To the Judge of the State Prosecutor's Office
of the Judicial Court of Paris

Hearing of 3 January 2023
Served by AVR on 14 December 2022 GCR
No. 21/11358

INCIDENTAL FINDINGS

FOR :

VODAFONE GROUP PUBLIC LTD. CO. a company incorporated under the laws of England with registered office at Vodafone House, The Connection, Newbury, Berkshire, RG14 2FN (United Kingdom), registration number 01833679;

"Defendant

Represented by:

Arthur Dethomas *Attorney at Law, Paris* Hogan
Lovells (Paris) LLP
17, avenue Matignon - 75008 Paris
Tel: 01.53.67.47.47 - Fax: 01.53.67.47.48
Toque n° J033
arthur.dethomas@hoganlovells.com

AGAINST :

1. **Mr Murat Hakan UZAN**, born on 30 May 1967 in Istanbul (Turkey), of Turkish nationality, residing at 32 avenue Foch 75016 Paris (France);

2. **Mr Cem Cengiz UZAN**, born on 26 December 1960, in Istanbul (Turkey), of Turkish nationality, residing at 32 avenue Foch 75016 Paris (France);

"Applicants

Having as lawyers :

Maître Christiane Feral-Schuhl and Maître Richard Willemant
Feral-Schuhl Sainte-Marie Willemant AARPI
Avocats au Barreau de Paris
24, rue Erlanger - 75016 Paris
Toque n° J106

Master Nairi Djidjirian
Lawyer at the Paris Bar
65 rue de Prony - 75017 Paris

IN THE PRESENCE OF :

1. **Tasarruf Mevduati Sigorta Fonu**, Savings Deposit Insurance Fund, whose sign is "TMSF" or "SDIF", having its seat at TMSF Büyükdere Cad. No: 143 Esentepe 34394 Şişli, Istanbul (Turkey), represented by its legal representatives ;

Having for lawyer : **Mr Benjamin Siino and Mr Peter Petrov**
Lawyers at the Paris Bar
Gaillard Banifatemi Shelbaya

2. **Motorola Solutions Credit Company LLC, a** U.S. corporation, formerly known as MOTOROLA CREDIT CORPORATION, having its principal place of business at Corporation Trust Center, 1209 Orange Street, Willmington, 19801 New Castle, United States of America, in the person of its legal representative ;

hereinafter, "*Motorola*".

Having for lawyer : **Maître Vanessa Benichou and Maître Anne Atlan**
Lawyers at the Paris Bar
King & Spalding International

3. **Blackrock, a** company incorporated in the United States of America, having its registered office at 400 Howard Street San Francisco CA 94105 (United States of America), represented by its legal representatives;

Represented by: **Maître Diego de Lammerville**
Avocat au Barreau de Paris
Clifford Chance Europe LLP

4. **Dimensional Fund Advisors LP**, a company incorporated in the United States of America, having its registered office at 6300 Bee Cave Road Building One, Austin, Texas 78746 (United States of America), represented by its legal representatives;

Lawyer: **Charlotte Baillot** *Attorney at Law, Paris* K&L Gates LLP

5. **Mr Sezai BACAKSIZ**, residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (Turkey);

6. **Mr Mehmet Serkan BACAKSIZ**, residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (Turkey);

7. **Mr Turhan Serdar BACAKSIZ**, residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (Turkey);

8. **Mr. Aydin DOGAN**, residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (Turkey);

9. **Ms Isil DOGAN**, residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (Turkey);

10. **Ms. Hanzade Vasfiye DOGAN BOYNER**, residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (Turkey);

11. **Ms. Yasar Begumhan DOGAN FARALYALI**, residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (Turkey);

12. **Mr Nihat OZDEMIR**, residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (Turkey);

13. **Mr Batuhan OZDEMIR**, residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (Turkey);

14. **Ms Ebru OZDEMIR KISLALI**, residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (Turkey);

15. **Ms. Turkan SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

16. **Mr. Omer Metin SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

17. **Ms. Dilek SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

18. **Ms. Sevil SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

19. **Ms. Serra SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

20. **Ms Vuslat SABANCI**, residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, Istanbul (Turkey) and also residing at Koybasi Cad No 173 Yenikoy, Istanbul (Turkey);

21. **Ms Arzuhan YALCINDAG**, residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, Istanbul (Turkey);

Having together as lawyer : **Maître Frédéric Lalance**
Lawyer at the Paris Bar
Orrick Rambaud Martel SCP

22. **Mr. Mehmet Mustafa BUKEY**, residing at Ankara Caddesi No: 335 Bornov, Izmir (Turkey);

23. **Ms Belgin EGELI**, residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

24. **Ms Fatma Meltem GUNEL**, residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey);

25. **Ms. Sulun ILKIN**, residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey);

Having together for lawyer : **Maître Séverine Hotellier-Delage**
Member of the Paris Bar
Dentons Paris

26. **Mr. Asim KIBAR**, residing at Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (Turkey);

27. **Ms Semiha KIBAR**, residing at Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (Turkey);

28. **Mr. Ali KIBAR**, residing at Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (Turkey);

29. **Ms Aysun KIBAR**, residing at Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktav, Istanbul (Turkey);

30. **Mr. Ahmet KIBAR**, residing at Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (Turkey);

Having together as lawyer : **Maître Georges Sioufi**
Lawyer at the Paris Bar
SRDB Law Firm

31. **Mr. Abdulkadir KONUKOGLU**, residing at Küçükbakkalköy Mahallesi Kayışdağı Caddesi No:1 Allianz Tower Kat: 23-24 34750 Ataşehir, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, Istanbul (Turkey) ;

32. **Mr. Zekeriye KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

33. **Mr. Adil Sani KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

34. **Mr. Sami KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

35. **Mr. Cengiz KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

36. **Mr. Turgut KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

37. **Mr. Fatih KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

38. **Mr. Hakan KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

39. **Mr. Sani KONUKOGLU**, residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (Turkey) and also residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey) ;

Having together for lawyer : **Maître Clément Dupoirier**
Lawyer at the Paris Bar
Herbert Smith Freehills Paris

40. **Ms. Suzan SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

41. **Ms. Cigdem SABANCI**, residing at Sabancı Center 4.Levent 34330, Istanbul (Turkey) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (Turkey);

Having together as lawyer : **Maître Marie Danis**
Member of the Paris Bar
August Debouzy

42. **Mr Aziz TORUN**, residing at Rüzgarlıbahçe Mahallesi Özalp Çıkmazı No: 4 34805 Beykoz, Istanbul (Turkey);

43. **Mr. Mehmet Mustafa TORUN**, residing at Rüzgarlıbahçe Mahallesi Özalp Çıkmazı No: 4 34805 Beykoz, Istanbul (Turkey);

Having as lawyer : **Ms Selda Can**
Lawyer at the Paris Bar
Cabinet Scan

44. **Ms. Yildiz IZMIROGLU**, residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey);

45. **Ms Filiz SAHENK**, residing at Büyükdere Cad. No: 249 34398 Maslak, Sarıyer, Istanbul (Turkey) ;

46. **Ms Deniz SAHENK**, residing at Büyükdere Cad. No: 249 34398 Maslak, Sarıyer, Istanbul (Turkey) ;

47. **Mr. Ferit SAHENK**, residing at Büyükdere Cad. No: 249 34398 Maslak, Sarıyer, Istanbul (Turkey) ;

48. **Ms Fatma Gulgun UNAL**, residing at Ankara Caddesi No: 335 Bornova, Izmir (Turkey);

49. **Mr. Zeki ZORLU**, residing at Esentepe, Eski Büyükdere Cd. No:199, 34394 Şişli, Istanbul (Turkey) ;

50. **Mr. Ahmet Nazif ZORLU**, residing at Esentepe, Eski Büyükdere Cd. No:199, 34394 Şişli, Istanbul (Turkey) ;

51. **Mr. Olgun ZORLU**, residing at Esentepe, Eski Büyükdere Cd. No:199, 34394 Şişli, Istanbul (Turkey) ;

Having together as lawyer : **Maître Serge-Antoine Tchekhoff**
Lawyer at the Paris Bar
FTPA

together with VODAFONE GROUP PUBLIC LTD. CO, the "Defendants".

