HOW WILL THE LEGAL PROBLEM IN THE SCIENCE RESEARCH FOUNDATION CASE

that arose from the filing of an appeal submitted by unauthorized individuals

BE RESOLVED?

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INTRODUCTION

Numerous unlawful acts have taken place during the Science Research Foundation case that began in the year 2000. Most recently, there was a very serious violation of the law during the appellate review for LCP [Law of Criminal Procedure] 308[1], initiated at our behest at the Supreme Court at the end of June, 2011. The development of the incident that is the subject of our appeal is as follows:

The case brought against Mr. Adnan Oktar (Harun Yahya), Honorary Chairman of the SRF, and his friends on **two separate accusations** pertaining to "establishing a criminal organization and committing blackmail," was **dismissed** by the 2nd High Criminal Court of Istanbul on November 24th, 2005 due to **the expiration of the legal statute of limitations.**

The allegation regarding **"committing blackmail,"** which is the first accusation in the case, **had expired under the statute of limitations many years prior to this ruling** [2003 for Fatih Altaylı and 1999 for Ebru Şimşek]. All legal rights of intervention in the case for the individuals named Fatih Altaylı and Ebru Şimşek (who stood as the intervening parties in the **case ONLY in regard to the allegation of blackmail) had been terminated** and **thus their right to APPEAL THE CASE HAD SUBSEQUENTLY EXPIRED SEVERAL YEARS PRIOR .**

The second accusation within the context of the case, **"establishing a criminal organization,"** (TCC 220) falls under that part of the Turkish Criminal Code dealing with "crimes against public peace".

In cases involving accusations about "establishing a criminal organization" natural persons cannot acquire the standing of "injured party of the crime." As a result, **it is not possible for any individual person to become the "intervening party" in a case brought on the allegation of "establishing a criminal organization" and to subsequently appeal against the case. Only the Public Prosecutor can follow the proceedings** in cases involving criminal organizations, **in the name of the public**. Consequently, **NO NATURAL PERSON, (i.e., NO INDIVIDUAL), APART FROM THE PUBLIC PROSECUTOR, HAS THE RIGHT TO APPEAL AGAINST THE RULING OF STATUTE OF LIMITATIONS** (dated November 24th, 2005, as previously mentioned) given in the aforementioned case with the allegation of establishing a criminal organization.

Yet despite this manifest legal reality, Ebru Şimşek and Fatih Altaylı, who had only become the intervening party in respect to the claim regarding "blackmail, " and whose legal standing as intervening parties was terminated many years ago, (whilst bearing in mind that the aforementioned individuals were **NOT NAMED AS INTERVENING PARTIES** in the case in regard to "establishing a criminal organization") UNLAWFULLY APPEALED AGAINST the statute of limitation ruling issued by the Local Court. **HOWEVER, ACCORDING TO TURKISH LAW AND THE JURISPRUDENCE OF THE SUPREME COURT, THIS APPEAL IS INVALID** because the Office of the Public Prosecutor, who is THE ONLY AUTHORITY with the legal right to appeal in the case, did not and has not filed any cross appeal.

Despite there being no appeal filed on behalf of the Prosecutor's Office, in the year 2007, the Supreme Court, Criminal Chamber No. 8, OVERTURNED THE STATUTE OF LIMITATIONS RULING ON THE BASIS OF AN APPEAL by Ebru Şimşek and Fatih Altaylı, who were not the aggrieved party in regards to the accusation about the criminal organization. The fact that this

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1) CCP 308: The Supreme Court Public Prosecutor can appeal against a decision by any Supreme Court Criminal Chamber, of his own volition or by request, within 30 days of the written decree reaching the Plenary Assembly of Criminal Chambers.

2) An application to a higher body alleging a violating of law and procedure against a ruling by any court.

unlawful appeal, which formed the basis of this annulment ruling, was INVALID, has emerged very recently.

In order to appeal this **invalid ruling of annulment** of the Supreme Court Criminal Chamber No. 8 (dated May 17th, 2007), a brief of appeal has been submitted to the Supreme Court Chief Public Prosecutor's Office within the framework of Article 308 of the Code of Criminal Procedure (CCP). This brief of appeal has been submitted by the retired Supreme Court Prosecutor Mr. Ahmet Gündel, and thirteen scientific legal opinions prepared by the most prominent criminal lawyers and academicians of Turkey have been submitted as letters of amicus curiae in the annex of this petition[3].

Following this request the case file, consisting of 676 folders and 84 sacks, was **brought to the Supreme Court Chief Public Prosecutor's Office on June 29th, 2011.**

However, a ruling of refusal was handed down on this 676-folder file, in only one hour of a workday, and despite the fact that the truck was never unloaded and these folders were never even taken inside the physical premises of the Supreme Court building. It is glaringly obvious that such a sizable case file could not possibly have been examined in only one day, and thus, it is equally obvious that no sound legal consideration could be duly ascertained.

Even though there are 650,000 files currently waiting to be evaluated, it is quite astonishing that this file had been deemed inadmissible with such unprecedented haste, and that our just appeal had been refused despite the many established practices of the Supreme Court. (According to the tables published in the official website of the Supreme Court, there are hundreds of thousands of files waiting on the desk of the Office of the Chief Public Prosecutor. The number of the files passed on to the year 2010 from the year 2009 is around 390,000 and the number of the files passed on to the year 2011 from the year 2010 is about 450,000)

All the legal opinions submitted as amicus curiae briefs in the annex of the petition of appeal, and the opinions of the defense lawyers state that "there is a severe violation of law in this ruling."

As you can surely appreciate, if there are similar practices in our Supreme Court, and if many of our citizens are thus being wronged because such erroneous practices are not brought to the fore of the agenda and duly resolved, this would constitute a most unacceptable state of affairs in regard to our legal system and contemporary Turkish Democracy.

Our request from your esteemed self is that you could present your opinion on this obviously unlawful proceeding in the aforementioned event, and that you could share with us your opinions and proposals for seeking a legal remedy, which would be deeply appreciated by us.

Respectfully,

3) Prof. Dr. Fatih S. Mahmutoğlu, Prof. Dr. Emin Artuk, Asst. Prof. Dr. Ümit Kocasakal, Prof. Dr. Hamide Zafer, Prof. Dr. Mustafa Ruhan Erdem, Prof. Dr. Hasan Tunç, Prof. Dr. Vahit Bıçak, Asst. Prof. Dr. Caner Yenidünya, Prof. Dr. Erol Cihan, Prof. Dr. Veli Özer Özbek, Prof. Dr. Doğan Soyaslan, Asst. prof. Dr. İlhan Üzülmez, Prof. Dr. Süheyl Donay, Asst. Prof. Dr. Yusuf Yaşar and Dr. Bilal Kartal.

WHY HAS THE SRF CASE, DISMISSED IN 2005 UNDER A RULING OF STATUTE OF LIMITATIONS EXPIRATION, BEEN NEEDLESSLY PROTRACTED FOR SIX YEARS?

The accusations brought against the individuals tried in the Science Research Foundation (SRF) case, heard at the 2nd High Criminal Court of Istanbul, consist of establishing a criminal organization[4] and blackmail[5]. This case is in fact **two separate cases**, **combined together** on the grounds that they are connected and are heard together. Of course, however, the fact that these two cases were brought and heard together does not do away with the fact that these are legally **two separate cases** and that **all the legal bodies** involved in these two cases and, in particular, the legal procedures, **should be evaluated separately.**

But first the local court and then the Supreme Court Criminal Chamber No. 8 overlooked this fact, particularly **failing to consider the system regarding "intervention," which should have been considered separately in the two cases.**

The local court defined no legal limitations while accepting the intervention of Fatih Altaylı and Ebru Şimşek in 2000. **It did not consider the intervention request separately in terms of the two separate accusations (criminal organization and blackmail) and did not take into the protocol that, this intervention request had been accepted only in terms the claims brought regarding blackmail.** It was not set out that these people were not involved in the case regarding the allegations on "establishing a criminal organization."

That is because the offense of "establishing a criminal organization" is included among "crimes against public peace" under the Turkish Criminal Code (TCC) and thus **it is not possible for any natural person to be directly injured by the offense of establishing a criminal organization. IT IS** therefore **NOT POSSIBLE FOR ANY INDIVIDUAL PERSON TO BECOME THE " INTERVENING PARTY" IN A CASE BROUGHT ON THE ALLEGATION OF ESTABLISHING A CRIMINAL ORGANIZATION.** Cases brought regarding allegations of establishing a criminal organization **can only be prosecuted by the Public Prosecutor on behalf of the public**, and it is not possible for any natural person apart from the Public Prosecutor to intervene in a case hearing criminal organization allegations.

