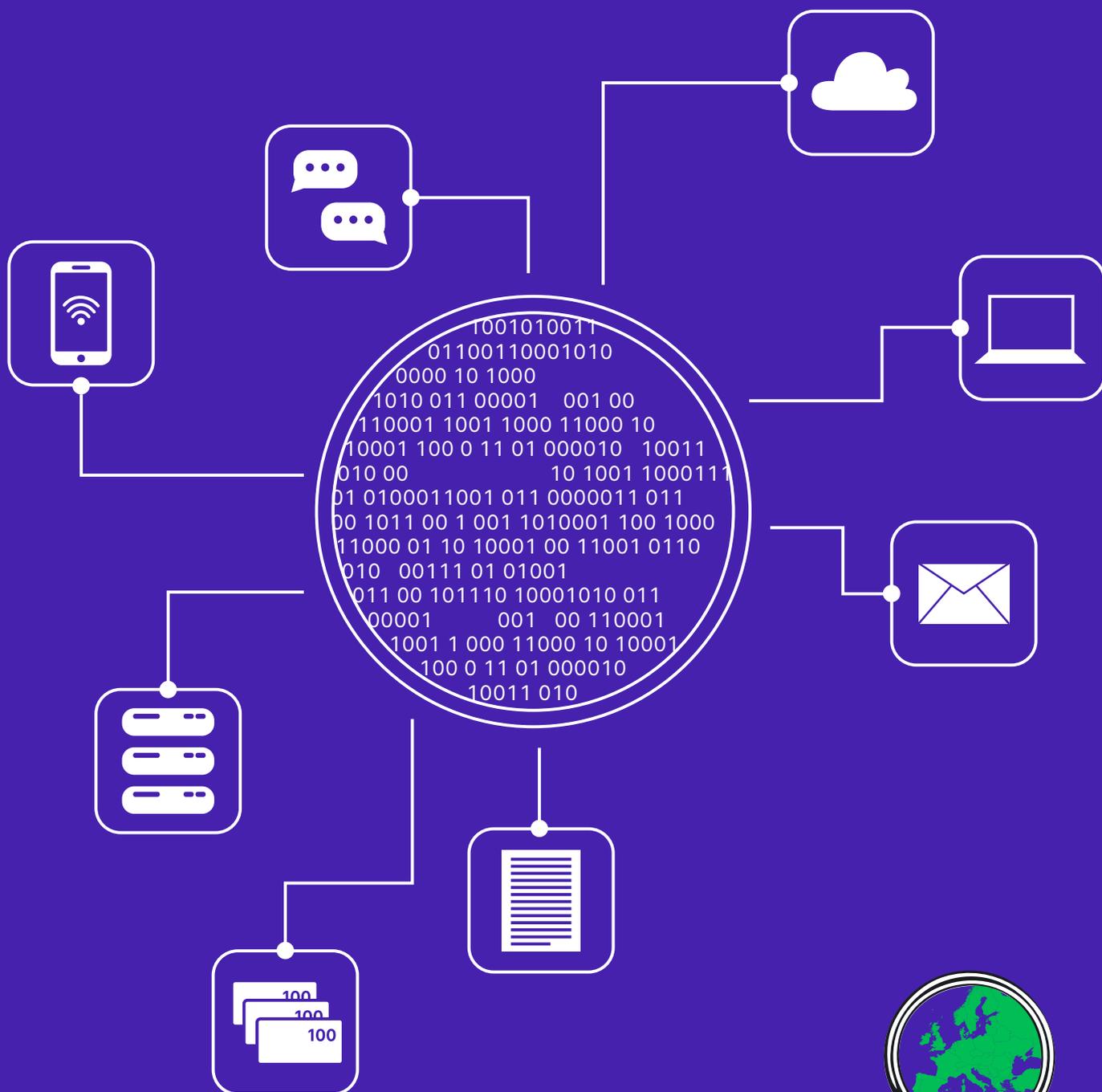


Algorithmic persecution in Turkey's post-coup crackdown: The FETÖ-Meter system

Emre Turkut & Ali Yıldız



Imprint

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1. Introductory note

In recent years, human rights and democratic standards have been under attack across the globe from a wave of authoritarian populist leaders, parties, governments, and movements. Similar patterns emerge when looking at the means used to undermine these values: public institutions are placed under governmental control, media outlets are co-opted or closed, avenues for accountability and criticism are limited or extinguished, and political opponents – real or imagined – are vilified, harassed, persecuted and silenced. Modern technology offers numerous ways to assist in achieving these goals, as demonstrated by this report, which shows the dangers of unchecked state institutions pursuing political opponents stripped of their fundamental rights.

The work of Statewatch mainly concerns the powers and practices of the institutions of the European Union, and its current and former member states. We are publishing this report, which looks at Turkey, because it offers a close examination of a way in which a state that has moved away from democratic norms and rule of law standards has gone about that task. Given the decline in democratic standards and respect for human rights in many EU member states (and the UK as a former member state), we deem it important to better understand developments in countries that are further along that path.

This timely report focuses on the use of an algorithm – the so-called ‘FETÖ-Meter’ to determine who should be deemed an ‘opponent’ of the political regime in Turkey. States increasingly harness the opportunities offered by new technologies (the so-called ‘digital tsunami’ highlighted by high-level EU officials over a decade ago) – in particular, the ability to process vast quantities of data about individuals and their activities. Here in the UK, within plans to massively water down individuals’ privacy and data protection rights, the government is actively seeking to abolish the right to be protected from solely automated decision-making – a protection that may have prevented the situations examined in this report from ever occurring, if it were effectively enforced.

By publishing this report, we seek to help readers to understand how state institutions can go about eliminating some of the norms that provide for a pluralistic, open society, to make it clearer why they must be defended. The use of catch-all criteria in algorithms to turn entire population groups (in this case from the military ranks) into plausible suspects or ‘threats’, often based on flimsy circumstantial evidence, reveals the danger of unrestrained data collection and analysis.

Given the role of Turkey as an ‘archetypal’ state amongst the array of formal democracies that are now led by authoritarian leaders – with a few EU member states (including Hungary and Poland) following its example to muzzle civil society and crack down on targeted groups – we believe it is important for the public to learn about events in this country at the EU’s gates. We hope that the publication of this report contributes in some small measure to that goal.

2. Foreword

The Hon Michael Kirby AC CMG
Past Justice of the High Court of Australia (1996–2009)
Past President of the International Commission of Jurists/
current Co-Chair of the IBA Human Rights Institute

On the evening of 15 July 2016 an uprising occurred in Turkey, allegedly organized by supporters of Fethullah Gülen, a critic of the regime of President Erdogan of Turkey. On that day, I was taking a short holiday in the south of France with my partner. The events in Turkey filled all the news channels. There was a sense of unease in the thought that, not far away, desperate attempts were being made to challenge the autocratic government of Turkey. The fact that the challenge came from the military was concerning. However, my partner and I had driven several times through Turkey. We knew well of the great Turkish general, turned political leader, Mustafa Kemal Atatürk. He had successfully led the Turkish military to repel the Anzac and Allied attempted landing at Gallipoli in 1915. He had later helped to create a secular republic that modernized Turkey. So, we were curious about the events occurring around the Bay. Our curiosity did not have to wait very long. By the following morning, the attempted coup was over. The television was full of scenes of mostly military personnel being rounded up for alleged involvement in the uprising.

These events have remained in our memories. They have recurred every time (which is quite often) that mention is made in news media of the retaliation that has followed the uprising. Curiously, that retaliation has persisted up to the present time, although the government of Turkey would appear to be safely in control of the country and capable of pursuing its distinctive policies both in Turkey and abroad. One such distinctive policy has been what seems to outsiders to be an obsessive and vindictive pursuit of military personnel and others, suspected of being involved (however remotely) in the 2016 events. Looking at the persistent pursuit of suspects six years after the failed attempt raises a suspicion in the minds of some outsiders that the government of Turkey must feel rather insecure about itself, despite the swift suppression of the coup and regardless of all the trappings of political and constitutional power resting in its hands.

This report is an eye-opener for friends of Turkey in Australia and elsewhere. It has been prepared by two brilliant legal experts, Dr Emre Turkut and human rights lawyer Ali Yıldız both with extensive practical and academic knowledge about the human rights situation in Turkey and the relevant municipal and international law.

The special focus of this report is the use by the Turkish government, since the attempted coup of 2016, of systems of artificial intelligence, in order to detect and penalize members of the Turkish community at home (especially in the military) who might have been involved in, or sympathetic to, the Gülen movement, allegedly behind the attempted coup. Using the so-called FETÖ-Meter, a very wide range of citizens have been rounded up and, by reference to the 'score' assigned to them by analytics, subjected to serious and persistent disadvantages, dismissal from employment, detention and other burdens. Sadly, as described in this report, and as raised in numerous complaints to human rights bodies (including the Human Rights Institute of the

International Bar Association) the Turkish judiciary, at trial, on appeal, and in the Constitutional Court has not proved robust and independent. It has not proved defensive of the fundamental human rights of those who are suspected of having been aligned to, or sympathetic with, the Gülen movement and their 'enemies of the people'.