PLEASE THE PRE-TRIAL JUDGE

On 24 May and 17 August 2006, Vodafone Telekomunkasyon A.S. and Vodafone IT Hizmetleri A.S. of Turkey won the tenders organised by the Turkish Savings Deposit Insurance Fund (hereinafter the "**TMSF"**) for the sale of the assets of Telsim Mobil Telekomunikasyon Hizmetleri A.S. (hereinafter "**Telsim**") and 02 Oksijen Teknoloji Gelis (hereinafter "02 Oksijen").
"Oksijen").

Now, more than 15 years later, the Claimants are challenging these asset transfers, claiming that they were made in fraud of their rights and that they caused them damages amounting to more than USD 22 billion.

These tenders were conducted in full transparency, with the opening of the envelopes containing the bids of the candidates for the purchase of Telsim's assets being broadcast live on several Turkish television channels.

The Claimants base their action on the shareholding they claim to have held in Telsim and Oksijen at the time of the transfers - which they do not prove by any valid documents - and on expert reports that have no probative value.

The choice of the French court is equally devoid of legal basis, as there is nothing in the case file that relates to France and the Claimants have not shown that they are domiciled there.

This procedure, which is part of an unprecedented fundraising and publicity campaign, is in fact a new attempt by the Uzan brothers to challenge decisions taken in the early 2000s by the TMSF against them, to which the Defendant is a stranger.

As a result of a proven and assumed "*forum shopping*", this dispute cannot be examined by the French courts, which will have to declare themselves incompetent.

In addition, the Plaintiffs are not entitled to bring an action against Vodafone Group Public Ltd.

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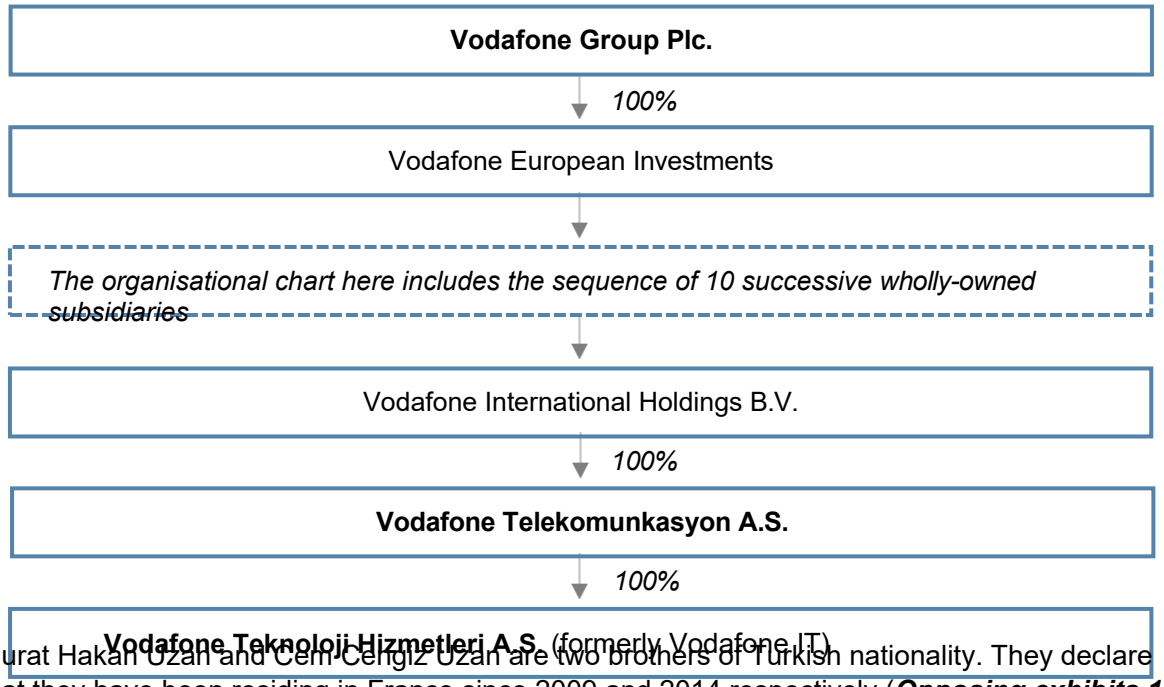
1. FACTS AND PROCEDURE

1.1 Presentation of the parties

1. The Vodafone Group Public Limited Company (hereinafter, "**Vodafone Group**") is a company incorporated in England which heads one of the world's leading telecommunications groups (hereinafter, "**Vodafone Group"**) (***Exhibit 1***).

Vodafone Telekomunikasyon A.S. (hereinafter, "**Vodafone Telekomunikasyon**") and Vodafone IT Hizmetleri A.S. (hereinafter, "**Vodafone IT**", which has since been renamed Vodafone Teknoloji Hizmetleri A.S.) are two subsidiaries of the Vodafone Group, both of which are based in Turkey (***Exhibits 2 and 3***).

The capital links between Vodafone Group and its subsidiaries as at the date of the initiation of the present proceedings, i.e. July 2021, were as follows



2. Murat Hakan Uzan and Cem Cengiz Uzan are two brothers of Turkish nationality. They declare that they have been residing in France since 2009 and 2014 respectively (***Opposing exhibits 1 and 2***).

Their family, including their sister, Ayşegül Uzan, and their father, Kemal Uzan (hereinafter, the "**Uzan Family**"), is regularly portrayed as one of the most influential in Turkey1.

Until the early 2000s, the Uzan family ran a vast conglomerate of companies, active in the banking, telecoms, energy, media and football sectors.

The Claimants allege that the Uzan Family owned, inter alia, 98.1% of the second largest Turkish mobile phone operator, Telsim, and 75.6% of Oksijen, which specialises in the mobile telecommunications sector (***Adverse Exhibit 18***).

However, there is no documentary evidence of these participations.

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[1] Les Echos, "*La chute de l'empire familial turc Uzan*", August 2003.

In addition, the Uzan Family controlled Türkiye İmar Bankası A.Ş. until the early 2000s. (hereinafter, "**Imar Bank**").

On a personal level, Cem Cengiz Uzan was presented in the early 2000s as the fourth largest fortune in Turkey. In 2002, he founded his political party in Turkey, the Young Party2.