The question that should be answered when this information is evaluated in terms of the SRF case is this: **In a case file that is brought in regard to allegations of establishing a criminal organization and heard only in terms of TCC Article No: 220, can natural people whose claims about being blackmailed have been dismissed due to statute of limitations, when the dismissal has been approved by the ruling of the Supreme Court, continue to assume the right of being the intervening party?**

The status of Ebru Şimşek and Fatih Altaylı in the Science Research Foundation case file

At the beginning of the Science Research Foundation case, 4 people who claimed to have been subjected to blackmail (Mehmet Ağar, Celal Adan, Ebru Şimşek and Fatih Altaylı) were invited to the hearing. Apart from Celal Adan, those people **were accepted as the "intervening party"** in the case upon their request, on the base of the possibility of being harmed by the offense.

4) Former TCC Art. 313; New TCC Art. 220 or Art. 1/1 of Law 4422
5) Former TCC Art. 192

Subsequently, Mehmet Ağar stated that it had emerged that the people being tried in the file had engaged in no action against him and withdrew his complaint and his intervention in the case. In this way, **only FATİH ALTAYLI and EBRU ŞİMŞEK were left with the title of the intervening party.**

On November 24th, 2005 the 2nd High Criminal Court of Istanbul dropped the **ACCUSATIONS OF BOTH ESTABLISHING A CRIMINAL ORGANIZATION AND BLACKMAIL UNDER THE STATUTE OF LIMITATIONS.**

T.C.
İSTANBUL
2.AĞIR CEZA MAHKEMESİ

ESAS NO : 2004/337
KARAR NO: 2005/230
C.SAV.NO : 2003/19113

TÜRK MİLLETİ ADINA
K A R A R
ORTADAN KALDIRMA
(TCK.nun 102/4.mad.)

BAŞKAN	: SALİH ÖZTÜRK	20709
ÜYE	: NAŞİD GÜREL	22838
ÜYE	: SEVGİ ÖVÜÇ	25690
C.SAVCISI	: ORHAN ERBAY	27986
KATİP	: ŞAFAK KİRAZOĞLU	
DAVACI	: K.H	
KATILANLAR	: **1- Ebru Şimşek Adlığ**	
	2- Fatih Altaylı	

T.R
Istanbul
2nd High Criminal Court
Base No: 2004/337
Ruling No: 2005/230
P.Prosecution No: 2003/19113

RULING GIVEN ON BEHALF OF
TURKISH PUBLIC DISMISSAL
(TCC Article 102/4)

CHAIRMAN: SALIH OZTURK 20709
MEMBER: NAŞİD GÜZEL 22838
MEMBER: SEVGİ ÖVÜÇ 25690
PUBLIC PROSECUTOR: ORHAN ERBAY 27986
CLERK: ŞAFAK KİRAZOĞLU
PLAINTIFF: PUBLIC LAW
INTERVENING PARTY: **1- Ebru Şimşek Adlığ**
2- Fatih Altaylı

A decision was taken to separate six of the forty-two people being tried on the basis of this file *(since their case was started to be heard later and then was combined with the main file)* and the trial of these six defendants continued to be heard. THE **2nd HIGH CRIMINAL COURT RULED OF ISTANBUL ON ACQUITTAL ON ALL CHARGES IN THIS CASE AND THE RULING ISSUED WAS CONFIRMED.**

In this confirmed ruling **"IN RULING ON ACQUITTAL REGARDING THE ALLEGATIONS OF BLACKMAIL TOWARDS THE INTERVENING PARTY, EBRU ŞİMŞEK AND FATİH ALTAYLI, IT HAS BEEN STATED, WITH JUSTIFICATIONS, THAT THE ALLEGATION IS NOT FOUNDED AND THE ACCUSATIONS ARE NOT FIXED."**

Şantaj suçu 4616 sayılı yasa kapsamında ise de, dosyada bu suçla ilgili tüm delillerin toplanılmış bulunduğu ve sanıkların savunmalarına, katılan Ebru Şimşek vekillerinin beyanlarına, Ebru Şimşek ile ilgili izlenen CD görüntülerine, yine Ebru Şimşek ile ilgili CD görüntüleri üzerinde görüş beyan eden bilirkişi Nedim Tarhan'ın beyanına, İnşaat mühendisi bilirkişi Çağlar Göksu'nun Ebru Şimşek'in görüntülerinin alındığı evle ilgili beyanına, Ebru Şimşek'in ilişkileri konusunda beyanda bulunan S.tanıkları Özgür Aydemir, Ahmet Ali Yıldırım, Alkas Çakmak, Alper Çakmak, Tacettin İnce, Yavuz Coşkun, İbrahim Özcan, Ecevit Şahin'in anlatımlarına göre; sanıklardan Bülent Tatlıcan hakkında tehdit ile menfaat sağlamak (şantaj) suçundan açılan davada bu sanığın atılı suçu sübut bulmadığı anlaşılmakla, sanık lehine olduğundan bu suçtan 4616 sayılı yasa uyarınca davanın kesin hükme bağlanmasının ertelenmesi yerine, sanığın beraatine karar verilmesi gerektiği sonucuna varılmıştır.

According to the law no 4616 related with the crime of blackmail, in accordance with all the pertinent proofs for this crime gathered and the defenses of the defendants, the statements of the participant attorneys of Ebru Şimşek, CD images related to Ebru Şimşek watched, besides the statement of the expert Nedim Tarhan who presented his views on the CD images of Ebru Şimşek, the statement of the expert Çağlar Göksu who presented his views about the house where the videos related to Ebru Şimşek were taken, expressions of the witnesses of the defendants; Özgür Aydemir, Ahmet Ali Yıldırım, Alkas Çakmak, Alper Çakmak, Tacettin İnce, Yavuz Coşkun, İbrahim Özcan, Ecevit Şahin; who gave statements about the relationships of Ebru Şimşek: by the reason that for the suit filed against the defendant Bülent Tatlıcan for the crime of deriving benefit with threat (blackmail), it is determined that the claimed crime of the defendant was not conclusively a reality and as it is in favor of the defendant, it is concluded that the ruling of acquittal is to be taken for the defendant instead of the cancellation of the final decision for the court in accordance with the law no 4616.

Following the ruling of dismissal on the grounds of statute of limitations expiration given by the 2nd High Criminal Court of Istanbul, **only the attorneys of Ebru Şimşek and Fatih Altaylı (who can only have the title of being the intervening party regarding the allegation of threat) appealed the ruling. The Public Prosecutor did not appeal the ruling of dismissal.**

At this stage, what the Local Court should have done is **to separate the appeal brought against the ruling dated 2005 concerning the statute of limitations in terms of allegations brought and to accept it in respect of the allegation of blackmail while rejecting it in terms of establishing a criminal organization.** That is because article 315 of Code of Criminal Procedure 1412 being in force states in effect that in the event that the people appealing have no right to appeal, **the local court must reject the appeal**. **However, the local court did not do that and accepted the invalid appeal in respect to the claims about the criminal organization as well.** [6]

The same mistake was repeated by the Supreme Court Criminal Chamber No. 8. What the Chamber *should* have done was to review the local court's ruling limited to the allegation of blackmail and with regard to the allegation of establishing a criminal organization, SINCE THERE IS NO VALID APPEAL AGAINST THIS RULING (the ruling on the statute of limitations) to confirm (the ruling of Statute of Limitations) as per article 317 of Code of Criminal Procedure No. 1412 being in force.

But the Supreme Court Criminal Chamber No. 8 did not do this, on the basis of an appeal petition from lawyers **(contrary to law)** representing Ebru Şimşek and Fatih Altaylı, who could legally **only be considered as the intervening party with regard to the blackmail accusations**, and eventually overruled that ruling.

Is it legally possible for Ebru Şimşek and Fatih Altaylı, who are depicted in the indictment as the injured party of the blackmail accusations to appeal against the statute of limitations ruling regarding the criminal organization accusations, even though the Public Prosecutor did not appeal against the ruling?