This report is released whilst Australia, Turkey and most other countries are in the midst of the COVID pandemic. That global challenge has required extensive measures of lockdown and isolation. Preserving and protecting human rights has been a challenge at this time. It is natural that the business and civil communities should have resorted to information technology and audio visual links in ways that would have been unthinkable just a few years earlier. The utilization of this technology has led some observers to call for extensions that will permit informatics to be used so as to automatically determine the outcome of contested court cases. This could be done, so it is urged, to obtain totally consistent decision-making, rendered by algorithms and computer programs rather than by fallible and inconsistent judges. In this way, the delivery of justice could be cheaper and more accessible, speedier and totally consistent.

No doubt some use of technology can be, and is being, used to improve access to justice. But justice is a human construct. It responds to deep human feelings. The great decision of the High Court of Australia in 1992 in the *Mabo case*, upholding after 150 years, the right of our Aboriginal people to ownership of their traditional lands, would never have been made by a computer focused only on consistency. Such a computer would have kept on producing unjust deprivation until a human being altered its program. So, it is with the *FETÖ-Meter* in Turkey. The healing balm of human judgements, protective of the universal rights of those who are accused and suspected, must be ever present in courts and tribunals. This report reminds observers of the situation in Turkey that this lesson applies there. Indeed everywhere.

If executive government, and its officials, establish inflexible policies (or computer programs) the result will often be persistent injustice. In 1950, the Australian Parliament tried to ban the Australian Communist Party and to impose civil burdens on its members. That law was initially very popular with most citizens. But fortunately, the High Court of Australia declared that the law was unconstitutional. All too often, governments favour their supporters or popular majorities. Courts and tribunals exist to protect minorities, especially those that may be unpopular. As this report points out, the Nazi regime in Germany in the 1930s changed the criminal laws. In specific cases, people were punished not for what they be shown to have done, but for whom they were. They were punished because they were *Volksschadlinge* (those who harm the nation), as defined by those in power. During my service on the High Court of Australia in *Fardon v Attorney-General*, I warned against following this mode of thinking in Australia. It is the same warning as is now given in the present report, directed at the government, officials and judges of Turkey. People should only be punished and seriously disadvantaged by public power for defined crimes and offences that they are proved to have performed. They should not be punished for whom they are. Least of all should they be punished by the operation of inflexible, unthinking algorithms.

An article recently published in the *New Yorker* by Jill Lepore, a professor at Harvard, showed how analytics is not new and is playing an increasing role in politics.¹ The misuse of personal data given to *Facebook* was demonstrated in

1 Jill Lepore, 'How The Simulatics Corporation Invented The Future', *New Yorker*, 27 July 2020, <https://www.newyorker.com/magazine/2020/08/03/how-the-simulatics-corporation-invented-the-future>

the case of *Cambridge Analytics* in 2017. It played a part in the election of Donald Trump as President of the United States. So it is likely to be used in various forms in virtually every country in the future. Yet the potential of analytics and artificial intelligence to undermine democracy and universal human rights is illustrated vividly in the present report. The report's ultimate instruction is that we must, in every land, render systems of artificial intelligence answerable to the values of well-informed and civilized people expressed in the law. If we do not take this advice, the precious rights collected in the *Universal Declaration of Human Rights* will be undermined. Minorities will be oppressed. Suspects will effectively be convicted by machines. Justice will be denied. The world will become a more dangerous and unstable place.

I thank everybody including the victims who have been involved in the preparation of this report. It is important. It is about Turkey and its vulnerable suspects. But it is also about Australia and indeed the entire world. We would all do well to reflect on the need to assert and uphold the human dedication to human rights and the rule of law. Only in this way will be uphold the universal affinity that we have for one another.

Sydney, Australia, 24 August 2021

Michael Kirby

The Hon. Michael Kirby AC CMG

3. Executive summary

The present report is the product of an effort to understand the means by which the Turkish state authorities have utilized the FETÖ-Meter system in post-coup dismissals from the Turkish armed forces. The FETÖ-Meter system is an Excel-based algorithm, designed by Resigned Rear Admiral Cihat Yaycı, to profile all active and retired military officers.

This report primarily draws on 10 semi-structured, in-depth, elite interviews with former members of the Turkish armed forces, and we carried out various follow-up interviews by phone, via Zoom and by email. In conducting these interviews, we were primarily interested in learning and transposing what victims of the FETÖ-Meter criteria list could tell us about their experiences, both as members of the Turkish armed forces and as individuals who were persecuted in the crackdown in the aftermath of the 15 July 2016 attempted coup. In addition to elite interviews, the report also draws upon information collected from an assessment of relevant legal provisions and court cases, statements by the Turkish authorities, detailed reports from intergovernmental organizations and human rights NGOs, and a survey of the relevant literature/research on Turkey's post-coup human rights issues.

The findings of the report show the depths of the persecution, mistreatment, humiliation and victimisation that Turkish army members endured in the aftermath of the failed coup. The findings also show that many of their fundamental human rights and the basic tenets of criminal law, including individual legal responsibility, legal certainty, and the right to a fair trial, were violated. The interviews with 10 participants revealed three emerging themes: (1) the indiscriminate use of the FETÖ-Meter list in post-coup dismissals, (2) widespread torture and mistreatment; and (3) the lack of trust in the judiciary.

4. Introduction:

The Turkish post-coup crackdown, guilt by association and the FETÖ-Meter system

Since the attempted coup on 15 July 2016, the Turkish government has waged a relentless counterterrorism campaign against the cleric, Fethullah Gülen, as well as against his followers. The Turkish government still maintains that the attempted coup was instigated by a faction within the Turkish army who were loyal to the so-called ‘Gülen Movement’ — a religious organization that is named after its self-exiled leader. In the aftermath of the 2016 failed coup, the Turkish government carried out an unprecedented purge *at home*. More than 150,000 people, including judges, prosecutors, military personnel, police officers, journalists, lawyers and opposition politicians, have been deprived of their liberty on charges that they were members of the Fethullahist Terrorist Organisation (FETÖ) – a name that the Turkish Government uses to denote the Gülen Movement (GM). Around the same number of people have been collectively dismissed from their public positions on the same grounds. Broad institutional closures, and liquidation with immediate effect of media outlets, schools, dormitories, associations and foundations that allegedly belong to the GM, have been other notable features of Turkey’s post-coup crackdown.

Those who fled the country could not escape from this crackdown either. Since July 2016, Turkey has embarked on a campaign of transnational repression² relying heavily on passport revocations, citizenship-stripping measures, extraditions and renditions. Turkey has repeatedly demanded the extradition of Fethullah Gülen, as well as other high level so-called Gülenists, from a number of countries – including the United States, the United Kingdom, Germany, Brazil, Romania, Bosnia and Poland. However, these countries have dismissed the extradition requests lodged by Turkey, due either to ‘insufficient evidence’, or to ‘the political nature of accusations’ and/or ‘the risk of torture and ill-treatment in Turkey’.³ Similarly, Interpol has so far rejected over 700 appeals for red notices that have been lodged by Turkey for suspects that they had links with the GM.⁴ Moreover, the Turkish Government has also weaponised international security/policing systems and bilateral extradition agreements in order to track, hunt and capture dissidents abroad. A joint letter issued by five UN Special Rapporteurs documents clear evidence of what appears to be a systematic practice of renditions and forcible return of at least 100 individuals to Turkey from multiple states: Albania, Azerbaijan, Afghanistan, Cambodia, Gabon, Kosovo, Kazakhstan, Lebanon and Pakistan, among others.⁵ Reportedly, the Turkish Government has signed bilateral security co-operation agreements with these countries containing broad and vague references to combatting terrorism and transnational crime in order to make the extraditions of such individuals possible.⁶

During this period, one important question for the Turkish state authorities was how to determine whether a person is affiliated or connected with the GM. Against this backdrop, different algorithms and systems that are based on certain criteria, including the ‘FETÖ-Meter’,⁷ were designed to calculate the material, ideological and institutional affiliation and affinity of those Turkish citizens who were/are with the GM, thus their level

2 Freedom House, ‘Turkey: Transnational Repression Case Study’, Special Report, 2021, <https://freedomhouse.org/report/transnational-repression/turkey>

3 For an analysis on these decisions, see: The Arrested Lawyers Initiative, ‘Extradition to Turkey: One-Way Ticket to Torture and Unfair Trial’, February 2020, pp.41-42 https://arrestedlawyers.files.wordpress.com/2020/02/extradition-to-turkey-one-way-ticket-to-torture-unfair-trial_.pdf

4 ‘Interpol rejected over 770 red notice requests by Turkey for alleged Gülenists’, Ahval News, 5 June 2021. <https://ahvalnews.com/gulen-movement/interpol-rejected-over-770-red-notice-requests-turkey-alleged-gulenists>

5 See, the Joint Letter in mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, AL TUR 5/2020, 5 May 2020, <https://spcom-mreports.ohchr.org/TMRResults-Base/DownloadPublicCommunicationFile?gId=25209>

6 Human Rights Watch, ‘Turkey: Renewed Torture in Police Custody, Abductions’ 12 October 2017, <https://www.hrw.org/news/2017/10/12/turkey-renewed-torture-police-custody-abductions>

7 Although the FETÖ-Meter is the most widely known one, similar tools have been employed. For example, the Turkish Land Forces used the SORI system to track so-called crypto Gülenists.

and degree of ‘terroristness’. These systems and algorithms have become powerful tools with which to demonize, target and initially to suppress the Gülenists, then Kurdish and leftist groups and, finally, virtually all dissent, which is based, in many cases, on a tenuous, or very remote, connection with the *raison d’être* of the 2016 attempted coup and the resulting state of emergency. More strikingly, this harsh crackdown and severe repression has utilized expansively a ‘guilt by association’ or ‘collective responsibility’ approach.

