



Istanbul Bar Association

Istanbul 40. High Criminal Court File No. 2025/318

16 March 2026- 02 April 2026

Case Observation 2. Preliminary Report

03.04.2026

Purpose of the Report:

Within the framework of the purpose and methodology specified in the report dated 13.03.2026, the Istanbul Bar Association, which is the institutional representative of the defense profession and one of the basic guarantees of the rule of law, has filed a lawsuit against the Istanbul 40th Criminal Court of First Instance regarding the Istanbul Metropolitan Municipality, which is closely followed by the public, in accordance with its public responsibility. It monitors the criminal proceedings carried out with the file numbered 2025/318 of the High Criminal Court in terms of the right to a fair trial and fundamental rights and freedoms. Although the main report will be prepared when the case is completed, it is stated that preliminary reports will be prepared upon the necessity and the violations that took place during the trial will be brought to the attention of the public. In this context, this report has been prepared and presented to the attention of the public.

Determinations in Terms of the Principle of Independent and Impartial Court:

During the observations made in this context, it was understood that the contradictions identified in the report dated 13.03.2026 continued to a significant extent. Since the court mainly took only the statements of the defendants and their lawyers at this stage, sufficient data could not be collected to observe its attitude towards the management of the case. However, the decisions of the court regarding the publicity of the proceedings will be evaluated under the relevant section.

Findings in terms of Equality of Arms and the Principle of Adversarial Trial:

At this stage, it has been determined that the defendants do not know what to defend against due to the inability to access evidence, the fact that the allegations against them have not been concretized, and the difference in legal definitions between the alleged crime and the crime that is the basis of detention. Again, the length of the indictment, the fact that the public prosecutor does not make an individualized assessment of the continuation of detention, thus the defendants and their lawyers have difficulty in producing a defense, and the fact that the detained defendants still do not have access to digital evidence, significantly impair the right to a fair trial.

Right to Silence



The defenses of some defendants and their defense attorneys that statements were taken under psychological pressure during the investigation phase, the allegations that people were taken out of prison and brought before the prosecutor by being told that they would be taken to the hospital, the statements of the people who testified in order to benefit from effective remorse were visited by some lawyers and stated that they were forced to testify due to their difficult situation and with the commitment to get out of prison, and that their family members would also be arrested if they did not confess. It has been determined as an important problem in terms of the right not to be forced to make a statement or show evidence against oneself or one's relatives, which is one of the most important guarantees of the right to a fair trial. It has been observed that there are similarities between the people heard so far in terms of the treatment and methods stated by the people who retracted their incriminating statements before the court.

Determinations in terms of the Principle of Publicity of the Trial:

a- In terms of the direct clarity of the trial:

- 1- It was observed that some deputies were banned from entering the courtroom. However, there is no authority in criminal procedure law to deny certain people to the hearing. In this respect, it has been determined that the actual practice is clearly contrary to the principle of being prescribed by law.
- 2- It was observed that the audience sometimes had difficulty in following what was said due to the size of the courtroom.

b- In terms of the indirect clarity of the trial:

- 1- It has been noticed that the court tends to let journalists with a press card, also known as the "Turquoise Card", into the courtroom. It is known that even in important media organizations, press workers cannot get this card because they are not insured with press insurance. On the other hand, according to the recommendation of the Committee of Ministers of the Council of Europe dated 8 March 2000 and numbered R (2000)7, a journalist *refers to "a natural or legal person who regularly or professionally collects information and shares it with the public through mass media"*. The European Court of Human Rights also acts on the definition in this recommendation in evaluating whether people are journalists or not, and when evaluating whether people are journalists, it deals with the duties they undertake, not their professions. In this respect, the European Court of Human Rights has clearly stated that NGOs, academic researchers, bloggers and social media users can also be considered journalists (ECtHR, [BD] Magyar Helsinki Bizottság v. Hungary, App. No. 18030/11, Date: 08/11/2016, §168). For the reasons explained, restricting access to the courtroom is contrary to the ECtHR's case-law on journalism.



- 2- It was understood that the prohibitions such as taking images and asking questions to the defendants from time to time continued, thus significantly limiting the journalists' professional activities.
- 3- In terms of observing what happened, it was understood that the journalists who were taken to the courtroom were placed in the farthest corner of the courtroom, they could only see the defendants from behind who were not reflected in the projection, they could not see the lawyers, they could not see the faces of the court panel, and they had difficulty in using their computers during the hearings that lasted all day long because there was not even a socket. In this context, journalists wanted to submit a petition to the court, but their petitions and requests to meet with the court board remained unanswered. Then, journalists applied to the Istanbul Bar Association with a petition to ask for support.