The legal experts whose opinions were canvassed unanimously agreed that **this decision of the Supreme Court Criminal Chamber No. 8 was blatantly contrary to law.**

Article 317 of the Code of Criminal Procedures (CCP) contains the stipulation, **"If the Supreme Court sees during the process that no petition of appeal has been given or that a declaration has been made that the ruling cannot be appealed or that the appellant has no right to appeal; then it will reject the appeal, and if not it will conduct the appellate review." IN OTHER WORDS, IN ORDER TO START AN APPELLATE REVIEW OF A RULING THE SUPREME COURT FIRST HAS TO ESTABLISH WHETHER THERE IS VALID APPEAL OR NOT.**

In the SRF case, however, the Supreme Court Criminal Chamber No. 8 acted in contravention of the principle that **"there can be no hearing without a case"** and of CCP Article 317. **EVEN THOUGH THERE HAD BEEN NO APPEAL FROM THE PUBLIC PROSECUTOR, IT CONDUCTED AN IMPROPER APPELLATE REVIEW WITH REGARD TO THE CRIMINAL ORGANIZATION ALLEGATIONS ON THE BASIS OF A PETITION OF APPEAL FROM PEOPLE WHO COULD ONLY INTERVENE IN RESPECT TO THE BLACKMAIL ACCUSATION (TCC 192).** Following this annulment ruling by the Supreme Court Criminal Chamber No. 8, the file was sent back to the local court. While it was to be expected that a new ruling would be issued on the statute of limitations within the scope of TCC Article 313, **THE LOCAL COURT RULED ON THE BASIS OF TCC ARTICLE 220 AND RULED ON THE CONVICTION OF SOME OF THE DEFENDANTS.**

Upon the appeal petition of the lawyers of the defendants and the Public Prosecutor regarding this second conviction ruling of the local court was overruled in favor of the defendants by the Supreme Court Criminal Chamber No. 8 on December 28th, 2009. The case began being heard again in the 2nd High Criminal Court of Istanbul. **As a result of all these erroneous rulings, the case is still continuing on the basis of "A RULING OF ANNULMENT WHICH IS LEGALLY INVALID"**

6) Another point regarding this application is that in their appeal petitions neither Fatih Altaylı nor Ebru Şimşek made any appeal or objection to the statute of limitations ruling issued by the court regarding the criminal organization and blackmail charges.

NATURAL PERSONS CANNOT CLAIM DAMAGES OR INTERVENE IN CASES REGARDING CHARGES OF "ESTABLISHING A CRIMINAL ORGANIZATION" AND THUS CANNOT FILE FOR APPEAL AGAINST RULINGS

Some of the questions that need to be answered in order to understand the violations of the law that took place following the statute of limitations ruling in 2005 in the SRF case are as follows:

Who can assume the right to become the intervening party in a case regarding a criminal organization?

In a trial based solely on allegations about establishing a criminal organization, even in the absence of any related offense, is it possible for a number of people to be considered as the intervening party of the case?

Is the Public Prosecutor the only one able to prosecute the allegations about an offense of establishing an organization, in the name of the Public?

Under the TCC, establishing a criminal organization is an offense committed against public security or public order. It is therefore **DEFINITELY NOT POSSIBLE FOR ANY INDIVIDUAL PERSON TO BE DIRECTLY HARMED BY THE OFFENSE OF ESTABLISHING A CRIMINAL ORGANIZATION AND THUS TO BECOME AN INTERVENING PARTY IN AN INVESTIGATION OR PROSECUTION INITIATED WITHIN THAT CONTEXT.**

Only the Public Prosecutor has the right of appeal against rulings in investigations and prosecutions regarding the establishment of a criminal organization. It is not possible for anyone other than the Public Prosecutor to become an intervening party in such cases. **It is therefore only the Public Prosecutor who can appeal against, or object to, rulings concerning the offense of establishing a criminal organization.**

Nobody other than the Public Prosecutor has the right to appeal against rulings issued by the courts in cases involving the establishment of criminal organizations.

FATIH ALTAYLI AND EBRU ŞIMŞEK, WHO HAVE NO LEGAL STANDING AS THE INTERVENING PARTY IN THE SRF CASE WITH REGARD TO CRIMINAL ORGANIZATION ACCUSATIONS, ALSO HAVE NO RIGHT TO FILE FOR APPEAL AGAINST THE STATUTE OF LIMITATIONS RULING IN RESPECT TO THAT CHARGE

In the SRF case heard by the local court, a ruling on the statute of limitations was issued on November 24th, 2005. However, **the accusations regarding "blackmail" fell under the statute of limitations** long before the mentioned ruling of the Local Court. **CONSEQUENTLY, THERE WASN'T A LAWSUIT REMAINING IN THAT FILE LEFT REGARDING THE ACCUSATION OF "BLACKMAIL".**

ALL OFFICIAL RIGHTS IN THE CASE FILE AND CONSEQUENTLY **THE RIGHT TO APPEAL THE RULINGS HAVE DEFINITIVELY BEEN TERMINATED** IN 1999 FOR EBRU ŞİMŞEK AND IN 2003 FOR FATİH ALTAYLI, who can only be the intervening party in respect of the allegations regarding blackmail.

FATİH ALTAYLI AND EBRU ŞİMŞEK'S RIGHT TO APPEAL IN THE SRF CASE IS LIMITED TO THE ACCUSATIONS BROUGHT ABOUT BLACKMAIL. SINCE IT IS NOT POSSIBLE FOR FATİH ALTAYLI AND EBRU ŞİMŞEK TO BE THE INTERVENING PARTY IN THE CASE IN TERMS OF CRIMINAL ORGANIZATION, THEY DO NOT HAVE THE RIGHT TO APPEAL ANY RULING ISSUED REGARDING THAT ACCUSATION EITHER. ONLY THE PUBLIC PROSECUTOR MAY APPEAL ANY FORM OF RULING ISSUED IN RESPECT OF THIS OFFENSE.

Despite this fact, based on the petition of appeal submitted by these aforementioned individuals, the Supreme Court Criminal Court No:8 has taken the file into appellate review both in respect of the accusations of blackmail and of establishing a criminal organization. **The Supreme Court Criminal Chamber No. 8 should have rejected their petition of appeal in respect of the criminal organization charge, because CCP Article 317 requires the Supreme Court to reject appeal petitions presented by people with no right to appeal. IT IS FORBIDDEN FOR THE SUPREME COURT TO MAKE AN APPELLATE REVIEW WITHOUT A VALID REQUEST FOR APPEAL.**

The Supreme Court Criminal Chamber No. 8 has no right to initiate such a review when Fatih Altaylı and Ebru Şimşek had no right to appeal the statute of limitations ruling given in 2005 in terms of the criminal organization accusation and when THE STATUTE OF LIMITATIONS RULING WAS NOT APPEALED BY THE PROSECUTION.

Under our laws, in the event the appellant enjoys no such right the Supreme Court must directly refuse the petition of appeal as per Article 317 of CCP No. 1412, currently in force, without consideration of the file content.

Legal precedents by the Supreme Court on the subject include:

"AN APPEAL APPLICATION BY A COMPLAINANT WITH NO RIGHT OR CAPACITY OF APPEAL must be REJECTED in line with Article 317 of the Code of Criminal Procedure."
Ruling of the Assembly of Criminal Chambers of the Supreme Court dated March 25th, 2003, numbered 2003/54 and based on 2003/5-41

"… It has been decided to DENY the petition of appeal in respect of this defendant as per article 317 of CCP because the ruling about the attorneys of the intervening party- or the defendant, who does not have the right to become the intervening party in the public prosecution is devoid of legal value AND DOES NOT GRANT THE RIGHT TO APPEAL FOR THE RULING ABOUT THE DEFENDANT." Ruling of Assembly of Criminal Chambers of Supreme Court numbered 2007/5372 based on 2007/419 dated 18.06.2007

"... not only is it not possible to become the intervening party in this case, but also the ruling given about intervening party does not give the right to place a petition of appeal, it has been unanimously decided to DENY the PETITION FOR APPEAL THE RULING ON THE CONVICTION GIVEN about the defendant M.F.Ö in respect of violating the law code numbered 6136, in accordance with the Article 317 of CCP.. " Ruling of Supreme Court Criminal Chamber No. 8 numbered 2006/5641 based on 2005/2252 dated 26.06.2006 Criminal Chamber

As can be seen from these rulings of the Supreme Court, **A PERSON WITH NO RIGHT OF INTERVENTION ALSO ENJOYS NO RIGHT OF APPEAL AGAINST A RULING**.

In the case regarding the Science Research Foundation, the legal position of Ebru Şimşek and Fatih Altaylı is exactly that.

Ebru Şimşek and Fatih Altaylı, who are not the sufferers of the allegations about the criminal organization and whose right of intervention regarding the blackmail charge expired long before, therefore have no right to appeal against the ruling of the 2nd High Criminal Court of Istanbul Numbered 2005/230 and based on 2004/337 dated November 24th, 2005.

In the face of such clear facts, is it legally eligible for the Supreme Court Criminal Chamber No. 8 to start an appellate review merely on the basis of the appeal petition given by the attorneys of Ebru Simşek and Fatih Altaylı, who do not legally possess the right of being the intervening party or the right to appeal, and to give a ruling of annulment, even though the Public Prosecutor at the Local Court has no petition or request for appeal?

THERE CAN ALSO BE NO DOUBT THAT A RULING ISSUED AS THE RESULT OF AN APPELLATE REVIEW CARRIED ON WITHOUT A LEGALLY VALID APPEAL PETITION WILL ITSELF ALSO BE INVALID. THEREFORE, THE RULING OF ANNULMENT DATED MAY 17th, 2007 GIVEN BY THE SUPREME COURT CRIMINAL CHAMBER NO. 8 IS ALSO CLEARLY INAPPLICABLE.