Collective guilt, or guilt by association, is the collectivist idea and understanding that individuals, who are part of a certain group, bear responsibility for an act or behaviour that other members of that group have committed, even if they themselves are not involved.⁸ Looked at from this perspective, it extends individual responsibility to “cover acts for which, without the conception of collective responsibility, the individual would not be held responsible at all.”⁹ This is indeed where the problem with the concept of collective responsibility starts: an individual member of a group is held responsible only on account of his membership of that group.

Collective punishment is not a new phenomenon: especially during times of emergency and situations of war, when it may be likely to occur, presupposing that there is the existence of collective guilt. Under Hitler’s Nazi rule, collective responsibility reached its apotheosis. Most of the Nazi policies regarding Jews were practically based on “the infliction of suffering on whole groups of people regardless of individual guilt”.¹⁰ In retrospect, the Nuremberg Laws played an instrumental role in the processes of the collective punishment of Jews. These were two laws passed at the annual rally in Nuremberg in September, 1935, that cumulatively set the institutional foundation of Nazi policies for the racialization and marginalization of Jewish people in the years preceding the Second World War. The first law, ‘the Nuremberg Law for the Protection of German Blood and German Honour’ aimed to protect the purity of German Blood (‘Aryan purity’).¹¹ The second one, the so-called Reich Citizenship Act, stripped Jewish people of their citizenship and excluded them from German social and political life.¹²

One particular problem, similar to the Turkish ‘FETÖ-Meter’ case, emerged: how to identify who could be considered ‘Jewish’. To address it, the Nuremberg laws introduced a definition of who was considered ‘Jewish’, and the method that was to be used to do this.¹³ More particularly, the Nuremberg Laws introduced the ‘Mischling Test’, which was comprised of a series of questions that helped Nazi authorities to identify whether a person was to be considered a Jew or a Mischling (meaning ‘of mixed blood’).¹⁴ These laws did not define ‘Jews’ on the basis of their religious beliefs, but as anyone who had three or four Jewish grandparents. Those who had one or two Jewish grandparents were classified as being ‘Mischling’.

Despite their obvious conceptual differences, the FETÖ-Meter still bears a worrisome resemblance to the Mischling test. As we will see below, the FETÖ-Meter list essentially illustrates the expanding practice of criminalising normal and everyday activities as terrorist crimes. It establishes a pattern for the application of punitive measures towards not only primary suspects, but also those people who associate with them, particularly their family members, colleagues, neighbours, and even social media contacts who they did not necessarily know.¹⁵ In the vast majority of cases, the evidence gathered through the application of the ‘FETÖ-Meter’ list, allegedly

8 Herman Mannheim, ‘Problems of Collective Responsibility’, *Theoria* 14:2, 1948, pp.144-166

9 *Ibid.*, p.144

10 *Ibid.*, p.151

11 The Nuremberg Law for the Protection of German Blood and German Honour, 15 September, 1935. The Law prohibited Jews from marrying, or having sexual relations with, persons of “German or related blood, banned them from employing German citizens under the age of 45 as a domestic worker and from displaying the national flag, the Reich flag or national colors” and only permitted them to display ‘Jewish colours’. A translation is available at: <https://www.yadvashem.org/docs/nuremberg-law-for-protection-of-german-blood-1935.html>

12 Paragraph 1 of the *Reichsbürgergesetz* (Reich Citizenship Act) reads: “A citizen of the Reich is only that subject who is of German or kindred blood, and who, through his conduct, shows that he is willing to serve the German people and Reich faithfully.” A translation is available at: <https://www.jmberlin.de/exil/en/reichsbuergergesetz.html> See also, David Fraser, and Frank Caestecker, ‘Jews or Germans? Nationality Legislation and the Restoration of Liberal Democracy in Western Europe after the Holocaust,’ *Law and History Review*, 31:2, 2013, pp.391-422.

13 J. Toland, *Adolf Hitler*, Doubleday & Company, New York, 1976

14 P. Mendes-Flohr and J. Reinharz, *The Jew in the Modern World: A Documentary History*, Oxford University Press, Oxford, 1995

15 Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East (January–December 2017), March 2018, para. 72, https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

linking Turkish citizens to disparate terrorist organizations, gives rise to a dangerous standard of ‘guilt by association’ or ‘collective guilt’ which, *inter alia*, violates the principles of individual legal responsibility, fairness and legal certainty.¹⁶

16 Council of Europe Commissioner for Human Rights, ‘Memorandum on the human rights implications of the measures taken under the State of Emergency in Turkey’, 7 October, 2016, CommDH(2016)35, para. 41: “A series of measures of particular concern to the Commissioner are those which target directly, or are liable to affect, family members of suspects in an automatic fashion ... [including] evictions, termination of lease agreements and freezing of assets of the said suspects ... the possibility for annulling passports of spouses of suspects who are themselves not under investigation. ... The Commissioner is worried that such measures will inevitably fuel the impression of ‘guilt by association’...” Similarly, the UN Working Group on Arbitrary Detention (WGAD) has consistently noted, with concern, that “the apparently widespread practice in Turkey of “guilt by association”...whereby such practices as arresting family members of suspects and seizing their passports appear to have become a common occurrence”. See: Rebi Metin Görgeç v. Turkey, WGAD Opinion No. 1/2017, 8 Jun 2017.

5. The 15 July 2016 attempted coup and its aftermath in Turkey

On 15 July 2016, Turkey experienced an attempted military coup, leaving 246 killed and 2,194 wounded.¹⁷ On that night, armed and uniformed soldiers occupied and bombed famous landmarks in the country, including the Bosphorus bridges and the Turkish Grand National Assembly. The coup-plotters detained many high-ranking military officers and briefly took control of state-run media offices and international airports. In reaction, and through FaceTime interviews with news anchors, President Recep Tayyip Erdoğan rallied his supporters on the streets.¹⁸ In part as a result of popular resistance, the coup attempt was nipped in the bud within hours of its being launched. According to a report by the state's Anatolian News Agency, the coup attempt started at around 10PM on 15 July 2016, and the Turkish Government regained full control at around 1AM the next day.

The coup attempt was allegedly perpetrated by a small faction within the Turkish Armed Forces (TAF) that was loyal to the Gülen Movement – officially dubbed as the Fetullahist Terrorist Organization Parallel State Structure' (FETÖ-PDY). Only a few hours into the coup attempt, the official Twitter account of the Turkish presidency posted a tweet, in which it claimed that the putschists were all members of the FETÖ/PDY.¹⁹ According to the official statements, 8,651 soldiers, 1,676 of whom were private soldiers with 1,224 military cadets, took part in the coup attempt. That number corresponds to only 1.5% of the TAF's total personnel.²⁰

Soon after the attempted coup, the Turkish Government declared a state of emergency on 20 July 2016, pursuant to Article 120 of the Turkish constitution, and Article 3 of the Act on the State of Emergency No. 2935. On the same day, referring to the failed coup and “other terrorist attacks”, the Government informed the Council of Europe (CoE) of its intention to derogate from the European Convention on Human Rights (ECHR), pursuant to Article 15 of that convention.²¹ On 2 August 2016, a similar notification was lodged with the United Nations, pursuant to Article 4 of the International Covenant on Civil and Political Rights (ICCPR).²² Since the initial emergency declaration, the state of emergency was prolonged seven times, for a total period of 24 months, until it was officially lifted on 17 July 2018.²³

Over the two-year emergency period, the Turkish government enacted thirty-two emergency decrees, which either targeted certain real and legal persons in an *ad hominem* manner, or stipulated permanent and structural changes to the ordinary legal frameworks and the state structure.²⁴ With these emergency decrees, 125,678 public servants were dismissed from their positions, including judges, prosecutors, police officers, teachers, and more than 4,000 legal persons, consisting of 174 media outlets as well as foundations, associations, foundation-owned universities, trade unions, private health institutions and private educational companies, were closed down.²⁵ Emergency decrees offered different grounds for dismissal:

- (I) having “membership, affiliation or connection to”, or “membership, relation or connection with” the ‘FETÖ/PDY’;²⁶
- (II) having “membership of, affiliation, link or connection with terrorist organizations or structures, formations or groups, which have been

17 For a summary, see: ‘Failed Turkey coup: A Summary of Today’s Key Developments’ BBC News, 16 July 2016, <https://www.bbc.com/news/live/world-europe-36811357>

18 ‘Erdoğan Addresses Turkey via FaceTime amid Attempted Coup – video’, The Guardian, 16 July 2016, <https://www.theguardian.com/world/vid-2016/jul/15/erdogan-face-time-turkey-coup-attempt>