His brother, Murat Hakan Uzan, owns numerous properties around the world, with the notable exception of France where his ownership is disputed (***Motorola Exhibits 19 and 37***).

3. The allegations against Vodafone Group in the present proceedings relate exclusively to the tenders for the sale of the Telsim and Oksijen assets won in 2006 by its subsidiaries Vodafone Telekomunikasyon and Vodafone IT.

It is useful to briefly recall the background to these asset disposals, noting immediately that Vodafone Group, as the parent company of the group, did not intervene in any way in these disposals, including when its Turkish subsidiaries won the tenders in question.

1.2 The background to the sale of the Telsim and Oksijen assets to Vodafone Telekomunikasyon and Vodafone IT

4. During 2003, the TMSF and the Turkish Banking Regulation and Supervision Agency (hereinafter, "**BRSA"**) conducted an investigation into the activities of Bank Imar.

At the end of the investigation, the ARSB published a report in which it claimed that the bank had concealed 90% of its deposits. According to the investigators, these undeclared deposits were the subject of an embezzlement scheme involving several members of the Uzan Family, including Kemal (the Claimants' father) and Murat Hakan Uzan (***TMSF Exhibit 31***).

5. In parallel, the ARSB decided on 3 July 2003 to withdraw its operating licence from Banque Imar and to transfer the management and control of the latter to the TMSF (***TMSF Exhibit 27***).

The two main tasks of the TMSF were then to conduct the judicial liquidation procedure of Banque Imar and to reimburse the damaged depositors. The total amount of reimbursements made by the TMSF as a guarantee fund to the depositors of Bank Imar would, according to the TMSF, amount to 8,629,979,234 Turkish Liras3 (***TMSF Exhibit 42***).

In order to recover the funds it had incurred to pay this sum, the TMSF took over the control and management of the companies controlled by the Uzan Family (hereinafter, the "**Companies"**) and replaced the officers and board members of the Companies (***TMSF Exhibit 69***).

Subsequently, the new directors appointed by the TMSF undertook to dispose of the assets of some of the Companies (***TMSF Exhibit 1***). The assets of the Companies were thus disposed of either separately or in lots. These lots were then referred to as a "commercial and economic package".

The funds generated by these disposals were intended to be used to recover funds paid out by the TMSF, including to depositors of Banque Imar.

It is worth noting that these decisions were challenged in the Turkish administrative courts, which rejected them (***TMSF Exhibits 73-76***).

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2 By way of illustration, "*La cavale française d'un ex-magnat turc*" Le Figaro.

3 Amount as at 31 December 2021.

6. It was in this context that the TMSF organised, in 2006, on behalf of the companies it had taken control of, tenders for the sale of the assets of Telsim and Oksijen.

1.3 **The sale to Vodafone Telekomunikasyon and Vodafone IT of the assets of Telsim and Oksijen**

7. *The sale of Telsim's assets*

On 25 August 2005, the announcement of the sale of the Telsim "commercial and economic complex" by tender was published in the Turkish Official Gazette. The value of the assets to be sold, which had previously been listed by a commission established for the transaction, was estimated at US$2.804 billion (***TMSF Exhibit 77***).

Fifteen different companies, including the world leaders in the sector, applied to participate in the pre-qualification process, thirteen of which were eventually granted access to confidential documents relating to Telsim's assets4 . Following the analysis of these documents and after having received responses from Telsim's management team, seven companies submitted final bids (***Exhibit 11***).

On 13 December 2005, several Turkish TV channels broadcast live the opening of the bids containing the final offers of the remaining participants5 .

Vodafone Telekomunikasyon came out on top with a bid of US$4.35 billion6 .

The subsequent auction, with the four highest bidders, was also broadcast live and was won by Vodafone Telekomunikasyon (***Exhibit 11*** *and* ***TMSF Exhibit 78***).

The divestiture was then subject to approval in Turkey by the Competition Authority and the Telecommunications Authority (***Exhibit 11***).

Finally, on 24 May 2006, the Board of Directors of the TMSF approved the transfer to Vodafone Telekomunikasyon, by its decision n°243 (***TMSF Exhibit n°78***). The agreement for the transfer of Telsim's assets was signed on the same day, between Vodafone Telekomunikasyon and the TMSF (***Exhibit 4***). The TMSF stated that it was acting under the powers of management and disposal of assets granted by Turkish law.

In return for the acquisition of Telsim's assets, Vodafone Telekomunikasyon paid the sum of US$4.55 billion to the TMSF (***TMSF Exhibit 79***).

8. *The disposal of the Oksijen assets*

The official announcement of the start of the tender for the sale of the Oksijen assets was published in the Official Journal on 8 March 2006 (***Exhibit 5***).

Again, a commission dedicated to listing Oksijen's assets for disposal had valued them at US$9.2 million (***Exhibit 5***).

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4 *"Vodafone wins Turkish telephony auction with US$4.55 billion bid*, Financial Express, 14 December 2005.

5 *"Vodafone buys Turkish Telsim*", Les Echos, 14 December 2005.

6 *ibid*.

On 13 June 2006, only Vodafone IT submitted a final bid for USD 9.2 million. Vodafone IT thus won the tender (***Exhibit 6***).

The sale of Oksijen's assets was then subject to the approval of the Turkish Competition Authority.

The Board of Directors of the TMSF gave its approval to the transaction on 17 August 2006 by its decision 394 (***Exhibit 6***). The agreement for the sale of the Oksijen assets was signed on the same day, between Vodafone IT and the TMSF (***Exhibit 7***)

In return for the acquisition of the Oksijen assets, Vodafone IT paid the sum of USD 9.2 million to the TMSF (***Exhibit 8***).

9. As a result of this transfer, Oksijen was finally liquidated on 26 July 2007 (***Exhibit 9***). Telsim, on the other hand, still exists today.

1.4 The different court procedures

(a) The different procedures introduced as a result of the transfers organised by the TMSF

10. The bankruptcy of Bank Imar led to hundreds of civil, administrative and criminal proceedings around the world.

A large number were directed against the Claimants, who then decided to leave Turkey (***TMSF Exhibits 6 and*** [77]).

11. With regard to the tender that led to the sale of Telsim's assets to Vodafone Telekomunikasyon, two legal proceedings were brought in the course of 2006 by direct and indirect shareholders of Telsim seeking to challenge the tender - without success (***Exhibits 10 and 11***).

Also in connection with this tender, Cem Cengiz Uzan filed two lawsuits in the *Supreme Court of* the State of New York on 3 April and 2 May 2006, in which it made claims very similar to those made in the current proceedings (***Exhibits 12 and 13***).

The first of these proceedings was directed against, among others, Vodafone Group, Vodafone Telekomunikasyon and Yasar Akgun, one of the TMSF-appointed managers of Telsim (***Exhibit 12***).

Cem Cengiz Uzan, claiming to be the economic beneficiary of Telsim, claimed that a plot was hatched by Yasar Akgun and other Telsim managers to sell off Telsim's assets. This would have caused him to lose the dividends due to him.

In the second case, against Telsim and Yasar Akgun among others, Cem Cengiz Uzan again alleged a conspiracy among Telsim's managers appointed by the TMSF with the alleged aim of harming him (***Exhibit 13***).