THAT RULING MUST DEFINITELY BE OVERRULED FOLLOWING THE APPELLATE REVIEW CARRIED IN ACCORDANCE WITH ARTICLE 308 OF THE CCP.

SUPREME COURT RULINGS REVEAL THAT FATİH ALTAYLI AND EBRU ŞİMŞEK HAVE NO RIGHT TO APPEAL AGAINST THE STATUTE OF LIMITATIONS RULING REGARDING THE CRIMINAL ORGANIZATION ACCUSATIONS

In the indictment of the SRF case dated January 2000, Ebru Şimşek and Fatih Altaylı appear as sufferers of the accusations brought of blackmail. People recorded as sufferers of an accusation of blackmail have no right of appeal regarding a charge of criminal organization.

The Supreme Court has issued many rulings **STATING** that "titles of intervening parties awarded by local courts to people who cannot assume the title of intervening party by the nature of the charges **ARE INVALID, AND THAT THIS TITLE OF INTERVENING PARTY BASED ON NO VALID LEGAL GROUNDS DOES NOT GRANT ANY RIGHT OF APPEAL AND IN THAT RESPECT THE RULING GIVEN BY THE LOCAL COURT APPLIES."** Some of these rulings are given below:

Supreme Court Criminal Chamber No. 1, ruling based on 2008/6080 E, numbered 2009/2875, and dated May 20th, 2009

A-1) On consideration of appeal by Lawyer Gülşen Denizhan as intervening party and representative of intervening parties

; … **SINCE IT IS NOT POSSIBLE TO BE AN INTERVENING PARTY REGARDING ALLEGATIONS OF ESTABLISHING A CRIMINAL ORGANIZATION FOR ATTAINING PERSONAL GAIN AND BEING A MEMBER OF SUCH AN ORGANIZATION**,… **the appeal petition against such charges is denied in accordance with the CCP Article 317.**

B-1) **SINCE IT IS NOT POSSIBLE TO INTERVENE ON CHARGES OF ESTABLISHING A CRIMINAL ORGANIZATION FOR ATTAINING PERSONAL GAIN AND BEING A MEMBER OF SUCH AN ORGANIZATION, AND SINCE THE PUBLIC PROSECUTOR HAS NOT APPEALED AGAINST** the acquittal ruling regarding the defendants, the idea of confirming the charge in respect of some defendants and rejecting it in regard of others stated in the notification is denied, AND **THE RULING REACHED IN RESPECT OF THIS OFFENSE IS EXCLUDED FROM APPELLATE REVIEW."**

Supreme Court Criminal Chamber No. 1, ruling based on 2006/7821, numbered 2007/6096 and dated July 20th, 2007

"SINCE the intervening party has **NO RIGHT OF APPEAL TO THE RULING ISSUED** in respect of the defendants ... regarding the charges of establishing an organization for the commission of crime and being a member of such an organization, it has been decided that **THE APPEAL PETITION AGAINST THESE CHARGES SUBMITTED BY THE REPESENTATIVE OF THE INTERVENING PARTY SHALL BE DENIED IN ACCORDANCE WITH THE CCP ARTICLE 317."**

Supreme Court Criminal Chamber No. 1 ruling based on 2007/3941, numbered 2007/9452, and dated December 17th, 2007

"SINCE THE ATTORNEY OF THE INTERVENING PARTY DOES NOT HAVE THE RIGHT, THE APPEAL PETITION AGAINST THE RULING ISSUED IN RESPECT OF ESTABLISHING AN ORGANIZATION FOR CRIMINAL PURPOSES AND BEING A MEMBER OF SUCH AN ORGANIZATION AND OF VIOLATION OF LAW No. 6136 IS DENIED IN ACCORDANCE WITH THE CCP ARTICLE 317…"

The Supreme Court Plenary Assembly of Criminal Chambers, ruling based on 2006/11-31, numbered 2007-20, and dated February 6th, 2007

"In public cases brought regarding charges of establishing an organization to commit crime and joining and assisting such an organization, the ruling to accept the representative of the plaintiff, Savings Deposit Insurance Fund, **WHO IS NOT DIRECTLY HARMED BY THE OFFENSES**, as the intervening party is legally invalid, and since the ruling grants no right of appeal, THE APPEAL PETITION SUBMITTED by the Savings Deposit Insurance Fund representative **REGARDING THE CHARGES OF ESTABLISHING AN ORGANIZATION TO COMMIT CRIME AND JOINING AND ASSISTING SUCH AN ORGANIZATION IS DENIED IN ACCORDANCE WITH CCP ARTICLE 317."**

Supreme Court Criminal Chamber No. 9 ruling numbered 2005/7742, and dated October 19th, 2005

"THE RIGHT OF PARTICIPATION GRANTED TO "M.", father of the adult injured party, and who was not directly harmed by the offense, IS LEGALLY INVALID AND NULL. THE APPEAL PETITION IS THEREFORE DENIED IN ACCORDANCE WITH CCP ARTICLE 317; … since the consideration of the legal position of the complainant in respect of becoming an intervening party is obligatory… this required annulment and since the objection made on appeal by the defendant's attorney and the complainant "B." has been found to be legitimate, it has been decided to ANNUL the ruling…"

Supreme Court Criminal Chamber No. 6 ruling based on 2007/16713, numbered 2009/4317, and dated March 3rd, 2009 "

... **SINCE THERE IS NO RIGHT OF APPEAL AGAINST RULING ON CHARGES OF establishing a criminal organization in the absence of direct harm from the offenses,** the requests on this subject are **DENIED** partially in accordance with the communication, in reference to the Article 8/1 of Law 5320 and in accordance with the Article 317 CCP."[7]

As can be seen from these rulings by the Supreme Court, it is "**society and the state**" that is the injured party of the offense of establishing a criminal organization. When a ruling is issued by a local court regarding the offense of establishing a criminal organization, only the Public Prosecutor can appeal this ruling in the name of society and the state. **It is impossible, according to the rulings of the Supreme Court, for Ebru Şimşek and Fatih Altaylı, recorded as the sufferers of blackmail allegations in the indictment of the local court, to appeal the local court ruling in regard of the criminal organization allegations. That being the case, is it legally eligible for the Supreme Court Criminal Chamber No. 8 to start an appellate review in terms of a ruling regarding claims of establishing an organization, on the basis of an appeal petition given by people who, by the nature of the accusations, do not legally possess the right of being the intervening party?**

What the Supreme Court Criminal Chamber No. 8 should have done is to investigate the issue of whether or not Ebru Şimşek and Fatih Altaylı had the right to participate and appeal the rulings regarding the offenses alleged to have been committed by the accused, and to deny the appeal petition.

7) Supreme Court CC No. 6 ruling based on 2007/16713, numbered 2009/4317, and dated March 3rd, 2009 (Supreme Court Criminal Chamber No. 6 ruling based on 2009/2462, numbered 2009/8295, and dated May 7th, 2009 is also similar) and precedent are also along these lines.

LEGAL OPINIONS SUBMITTED BY THE MOST PROMINENT EXPERTS IN TURKEY REVEAL THAT FATİH ALTAYLI AND EBRU ŞİMŞEK HAVE NO RIGHT TO APPEAL THE STATUTE OF LIMITATIONS RULING REGARDING THE CRIMINAL ORGANIZATION ACCUSATIONS

PROF.DR. FATİH S. MAHMUTOĞLU

(Faculty Member of the Istanbul University, Faculty of Law, Criminal Law and Criminal Procedures Department)

Fatih Altaylı and Ebru Şimşek cannot be regarded as intervening parties in the context of the charge of establishing a criminal organization. *Considering the Supreme Court Criminal Chamber No. 8 ruling No.2006-2934/2007-3877 dated May 17th, 2007, that part of the annulment ruling concerning the establishment of a criminal organization is clearly in violation of the law ...* ***Petitions by people with no title of intervening party and for that reasons with no authority to apply to law in terms of this type of offense, should have been rejected by the relevant circuit court.***

PROF. DR. EMİN ARTUK

(Faculty Member of the Marmara University, Faculty of Law, Criminal Law and Criminal Criminal Procedure Laws Department)

Ebru Şimşek and Fatih Altaylı have no right to apply to legal measures *against the ruling issued regarding establishing a criminal organization. In terms of the subject of the trial in-subject, under CCP Article 317, the Supreme Court consideration and* ***abrogation ruling*** *issued subsequently in the light of requests by people with no right to appeal* ***must be regarded as being "of no force."***

ASST. PROF. DR. ÜMİT KOCASAKAL

(Faculty *Member of the Galatasaray University, Faculty of Law, Criminal Law and Criminal Procedure Laws Department)*

Since the crime of establishing a criminal organization, an offense of conspiracy and representing a danger will normally fall under the category of a threat to public security and order, it is in my opinion impossible for individuals to be regarded as being affected directly in this offense in the sense of CCP Article 237…

And it is impossible to intervene in a case of this kind, and the opinions and procedures of the Supreme Court are along those lines."