19 This tweet is available at: <https://twitter.com/tcbestepe/status/754119499440328704>

20 ‘Military says 8,651 soldiers participated in Turkey’s coup attempt’, *Hürriyet Daily News*, 27 July 2016, <http://www.hurriyetdailynews.com/military-says-8651-soldiers-participated-in-turkeys-coup-attempt-102137>

21 Turkey, ‘Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification (ETS No.5)’, JJ8187C TR/005-191, 22 July 2016

22 Turkey, ‘Notification under Article 4(3) ICCPR’, C.N.580.2016.Treaties-IV.4, 2 August 2016

23 Turkey, ‘Derogation to the Convention on the Protection of Human Rights and Fundamental Freedoms Notification (ETS No.5)’, JJ8719C TR/005-223, 8 August 2018

24 Emergency Decrees Nos. 667, 668, 669, 670, 672, 673, 675, 677, 679, 683, 686, 689, 692, 693, 695, 697, 701. For an overall analysis: see: Ali Yildiz, ‘Turkey’s Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights’, Institute for European Studies, 2019, 29 April 2019, <http://dx.doi.org/10.2139/ssrn.3567095>

25 The Inquiry Commission on the State of Emergency Measures, Activity Report, 2020, https://soe.tccb.gov.tr/Docs/SOE_Report_2020.pdf, See also: Ismet Akça and others, ‘When a State of Emergency Becomes The Norm: The Impact Of Executive Decrees On Turkish Legislation’, *Heinrich Böll Stiftung*, 15 March 2018

26 Article 2 of Emergency Decree Nos. 669, 670, Article 4 of Emergency Decree No. 673

determined by the National Security Council (NSC) to perform activities against the national security of the State”;²⁷

(III) having been considered “to be a member of, or having a relation, connection or contact with terrorist organizations or structure/entities, organisations or groups, established by the NSC to be engaging in activities against the national security of the State.”²⁸

The ‘dismissals lists’, which were annexed to the emergency decrees, were produced on the basis of a combination of various criteria, namely,

- (I) making monetary contributions to the Bank Asya, and to other companies which were closed down with emergency decrees;
- (II) using the messenger application ByLock;
- (III) police or secret service reports;
- (IV) analysis of social media contacts;
- (V) donations made to certain legal persons which were closed down by emergency decrees;
- (VI) websites visited;
- (VII) being resident in student dormitories belonging to legal persons that were closed down by emergency decrees;
- (VIII) sending children to schools which were closed down by emergency decrees;
- (IX) subscription to Gülenist periodicals, or to others which were closed down by emergency decrees;
- (X) information received from work colleagues or from neighbors;
- (XI) being a manager or member of a trade union, association, foundations which were closed down by emergency decrees.²⁹

Of the total number of 125,678 dismissals that have been carried out as per emergency decrees, 13,682 dismissals were of those from the Turkish Armed Forces (TAF), consisting of the air, naval and land forces.³⁰ After the state of emergency was lifted, the dismissals from the TAF continued unabated.³¹ According to a statement on 7 April 2021, the Turkish Minister of Defence explained that a total of 21,650 officers have been summarily dismissed since July 2016.³² The statement also noted that dismissal procedures concerning a further 3,157 officers are underway.³³

27 Article 1 of Emergency Decree Nos. 679, 686, 689, 692, 695, 697, 701

28 Article 4 of Emergency Decree No. 667

29 Council of Europe, ‘Turkey - Opinion on Emergency Decree Laws N°s 667-676, adopted following the failed coup of 15th July, 2016’, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, para. 103, [https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD\(2016\)037-e](https://www.venice.coe.int/webforms/documents/?pdf=C-DL-AD(2016)037-e). See also, ‘Memorandum prepared by the Ministry of Justice of Turkey for the visit of the delegation of the Venice Commission to Ankara on 3rd and 4th November, 2016, in connection with the emergency decree Laws’, [https://www.venice.coe.int/webforms/documents/?pdf=C-DL-REF\(2016\)067-e](https://www.venice.coe.int/webforms/documents/?pdf=C-DL-REF(2016)067-e). Apart from the above-mentioned general reasoning, the Emergency Decrees presented neither an individualized justification, nor a definition of “membership, relation, connection, contact, affiliation, link,” nor yet the assessment criteria that were used to determine that public servants be dismissed.

30 The Inquiry Commission on the State of Emergency Measures, Activity Report, 2019, https://soe.tccb.gov.tr/Docs/OHAL_Report_2020.pdf

31 With Law no. 7145, dated 25 July 2018, the Government extended its power to dismiss civil servants without a disciplinary proceeding for three more years, until July 2021.

32 Ministry of Defence, press release, 7 April 2021, <https://www.msb.gov.tr/SlaytHaber/742021-32320>

33 Ibid.

6. The FETÖ-Meter system in Turkey

6.1. Basic parameters of the FETÖ-Meter system

It must be stressed that the above-mentioned eleven criteria for the ‘dismissals lists’ were applied mostly to those civil servants who worked in public institutions, rather than to those who served in the armed forces. In order to determine those military officers who were to be dismissed, different algorithms, *inter alia* the FETÖ-Meter system, were invented, and have since been used to justify dismissals from the TAF.

Briefly put, the FETÖ-Meter is an excel based algorithm, designed by Rear Admiral Cihat Yaycı, to profile all active and retired military officers. According to Yaycı, it is a “decision support program” that helps the decision makers to uncover “crypto” Gülenist soldiers.³⁴ According to the state-run Anatolian News Agency, at least 810,000 individuals have been subjected to this profiling algorithm.³⁵ “A special unit called ‘The Office of Judicial Proceedings and Administrative Action’ (ATİİİŞ) within the Personnel Department of the Turkish Naval Forces (TNF) was responsible for its implementation.” It was created through an order issued by the Commander of the TNF, and it started to operate under the supervision of Resigned Rear Admiral Cihat Yaycı, the then-president of the personnel department of TNF. The ATİİİŞ personnel who run the FETÖ-Meter algorithm were personally chosen by Yaycı himself, either from among officers who had been prosecuted in well-known controversial cases, such as Ergenekon and Balyoz (Sledgehammer), or those who are personally close to him.³⁶

The ATİİİŞ became operational on 11 September 2016. Despite the official starting date, Yaycı said in an interview that his efforts to design such a system started seven or eight years before the coup attempt of 2016, and he added that, while he carried out his work, the Turkish state authorities were aware of it.³⁷

6.2. The application of the FETÖ-Meter system

The set of criteria deployed in order to ‘uncover’ so-called ‘crypto’ Gülenist soldiers was first published by the pro-government journalist, Nedim Şener, in his book entitled *Hero Traitors*.³⁸ The book was published on 15 May 2018 and includes a document entitled ‘Personnel Criterion Point Card’.³⁹

On 11 September, 2018 the state-run Anadolu Agency (AA) published a news item headed ‘Cryptos are deciphered with ‘FETÖ-Meter’’, and this included a screen shot of the ‘Personnel Criterion Point Card’.⁴⁰ Cihat Yaycı himself later gave interviews to several news platforms, and he explained the criteria and the workings of the FETÖ-Meter in detail.⁴¹ In these interviews, Yaycı also confirmed the authenticity of the card which Şener had published.

According to Şener and Yaycı, each personnel member is grouped into one of four categories based on the points he/she is or was given by the algorithm:

34 See two interviews with Cihat Yaycı: (1) ‘FETÖMETRE Nasıl Çalışıyor? Cihat Yaycı İlk Kez Anlatıyor [How does the Fetometre work? Cihat Yaycı explains for the first time]’, <https://www.youtube.com/watch?v=my0keJf5png>; ‘Cuneyt Özdemir’in Cihat Yaycı Röportajı Fetö’cülerini Çılgına Çevirdi!’, <https://www.youtube.com/watch?v=7FPaOGbgu6o>

35 ‘Turkish navy algorithm detects allegedly 4,500 Gülen-linked officers among 800,000 profiled’ Turkish Minute, 11 September 2018, <https://www.turkishminute.com/2018/09/11/turkish-navy-algorithm-detects-allegedly-4500-gulen-linked-officers-among-800000-profiled/>

36 ‘Turkish Army taps into technology, intelligence to weed out FETÖ’ Daily Sabah, 12 September 2018, <https://www.dailysabah.com/investigations/2018/09/12/turkish-army-taps-into-technology-intelligence-to-weed-out-feto>

37 See Yaycı’s interviews, footnote 36.

38 Nedim Şener, Karaman Hainler, ‘Türk Silahlı Kuvvetleri’nde Fetö’nün Kriptoları’, Destek Publishing, 2018

39 Nedim Şener describes the Personnel Criterion Point Card as a ‘Table Regarding the Criteria Used to Determine Fetö/Pdy Members within the Turkish Armed Forces, known as the Fetömeter in the General Public. (Point Card)’.