The *Supreme Court of* the State of New York first ruled in this second proceeding: on 5 October 2007, it dismissed all of Cem Cengiz Uzan's claims, ruling

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[7] See **TMSF Exhibit 6**, Le Monde, "Cem Uzan, passé du gotha turc aux fichiers d'Interpol", 19 October 2009: "*Cem Uzan* [...] *vanished in early October. Threatened with arrest, he had fled his country in a yacht, shortly before, by docking on a Greek islet. He was said to be in Jordan, but he could be in France. [Cem has joined his father Kemal and his brother Hakan on the run, suspected, like him, of having embezzled several billion dollars*.

In particular, it was found that it lacked jurisdiction and that the link with the Turkish courts was much stronger (***Exhibit 13***).

Cem Cengiz Uzan took note of this decision and consequently, in the course of 2009 - i.e. after three years of proceedings - preferred to withdraw its claims in its first proceedings (***Exhibit 12***).

12. These actions initiated by Cem Cengiz Uzan are only two examples of the instrumentalisation of justice that members of the Uzan Family have engaged in on numerous occasions (***TMSF Exhibit 2***).

The present procedure is a further illustration of this.

(b) **This procedure**

13. By deed dated 19 July 2021, the Plaintiffs brought an action before the Court of First Instance seeking to :

> "To *obtain judicial recognition of the massive fraud of which they were the victims, in their capacity as economic beneficiaries of the companies targeted by the fraudulent captures, and in order to obtain compensation for the damage they suffered as a result of the actions of the defendants, who should be condemned jointly and severally*.

The Uzan brothers allege that they have suffered damages of more than US$68 billion, corresponding to the "*market value to date of the businesses and assets disposed of by the Companies under the management of TMSF, including dividends already generated by these businesses and assets for the last 19 years as well as present and future dividends generated by these businesses and assets now held by third parties*".

The Claimants further state that they come to the rights of their father and sister, Kemal and Ayşegül Uzan, who are said to have assigned to them "*all rights arising from [their] direct and indirect ownership in the Companies, which include, but are not limited to, dividend rights, the right to sue for unlawful acts*" (***Adversary Exhibit 3***).

Specifically, against Vodafone Group, whose subsidiaries acquired the assets of Telsim and Oksijen, the Uzan brothers are demanding payment of more than US$22 billion.

14. This procedure should not mislead the court: **its sole purpose is to harm the Defendants**.

Cem Cengiz and Murat Hakan Uzan are making a great deal of noise about their lawsuit, which they describe as "*the biggest trial in the world* "[8] , against those they accuse of committing an unprecedented fraud.

In order to attract the attention of the media and the public, the Plaintiffs created a website, named "Uzan Case - Real Justice "[9] , on which the Plaintiffs publish articles mentioning the trial.

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8 Videos "*Uzan NFT Reveal*" and "*Uzan NFT Reveal (eng)*" published on *Youtube* on 14 September 2022: https://www.youtube.com/watch?v=k7bk_u1zvIE.

9 Website: https://www.uzancasetruejustice.com/.

The Plaintiffs have also publicly issued NFTs ("*non-fungible tokens*")[10] , i.e. digital assets of cryptocurrencies issued and exchangeable on a *blockchain*, called "GPWIN" and presented as the NFTs of the "*Trial of the Century* "[11].

Indeed, they announced on 13 September 2022, through videos and publications on social networks, that they had signed a partnership with the cryptocurrency platform DANA in order to create NFTs, which could be bought and exchanged on this platform. A new website was created to promote these NFTs, on which the Plaintiffs did not hesitate to publish their summons as well as the Defendants' submissions in their possession12.

Cem Cengiz Uzan does not hide the purely speculative purpose of these NFTs: in the video he posted on social networks for the occasion, he does not hesitate to assert that DANA is about to revolutionise the world of legal litigation. He promises that the profit for an investor in an NFT would "ultimately" be 27 times his or her initial investment.

The price of an NFT is set, at the time of the regularisation of these findings, at US$170. Multiplied by the number of NFTs offered for sale, i.e. 3,380,000, this represents a total amount of nearly US$575 million that the Uzan brothers hope to raise from the public exclusively through this process.

This trial is therefore above all a source of revenue for the Claimants, who are not afraid to use French justice and this court to generate several hundred million dollars in revenue.

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However, even before addressing the merits of the case, it will be shown that there is no rule of law that would allow the Paris Court of Justice to have any jurisdiction over this case.

In addition, the Claimants are not entitled to bring an action against Vodafone Group for a number of reasons, as will be explained below.

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[10] According to the Dictionnaire permanent Epargne et produits financiers - Marché de l'art: "*It is a token registered in the blockchain, comprising a sequence of alphanumeric characters that comply with the rules of cryptography*.

[11] https://gpwin.io/.

[12] https://gpwin.io/ - Case Cal.

2. DISCUSSION

2.1 On the lack of jurisdiction of the Paris Court of Justice

15. It is requested, *in limine litis, that* the Paris Court of Justice declare that it has no jurisdiction in favour of the Turkish courts.

(a) The applicable jurisdictional rules

16. In law, pursuant to Article 6 of the Brussels Ia Regulation, the rules of jurisdiction applicable to a dispute brought in France against defendants domiciled in third countries, such as the United States, Turkey and, since 1 February 2020, the United Kingdom, are those of French private international law.

However, under this law, the international jurisdiction of French courts in international disputes is determined in accordance with the rules of domestic jurisdiction13 , irrespective of the law applicable to the merits of the case14.

The Court of Cassation has specified that: "*if the parties are foreign, the French courts cannot accept jurisdiction if no ordinary criterion of territorial jurisdiction is met in France* "[15].

Thus, for the international jurisdiction of French courts to be established, it is necessary that **one of the connecting factors referred to in the domestic provisions on territorial jurisdiction be realised or located in France**.**16**

17. In this case, Murat Hakan Uzan and Cem Cengiz Uzan, both allegedly domiciled in Paris, brought a liability action against 52 defendants, domiciled in Turkey, the United States and the United Kingdom. The applicable rules of jurisdiction are therefore those of French private international law.

The dispute is unquestionably international if all the parties are foreign, the defendants are domiciled abroad and the alleged damage is caused abroad.

In application of the above-mentioned principles, it is necessary that an ordinary criterion of territorial jurisdiction be fulfilled in France for the jurisdiction of the French courts to be retained.

As will be shown below, the French courts have no ordinary international jurisdiction to hear this dispute.

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13 Professors B. Audit and L. d'Avout, Droit international privé, 8th edition, n°425; JurisClasseur, Compétence des tribunaux français à l'égard des litiges internationaux, § 5.

14 JurisClasseur, Compétence des tribunaux français à l'égard des litiges internationaux, § 6. Cass. civ. 1ère, 30 October 1962, published in the bulletin; Cass. civ. 1ère, 13 January 1981, n°79-10.693, published in the bulletin.

15 Cass. civ. 1ère, 16 April 1985, n°83-16.741, published in the bulletin.

16 JurisClasseur, Jurisdiction of French courts in international disputes, § 6.

(b) **On the ordinary international incompetence of the French courts**

18. Under Article 46 of the Code of Civil Procedure, the plaintiff in a tort action may bring the action not only before the court of the place where the defendant resides, but also before (i) the court of the place where the damage occurred or (ii) the court in whose jurisdiction the damage was suffered.