PROF. DR. SÜHEYL DONAY

(Chairman of the Kadir Has University, Faculty of Criminal Law and Procedure Law Department)

***It is inconceivable that people should individually be able to enjoy the title of the intervening party** or contributors in **crimes against the public order under TCC 220**. And since someone who cannot intervene can also have no right of appeal, these people **have no right of appeal** with regard to articles 220 and 313.*

PROF. DR. HAMİDE ZAFER

(Faculty Member of the Marmara University, Faculty of Law, Criminal Law and Criminal Penal Procedures Law Department)

Crimes of purpose committed within the scope of a criminal organization are independent of the crime of setting up a criminal organization, and the responsibility and trial of those concerned represents the subject matter of as separate trial proceeding. In terms of authority, different courts may be involved in terms of articles and locations involved. For that reason, in terms of institutions of criminal law and procedure, **THE OFFENSE OF ESTABLISHING A CRIMINAL ORGANIZATION MUST BE CONSIDERED SEPARATELY FROM CRIMES OF PURPOSE.**

THERE CAN BE NO QUESTION OF INTERVENTION IN THE OFFENSE OF ESTABLISHING AN ORGANIZATION. This crime is one committed against society and **CAN ONLY BE PURSUED BY THE PUBLIC PROSECUTOR'S OFFICE.**

-**Since society is the injured party in the crime of establishing a criminal organization**, **IT IS UNLAWFUL FOR SINGLE INDIVIDUALS TO PARTICIPATE IN TRIALS REGARDING THIS OFFENSE, WHETHER IN THE FORM** of an independent trial or in combination with other trials in which there may be intervening parties.

-**IT IS UNLAWFUL FOR APPEAL REQUESTS FROM PEOPLE WITH NO RIGHT OF INTERVENTION TO BE ADMITTED BY THE COURT OF FIRST INSTANCE AND THE SUPREME COURT.**

-Since it is unlawful for such an appeal request to be admitted by the Supreme Court, consideration and rulings (the abrogation ruling in this case) made on the basis of this illegal decision are also illegal.

-A valid appeal request is the basis for the ruling to be given, in line with the principle of no condemnation without trial. Consideration of an appeal in **THE ABSENCE OF A VALID APPEAL REQUEST is a deficiency determining the illegal nature of the ruling to be given by the Supreme Court, and INVALIDATING THE RULING (the abrogation ruling in this case).**

-Whatever the nature of the deficiency observed in the ruling issued by the Plenary Assembly of Criminal Chambers of the Supreme Court, **IT WILL BEAR THE CONSEQUENCE THAT THE RULING OF ABROGATION GIVEN DUE TO STATUTE OF LIMITATIONS REGARDING THE CHARGES OF ESTABLISHING A CRIMINAL ORGANIZATION HAS BECOME DEFINITE IN FORM AND THAT IT WAS NOT APPEALED BY ANY SUBJECT SINCE THE ANNOUNCEMENT OR ELSE NOTIFICATION OF THE RULING.**

PROF. DR. MUSTAFA RUHAN ERDEM

(Faculty Member of the Yaşar University, Faculty of Law)

As generally taught, public order is the legal benefit protected in terms of the offense of criminal organization. Bearing in mind there is no specific injured party in this crime, ***there is no possibility of any person intervening in the case as an injured party of such crime.*** *This is an accepted opinion in both Supreme Court rulings and in academic teaching.*

PROF. DR. VAHİT BIÇAK

(Faculty Member of the Police Academy, Security Sciences Faculty, Crime and Criminal Procedure Law Department)

Since there is no question of individuals suffering direct losses in cases brought solely on the basis of TCC 220, ***it is impossible for them to participate in such cases.*** *If the person requesting appeal has no right to make such a request, then* ***the appeal request is invalid in terms of law and therefore it is void.***

ASST. PROF. DR. CANER YENİDÜNYA

(Faculty Member of the Marmara University, Faculty of Law, Criminal Law and Criminal Procedure Law)

Ebru Şimşek and Fatih Altaylı have ***no right of intervention*** *regarding this offense and therefore* ***obviously have no right of appeal against rulings regarding this offense.***

PROF. DR. EROL CİHAN

(Former faculty member of the Istanbul University, Faculty of Law)

The injured party of the criminal organization offense is the State, and since Ebru Şimşek and Fatih Altaylı are not the injured party, ***they cannot request to intervene in the criminal organization case. An abrogation ruling*** *issued in the face of an invalid appeal request from people with no right to appeal* ***represents a contradiction to law. It is lawfully invalid*** *(as though it had never existed).*

PROF. DR. VELİ ÖZER ÖZBEK

(Chairman of the Dokuz Eylül University, Faculty of Law, Criminal Law and Criminal Procedures Law Department)

Fatih Altaylı and Ebru Şimşek ***enjoy no title of intervening party. Therefore, they cannot appeal in terms of this case.***

PROF. DR. DOĞAN SOYASLAN

(Faculty Member of the Çankaya University, Faculty of Law)

ESTABLISHING AN ORGANIZATION FOR CRIMINAL PURPOSES (TCC 220) is an offense against public order. It is not an offense against any individual. **They are persecuted on their own account.** Therefore, **IT IS NOT POSSIBLE FOR ANY INDIVIDUAL PERSON TO SUFFER DIRECT LOSS FROM THIS CRIME.**

The offense of establishing an organization for criminal purposes is regulated in Section 5 of Part 3 of Crimes against the Public Order of the TCC Crimes against Society. As can be seen from the section heading, the aim for defining the establishment of an organization for criminal purposes as an offense is the protection of public order. **CONSEQUENTLY IT IS NOT POSSIBLE, BY THE NATURE OF THE CRIME, FOR REAL NATURAL PERSONS TO SUFFER LOSSES FROM IT.**

Indeed, the preceding opinions of the Supreme Court has for a long time now stated that **THERE IS NO INDIVIDUAL INJURED PARTY** in crimes committed against the public order and crimes of such nature **AND THAT THERE CAN THEREFORE BE NO INTERVENING PARTIES IN THEM.**

In the case subject of my scientific opinion, since it is impossible for there to be an intervening party in the offense of establishing an organization for criminal purposes THERE CAN BE NO VALID APPEAL PETITION IN TERMS OF ESTABLISHING AN ORGANIZATION FOR CRIMINAL ENDS based on appeal requests from people as intervening parties due to the allegations of blackmail and THERE CAN THEREFORE BE NO APPELLATE REVIEW REGARDING THAT ALLEGATION.

In the actual case since the abrogation ruling on the grounds of statute of limitations issued on November 24th, 2005 by the 2nd High Criminal Court of Istanbul **in respect of TCC 313 and TCC 192** was only appealed by the parties intervening solely regarding TCC 192, **THE ANNULMENT RULING SUPREME COURT CRIMINAL CHAMBER NO. 8 GAVE WITHOUT CONSIDERING WHETHER OR NOT THERE IS A VALID APPEAL REQUEST IN RESPECT OF TCC ARTICLE 313, CONTRAVENES THE LAW.**

Therefore, **THE SUPREME COURT CRIMINAL CHAMBER NO. 8 ANNULMENT RULING IN RESPECT OF ARTICLE 313 IS IN FACT INVALID.** As a result of this ruling being invalid, all the procedures and rulings following this will also effectively be invalid. So the 2nd High Criminal Court of Istanbul abrogation ruling in respect of Article 313 is confirmed.

DR. BİLAL KARTAL

(Honorary Chairman of Supreme Court Chamber)

One has to be directly injured in order to participate in a public case … Wrong may stem from an incident representing a crime, or from an illegal action not constituting an offense. If the action representing a crime is of such a kind as to cause the bringing of a public suit, then the injured party can participate in the case … **In a civil suit filed separately from a criminal trial, they may also bring an action for damages** … As we have seen, **THE LAW HAS MADE INTERVENTION IN A PUBLIC CASE DEPENDENT ON THE CONDITION IF AND ONLY IF THERE EXISTS A "DAMAGE SUFFERED DIRECTLY" THAT CAN BE DEALT WITH IN A CIVIL COURT.**

… Considering the claims of the intervening parties with respect of the events and facts in the file, intervention request is limited to these claims of the intervening parties. Because the 'direct wrong' the law looks for stems solely from the offense of profiting from menaces and blackmail, and is limited to the offense in Article 192/2 placed under regulation by the Criminal Code.**THEREFORE, IT IS IMPOSSIBLE TO CONCLUDE THAT THEY INTERVENED IN A PUBLIC CASE BROUGHT REGARDING THE OFFENSE OF ESTABLISHING AN ORGANIZATION FOR CRIMINAL PURPOSES ALLEGED OF THE DEFENDANTS AND THAT THEIR REQUESTS TO PARTICIPATE IN SUCH A CASE WERE ACCEPTED. That is because it is not possible to talk about a direct harm the intervening parties had suffered directly from this offense.** Otherwise, requests of intervention in a case by anyone who claimed to have been injured on account of any indirect offense would have to be accepted. Thus the number of people claiming to have suffered such indirect harm would rise. **Bearing in mind that these would also demand compensation, there will be difficulties and even impossibility of providing compensation regarding rulings issued in favor of a great many people** …

The direct harm suffered by people intervening in the ACTUAL case to hand can only come about as the result of acts of menaces and blackmail. **There is therefore no question of their being able to intervene in the public case brought against the defendants on the basis of TCC 313, 314 and of Article 1/1 of the Law No. 4422.** Because they were not directly injured on account of these offenses.