- (I) 0.00– 0.999 point: to be monitored;
- (II) 1.000 – 1.999 point: to be subjected to a thorough investigation;
- (III) 2.000 – 2.999: to be suspended or dismissed from the post;
- (IV) 3.000 and above: shall be dismissed.⁴²

40 'FETÖ metre' ile kriptolar deşifre ediliyor' Anadolu Agency, 11 September 2018, <https://www.aa.com.tr/tr/15-tem-muz-darbe-girisimi/feto-metre-ile-kriptolar-desifre-ediliyor/1251818>

41 See Yaycı's interviews, footnote 36

Yaycı said, in an interview, that the highest point would be ten.⁴³

42 See Şener, footnote 40, p. 225

Şener importantly notes that “this system was designed in such a way that it was almost impossible for an individual to score 0.000 points.”⁴⁴ He also states that “[i]n fact, even if an individual scored 0.000 points, he/she had still been subjected to investigation as a FETO suspect.”⁴⁵ The Personnel Criterion Point Card, which was published by Şener, included 58 main, and over 200 sub-criteria. The Anatolian News Agency, however, reported that the system had started with 29 main criteria, which were expanded into 70 main, and 249 sub criteria,⁴⁶ while Yaycı said the number of main criteria was 97, and of sub-criteria about 290.⁴⁷

43 Ibid.

44 Ibid, p. 226

45 Ibid.

46 See the AA news article, footnote 42

47 See Yaycı's interviews, footnote 36

The FETÖ-Meter criteria, which were published by Şener and confirmed by Yaycı, may be grouped in four categories, namely:

- (I) those directly relating to the core of the private life of the profiled person;
- (II) those relating to professional life (as of their cadetship) of the profiled person;
- (III) those relating to the social circle and affiliation of the profiled person;
- (IV) those relating to the relatives of the profiled person;

(I) *Criteria relating to the core of the private lives of military personnel*

Getting married within six months (without, or with a very short engagement period): 0.050	Being divorced between 2015 and 2016: 0.150	Planned vacation prior to the coup attempt: 0.20
Having an abnormality in one's health status records: 0.200 – 0.800	Having filed a retirement or resignation request between July, 2016, and March, 2017: 0.200 – 0.400	Residing at the same house as someone who is affiliated with the GM: 0.200 – 1.200

This group of criteria directly concerns the core of the private life of the concerned person. For instance, the score for having married without, or with a very short, engagement period is 0.05, while the score for having been divorced between 2015 and 2016 is 0.150.

(II) *Criteria relating to professional life (as of their cadetship) of the profiled person*

Military school entrance year (2003-2013): 0.060 – 0.300	High graduation grade from the Military School and the Military Academy: 0.100 – 0.200	Having been rewarded by early promotion: 0.100 – 0.300	Having received high evaluation scores from his/her superiors: 0.200 – 0.600
Having worked as an aide to, or as Chief of Staff of, senior commanders: 0.100 – 0.400	Having worked for the Military School Student Admission Boards: 0.500 – 0.095	Having worked for the Military Schools and/or the Military Academy: 0.150 – 0.600	Serving as a Military Attaché, or being assigned to a NATO post or another post abroad: 0.100 – 0.300
Having worked at important and sensitive units (i.e., intelligence, communication, duty evaluation and inspection units): 0.050 – 0.300	Status and attitude during the coup attempt (depending on direct participation, strong suspicion, or suspicion): 1.800 – 3.00	Foreign language abnormality (fluctuation in grades in foreign language exams): 0.800 – 1.500	Having attended a foreign language course (for each course): 0.020 – 0.050
Having studied at the Military Academy for general staff officers: 0.150 – 0.700			

Most of this group of criteria are based on certain background information and the achievements of military members, such as promotions, “entrance year to military school,” “attendance of a foreign language course,” or “serving as a Military Attaché, or being assigned to a NATO post.” In general, this group of criteria aims to assess certain parameters in the professional life of military personnel. Some other criteria in this group are devoted to assessing their professional status (rank) and attitude during the 2016 attempted coup.

(III) *Criteria relating to the social circle and affiliation of the profiled person*

48 A pro-government journalist claimed, in a TV interview, that the Universities of Purdue and Old Dominion were affiliated with the Gülen Movement, available at: <https://twitter.com/gokhanzbek/status/887090955492503553>

Having studied at educational institutions abroad, or those dissolved by emergency decrees, or universities of Purdue or Old Dominion: 0.050 – 0.450	Making a donation to those entities who were dissolved by emergency decrees: 3.000	Intelligence Reports of the Turkish Intelligence Agency (MIT), the Police, the Financial Crimes Investigation Board (MASAK): 0.100 – 3.000
Membership of those entities (i.e. trade unions, NGOs) that were dissolved by emergency decrees: 2.000	Having been informed upon through the official communication platforms: 0.010	Having a PhD degree (in a case where the dissertation consultants or jury member(s) were dismissed through an emergency decree, or who were prosecuted within the scope of an investigation against the GM): 0.015 – 0.030
Using or downloading Bylock: 4.000	Having a deposit account in Bank Asya: 0.050 – 2.000	Judicial proceeding status: Whether the person concerned is a fugitive, or has ever been remanded to pre-trial detention, and the length of the pre-trial detention period: 0.750 – 4.000

This group of criteria again includes and processes, sensitive personal data emanating from the social circle and affiliation (or membership of associations, foundations or trade unions) of military members. A notable feature of this group is the criminalization of having studied at Purdue or Old Dominion universities, where many members of the Turkish armed forces obtained Masters’ and PhD degrees.⁴⁸

(IV) *Criteria relating to the relatives of the profiled person*

Having a relative who is a senior public servant, and who is affiliated with the GM: 0.020 – 0.100	Having a relative who has used or downloaded Bylock: 0.500 – 2.000	Having a relative who has a deposit account at Bank Asya: 0.001 – 1.000	Having a relative who has been dismissed as a result of an emergency decree: 0.050 – 2.500
Having a child who has studied at those educational institutions that were dissolved by emergency decrees: 0.300 – 0.600	Having a relative who has worked at institutions or companies which were dissolved by the use of an emergency decree: 0.200 – 1.000	Having a relative who made a donation to those entities which were dissolved by emergency decrees: 0.300 – 2.400	Having a relative who has membership of those entities (i.e.: Trade Unions, NGOs) that were dissolved by emergency decrees: 0.150 – 2.000
Having a relative who has worked for the Turkish Telecom Company or The Scientific and Technological Research Council: 0.100 – 1.000		Having a relative who was arrested, released under probation, or who was investigated within the scope of investigations against the members of GM, or who was a witness at such a trial: 0.100 – 1.500	
Relatives include first, second and third degree relatives, and all other relatives.			

This group of criteria is devoted to assessing the family relations of military members, along with proceedings or administrative measures carried out against their relatives.

6.3. Sources of data collection

In his interviews with the Turkish media, Yaycı said it was “really easy to obtain data – it was enough to send a written request to the relevant institution, and then all data was sent to them.”⁴⁹ According to a piece by the state-run Anatolian News Agency, the ATİİİŞ unit has gathered data from sixteen ministries and twenty-five other public institutions.⁵⁰ The piece mentions, for example, that the ATİİİŞ obtained nineteen million lines of banking data from the Savings Deposit Insurance Fund (TMSF), and subsequently processed the banking data of ten thousand military personnel so as to identify those who might have an account in Bank Asya and those who have made payments or donations to media outlets, education institutions, trade unions, associations and foundations which were dissolved by emergency decrees.⁵¹ The piece further reveals that the telephone calls and Internet records of approximately one million GSM numbers have been processed by the ATİİİŞ. This vast amount of

49 See Yaycı's interviews, footnote 36

50 See the AA news article, footnote 42

51 Ibid.

data complemented the already existing personal data within the Personnel Department at TNF.

6.4. Lack of legal grounds for the FETÖ-Meter system

As noted above, the ATİİİŞ obtained the sensitive personal data of at least 810,000 individuals from various official bodies, pursuant to a ‘commander-ship order’ issued by the Commander of the TNF. Neither Yaycı himself, nor any department of the TNF, including the ATİİİŞ, has, however, been legally vested with the authority to carry out any of those activities explained above. As such, there exists no legal basis to lawfully obtain and process the personal data of hundreds of thousands of individuals

Even if such legal authorization has been granted, the activities of the ATİİİŞ would still be in clear violation of many constitutional guarantees and internationally protected human rights. Article 20 of the Turkish Constitution (privacy of private life), for example, says:

*“Everyone has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/ her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law or by the person’s explicit consent. The principles and procedures regarding the protection of personal data shall be laid down in law.”*⁵²

A more specific protection is provided for public servants under Article 128(2) of The Turkish Constitution:

*“The qualifications, appointments, duties and powers, rights and responsibilities, salaries and allowances of public servants and other public officials, and other matters related to their status shall be regulated by law.”*⁵³

The Turkish Personal Data Protection Law (TPDPL), in its Article 4, stipulates that personal data shall only be processed in compliance with procedures and principles that are laid down in this law or in other laws. Under Article 6, the TPDPL further provides that personal data relating to the race, ethnic origin, political opinion, philosophical belief, religion, religious sect, or other belief, appearance, *membership of associations, foundations or trade-unions, data concerning health*, sexual life, criminal convictions and security measures, and biometric and genetic data, are deemed to be special categories of personal data. And, it is prohibited to process special categories of personal data (*sensitive data*) without the explicit consent of the data subject.⁵⁴

52 The official translation of the Turkish Constitution is available at: <https://www.anayasa.gov.tr/en/legislation/turkish-constitution/>

53 Article 128(2) of the Turkish Constitution, *ibid.*

54 Articles 4 and 6 of the TPDPL, official translation available at: <https://www.kvkk.gov.tr/Icerik/6649/Personal-Data-Protection-Law>

7. Methodology:

Data collection, participants and sampling and data analysis

We conducted ten semi-structured, in-depth, elite interviews with former members of the Turkish armed forces between October 2020, and January 2021, and carried out various follow-up interviews by phone, via Zoom and email. We initially aimed to conduct face-to-face interviews, but this was simply impossible due to the COVID-19 pandemic, and for security reasons. The participants also provided copies of legal documents pertaining to their dismissals and the judicial proceedings initiated against them.