On 02.04.2026, it was determined that the journalists were admitted to the lawyers' section and were able to approach the court panel, albeit a few meters. On the other hand, according to the information reflected in the press¹; Considering that the distance between the delegation and the audience in the hall was approximately 100 meters long, this change did not make a significant difference in the follow-up of the hearing by the press. In addition, it was observed that they had access to sockets on April 2 when the press was taken to the section reserved for lawyers.

¹ Yeni Şafak, Defendants will enter Silivri underground, T. 28.05.2013, "In the hall, which draws attention with its length and width, the audience section is located at one end of the hall and the tribune of the court committee is at the other end of the hall. Due to the distance of approximately 100 meters, it is almost impossible for the audience to see the section where the delegation is located with the naked eye. 30 seats have been reserved for members of the press in the audience section...", Online Access: <https://www.yenisafak.com/gundem/saniklar-silivriye-yer-altindan-girecek-525417> E. T.: 03.04.2026.



Figure 1: Photo of the Courtroom²

- 4- The personnel and journalists in charge of the live broadcast were observed and heard in the area where they were not allowed into the courtroom in any way, therefore they could not meet their toilet needs, they were affected by the weather conditions because the place shown to them was an open area, and they were exposed to sound, dust and odor pollution for long hours due to the ongoing construction next to the place shown.

Determinations in terms of the Principle of Presumption of Innocence:

In terms of the principle of presumption of innocence, it has been determined that the violations specified in the report dated 13.03.2026 continue. Again, as reflected in the shared SEGBİS minutes, the title of different allegations as "Action 1, Action 2" etc. instead of "Claim 1, Claim 2" etc. was found problematic in terms of understanding the allegations for which there was no final conviction yet as if they were concrete cases.

Determinations in Terms of Defense Rights and Minimum Procedural Safeguards:

- a- **Being Informed of the Charges and Access to Evidence:** There are ongoing allegations that the charges identified in the report dated 13.03.2026 are not specific to individuals and that the problems with access to digital evidence continue. For explanations on this subject, *see the section titled 'Determinations in terms of Equality of Arms and the Principle of Adversarial Trial'*.

² Marmara Open Penal Execution Institution Website, <https://marmaraacik.adalet.gov.tr/durusma-salonu#resimac-4>



- b- **Sufficient Time and Opportunity to Prepare a Defense:** The detention review, which should be carried out every month, was compressed into 3 days, therefore it was stated that the lawyers would be given 15 minutes for each defendant regarding the detention, the defendants were not given the floor and the objections regarding this were not accepted, except for IMM President Ekrem İmamoğlu, the hearings lasted approximately 12 hours due to the effort to get the statements of 90 people in 3 days, It was determined that there were only 2 or 3 breaks, so the defendants were tired, hungry, had difficulty in meeting their basic needs, and thus had difficulty in preparing and performing their defense. It was understood that the hearing memorandum could not be seen by the lawyers because the hearing was ongoing, the monitors installed in other courts were not in this hall, the records kept by the system were uploaded with a delay, and so far, only the transcript of the statements for the days of 09-10-11-12-17 and 18 March was shared with the lawyers.
- c- **Right to Benefit from Defense Counsel Assistance:** During the observations, it was determined that the defendants were positioned among the intense gendarmerie personnel in the middle of the courtroom, the defense attorneys could not even see their clients, they could not communicate with each other, and they only tried to prepare their defense by calling each other in the presence of gendarmes while the courtroom was being emptied in between. Again, the defendants' lawyers, who observed that new black security cameras were added to the wall behind the lawyers in addition to the existing security cameras in the courtroom, so that they could see the lawyers' notes and the computer screen, submitted their objections to this practice to the court. Such practices are of a nature that will damage the right to defense, which is one of the most important guarantees of the right to a fair trial.

Preliminary Evaluation and Monitoring Process

The case monitoring activity carried out by the Istanbul Bar Association continues, and the further stages of the proceedings will continue to be monitored by impartial observers. This 2nd preliminary report is also based on the observations made and does not constitute a final evaluation. After the completion of all stages of the trial, the data obtained will be analyzed holistically and a more comprehensive report will be shared with the public.

The Istanbul Bar Association, as the institutional representative of the defense profession, will continue to monitor the trial in question and will continue to share its observations with the public.