmerie elements for Fatih and Beyazıt mosques, it was planned that the protest demonstrations with reactionary images would be organized and a chaotic environment would be created through the connected individuals following these actions,

It was planned that the state administration would be restructured as desired by the junta structure by overthrowing the executive authority following the declaration of martial law after the creation of the necessary environment, in this context, the aforementioned preparations were completed, the operation plan came out of the conceptual phase,

The execution phase was initiated through the activities such as the reconnaissance of the possible demonstration places, the determination of the people to be detained (members of the political parties, mayors, directors and members of the non-governmental organizations, journalists, intellectuals, scientists, opinion leaders), the students to be expelled from school, the vehicles to be seized, the public officials to be suspended, detained, superannuated, used, which military personnel would be appointed as the head of the institutions and organizations, which were identified as sensitive, the determination of the military personnel to be dismissed as they were described as harmful, the determination of how the police organization would be directed and used, the plans made about the press institutions and employees (the determination of who will be detained and who can be used), the design of the government called the National Consensus Government to be appointed after the operation, but the execution activities could not be completed, the operation plan was heard of by the Turkish General Staff and the Land Forces Command, this issue became obvious as Yaşar Büyükanıt had the lawyers examine the seminar conclusion report, the Land Forces Command gave instructions about not playing the Dangerous Scenario With the Highest Probability, the Chief of the General Staff warned the accused Çetin Doğan about this issue."

82. The Court of First Instance states that the junta structure led by Çetin Doğan started performing the execution activities through the equipment and personnel that were suitable for the committal of the crime, but "*the junta structure lost its capability to commit the coup crime and the execution activities could not be completed* as Çetin Doğan had cardiac surgery and thereafter, he was superannuated in August 2003, duty stations of some accused were changed and *the Headquarters of the General Staff primarily opposed against the possible coup and, thereafter, made an effort to prevent it to the extent permitted by the conditions at the time*" (*reasoned decision*, p.1023).

83. The requests for the hearing of the Chief of General Staff Hilmi Özkök and the Land Forces Commander Aytaç Yalman, who were on duty on the aforementioned dates, as witness were dismissed with the following justification.

"The primary and main goal of the court is to elucidate the material fact. If the assertion of a piece of evidence does not help to ascertain the truth and results in the lengthening of the case, the Court needs to decide on this matter. Even if it is a rule to allow the hearing of all the witnesses and experts and the assertion of the other evidence; in the event that the fact is settled in a way that will not leave any doubt through the statements of some witnesses, who are heard, and the reception of the expert opinion, it is a practice, which is accepted in the doctrine and practice, not to hear the remaining witnesses and experts, who will not introduce something new to the trial and contribute to the elucidation of the material fact in order not to cause the loss

of time and the unnecessary effort. Otherwise, the obligation of presenting all the evidence serves for the malicious ones, who aim to lengthen the trial. Due to these reasons, as for the dismissal and restriction of the evidence, it is discussed in the doctrine that the evidence needs to be dismissed in cases where there is no legal ground for demonstrating the evidence, the situation is so clear that there is no need for demonstrating the evidence, the fact requested to be proven does not have any effect on the decision or is related to a matter that is proven before, the evidence is not suitable for the purpose, it is not possible to obtain it, the fact asserting that the request for the demonstration of the evidence is made in order to lengthen the case has a quality to be accepted as real. It is possible to apply the specified matters for all the witnesses and experts presented at various phases.

The accused and the counsels thereof insistently requested that the experts, who prepared reports for the file, and the witnesses Aytaç Yalman and Hilmi Özkök be heard. When it was considered that taking the statements of the experts and the aforementioned witnesses would not have any effect on the decision according to the collected evidence given the quality of the crime alleged to the accused and that the evidence was not suitable for the purpose, it was concluded that the hearing of the experts and the witnesses would not have any effect on the result as the request for presenting the witnesses was made in order to create pressure on the court before the public and the seminar and the other documents were real…" (*reasoned decision,* p. 1046).

84. Although it was stated that the alleged coup crime could not be committed due to the health condition of Çetin Doğan, who was accepted to be the leader of the structure, the fact that some accused were appointed and the Headquarters of the General Staff primarily opposed against the possible coup and, thereafter, made an effort to prevent it to the extent permitted by the conditions at the time, it is stated that the testimony of the Chief of the General Staff and the Land Forces Command does not have any effect on the decision according to the collected evidence given the quality of the crime.