19. In the present case, the action brought against Vodafone Group is an action in tort, with the Claimants accusing it of having incurred liability "*for having participated and contributed, necessarily with full knowledge of the facts and therefore in a wrongful manner, to the concerted scheme of fraudulent misappropriation of the aforementioned assets and for having thus benefited from the proceeds and fruits of these illicit captures*".

The Claimants therefore benefit from the option of jurisdiction provided for in Article 46 paragraph 3 of the Code of Civil Procedure.

Neither of the two criteria of Article 46(3) is met here:

(i) The place of the harmful event.

The doctrine specifies that the place of the harmful event refers to the place where the event causing the damage occurs, i.e. the place where the event causing the damage occurred17.

The case law adds that the place of the harmful event, in the specific case of a confiscation of shares followed by a transfer of assets, is defined according to the place where the disputed deed of sale was signed and the place where the confiscation order was issued18 . The place of residence of the claimant cannot be taken as the place of confiscation solely on the grounds that the claimant has suffered financial loss there19.

In the present case, the alleged harmful event, namely the transfer of control and management of the Companies to the TMSF and the subsequent asset disposals through tendering and auction procedures in accordance with Turkish law, was undoubtedly carried out in Turkey.

The ordinary international jurisdiction of the French courts cannot therefore be retained on the basis of the place of the harmful event.

(ii) The place where the damage was suffered.

The case law, which is constant in this respect, decides that the place where the damage was suffered is the place where the damage occurred20.

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17 M. Kebir, *Compétence territoriale: accessibilité d'un site internet à l'origine d'un dommage*, 6 Nov. 2017; Mesdames et Monsieur les Professeurs N. Sauphanor-Brouillaud, C. Aubert De Vincelles, G. Brunaux and L. Usunier, Les contrats de consommation. Common rules, 18 Dec. 2018.

18 CA Aix-en-Provence, 17 December 2009, n°09/05647.

19 CA Paris, 2 June 2017, n°16/15845.

20 Cass. civ. 2ème, 28 Feb 1990, n°88-11.320, published in the bulletin; Cass. com. 8 Feb 2000, n°98-13.282; CA Paris, pole 5 ch. 1, 23 May 2017, n°16/24716; CA Paris, pole 1 ch. 8, 31 January 2020, n°19/13933.

The judges deduce that the injury of the victim by ricochet, understood as the one whose injury is only the corollary of the one suffered directly by a third party21 , cannot be considered as having been suffered at the place of his residence22.

Nor can the place where the damage was suffered be equated with the place where the financial consequences of the damage could be measured23.

This solution has been confirmed by the Cour de cassation24 and is the subject of numerous decisions by the courts25 , including in relation to the deprivation of dividend payments26.

These decisions are easy to understand because, as the doctrine points out, Article 46(3) of the Code of Civil Procedure is not intended to be misused to allow the victim to bring an action in the court of his place of residence27 . Otherwise, the claimant would be allowed to bring an action in the court of his place of residence as soon as he had borne - even if only in part - the financial consequences of the damage in the jurisdiction of his place of residence.

In the present case, the Plaintiffs argue in their summons that :

> *"At least part of the financial loss suffered by the Claimants, in their capacity as ultimate economic beneficiaries of the Companies, is suffered in France since they are deprived of the fruits of the activity of these companies and are victims of a total deprivation of the dividends they could have expected each year.*
>
> *France is indeed the place where the Claimants carry out their activity as economic beneficiaries of the Companies, so that the damage was and still is suffered in France where this capacity of shareholders is exercised, as natural persons having their residence in France.*
>
> *The French court system therefore has jurisdiction* rationae loci in *respect of the damage that occurred in France and therefore to hear the entire dispute, in respect of all the damage suffered*.

The Claimants therefore seek compensation for a loss which, according to them, originated in the TMSF's disposal of the Companies' assets and activities.

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21 Cass. com. 26 January 1970, Bull. civ. IV, n°30.

22 Cass. civ. 2ème, 11 January 1984, n°82-14.587, published in the bulletin.

23 Cass. civ. 2ème, 28 February 1990, n°88-11.320, published in the bulletin.

24 Cass. com. 8 Feb. 2000, n°98-13.282.

25 CA Paris, 7 January 2020, n°19/12553; CA Colmar, 25 August 2011, n°10/05219.

26 CA Aix-en-Provence, 17 December 2009, n°09/05647; CA Colmar, 25 August 2011, n°10/05219.

27 Dalloz action Droit et pratique de la procédure civile, § 241.251; JurisClasseur Procédure civile, "Territorial Jurisdiction in Civil Matters", § 163; Repertoire of Civil Procedure, "Determination of the Rules of Jurisdiction", § 88.

18 Formatting added.

In the specific case of Vodafone Group, the Claimants argue, in their alleged capacity as shareholders of Telsim and Oksijen, that the transfer of the assets of these companies to the subsidiaries of Vodafone Group would have caused them harm.

However, assuming that the transfers of Telsim's and Oksijen's assets took place in a fraudulent context, as the Claimants maintain, it is possibly the companies Telsim and Oksijen that were wrongfully deprived of their assets and of the benefits they could have obtained from them.

The damage suffered by the Claimants - if established - would only be the corollary of the damage hypothetically suffered by Telsim and Oksijen and would therefore only be a ricochet damage.

Only part of the financial consequences of this alleged fraud would have appeared in France.

In application of the above-mentioned case law, the place where the damage was suffered cannot be France.

The Claimants cannot therefore rely on Article 46 of the Code of Civil Procedure to establish the jurisdiction of the French courts.

20. It will be stressed that paragraph 3 of Article 42 of the Code of Civil Procedure cannot be the basis for their jurisdiction either, as the Applicants' interpretation of this provision is erroneous.

Indeed, this provision offers the plaintiff an option of jurisdiction only where the defendant has no known domicile or residence, which is not the case here.

21. **It follows from the above that there is no internal rule of territorial jurisdiction on which to base the ordinary international jurisdiction of the French courts.**

In the alternative, the Claimants justify the jurisdiction of the court in question by invoking Article 14 of the Civil Code. This ground cannot succeed either, as will be shown below.

(c) **On the privileged international incompetence of the French courts**

(i) **The conditions for the combined application of Article 14 of the Civil Code and Article 6 of the Brussels I bis Regulation**

22. In law, when the international jurisdiction of the French courts cannot be retained on the basis of their ordinary international jurisdiction, it can still be retained on the basis of their extraordinary international jurisdiction, on the basis of Article 14 of the Civil Code, which provides

> *"A foreigner, even one not residing in France, may be summoned before the French courts for the performance of **obligations contracted by him in France with a French person**; he may be brought before the French courts for **obligations contracted by him in a foreign country towards French persons**.*[29]

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[19] Formatting added.

This article establishes a privilege of jurisdiction by virtue of which the French plaintiff can sue in France the foreign defendant domiciled abroad. French nationality is therefore a necessary condition for the implementation of Article 14 of the Civil Code30.

23. In the present case, the Applicants are not French nationals, so that they cannot in principle invoke Article 14 as a basis for the jurisdiction of the French courts.