A purposive snowballing sample of ten Turkish participants/interlocutors was recruited through personal contacts and the recommendations of other participants. Of the 10 participants, nine were male, and one was female. Their ages ranged from 40 to 51. All participants held different positions with the Turkish Naval Forces (TNF), including the ranks of Colonel, Major, Lieutenant Colonel, and Captain, having served at the TNF for tens of years, ranging from the minimum 14 years to the maximum 23 years. Most participants had participated in the initial seminars organized by the ATİİİŞ unit that was established by Cihat Yaycı, and that was responsible for the entire implementation of the FETÖ-Meter list. These seminars aimed to introduce the FETÖ-Meter list to the wider circles of, first, the TNF, and then the Turkish armed forces. One participant, moreover, had worked at the ATİİİŞ unit.

All ten participants were summarily dismissed from their public posts and, in most cases, were prosecuted/arrested/detained at different dates between October 2016, and December 2017, mostly on alleged membership of terrorist organizations, in particular, FETÖ. None of the participants were officially charged with involvement in the coup attempt. On the contrary, Participants 1, 3, 7, 8, and 9 were either promoted or assigned to important positions after the coup attempt.

Based on the information provided by the participants, six of the respondents had been arrested, with three of them being placed in pre-trial detention, while the other three were released following a judicial control decision. Four of the participants had never been arrested or placed in pre-trial detention subsequently to the 2016 attempted coup. All of the participants are currently relocated in Europe as recognized refugees or asylum seekers.

Most participants had outstanding educational backgrounds and vocational qualifications. Participant 4, for example, graduated from the Turkish Naval Academy at the top of his class and moved on to obtain a master's degree in the United States, with a high proficiency in English. Participant 10 similarly holds a master's degree in the USA, and speaks English fluently. Based on the information they provided, Participants 1, 2, 6, 7, and 8 attended different postgraduate programs (MA or MSc) abroad, and they are fluent in a second language (i.e. English) other than their native language. Some participants, moreover, have served on international missions for the TNF. Participant 1 held a position at NATO in Brussels, and Participants 2 and 4 worked as military attachés.

In terms of data analysis, the present report adopts a narrative inquiry.⁵⁵ We were primarily interested in learning and transposing what victims of the

55 John W. Creswell and Cheryl N. Poth, 'Qualitative Inquiry and Research Design: Choosing among Five Approaches', Sage, 2016; Carl Auerbach and Louise B. Silverstein, 'Qualitative data: An introduction to coding and analysis', New York University Press, 2003

FETÖ-Meter criteria list would tell us about their experiences, both as members of the TNF and as individuals who were persecuted in the crackdown in the aftermath of the 15 July 2016 attempted coup. Narrative research of a qualitative nature is a particularly suitable way of “understanding human experience through stories”,⁵⁶ which may help us to understand both human phenomena and the cultural and political environment surrounding it.

56 Jeong-Hee Kim, 'Narrative data analysis and interpretation: Flirting with data', *Understanding Narrative Inquiry*, 2016, pp. 185-224

8. Main findings

The main findings of the report show the depths of the persecution, mistreatment, humiliation and victimization that a large swathe of Turkish society endured in the aftermath of the failed coup. The findings also show that many fundamental human rights and basic tenets of criminal law, including individual legal responsibility, legal certainty, the right to a fair trial, the right to privacy and the right to data protection, have been violated. The interviews with the ten participants revealed three emergent themes:

- (I) the indiscriminate use of the FETÖ-Meter list in post-coup dismissals;
- (II) widespread torture and mistreatment; and
- (III) the lack of trust in the judiciary.

8.1. The widespread use of the FETÖ-Meter criteria in dismissals

Since the failed 15 July 2016 coup in Turkey, more than 150,000 people, including judges and prosecutors, military personnel, police officers, journalists, lawyers, human rights defenders and opposition politicians, have been collectively purged from their position and, in many cases, have been deprived of their liberty on an array of terrorism-related charges. Of that total number, 20,311 were military personnel in the Turkish Armed Forces.⁵⁷ All of them, without exception, have been dismissed on the basis of the FETÖ-Meter algorithm, which was created in September 2016.

The participants who were interviewed for the report confirmed what the mastermind behind this algorithm, the Resigned Admiral Yaycı, had said, that the FETÖ-Meter list dates well back, to several years before the attempted 2016 coup. Participant 1 said:

“I worked at the ATİİİŞ unit for three months. I was responsible for transferring the information on these lists to the personnel system database. Thousands of officers and commanders were listed, with their ranks before 2016; some were in the list even though they were dead. It was crystal clear, since day one, that the FETÖ-Meter was built on already existing profiling and tagging lists prepared by those who prosecuted in the Ergenekon and Balyoz cases.”

Participants believe that Cihat Yaycı assumed his role as the creator and executive of FETÖ-Meter with *opportunistic*⁵⁸ motivation.

Participant 6 himself heard from one of most controversial figures implicated in the Ergenekon trials, former Colonel Dursun Cicek, during some military training:

“In our training, we met Dursun Cicek. As students, we invited him to our dining table. The first thing he said to us was that ‘they were stabbed in the back, you should not be’. He said that while they were in jail, they did not stay

57 ‘20,312 military personnel summarily dismissed from Turkish Armed Forces over alleged Gülen links’, Stockholm Center for Freedom, 5 October 2020, <https://stockholmcf.org/20312-military-personnel-summarily-dismissed-from-turkish-armed-forces-over-alleged-gulen-links/>

58 W. Seltzer and Margo Anderson, ‘The dark side of numbers: The role of population data systems in human rights abuses’, Social Research, 68, 2001, p.494

idle, they created huge lists. They would give these lists to the current power holders and their time for retribution would come."

Participants 7 and 10 also shared similar observations. Participant 7 stated:

"When I first heard about the FETÖ-Meter list, I thought to myself that the Ergenekon people [Ergenekoncular] seemed to have achieved their objectives."

Participant 10 heard from another Ergenekon convict:

"Except for those who were prosecuted in the Ergenekon and Balyoz cases, we listed anyone in the Turkish army as potential suspects."

Participant 2 stated:

"The AKP and the Ergenekon organization formed a coalition, and the 2016 incident was probably nothing more than a 'controlled coup'. In its aftermath, they moved on to implement their previously fabricated genocidal execution lists. These lists were produced by blacklisting millions of Turkish people years ago."

All participants vehemently denied any relations with, or affiliation to, the Gülen Movement. As Participant 8 succinctly put it, "if you are not with them, [referring to the AKP Ergenekon coalition], then you are with the Gülen Movement".

That almost half of the participants were not even present in Turkey at the time of the attempted coup, yet were still targeted, corroborates the view that the purging lists were prepared long before the events of 15 July. Participant 2, for example, was serving as a naval attaché at the time, on a diplomatic mission abroad:

"Yet, I was accused of being a terrorist, killing and wounding people. It does not matter where you are, who you are, or what you did. Despite my option to seek asylum under diplomatic protection abroad, I decided to return to Turkey."

In the immediate aftermath of the failed coup, hundreds of Turkish army members serving at international missions and embassies, including Participant 2, were issued with 'return home' orders, and were later detained (in September 2016) on suspicion of being FETÖ members.⁵⁹

Several participants recounted that they were at sea on submerged TNF submarines at the time of the coup. Participant 7 explained:

"I was on a mission on the morning of 15 July with my fellow submarine officers. We received a simple message later that day (through the radio waves, as the communication with submerged submarines is normally very challenging and requires specialized technology): 'The Navy Commander is on duty. The coup perpetrated by a small group within the Turkish army failed.' We continued the mission until 18 July, as initially planned, as if nothing had happened."

Once the FETÖ-Meter algorithm that is based on these lists started to be used in dismissals, it caused unrest in the TNF. To address concerns, Cihat Yaycı himself organized numerous briefings to explain to the TNF staff what the FETÖ-Meter algorithm is all about. Participant 7 was one of the attendees at the Mersin briefing. He shared his insights:

"Everyone in the meeting hall was concerned about the FETÖ-Meter criteria used in the dismissals. The briefing lasted for more than 6 hours. Yaycı talked about every criterion in the FETÖ-Meter list. He said: 'Tell your

elder brothers [referring to 'Agabey' jargon in the Gülen Movement] that the game is over. We are looking for every tiny detail in your past. If we find even the remotest link to the Gülen Movement, then you are done'."