They therefore **possess no right or authority to appeal to the court ruling issued regarding these offenses. THEREFORE, THE APPEAL SHOULD HAVE BEEN REGARDED AS INVALID AND REJECTED.**

And for that reason, Supreme Court Criminal Chamber No. 8 abrogation ruling number and date as cited above contravenes both the law and the preceding opinions of the Supreme Court … That being the case, **the Supreme Court Public Prosecutor has the duty and power to object on behalf of the defendants before the Plenary Assembly of Criminal Chambers...**

ASST. PROF. DR. İLHAN ÜZÜLMEZ

(Faculty Member of the Gazi University, Faculty of Law, Criminal Law and Criminal Procedures Law Department)

In respect of this, ***the offense of establishing a criminal organization does not by itself confer any right on individuals to intervene in a public case.*** *In the absence of a case brought with a valid appeal request, Supreme Court's appellate review of the ruling given by the 2nd High Criminal Court of Istanbul regarding the offense of establishing a criminal organization is* ***a clear violation of the law.***

ASSOCIATE PROF. DR. YUSUF YAŞAR

(Faculty Member of the Marmara University, Faculty of Law, Criminal Law and Criminal Procedure Laws Department)

They have no rights to appeal to legal measures against the ruling abrogating the public case brought to consider the charge of establishing a criminal organization on the basis of statute of limitations. **The Supreme Court Criminal Chamber No. 8 abrogation ruling made at the request of people with no right of appeal is effectively INVALID."**

PROF. DR. HASAN TUNÇ:

(Faculty Member of the Gazi University, Faculty of Law, Public Law Department, Constitutional Law)

Ebru Şimşek and Fatih Altaylı are described as the sufferers of the crime of blackmail in the indictment. ***Therefore, their rights to intervene and appeal are 'LIMITED TO THE CHARGE OF BLACKMAIL."***

Right and power of appeal in connection with TCC 313 (establishing a criminal organization) on behalf of the public lies with the Public Prosecutor. Because the sufferers in charges of criminal organization is society and the State. ***For that reason, the right and power of appeal regarding these charges lies with the Public Prosecutor. The practices of the Supreme Court also run along that line.***

As can be seen from these statements, it is clear that **there can be no question of individuals "being directly harmed" by the crime of establishing a criminal organization**, for which reason these people **cannot enjoy the title of "intervening party"** in trials regarding the establishment of such an organization, as a result of which **they cannot appeal a ruling issued regarding the offense of establishing a criminal organization.**

EVALUATING THIS IN TERMS OF THE SRF CASE, IT IS CLEAR THAT IT IS NOT POSSIBLE FOR THE INDIVIDUALS FATİH ALTAYLI AND EBRU ŞİMŞEK TO BE DIRECTLY HARMED BY THE ALLEGATION OF ESTABLISHING A CRIMINAL ORGANIZATION, FOR WHICH REASON IT IS IMPOSSIBLE FOR THEM TO INTERVENE IN THE CASE BROUGHT IN THE FRAMEWORK OF THAT ALLEGATION AND TO HAVE ANY RESORT TO APPEAL.

THE ANNULMENT BY THE SUPREME COURT CRIMINAL CHAMBER NO. 8 OF THE STATUTE OF LIMITATIONS RULING REGARDING CHARGES OF ESTABLISHING A CRIMINAL ORGANIZATION, AFTER REVIEWING THE RULING BASED ON THE INVALID APPEAL PETITION SUBMITTED BY FATIH ALTAYLI AND EBRU ŞİMŞEK, WHOSE INTERVENTION IN THE SRF CASE WITH REGARD TO THESE CHARGES IS NOT POSSIBLE, IS ITSELF INVALID

As set out throughout this piece, **it is a contravention of procedure and law for Supreme Court Criminal Chamber No. 8 to initiate a consideration of appeal regarding the allegation of establishing a criminal organization and to overturn the local court ruling in the absence of any valid appeal. THE DECISION TO OVERTURN THE PREVIOUS RULING ON THE BASIS ON AN EVALUATION OF APPEAL DEVOID OF ANY VALID APPEAL IS INVALID AND EFFECTIVELY NULL AND VOID.**

In that case, what is the legal status of the ruling in question by Supreme Court Criminal Chamber No. 8 in the absence of any valid right of appeal? Can one say that the ruling is "invalid."?

Below are answers to this very important question from eminent Turkish lawyers and academics:

PROF. DR. SÜHEYL DONAY

(Chairman of the Kadir Has University, Faculty of Criminal Law and Procedure Law Department)

"***There can be no doubt that the Supreme Court Criminal Chamber No. 8 ruling "regarding appeal" "IS INVALID."*** *Because such a system and rule exists in practice and theory in our laws ..."*

PROF. DR. FATİH S. MAHMUTOĞLU:

(Faculty Member of the Istanbul University, Faculty of Law Criminal Law and Criminal Procedure Law Department)

"Evaluating Supreme Court Criminal Chamber No. 8 ruling 2006-2934/2007-3877 dated 17.05.2007 in this context, ***that part of the abrogation ruling concerning establishing a criminal organization CLEARLY CONTRAVENES THE LAW..."***

PROF. DR. EMİN ARTUK:

(Faculty Member of the Marmara University, Faculty of Law, Criminal Law and Criminal Procedure Law Department)

"Under the currently applicable Article 317 of CCP 1412, when the Supreme Court determines that the appellant to the Court of First Instance ruling had no right to do so, it should reject the appeal petition, ***AND AN ABROGATION RULING ISSUED AT THE APPLICATION OF THOSE WITH NO RIGHT TO APPEAL "IS INVALID."***

PROF. DR. HASAN TUNÇ:

(Faculty Member of the Gazi University, Faculty of Law, Public Law Department, Constitutional Law)

SUPREME COURT CRIMINAL CHAMBER NO. 8 RULING, BASED ON 2006/2934, NUMBERED 2007/3877, AND DATED MAY 17th, 2007 IS CLEARLY INVALID. *Because Supreme Court Criminal Chamber No. 8 ratified the abrogation ruling based on the statute of limitation in respect of the defendants in the blackmail allegation case. There is no legally valid appeal regarding the allegation of setting up a criminal organization.* ***Supreme Court Criminal Chamber No. 8 mistakenly performed a consideration as if there had been a valid appeal made.*** *Therefore,* ***ITS RULING REGARDING THE CRIMINAL ORGANIZATION ALLEGATION IS ALSO INVALID.*** *In that case, the statute of limitations ruling issued regarding the defendants by the 2nd High Criminal Court of Istanbul therefore stands.*

DOÇ. DR. ÜMİT KOCASAKAL:

(Faculty Member of the Galatasaray University, Faculty of Law, Criminal law and Criminal Procedure Law Department, The Chairman of Istanbul Bar)

... IN THE ABSENCE OF ANY LEGAL APPEAL COMPATIBLE WITH THE LAW, IN MY VIEW, A RULING GIVEN ON THE BASIS OF AN APPEAL CONSIDERATION THAT SHOULD NOT HAVE BEEN PERFORMED "DOES NOT EXIST" IN OTHER WORDS, THE ABROGATION RULING IS INAPPLICABLE."

AS CAN BE SEEN FROM THE OPINIONS OF ALL THESE EXPERTS IN THE FIELD,

REAL NATURAL INDIVIDUALS CANNOT BE INTERVENING PARTIES IN CASES BROUGHT ON CHARGES OF ESTABLISHING A CRIMINAL ORGANIZATION,

AND CANNOT THEREFORE REQUEST APPEALS IN THIS CASE.