24. To justify the jurisdiction of the French courts, the Claimants rely on a
The Court of First Instance of the European Communities has stated that "the *combined application of the European Regulation and Article 14*" and affirmed that "*any foreigner whose domicile is in France is assimilated to the French as regards the possibility of invoking Article 14 of the Civil Code to found the international jurisdiction of the French courts, when the defendant is not domiciled in a Member State of the European Union*".

Article 6(2) of the Brussels I bis Regulation provides that :

> *"Any person, whatever his nationality, who is domiciled in a Member State may, like the nationals of that Member State, invoke in that Member State against that defendant the rules of jurisdiction in force there and in particular those which Member States must notify to the Commission pursuant to Article 76(1)(a)*.[31]

Thus, only applicants who can demonstrate that they are actually domiciled in France can avail themselves of this provision.

25. In law, the concept of domicile, as it emerges from the application of the Brussels I bis Regulation and Article 102 of the Civil Code, means the place of a person's "*principal place of business*".

The determination of the principal place of business, which is left to the sovereign appreciation of the trial judges, is carried out on the basis of a body of corroborating evidence.

Both authors and case law agree that the concept of domicile is based on the principle of unity and fixity, which distinguishes it from the purely factual concept of residence. Thus, although a natural person may have several residences, he or she has only one domicile32.

In addition, the judges retain two cumulative conditions for identifying the place of residence of a natural person:

- a material criterion, understood as the place where the centre of the person's business, activities or interests is located.
- an intentional criterion, reflecting the will of the person33.

Thus, the purely arbitrary intention to fix one's domicile in a place is insufficient in the absence of an actual establishment34.

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30 Cass. civ. 1ère, 21 March 1966.

31 Formatting added.

32 Professor J. Jourdan-Marques, Répertoire de procédure civile, "Domicile, demeure et résidence", §7.

33 Professor Y. Buffelan-Lanore, Répertoire de droit civil, "Domicile, demeure et logement familial", §93.

34 Professor J. Jourdan-Marques, *op. cit.* , §24.

Among the indicators taken into account by the courts are the place where the individual's family is located and the place of the centre of the individual's pecuniary and professional interests35 . The fact of owning a large amount of movable or immovable property in a country thus often reflects the place of the centre of a person's pecuniary interests.

In the present case, the Applicants have not provided any evidence that their domicile is in France.

They submitted simple residence permits (***Opposing Exhibits 1.1 and 1.2***) - which they entitled "Proof of residence in France "[36] - as well as an electricity bill in Murat Hakan Uzan's name alone (***Opposing Exhibit 1.3***).

According to their residence permits, the applicants both live in the same flat, at 32 avenue Foch in Paris. This cohabitation is surprising, to say the least, given that they are two adults, each with a family.

Murat Hakan Uzan had moreover declared, during an attempt at service made by Motorola on 16 November 2021, that his brother was not domiciled at 32 Avenue Foch (***Motorola Exhibit 23***).

The bailiff appointed twice by Motorola in November and December 2021 - i.e. after the present proceedings were initiated - to serve judgments on Cem Cengiz Uzan had thus concluded that the latter clearly had no known domicile, residence or place of work on French territory (***Motorola exhibits 23 and 24***).

As for Murat Hakan Uzan, the evidence provided by Motorola is once again overwhelming: the multiplicity of identities fraudulently used by him clearly makes it impossible to link the claimant to a domicile in France.

Finally, it should be noted that the Claimants are very active within their Turkish political party, the Young Party: Murat Hakan Uzan is, according to his LinkedIn profile, the president since July 2020 of the party founded by his brother. As for Cem Cengiz Uzan, he declared in June 2022 to a Turkish media that he would be a candidate in the next presidential elections in Turkey in 202337 (***Motorola Exhibit 42***).

This involvement of the applicants in the political life of their country of origin shows that the centre of their professional interests is not in France but in Turkey.

The two Uzan brothers are therefore clearly not domiciled in France and are now using this argument to - improperly - base the jurisdiction of the French courts.

26. Moreover, the Applicants cannot rely on Article 14 read in the light of Article 6 of the Brussels I bis Regulation, since the case law makes the application of Article 14 conditional on the existence of an interest in bringing proceedings specific to the applicant of French nationality.

The Court of Cassation thus ruled, in relation to an action brought by a foreign company and its legal representative of French nationality, that the latter could only invoke Article 14 of the Civil Code if he had a direct interest in bringing the proposed action in his own name38.

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35 Professor Y. Buffelan-Lanore, *op. cit.* §94 and following.

36 Formatting added.

37 *"Believe me, the Erdogan period is coming to an end*", Sözcü, 9 June 2022.

38 Cass. civ. 1ère, 22 February 2005, n°02-10.481, published in the bulletin.

The judges noted in this case that the action only sought to obtain compensation for the damage suffered by the foreign company, so that the French nationality of the other plaintiff was not sufficient to establish the jurisdiction of the French courts on the basis of Article 14. The international jurisdiction of the French courts could not therefore be accepted.

Finally, as one author commented at the time, "*only a claim of personal and direct interest to a French person can open the exceptional and subsidiary way of the privilege of French jurisdiction* "[39].

In the present case, the Plaintiffs have absolutely no interest in the present action.

They do not produce any documents to prove the ownership of the shares they allegedly hold in the Companies, nor do they justify the amounts of damages they allege.

On the contrary, the Uzan brothers have, as in the above-mentioned case law, clearly no interest in acting, since they are acting in compensation for a loss that would be suffered directly - if it were established - only by the companies whose assets were sold.

In direct application of the above decision, the Claimants cannot therefore rely on Article 14 of the Civil Code, including as read in the light of Article 6 of the Brussels I bis Regulation, as a basis for the jurisdiction of the French courts.

It follows from all the above that the international jurisdiction of the French courts on the basis of Article 14 of the Civil Code cannot be retained, as the Claimants do not meet the conditions for its application.

(ii) **In addition, on the fraudulent application of Article 14 of the Civil Code**

27. As explained above, Article 14 of the Civil Code establishes a jurisdictional privilege for the claimant of French nationality.

28. However, in application of the adage that fraud corrupts everything, the French courts must declare themselves incompetent when the applicant fraudulently creates the conditions for the application of Article 14 in order to give them jurisdiction.40 This is particularly true when the situation of internationality invoked by the applicant is created out of thin air. This is particularly the case where the situation of internationality invoked by the applicant is created out of thin air.

Case law follows this reasoning and recognises the existence of fraud under Article 14 of the Civil Code when a claim is assigned by a foreign company to a French national for the sole purpose of establishing the jurisdiction of the French courts. The Court of Cassation thus approved the reasoning of the Court of Appeal, which had "*rightly stated*" that
"the assignment of the claim (...) tended to fraudulently create the conditions for the application of the above-mentioned Article 14"[41].

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39 Professor M.A. Ancel, *La justification d'un intérêt personnel et direct à l'action est nécessaire pour fonder la compétence des juridictions françaises*, Revue critique de droit international privé 2005 p.671.

40 J. Burda, *Article 14 of the Civil Code: the divorce action and the privilege of jurisdiction*, Dalloz actualité, 26 July 2012.