He continued:

"Then a commander raised his hand and said to Yaycı that what he's been telling them does not make any sense. Yaycı then gave a couple of examples. He said, if an army member says he met his wife, say, on a bus, he is certainly lying, because he is hiding that he met his wife through FETÖ's 'marriage service structure's match-making catalogues. This can only mean one thing: That person is a FETÖ member."

These briefings apparently did not create the desired effects, and Yaycı had to schedule several more meetings. Participant 7 was struck by the way Yaycı's tone changed over time:

"In the Gölcük briefing, he spent almost half of the time on trying to convince the attendees to benefit from the effective repentance provisions. He said: "Be a confessor [itirafçı], tell us what you know and we'll show you a safe way out."

All participants believe that they were victims of the FETÖ-Meter list. Participant 8 was purged from the TNF because he was allegedly a Bylock user:

"I see from my dismissal documents that the TNF sent an inquiry to the MIT [Turkey's intelligence service] about whether I was a Bylock user, together with another 2,000 officers. But before waiting for a response to that inquiry, the TNF made a criminal complaint about us, and once the prosecutorial office opened up an investigation, I was suspended and then dismissed. After some time, the MIT sent a response: they had found no trace of the Bylock app in my phone."

But he notes that he knew that Bylock was just a pretext, right from the start:

"If you look at other FETÖ-Meter criteria, I reckon everyone in the army might be regarded a FETÖ member. I have a Master's degree, I am a PhD candidate, I have fluent English, I served at international missions, I am a hardworking person and I have a great service record... They maybe targeted us because we were really successful."

Participant 6 also shared his story of being an alleged Bylock user:

"I lost my job because of the Bylock app. They claim that I used the app for 5 days. But the signal sheets they rely on show that I was online in that app for 4 days straight. So, according to them, for 96 hours, I used the app non-stop. I did not eat, I did not sleep, I did not do anything except use the app. The expert witness in the court said this is neither technologically nor physically possible."

Participant 1 was also dismissed, due to an allegation that his wife was a Bylock user:

"One day Cihat Yaycı wanted to see me. He said: "your wife is a Bylock user". I said: "that's not possible, because her number is registered in my name". He said: "prove it, if you are innocent". The presumption of innocence is thus reversed."

Apart from other more 'formal' reasons that were cited for her dismissal, such as allegedly having a contact with a Bylock user, and the testimony of a secret

witness, Participant 10 is worried that her son, who has Down syndrome, played a role in her dismissal:

“I heard it from Admiral Sezai Ozturk. He said that the Gülenists give special medication to its members to be able to keep them within the Movement, but one side effect of this medication is having a disabled child. He also said, Fethullah Gülen had also issued a Fatwa [an opinion handed down by a qualified Islamic jurist] and instructed his followers to keep babies, no matter what, even though they have conditions that would lead to physical and mental disabilities. That’s why this was added as a criterion of the FETÖ-Meter list.”

What Participant 3 heard from his commander, who attended the Marmaris briefing in July 2017 confirms this:

“Apparently being pregnant with a disabled baby and keeping it (not having an abortion) is a FETÖ-Meter criterion. My commander said Yaycı himself had explained that several people had been purged from the army, based on the fact that they had disabled children. Can you believe it? According to Yaycı, keeping your own blood, your child, even though s/he would be disabled, means you have religious views which can only indicate you are a FETÖ member.”

Four participants (Participants 2, 5, 6, and 9) saw the Bank Asya, an Islamic bank that used to belong to businessmen who were members of the Gülen Movement, cited in justification of their dismissals and/or detention, but, in reality, none had a deposit at that bank. On the last day of his eight-day detention, for example, Participant 2 was told that one of his relatives was a Bank Asya client:

“Then, a few hours later, I was released from detention, because the prosecutor apparently found out that this was not true.”

Participant 5 also stated:

“According to the document I received from the personnel department, my brothers and I had bank accounts at the Bank Asya. And this was said to take place in 2017. But they forgot that the Bank Asya had been defunct since 22 July 2016.”

Participant 6 was similarly dismissed, because his sister had a Bank Asya bank account:

“She was a business person. She had bank accounts in more than ten different banks. One happened to be at Bank Asya. She proved that she used that account only for business purposes, but they still sacked me from my job over it.”

When the alleged evidence, such as downloading the Bylock app or possessing a bank account at the Bank Asya, were seemingly insufficient, the TNF openly acknowledged that they used the information obtained through the FETÖ-Meter criteria as a basis for dismissals. Sharing with us the document that he had received from the TNF, Participant 9 stated:

“As you see, the document cites many absurd reasons for my dismissal. Having received high service record grades from FETÖ affiliated commanders, having served on interview committees and international missions and having a suspicious marriage process...”

Participant 4 shared a similar story:

“I was not a Bylock user. I did not have a deposit at the Bank Asya. I did not send my children to schools affiliated with the Gülenists. I did not buy subscriptions to their newspapers or periodical. Yet I was dismissed over Gülenist links. You will not believe it, but my institution [TNF] said I obtained a Master’s degree in the United States from Purdue University, gained 97.5 out of the total 100 in the English language exam [referring to the KDPS, the foreign language proficiency examination for state employees], worked as a military attaché, and worked on highly sensitive military projects. To them, these reasons prove that I am a FETÖ member.”

8.2. Torture and mistreatment

Torture and mistreatment have always been unfortunate markers of Turkey’s human rights landscape. For decades, allegations of torture, mistreatment, police violence, sexual abuse, overcrowded and unhealthy prison conditions, strip-searching, have been the most common human rights violations in the country. This was so, despite international conventions to which Turkey is a party, and the domestic legislation, which prohibits, without any exceptions, torture and inhuman and degrading treatment. The allegations of torture and ill treatment, and the entrenched practice of impunity, have reached unprecedented levels in more recent years, especially in the aftermath of the 15 July 2016 attempted coup. A report drafted for the Turkey Tribunal, for example, collected credible evidence showing that torture was practiced in a systematic and organized manner against certain groups of people, *inter alia*, the Gülen Movement and the Kurdish minority.⁶⁰

60 Eric Sottas and Johan Vande Lanotte, ‘Torture in Turkey Today’, <https://turkeytribunal.com/executive-summary-torture-in-turkey-today/>

The participants who were interviewed for this report were no exception in this regard: some of them complained of having experienced similar mistreatment and torture. Starting with insults at the time of apprehension, arrest/detention was ordered, despite serious health problems, coupled with inhuman and degrading treatment by police officers. As time passed, the level of mistreatment and torture unfortunately increased.

At the time of his detention, Participant 2 was suffering from a severe slipped disc problem, and was unable to move or sit:

“Despite the intensity of my pain, I was arrested by the police in an insulting and degrading manner, as a disabled man, and in front of neighbours and family members, with a humiliating accusation of being a traitor against my own beloved country.”

He was soon transferred to a hospital, yet the doctor refused to put his medical condition on record, and he was taken to a sports hall that was used as a detention centre, where he spent seven days with 100 other military officers. He further explained the increasing torture and mistreatment he suffered during the detention:

“In addition to being deprived of sleep, nutrition and hygiene facilities, I was subjected to regular yelling, cursing, abuse, threats of beatings and rape, and other torments. They repeatedly denied my requests for a medical examination”.

After seven days, on 6 October 2016, the judge released him with a judicial control decision (with a ban on leaving the country, and a requirement to report to a police station one or two days a week), but his condition seriously worsened on that day, and the police had to take him to an emergency room immediately after his release.

These unlawful practices were systematic and were organized for these military personnel, even before their arrest and detention. Participant 6 stated that an interrogation centre was established at the General Staff of the Turkish Armed Forces to question those suspected of being FETÖ members before they were turned in to the police:

“I both witnessed and heard that a group of senior military personnel used different forms of torture and mistreatment, including beatings, electric shocks, threats, and sexual assault, to extract confessions or to provide the names of other FETÖ members in the Turkish army.”

Participant 10 remembers that senior military personnel showed her pictures and videos of the captured military officers, the alleged coup plotters, who were handcuffed behind their backs, forced to kneel for hours, beaten, sexually abused and insulted.⁶¹ She continued:

“They said they would see how you reacted to these pictures and videos. I was trying to hide my feelings, but one of them told me: ‘you seem to be upset, Commander!’ I was really afraid.”

Alas, the Turkish army appeared to have a very troubling policy for dealing with its members, and were deeply implicated in this torture regime: it rewarded them with promotions. Participant 6 noted that:

“An aide (commanding officer) to a General was severely beaten by a Colonel. His mouth was filled with blood, his face smashed, his nose broken. Some months later, that Colonel became a General in the Turkish army, and that officer was turned into the police, and is probably still in jail.”

The humiliating and insulting mistreatment also expanded to the families. Most families were taken as hostages, interrogated and arrested. Participant 4 stated:

“Soon after I was detained, my father and wife were also arrested and taken into custody, probably to convince me to cooperate with the authorities.”

Participant 2 described how his family was also targeted:

“I had no connection whatsoever with the coup, and my criminal investigation confirmed this. The very next day, after I was freed, the police raided my house again to detain me. I was, luckily, not at home, my wife gave me the news and I understood I had to disappear immediately. But they detained my brother, wife and eldest for hours, and asked them questions about me. As if this were not enough, four armed officers raided my old mother’s house and carried out a search under inhumane conditions.”