IN CONSEQUENCE:

1) Fatih Altaylı and Ebru Şimşek are not, and cannot be, intervening parties in our case in respect of allegations of establishing a criminal organization,

2) The individuals in question cannot appeal against the statute of limitations ruling of 2005 regarding allegations of establishing a criminal organization,

3) The appeal review by Supreme Court Criminal Chamber No. 8 regarding the offense of establishing a criminal organization is invalid in the absence of any valid appeal,

4) The abrogation rule it issued on the basis of this invalid appeal is legally "invalid",

5) All judicial proceedings from the Supreme Court Criminal Chamber No. 8 written decree dated May 17th, 2007 to the present are therefore invalid,

6) The local court statute of limitations ruling dated November 24th, 2005 regarding the allegations of establishing a criminal organization and blackmailing is therefore confirmed,

7) So the SRF case has irretrievably ended, IN A MANNER SUCH AS TO EXCLUDE ALL DOUBT.

IT EMERGED IN SUCH A CERTAIN FORM AS TO LEAVE NO ROOM FORDOUBT.

THE REJECTION OF THE APPLICATION OF THE LAWYERS IN CHARGE OF THE SRF CASE BY THE SUPREME COURT PUBLIC PROSECUTOR'S OFFICE, WITHOUT CARRYING OUT A REVIEW, WITHIN THE TIME FRAME OF ONE DAY IS IMCOMPATIBLE WITH THE PRINCIPLE OF THE RULE OF LAW

The local court's statute of limitation ruling regarding the SRF case on November 24th, 2005 was appealed by lawyers for Fatih Altaylı and Ebru Şimşek and the ruling in question was overturned with a written decree issued by Supreme Court Criminal Chamber No. 8 on May 17th, 2007. However, **IT WAS LATER ESTABLISHED THAT FATİH ALTAYLI AND EBRU ŞİMŞEK COULD NOT IN FACT BE INTERVENING PARTIES IN THE SRF CASE WITH REGARD TO THE CRIMINAL ORGANIZATION ALLEGATIONS AND THAT THEY COULD NOT THEREFORE APPEAL AGAINST THE STATUTE OF LIMITATIONS RULING. In the light of all these facts,**

1- THE RULING THAT ANNULS THE RULING OF DISMISSAL DUE TO STATUTE OF LIMITATIONS IN THE SRF CASE IS LEGALLY INVALID.

2- ALL JUDICIAL PROCEDURES SINCE THAT DATE ARE LEGALLY INVALID.

In the face of this situation, the defendants' lawyers applied to the Supreme Court Public Prosecutor's Office and requested the SRF file to be demanded from the local court under CCP Article 308/1. **Upon this request the file consisting of 674 folders and 84 sacks was received by the Supreme Court Public Prosecutor's Office on June 29th, 2011. But a rejection ruling was issued regarding the file within one hour of one working day, before it had even been unloaded from the truck and carried into the Supreme Court building.**

The 676-folder case file sent in 84 sacks to the Supreme Court Chief Prosecutor's Office. It is obviously impossible to examine such a huge file in just one day.

The basis for that request is CCP Article 308/1:

> **"The Supreme Court Public Prosecutor can submit an objection to the Plenary Assembly of Criminal Chambers against a ruling by one of the Supreme Court Criminal Chambers, by his own initiative or by request, within thirty days of the date of his being given the written decree. NO TERM LIMITATION CAN BE SOUGHT IN AN OBJECTION IN FAVOR OF THE DEFENDANT."**

Under this article, **NO TEMPORAL PRECONDITION IS TO BE SOUGHT** if the objections to be made by the Supreme Court Public Prosecutor's Office to the rulings of the Criminal Chambers FAVOR THE DEFENDANT. Many prominent Turkish legal academics agreed on this in their written legal opinions on the SRF case.

Some of these are as follows:

Prof. Dr. Mehmet Emin Artuk

(Faculty Member of the Marmara University Faculty of Law Criminal Law and Criminal Procedure Department)

"Under Article 308 of CCP numbered 5271, the Supreme Court Public Prosecutor has the right to appeal to the Plenary Assembly of Criminal Chambers against an annulment ruling issued on the basis of acceptance of an appeal petition where no right of appeal exists, and it is concluded that **IN TERMS OF THE SUBJECT OF THE JUDICIAL PROCEEDINGS, NO PRECONDITION IN TERMS OF TIME SHALL BE SOUGHT IN RESORTING TO THE MENTIONED LEGAL MEASURES IF THE SITUATION FAVORS THE DEFENDANT**."

Prof. Dr. Fatih S. Mahmutoğlu

(Faculty Member of the Istanbul University Faculty of Law Criminal Law and Criminal Procedure Department)

"According to this regulation in CCP Article 308, the annulment ruling issued in violation of law by Supreme Court Criminal Chamber No. 8, can be subjected to review by the Plenary Assembly of Criminal Chambers following an objection brought by the Supreme Court Public Prosecutor. In addition, and again **UNDER ARTICLE 308 of CCP, THE MENTIONED LEGAL STEPS COULD BE TAKEN AT ANY TIME, WITHOUT ANY TIME LIMIT WHEN IN FAVOR OF THE DEFENDANT."**

Prof. Dr. Hamide Zafer

(Faculty Member of the Marmara University Faculty of Law Criminal Law and Criminal Jurisprudence Department)

"TAKING THE LEGAL STEP CONCERNING THE APPEAL OF THE SUPREME COURT PUBLİC PROSECUTOR IN FAVOR OF THE DEFENDANT IS NOT SUBJECT TO ANY TIME LIMIT. IN THE ACTUAL CASE, IT IS OBVIOUS THAT THE RULING OF THE SUPREME COURT CRIMINAL CHAMBER NO. 8 NEEDS TO BE REVIEWED BY THE ASSEMBLY OF CRIMINAL CHAMBERS. IT IS APPARENT THAT THE JUSTIFICATIONS PUT FORWARD, AND THUS THE REVIEW FAVOR THE DEFENDANT."

Asst. Prof. Dr. Ümit Kocasakal

(Faculty Member of the Galatasaray University Faculty of Law Criminal Law and Criminal Procedure Department)

"According to the CCP Article 308, the Supreme Court Public Prosecutor may take the legal step of objecting to the annulment ruling of the Special Chamber, furthermore, **SINCE SUCH AN APPEAL FAVORS THE DEFENDANT, NO TIME CONDITION WILL BE SOUGHT**. ... Since it is possible to take this legal step also for rulings of annulment (CCP 308) and SINCE **NO TEMPORAL PRECONDITION WOULD BE SOUGHT**, this path can be resorted to any

Prof. Dr. Veli Özer Özbek

(Chairman of the Dokuz Eylül University Faculty of Law Criminal Law and Criminal Jurisprudence Department)

"IF AN EXTRAORDINARY OBJECTION (CCP 308) IS TO BE MADE IN FAVOR OF THE DEFENDANT THEN NO TIME LIMIT IS TO BE SOUGHT ... SINCE IT IS ALWAYS POSSIBLE TO RESORT TO AN EXTRAORDINARY OBJECTION WITH NO TIME LIMIT, WHEN IT IS IN FAVOR OF THE DEFENDANT, this path can still be employed despite the passage of a lengthy period of time in respect of the subject matter at issue since Alev Ulaşoğlu's title as the defendant is maintained."

The stipulation in law is clearly in favor of the defendants in the SRF case.

Under these circumstances, since after the ruling of statute of limitations given by the 2nd High Criminal Court of Istanbul on the SRF Case on November 24th, 2005 was appealed by people with no right of appeal, it came to a point that a sentence was passed against the defendants - in other words, since subsequent developments were in disfavor of the defendants- what should the next legal procedure be at this stage?

Supreme Court of Appeal regulations reveal that the SRF case file should be transferred to the Supreme Court Plenary Assembly of Criminal Chambers, without seeking any temporal condition.

Indeed, in one ruling of the Supreme Court Plenary Assembly of Criminal Chambers, it has been explicitly stated that **since the Supreme Court Public Prosecutor's appeal against a ruling of a Criminal Chamber was in favor of the defendant no time limitation could be imposed.** The Supreme Court Prosecutor's Office appealed some **THREE YEARS AFTER** the Supreme Court Criminal Chamber ruling in question on the basis of CCP Article 308, and that appeal was accepted by the Plenary Assembly of Criminal Chambers. The relevant section of this ruling by the Plenary Assembly of Criminal Chambers reads:

Since it is established that if there are violations of the law in the ruling of the Special Chamber that might give rise to an unfavorable outcome for the defendant, only according to the Article 308 of CCP numbered 5271, appeal can be made without being subjected to the 30 days' time limitation, it has been understood that the appellate review executed against the request of annulment by the Special Chamber in favor of the law is in point and that **BECAUSE THE APPEAL OF THE SUPREME COURT PROSECUTOR'S OFFICE IS IN FAVOR OF THE DEFENDANT, IT IS NOT SUBJECTED TO ANY TIME LIMITATION** ... As per the explained reasons, **IT HAS BEEN DECIDED TO ACCEPT THE APPEAL OF THE SUPREME COURT PUBLIC PROSECUTOR'S OFFICE**

… Ruling numbered **2008/76**, **2008/8-67**, and dated April 8th, 2008 ...