41 Cass. civ. 1ère, 24 November 1987, n°85-14.778, published in the bulletin (formatting added).

Article 14 of the Civil Code cannot be invoked by a claimant as a basis for the jurisdiction of the French courts if it is established that *there has been "a fraud intended to artificially give jurisdiction to the French court in order to remove the debtor from his natural judges"*.[42] The Court of Justice of the European Communities, in its judgments, has not been able to establish the jurisdiction of the French courts.

In these cases, the *forum shopping* by the claimant is coupled with a fraud on the law, since the exercise of the jurisdictional option is in fact the result of a manipulation of the connecting factor.43 In this case, the claimant's choice of jurisdiction is not only a choice of law, but also a choice of jurisdiction.

Fraud against the law requires the meeting of three criteria: (i) a legal element (the provisions the fraudster is trying to evade), (ii) a material element (the artificial creation of jurisdiction) and (iii) a moral element (the fraudulent intent).[44]

29. In this case, Murat Hakan Uzan and Cem Cengiz Uzan are both Turkish nationals. They declare that they have lived in France since 3 September 2014 and 3 September 2009 respectively.

The three elements of fraud under Article 14 of the Civil Code are present:

i) The Applicants make no secret of their desire to evade the provisions of Turkish law. Having been convicted and / or had their claims dismissed in Turkey and the United States, they are now trying to win their case in France. This characterises the legal element of fraud.

ii) The material element of fraud is apparent from the fact that the Claimants claim to be domiciled in France which allows them to invoke Article 14 of the Civil Code and the Brussels I bis Regulation, which Kemal and Ayşegül Uzan cannot do.

A few months before the commencement of the present action, Kemal and Ayşegül Uzan therefore undertook to transfer rights attached to all of their securities to the Claimants (***Adverse Exhibit 3***).

This ploy will not fool anyone: it was to give the Claimants the means to present, before the French courts, the claims brought on behalf of all the members of the Uzan Family.

It should be noted, moreover, that the Claimants have taken care not to summon before the Paris Court persons residing in the European Union.

Of the fifty-eight different beneficial owners of the Companies' assets that the Claimants themselves list in their summons, fifty-two are summoned along with the TMSF and Motorola. The other six, voluntarily excluded from the proceedings, are all European citizens or companies registered in the European Union45.

The Claimants have therefore knowingly manipulated the connecting factor in an attempt to artificially create the jurisdiction of the French courts.

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42 Cass. civ. 1ère, 14 December 2004, n°01-03.285, Published in the bulletin.

43 Professor H. Gaudemet-Tallon, *Fraude au jugement et abus de procédure*, Revue critique de droit international privé 2012, p.900.

44 Professors D. Bureau and H. Muir Watt, Private International Law, Tome I General Part, 4th ed. Bureau

45 Summons of Murat Hakan Uzan and Cem Cengiz Uzan, §17, page 13.

and H. Muir Watt, Droit international privé, Tome I Partie générale, 4th ed, §428 et seq.

[45] Summons of Murat Hakan Uzan and Cem Cengiz Uzan, §17, page 13.

iii) The fraudulent intent of the Claimants, characterising the moral element of the fraud, is clearly evident from the manoeuvre they undertook, which was solely intended to evict the Turkish courts *by* artificially gathering the right to act in the hands of the members of the Uzan Family who were allegedly domiciled on French territory.

The Claimants have therefore created from scratch the connecting factor of their situation vis-à-vis the French courts. The jurisdiction of the French courts is the result of an instrumentalisation of French and European standards for the sole purpose of removing the present dispute from the Turkish courts.

For all these reasons, the Pre-Trial Judge will have to declare that he has no jurisdiction to hear the present action.

The competent courts are those of Turkey, and presumably those of the administrative order, as :

- The alleged harmful event was the transfer of control and management of Telsim and Oksijen to the TMSF, followed by the sale of their assets by tender procedures in accordance with Turkish law.

- The place where the damage was suffered - if it is established - since the tender procedures for the assets of Telsim and Oksijen, Turkish companies, took place in Turkey and the winners of these tenders are Turkish companies.

* *

*

If the Pre-Trial Judge were to declare himself competent to hear the merits of the present dispute, he would nevertheless consider all the claims made by the Claimants to be inadmissible.

2.2 **On the inadmissibility of the claims**

30. First of all, it should be noted that the Claimants do not produce, in support of their pleadings, any document proving their status as shareholders in Telsim and Oksijen prior to the transfer of the latter's assets.

They merely state that they are the "ultimate economic beneficiaries of numerous companies (hereinafter referred to as the "Companies") in which they hold, directly or indirectly, more than 25% of the capital and voting rights and whose assets have been fraudulently misappropriated by the defendants "[46].

The Plaintiffs therefore do not at any time have a legal interest in the present action and for this reason alone their claims should all be deemed inadmissible.

[46] Summons of Murat Hakan Uzan and Cem Cengiz Uzan, §3, page 9.

31. If the Pre-Trial Judge decides to presume that the Plaintiffs are shareholders in Telsim and Oksijen, it will be shown that the claims of the Uzan brothers are nonetheless inadmissible.

Indeed:

- Vodafone Group, the defendant in the present proceedings, has no standing to defend since it is not involved in the divestiture of the Telsim or Oksijen assets (**a**) ;
- The Claimants' action is time-barred (**b**);
- The Applicants do not have a direct interest in the case (**c)**, since :
    - they seek redress for the alleged damage suffered by the Companies; and
    - they seek compensation for the alleged damage suffered by the other members of the Uzan Family.
- Claims made in US dollars before a French court are inadmissible (**d**).

(a) **Mainly, on Vodafone Group's lack of standing to defend**

32. In law, according to Article 31 of the Code of Civil Procedure, legal action is open to all those who have a legitimate interest in the success or rejection of a claim, subject to cases in which the law attributes the right to act only to those persons whom it qualifies to raise or combat a claim, or to defend a specific interest.

Legal action is therefore subject to the demonstration of an interest in acting, which is assessed at the time the claim is brought.

Article 32 of the same code states that any claim made by or against a person without the right to act is inadmissible.

It follows from the combination of these two articles that the conditions for the existence of the action must be assessed not only in the person of the plaintiff, but also in that of the defendant.

It is on this basis that the doctrine has notably developed the notion of "legitimate opponent":

> *"A person cannot be called to court to discuss a claim if he is not the "legitimate opponent". (...)*
>
> *In this sense, the admissibility of a claim is also assessed in the person of the defendant (Civ. 17 Jul. 1918, DP 1923. 1. 76. - Com. 13 Nov. 1972, D. 1975. 397, note J.-M. J. Burst. - Civ. 1re , 19 Jan. 1983, Bull. civ. I, no 27. - Civ. 1re , 29 Jan. 1974, Bull. civ. I, no 31. - Civ. 1re , 5 Dec. 1995, no 92-18.292, Bull. civ. I, no 442. - Adde : P. HÉBRAUD, RTD civ. 1959. 144). The latter will be entitled to oppose a fin de non-recevoir to the claims of his adversary if the latter has confused him with another. In other words, the claim submitted to the judge must be attributable not only to its author, but also to the person of the defendant"*[47] .

[47] Professor N. Cayrol, Répertoire de procédure civile Dalloz - Action en justice, §445-446, formatting added.