Participant 8 also shared a similar story:

“Close friends of mine have been tortured. That’s why I did not want to surrender to the police. While I was on the run, the police raided my house 3 times – even though they knew they could not find me at my house. My family suffered a lot.”

Family members were also marginalized in their social life. Participant 1 explained:

“My wife was a branch manager at a Turkish bank. Following my dismissal from the Turkish army, she was subjected to insults, sarcastic remarks, and threat of job loss.”

8.3. Lack of trust in the judiciary

Over the last decade, the Turkish judiciary was considered to be “in peril”⁶² against the backdrop of regular changes to the legal-legislative frameworks, increased governmental control, arbitrary dismissal/detention, the transfer of thousands of judges and prosecutors, and the widespread harassment of lawyers and bar associations. Field surveys also revealed many pressing issues that were of concern, including high levels of corruption and nepotism, and all of this has led to the dramatic loss of citizens’ trust in the judicial system.⁶³

For those who been caught in the FETÖ dragnet in the aftermath of the attempted 2016 coup, it is even harder to navigate the legal chaos and to find redress and justice in Turkey. Amnesty International rightly described Turkey’s post-coup legal landscape as being ‘desolate’.⁶⁴ All of the participants’ fruitless legal fights sadly confirm this.

Once they became aware of their dismissal decisions, all of the participants tried to make use of all of the available domestic remedies. Yet, for dismissed public servants and disbanded institutions, there was no clear route of appeal. Thousands of individuals applied to Turkey’s administrative courts, the Turkish Council of State and the Turkish Constitutional Court, but these bodies ruled that they had no competence to review emergency decrees. In mid-2017, Turkey decided to bring a temporary solution to this large-scale problem – a special *ad hoc* body that was tasked with reviewing individual applications that were related to the dismissals of public servants. A non-judicial ‘State of Emergency Inquiry Commission’ (*OHAL Komisyonu*) was thus formed in May 2017, to examine the mass dismissals of public servants, as well as widespread closures and liquidation of media outlets, schools and other institutions.

As of May 2021, the Commission had delivered 115,130 decisions (14,072 accepted, 101,058 rejected), with the number of pending applications standing at 11,544.⁶⁵ Apart from this very low success rate, a report by the Turkey Human Rights Litigation Support Project gathered valid evidence, in October 2019, that the Commission cannot be regarded as an effective domestic remedy, in light of the many structural problems, including, but not limited to, the arbitrary and non-transparent nature of its decisions, the limited scope of its mandate, the lack of impartiality and independence from the executive, and the lack of procedural safeguards.⁶⁶

All of the participants are among those whose applications have been rejected by the Commission. Although they have exhausted this domestic remedy, they still have a complete lack of understanding as to what sort of criteria the Commission utilizes in formulating its decisions. While the Commission’s decisions are also appealable before the Ankara Administrative Courts, to be followed by an individual application before the Turkish

62 International Commission of Jurists, ‘Turkey: The Judicial System in Peril’, 2016, <https://www.refworld.org/pdfid/57ee8e674.pdf>

63 “[S]ixty percent of respondents said their trust in the judiciary had been negatively affected, and 57 percent said outright that they did not trust the judiciary or its verdicts.” See: ‘Survey shows falling trust in Erdoğan and Turkish judiciary’ *Ahval News*, 14 November 2018, <https://ahvalnews.com/recep-tayyip-erdogan/survey-shows-falling-trust-erdogan-and-turkish-judiciary>

64 Amnesty International, ‘Weathering the Storm: Defending human rights in Turkey’s climate of fear’, 26 April 2018, <https://www.amnesty.org/en/documents/eur44/8200/2018/en/>

65 Announcement on the Decisions of the Inquiry Commission on the State of Emergency Measures, 28 May 2021, <https://soe.tccb.gov.tr/>

66 Turkey Human Rights Litigation Support Project, ‘Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission’, 15 October 2019, <https://www.turkeylitigationssupport.com/blog/2019/10/15/access-to-justice-in-turkey-a-review-of-the-state-of-emergency-inquiry-commissionnbsp>

Constitutional Court, but most of the applicants also saw their applications rejected by these bodies. Participant 10, for instance, stated:

“I challenged my dismissal before the [OHAL] Commission. Rejected. I then brought my case to the Administrative Court. Rejected. Finally, the Turkish Constitutional Court. Again no luck, rejected. I don’t think these bodies considered my arguments at all.”

Participant 5 has had an almost identical experience. His repeated applications to find justice yielded no result. However, as if this were not enough, he shared how his lawyer has also been targeted. Participant 5 explained:

“My lawyer was targeted and reprisals were made against him for his efforts to protect my rights. He was arrested without evidence, because, according to the prosecutor, he was associated with my alleged crime.”

In Turkey’s desolate post-coup human rights landscape, the ‘mass prosecution of lawyers’ has been a key indicator of the severe undermining of the functioning of the judiciary and the rule of law. The Arrested Lawyers Initiative, a Brussels based rights group, for instance, noted in its January 2021 report that Turkey has prosecuted more than 1,600 lawyers since 2016, with 450 of these being convicted on terrorism related charges, and 615 having been held in pre-trial detention for varying periods.⁶⁷ Human Rights Watch has similarly documented many cases, and has found a ‘pattern’ of police threatening and intimidating lawyers and of prosecutors investigating and opening criminal cases against them.⁶⁸

Desperate for justice in Turkey, all participants have recognized that they had to leave the country and seek asylum in order to settle in European countries. Participant 1 said:

“This was a really hard decision, but I knew I had to flee eventually, because, in their eyes, we are terrorists. Justice is like a non-existent town in Turkey.”

Participant 2 shared similar reflections:

“My family and I were treated badly, despite years of service to Turkey. We realised we had no right to live in the country as noble human beings.”

Despite the vulnerabilities of their situations, those who fled the country still prefer being asylum seekers and/or refugees to having a citizenship bond with an authoritarian state, that is, today’s Turkey. Participant 6 believed this provided a “source of protection” for him and his family:

“As dangerous and painful as our path to freedom is, for exiles like us, it is still better than being repressed in Turkey. We now wish only the best, and peace for our country.”

67 The Arrested Lawyers Initiative, ‘Mass Prosecution of Lawyers in Turkey (2016-2021)’ 18 January 2021, <https://arrestedlawyers.org/2021/01/18/report-up-date-mass-prosecution-of-lawyers-in-turkey-2016-2021/>

68 Human Rights Watch, ‘Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey’, 10 April, 2019, <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>

9. Conclusion

Our research showed us again that the dark sides of numbers⁶⁹ can be more dangerous in our century as governments have gigantic technological capabilities to collect, retain and process enormous amounts of data.

In the aftermath of the attempted 15 July 2016 coup, Turkey declared a nationwide state of emergency and adopted over 30 emergency decrees that introduced sweeping measures that resulted in strongly curtailed rights. In the post-coup period, Turkish state authorities designed different algorithms and systems, based on certain criteria, including the most widely known, the 'FETÖ-Meter', in order to determine whether a person is affiliated to, or connected with, the Gülen Movement. This algorithm was used to calculate the material, ideological and institutional affiliation and affinity of these Turkish citizens with the Gülen Movement, thus resulting in the large-scale profiling of all active and retired military officers.

As detailed in the report, most of the FETÖ-Meter criteria unlawfully and unjustly interfered with the core of the private life of the concerned persons, and this occurred on a large-scale. Moreover, its application signifies the arbitrariness of the data selection, and indicates that the real motivation was to vindicate the Government's prejudice towards certain military personnel who were allegedly 'crypto' Gülenists, who had infiltrated the Turkish army. Based on biased and arbitrary data, and unsubstantiated evidence, as exemplified by the ten interviews conducted for this report, the FETÖ-Meter essentially illustrates the expanding practice of criminalizing normal and everyday activities as being terrorist crimes. It establishes a pattern of application of punitive measures towards not only primary suspects, but also towards anyone in their social circles, including their family members, colleagues, and neighbours. As shown in the report, the application of the FETÖ-Meter system gives rise to a dangerous standard for guilt by association, which is in flagrant violation of many fundamental human rights and principles of modern criminal law, including individual legal responsibility, freedom from torture and mistreatment, the prohibition of retrospective punishment, the principle of no punishment without law, due process, and the right to privacy.

The main findings of the report show the depths of the persecution, mistreatment, humiliation and victimization that have marked Turkey's post-coup period. As detailed in the interviews, in many cases, the victims of the FETÖ-Meter have been arrested, tortured and mistreated. They have ultimately fallen victim to political and legal injustices, without any recourse to an effective remedy that they can use to meaningfully challenge their dismissals and detention. Desperate for justice in Turkey, they have had to leave Turkey and settle in European countries as refugees. The FETÖ-Meter has been an unfortunate marker of the regime of evil that is taking shape in Turkey today.

69 W. Seltzer and Margo Anderson, 'The dark side of numbers: The role of population data systems in human rights abuses', *Social Research*, 68, 2001, p.494