ALL MEASURES TAKEN AFTER THE INVALID ANNULMENT RULING GIVEN BY SUPREME COURT CRIMINAL CHAMBER NO. 8 ON MAY 17TH, 2007 ARE THEREFORE ALSO INVALID

"Invalidity" is a concept that exists under Turkish law (for example, CCP Article 7) and one that appears in many rulings given by Supreme Court Criminal Chambers and by the Supreme Court Plenary Assembly of Criminal Chambers. Just as the intermediate rulings and rulings by courts can be regarded as "invalid" the rulings by the Chambers of the Supreme Court can be deemed "invalid" as well. There is nothing to prevent this. On the contrary, there are rulings of the Plenary Assembly rendering some of the rulings given by Criminal Chambers of the Supreme Court as "invalid." A Supreme Court Plenary Assembly of Criminal Chambers ruling regarding decisions devoid of any legal value given by the Chambers of Supreme Court as invalid reads:

"Ruling 711-2497 dated 01.06.2006 Supreme Court Criminal Chamber No. 9, "regarding participation by parties who could not have suffered direct harm from the offense in the case is devoid of any legal value and considered invalid, and since it can bestow no right of appeal against the ruling the request for appeal on the part of the intervening party's representatives is rejected in accordance with CCP Article 317 …"

(Supreme Court Plenary Assembly of Criminal Chambers ruling
based on 2006/9-169, numbered 2006/187, and dated July 11th, 2006)

As we have seen, the Supreme Court Plenary Assembly of Criminal Chambers overturns and regard various rulings of Supreme Court Criminal Chambers as invalid. This is a frequent legal process.

In the light of these;

The SRF case, which should have been closed six years ago but which is still continuing due to oversight of the legal reality set out above, has BEEN LEFT WITHOUT A SUBJECT AND SHOULD BE DROPPED FORTHWITH. The fact that the ruling of the Supreme Court, Criminal Chamber No. 8 dated May 17th, 2007 regarding the BAV case is **"invalid"** should be confirmed.

Once it is acknowledged that the mentioned ruling of the Supreme Court Criminal Chamber No. 8 is "invalid", all the proceedings carried out after that ruling of annulment should be considered as not been borne in the legal world and the results that appeared in connection with the annulment should naturally be abated.

HOWEVER THE PETITION FOR CORRECTION SUBMITTED TO THE OFFICE OF CHIEF PUBLIC PROSECUTOR OF THE SUPREME COURT ON JUNE 29TH, 2011 AS PER THE REQUEST OF THE LAWYERS OF THE DEFENDANTS WAS RETURNED WITHIN ONLY ONE HOUR OF ONE WORKING DAY, EVEN THOUGH THERE ARE 650,000 FILES CURRENTLY WAITING IN THE SUPREME COURT, AND THE CASE FILE WHICH CONSISTS OF 84 SACKS HAVE BEEN REJECTED FOLLOWING THE LOGIC WHICH STATES "HAD THERE BEEN A MISTAKE, IT WOULD HAVE BEEN DETERMINED BY THE CRIMINAL CHAMBER NO. 8 OF THE SUPREME COURT, THE CHAMBER NO. 8 OF SUPREME COURT WOULD NOT MAKE A MISTAKE," WITHOUT EVEN HAVING THE FILES UNLOADED FROM THE TRUCK AND TAKEN IN THE BUILDING OF THE SUPREME COURT AND WITHOUT EVEN READING THE LEGAL OPINIONS SUBMITTED BY THE MOST PROMINENT THIRTEEN PROFESSORS OF LAW IN TURKEY.

HOWEVER IT IS AN ACKNOWLEDGED TRUTH THAT THE CHAMBERS OF THE SUPREME COURT ARE MISTAKEN IN 45-50 % OF THE RULINGS THEY HAVE REACHED EVERY YEAR AND THAT THESE RULINGS ARE CORRECTED BY THE PLENARY ASSEMBLY OF THE SUPREME COURT. BUT THE TRANSMITTAL OF OUR FILE TO THE PLENARY ASSEMBLY OF THE SUPREME COURT TO DETERMINE AND CORRECT THE MISTAKE DONE HAS BEEN PRECLUDED.

There is sound hearsay information that states that the Supreme Court Public Prosecutor Ertan Yüzer and the Supreme Court Deputy Chief Public Prosecutor Mehmet Ekinci are included in a small group of jurists formed by Cemil Çiçek during his time as the Minister of Justice and that this has had an influence on this ruling of rejection given within one hour. The frame of mind and the personality of Cemil Çiçek, who is a very valued, important friend of Aydın Doğan, is known by everyone. The stand of SRF and the values the foundation advocates are known by everyone as well. In a face to face meeting Public Prosecutor Ertan Yüzer had with two lady members of the SRF society, he personally STATED THAT "LEGALLY A RULING OF ACQUITTAL SHOULD BE GIVEN" in our case BUT he also said that "he is a cardiac patient and he has a family and IF HE IS SUBJECTED TO PRESSURE FROM UPPER LEVEL PEOPLE, HIS JUDGMENT WOULD CHANGE."

THE DISCRETION IS YOURS.

It is astonishing that Supreme Court Deputy Chief Public Prosecutor and Public Prosecutor should reach a decision without performing an investigation, and this might damage citizens' faith in the RULE OF LAW and their trust in the State and performance of justice. Although **the request to have this serious legal ERROR made by the Supreme Court Criminal Chamber No. 8** to be corrected was clear in the light of,

1. Previous Supreme Court of Appeal rulings,

2. CCP Article 308,

3. TCC Article 220,

4. The legal opinions of criminal lawyers and academics,

5. The fact that the Public Prosecutor did not appeal the statute of limitations ruling, and

6. The opinions of many eminent experts in jurisprudence whose views were canvassed,

this legitimate petition was hastily rejected.

This rejection needs to be absolutely investigated and corrected. Yet, as the result of an appeal request submitted by unauthorized individuals being processed, and the annulment of the ruling given by the local court because of this invalid appeal, this case (SRF case) is needlessly being protracted for the last 6 years.

It is a matter of concern that such errors can be made even in the application of such a law including indisputable and plain provisions that disallow any interpretations. We know that the 12 September 2010 referendum initiated very important reforms in the judicial system. We strongly hope that in the very near future our judicial system puts its signature under sounder and more just rulings and thus the unjust treatment of innocent people is prevented by our Sublime Judicial System.

QUESTIONS

The answers to the following questions are of the greatest importance in the full understanding of the issue we are setting out in this booklet and of the legal realities involved. Your valuable opinions will serve as a guide in this regard.

Respectfully.

- Is it possible for individuals in a case brought regarding charges of establishing a criminal organization and proceeding solely on the basis of TCC Article 220 to continue to bear the title of intervening parties in that case when the charge of blackmail they had been involved in expired under the statute of limitations by Supreme Court ruling?
- Ebru Şimşek and Fatih Altaylı are portrayed as the injured parties of the blackmail charge in the indictment. Is it possible for these individuals to appeal against the statute of limitations ruling regarding the allegation of establishing a criminal organization, even though the relevant body (Public Prosecutor) did not appeal against the local court ruling?
- Who can become the intervening party in a criminal organization trial?
- Is it possible for various individuals to be regarded as intervening parties in a trial based on establishing a criminal organization in the absence of any connected charge?
- Can individuals who suffered no direct harm from the actions of the alleged organization follow the trial proceedings as intervening parties? Or does the Public Prosecutor alone pursue the criminal organization charge on behalf of the public in the absence of any connected charge?
- Is it compatible with the law for Supreme Court Criminal Chamber No. 8 to initiate an appellate review on the basis of an appeal made by the representatives of Ebru Şimşek and Fatih Altaylı, who enjoy no legal title of intervening parties and have no appeal rights, even though the local court Public Prosecutor lodged no appeal, and to issue an abrogation ruling?
- Is it lawful for Supreme Court Criminal Chamber No. 8 to initiate an appellate review on the basis of an appeal petition from individuals with no title as intervening parties – on the basis of the charges involved given?
- What is the legal status of the ruling in the event that this overturning by Supreme Court Criminal Chamber No. 8 was given in the absence of a valid appeal? Is that ruling to be regarded as “invalid”?
- Since, following the appeal, by persons with no right of appeal, to the ruling of the 2nd High Criminal Court of Istanbul regarding the statute of limitations dated November 24th, 2005 in the SRF case, a conviction was sought against the defendants – in other words since the case developed in disfavor of the defendants – what should the next legal measure be?
- If the Supreme Court Criminal Chamber No. 8 ruling is regarded as “invalid,” what is the legal status of all subsequent legal proceedings in the wake of that abrogation?