85. Considering the fact that the criminal actions alleged to the accused were mainly based on the documents created with computer software programs, the contents of these documents reflected the material facts and phenomena and they were accepted to be real, this data had the quality of being edited as specified in the expert reports/expert opinions and given the incompliance of the technical information and contents of this data, the statements of these people, who were requested to be heard as the witnesses, may not be considered as trivial in terms of ascertaining the material fact.

86. Moreover, as it was accepted that the activities of a structure based in the 1st Army Command towards the purpose of a coup were heard of and the attempted crime was prevented by the Turkish General Staff and the Land Forces Command, the justification that the statements of the people, who were in the aforementioned

positions, requested to be heard as witnesses according to the collected evidence did not have any effect on the result is not reasonable.

87. Moreover, the requests for the hearing of witnesses were dismissed with the additional justification that "*they were made in order to create pressure on the court before the public*". These requests, which were accepted to have been made for another purpose and to have no effect on the decision, must only be evaluated by considering its effect on the trial in an objective manner.

88. As it was accepted that the persons, whom the applicants requested to be called as the witnesses, prevented the committal of the crime through the attitude they exhibited and the actions they performed within their duties, the statements of these persons shall constitute the evidence beyond only being the witness statement that will bring about a result in favor of the accused. It is necessary to set forth the evidence with this quality in a public hearing and before the accused given its decisive quality in terms of the trial.

89. Although the authority of evaluating the evidence as regards a certain case and of deciding whether the evidence to be demonstrated is related to the case, as a rule, belongs to the court that conducts the trial, given the crime that is subject to the trial, the state of the accused, the form of committal of the alleged crime, the criminal acts, the status of the witnesses and the quality of other evidence in the concrete case, the dismissal of the requests for the hearing of the then Chief of General Staff Hilmi Özkök and the then Land Forces Commander Aytaç Yalman as witnesses has the quality of violating the right to a fair trial in terms of the entire trial.

90. The dismissal of the testimony of the then Chief of General Staff Hilmi Özkök and the then Land Forces Commander Aytaç Yalman although it was specified in the justification of the court that it was essential from an objective point of view in terms of the certainty of the alleged crime violated the right to a fair trial as it did not comply with "*the principle of adversarial trial*" and "*the right to ensure that the witnesses of the defense are called and heard*".

91. As it was decided that "*the right to a reasoned decision*", the principles of "*equality of arms*" and "*adversarial trial*" and "*the right to ensure that the witnesses of the defense are called and heard*" of the applicants were violated, it was not considered necessary to make a separate examination about their other complaints as regards the right to a fair trial (§ 17) in terms of admissibility and merits.

V. JUDGMENT

In the light of the reasons explained, it is **UNANIMOUSLY** decided on 18/6/2014 that;

A. The applicants'

1. complaints about the right to liberty and security is **INADMISSIBLE** due to "*lack of venue in terms of ratione temporis*",

2. complaints about the right to a fair trial;

i. claims that the complaints about evaluation of the digital evidence were not satisfied,

ii. complaints about the right to have the witnesses examined because their requests for the hearing of the then Chief of General Staff Hilmi Özkök and the then Land Forces Commander Aytaç Yalman as witness were dismissed,

IS ADMISSIBLE,

B. The right to a fair trial enshrined in Article 36 of the Constitution **WAS VIOLATED,**

C. A copy of the judgment be **SENT** to the related Court for retrial in order for the violation and the consequences thereof to be removed,

D. The trial expenses, whose breakdown is made, be **PAID TO THE APPLICANTS.**

President Haşim KILIÇ	Deputy President Serruh KALELİ	Deputy President Alparslan ALTAN
Member Serdar ÖZGÜLDÜR	Member Osman Alifeyyaz PAKSÜT	Member Zehra Ayla PERKTAŞ
Member Recep KÖMÜRCÜ	Member Burhan ÜSTÜN	Member Engin YILDIRIM
Member Nuri NECİPOĞLU	Member Hicabi DURSUN	Member Celal Mümtaz AKINCI

Member	Member	Member
Erdal TERCAN	Muammer TOPAL	Zühtü ARSLAN

Member	Member
M. Emin KUZ	Hasan Tahsin GÖKCAN

Breakdown of trial expenses:

The following payments are adjudged.

1- 198.35 TL, which was separately paid in fees, shall be separately paid to the applicants Sencer BAŞAT, Turgut KETKEN, Ökkeş Alp KIRIKKANAT, Hasan HOŞGİT, Fikret GÜNEŞ, Taner BALKIŞ, Mustafa KARASABUN, Nadir Hakan ERAYDIN, İsmail TAŞ, Emin KÜÇÜKKILIÇ, İsmail TAYLAN, Nuri Selçuk GÜNERİ, Yusuf AFAT, Celal Kerem EREN, Berker Emre TOK, Erhan KUBAT, Doğan TEMEL, Mete DEMİRGİL, Erhan ŞENSOY, Hayri GÜNER, Ahmet Feyyaz ÖĞÜTCÜ, Hüseyin HOŞGİT, Ali Yasin TÜRKER, Levent Kerim UÇA, Bülent OLCAY, Zafer Erdim İNAL, Erdinç ALTINER, Mehmet Cem OKYAY, Mehmet Baybars KÜÇÜKATAY, Mustafa Erhan PAMUK, Ümit ÖZCAN, Engin BAYKAL, Lütfü SANCAR, Nuri ÜSTÜNER, Ahmet KÜÇÜKŞAHİN, Nuri Ali KARABABA, Aykar TEKİN, Engin KILIÇ, Refik Levent TEZCAN, Kemalettin YAKAR, Yaşar Barbaros BÜYÜKSAĞNAK, Kıvanç KIRMACI, Mustafa Haluk BAYBAŞ, Levent ÇEHRELİ, Ayhan Türker KOÇPINAR, Fahri Can YILDIRIM, Bahadır Mustafa KAYALI, Ertuğrul UÇAR, Mesut Zafer SARI, Ercan İRENÇİN, Mehmet Cem KIZIL, Hasan ÖZYURT, Murat ÜNLÜ, Hannan ŞAYAN, Alpay ÇAKARCAN, İbrahim Özdem KOÇER, Mehmet Ferhat ÇOLPAN, Aydın SEZENOĞLU, Rafet OKTAR, Ahmet DİKMEN, Ergün BALABAN, Ayhan GEDİK, Önder ÇELEBİ, Servet BİLGİN, Mücahit ERAKYOL, Tuncay ÇAKAN, Kadri Sonay AKPOLAT, Abdullah GAVREMOĞLU, Onur ULUOCAK, Özgür Ecevit TAŞCI, Özer KARABULUT, Derya GÜNERGİN, Haydar Mücahit ŞİŞLİOĞLU, Yurdaer OLCAN, Halil KALKANLI and Abdülkadir ERYILMAZ;

2- 206.10 TL, which was separately paid in fees, shall be separately paid to the applicants Ender KAHYA, Fahri Yavuz URAS, Faruk Oktay MEMİOĞLU and Mustafa ÇALIŞ;

3- A total of 1,698.35 TL, which was separately paid and composed of the legal fee of 198.35 TL and the counsel's fee of 1,500.00 TL, shall be separately paid to the applicants Yavuz KILIÇ, Aşkın ÖZTÜRK, Ali Cengiz ŞİRİN, Bulut Ömer MİMİROĞLU, Bayram Ali TAVLAYAN, Korcan PULATSÜ, Ziya GÜLER, Rıdvan ULUGÜLER, Beyazıt KARATAŞ, Mehmet ELDEM, Hüseyin ÇINAR, Sefer KURNAZ, Berna DÖNMEZ, Mehmet Cem ÇAĞLAR, Ali Deniz KUTLUK, Mustafa Aydın GÜRÜL, Ahmet Sinan ERTUĞRUL, Bülent KOCABABUÇ, Osman KAYALAR, Recep YILDIZ, Alpar KARAAHMET, Nihat ALTUNBULAK, Hakan Mehmet KÖKTÜRK, Ayhan ÜSTBAŞ, Hakan İsmail ÇELİKCAN,

Ali TÜRKŞEN, Tayfun DUMAN, İbrahim Koray ÖZYURT, Muharrem Nuri ALACALI, Dora SUNGUNAY, Şafak YÜREKLİ, Binali AYDOĞDU, Oğuz TÜRKSOYU, Cemal TEMİZÖZ, Uğur UZAL, Ergin SAYGUN, Kubilay AKTAŞ, Armağan AKSAKAL, Sinan TOPUZ, Recep Rıfkı DURUSOY, Aşkın ÜREDİ, Çetin DOĞAN, Ahmet YAVUZ, Mehmet OTUZBİROĞLU, Devrim REHBER, Mustafa KOÇ, Erdal AKYAZAN, Cenk HATUNOĞLU, Namık SEVİNÇ, Mustafa İLHAN, Süleyman Namık KURŞUNCU, Yalçın ERGÜL, Mehmet ERKORKMAZ, Hüseyin DİLAVER, Şenol BÜYÜKÇAKIR, Bülent GÜNÇAL, Gürkan YILDIZ, Ayhan GÜMÜŞ, Ahmet ERDEM, Kubilay BALOĞLU, Atilla ÖZLER, Rasim ARSLAN, Çetin CAN, Turgut ATMAN, Cengiz KÖYLÜ, Yusuf Volkan YÜCEL, Necdet Tunç SÖZEN, Osman BAŞIBÜYÜK, Cahit Serdar GÖKGÖZ, Halit Nejat AKGÜNER, Haldun ERMİN, Derya ÖN, Mehmet AYGÜN, Mustafa ÖNSEL, Erdem Caner BENER, İhsan BALABANLI, Hanifi YILDIRIM, Bekir MEMİŞ, Kahraman DİKMEN, Hüseyin TOPUZ, Taylan ÇAKIR, Aziz YILMAZ, Nail İLBEY, Bülent TUNÇAY, Yusuf KELLELİ, Ali DEMİR, Hakan SARGIN, Erdinç ATİK, Murat ÖZÇELİK, Ümit METİN, Hüseyin ÖZÇOBAN, Salim Erkal BEKTAŞ, Şükrü SARIIŞIK, Nejat BEK, Bilgin BALANLI, Meftun HIRACA, Deniz CORA, Engin ALAN, Serdar Okan KIRÇİÇEK, Taner GÜL, Halil İbrahim FIRTINA, Osman Fevzi GÜNEŞ, Turgay ERDAĞ, Memiş Yüksel YALÇIN, Özden ÖRNEK, Ayhan TAŞ, Mehmet Cenk DALKANAT, Ramazan Kamüran GÖKSEL, Ali Sadi ÜNSAL, Behzat BALTA, Gürkan KOLDAŞ, Mehmet Seyfettin ALEVCAN, Ahmet HACIOĞLU, Mehmet ÖRGEN, Ender GÜNGÖR, Murat SAKA, Hakan BÜYÜK, Ahmet Bertan NOGAYLAROĞLU, Süha TANYERİ, Cemalettin BOZDAĞ, Ahmet Zeki ÜÇOK, Mehmet Koray ERYAŞA, Turgay YAMAÇ, Abdullah Can ERENOĞLU, Kadir SAĞDIÇ, Mehmetfatih İLĞAR, Davut İsmet ÇINKI, Nedim Güngör KURUBAŞ, Mehmet Fikri KARADAĞ, Yusuf Ziya TOKER, Hasan Fehmi CANAN, Mehmet Kaya VAROL, Gürbüz KAYA, İzzet OCAK, Suat AYTIN and Mehmet YOLERİ;

4- A total of 1,698.35 TL, which was separately paid and composed of the legal fee of 198.35 TL and the counsel's fee of 1,500.00 TL, shall be separately paid to the applicants Ali Semih ÇETİN, Cem Aziz ÇAKMAK, Faruk DOĞAN, Metin Yavuz YALÇIN, Ramazan Cem GÜRDENİZ, Soner POLAT, Taner GÜL, Fatih Uluç YEĞİN, Kürşad Güven ERTAŞ, Murat ÖZENALP, Utku ARSLAN;

5- A total of 1,706.10 TL, which was separately paid and composed of the legal fee of 206.10 TL and the counsel's fee of 1,500.00 TL, shall be separately paid to the applicants Gürsel ÇAYPINAR and Mehmet ULUTAŞ;

6- A total of 1,896.70 TL, which was separately paid and composed of two legal fees of 198.35 TL and the counsel's fee of 1,500.00 TL, shall be separately paid to the applicants Dursun ÇİÇEK and Mustafa Korkut ÖZARSLAN;