Another author recalls that :

> *"In other words, it is a question of ensuring that the person who has taken the initiative to raise a claim has directed his action against the right target. This sense of the defendant's standing corresponds to that of "standing to be sued". Thus, when an insured undertakes to bring an action for payment of an indemnity against a defendant who turns out not to be the insurer but a mere broker, it is obvious that the plaintiff has "misdirected" the action. The defendant lacks standing and the claim must be dismissed without consideration of the merits"*[48] .

Thus, when the claim is directed against the wrong defendant, the latter is entitled to raise an objection on the basis of Article 122 of the Code of Civil Procedure and the claim against him must be declared inadmissible without examination of the merits.

In application of this principle, a claim against the parent company when only the subsidiary is the legitimate opponent of the claimant must be declared inadmissible, as the parent company has no standing to defend.

This was the position taken by the Versailles Court of Appeal in declaring inadmissible an action for the return of furniture brought against the parent company instead of the subsidiary company, since the former was neither a party to the disputed furniture storage contract nor the depositary of the claimant's belongings, which were stored in the subsidiary company's furniture storage facility49.

33. In this case, the assets of Telsim were sold to Vodafone Telekomünikasyon. The assets of Oksijen were sold to Vodafone IT.

Both companies belong to the Vodafone Group but have their own legal personality separate from that of Vodafone Group.

Thus, even if it were established that the transfer of the Telsim and Oksijen assets had taken place in fraud of the Plaintiffs' rights and that the transferees of these assets had committed a fault in this respect (*quod non*), Vodafone Group would in any case not be the legitimate opponent in the present action.

Finally, it should be noted that, in an attempt to implicate Vodafone Group in the case, the Claimants produce a letter sent by Vodafone Group Services Limited to the advisor of the Turkish Prime Minister, dated 23 November 2004 (***Opposite Exhibit 27***). Even assuming for the sake of argument that a letter is sufficient to implicate a defendant, it is clear that the Claimants are again confusing Vodafone Group with another Vodafone Group company, Vodafone Group Services Limited.

All of the Plaintiffs' claims against Vodafone Group will therefore be declared inadmissible, as Vodafone Group does not have standing to defend in this dispute.

(b) **In the alternative, on the statute of limitations**

34. If, by chance, the Pre-Trial Judge rejects the plea of inadmissibility presented above, he can only declare that the present action is inadmissible as time-barred.

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48 Professor Y-M. Serinet, *La qualité du défendeur*, RTD Civ. 2003, p. 203, formatting added.

49 CA Versailles, 2 June 2010, n°09/04092.

35. As a preliminary point, the law applicable to this plea of inadmissibility is, pursuant to Article 2221 of the Civil Code and the case law50 , the law where the harmful event occurred, i.e. Turkish law.

Under Turkish law, Article 60 of the Turkish Code of Obligations, as it stood at the time, provided that an action in tort is barred by :

- one year from the date of knowledge of the damage and its author, and
- at the latest ten years after the event causing the damage, even if the injured party has not yet had knowledge of the damage or its perpetrator.

In this case, Murat Hakan Uzan and Cem Cengiz Uzan accuse the Vodafone Group, whose subsidiaries acquired assets from Telsim and Oksijen, of allegedly participating in *the* "*concerted scheme of fraudulent misappropriation*" of these assets, organised by the TMSF.51

The disputed facts on which the Uzans' action against the Defendant is based therefore occurred at the latest on the date of the transfer of the assets of the companies Telsim and Oksijen to the subsidiaries of Vodafone Group, i.e. on 24 May and 17 August 2006.

The Applicants cannot claim not to have been aware of this at the time of the events, as the case was widely publicised, as they do not fail to point out in §118 of their summons.

36. **The Plaintiffs' action is therefore time-barred since 25 May 2007 for the claims related to the transfer of Telsim's assets and 18 August 2007 for those of Oksijen.**

Even if we consider that the one-year period did not begin to run on 24 May and 17 August 2006, the Claimants' action has in any case been time-barred since 25 May and 18 August 2016, i.e. ten years after the event that caused the damage.

The present tort action was brought by the Plaintiffs by a writ dated 19 July 2021, i.e. more than eight years after the expiry of the limitation period.

As this application is time-barred, the Pre-Trial Judge will have to declare it inadmissible.

37. It should be noted, for all intents and purposes, that the solution is the same under French law.

Indeed, pursuant to the new Article 2224 of the Civil Code resulting from Law No. 2008-561 of 17 June 2008 on the reform of the statute of limitations in civil matters, an action in tort is prescribed by five years from the day on which the holder of a right knew or should have known the facts enabling him to exercise it.

Prior to this law, the limitation period for actions in tort was ten years52.

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50 CA Paris, 19 November 2021, 16/22163.

51 Summons of Murat Hakan Uzan and Cem Cengiz Uzan, §16, page 12.

52 Civil Code, art. 2270-1.

Pursuant to the transitional provisions of the Act53 , the new five-year period applies to prescriptions in progress from the day of entry into force of this Act, i.e. 18 June 2008, without the total duration exceeding the duration provided for by the previous Act.

Thus, actions for which a limitation period of more than five years remained on 18 June 2008 were given a new limitation period of five years from the date of entry into force of the Act. In this case, the limitation period expired on 19 June 2013.

Moreover, in the specific case of a contentious assignment, the limitation period starts to run from the day when the plaintiffs in the action became aware of the assignment. This reasoning has been applied on several occasions by the lower courts54.

Therefore, under the former limitation regime, the Claimants' action would have been time-barred as of 25 May 2016 in respect of the assets in Telsim and 18 August 2016 in respect of Oksijen. As of 18 June 2008, there were therefore still more than five years to run.

The Claimants' action for both Telsim and Oksijen is therefore time-barred since the expiry of a new five-year period that started on 18 June 2008, i.e. on 19 June 2013. Again, on 19 July 2021, the action was time-barred.

The Pre-Trial Judge will therefore have to declare the Claimants' action inadmissible.

(c) **In the infinitely alternative, on the Applicants' lack of interest in bringing proceedings**

If the Pre-Trial Judge were to set aside the two grounds of inadmissibility set out above, he would nevertheless find that the Plaintiffs lacked an interest in the case, in several respects.

(i) **On the lack of a direct interest on the part of the Plaintiffs in obtaining compensation for damage suffered solely as a result of the ricochet effect**

38. The Claimants must be declared inadmissible to claim compensation for the entirety of the damage they allege, as they have no direct interest in bringing the action. In fact, this damage, if it were proven, would only have been suffered by ricochet.

39. In law, as has already been recalled, the action is open to all those who have a legitimate interest in the success or rejection of a claim, in accordance with Article 31 of the Code of Civil Procedure.

It is settled case law that the interest to act must be direct and personal55 , legitimate, born and actual56 , on pain of inadmissibility of the action.

Consequently, it is accepted that a shareholder is only admissible to bring an action for damages against the company's directors or against third parties on condition that he or she seeks compensation for a personal loss distinct from that suffered by the company and which is not the corollary thereof. A shareholder's action seeking only compensation for damage suffered as a result of the loss of value of his shares or the loss of dividends will therefore be declared inadmissible.

Authoritative doctrine recalls in this respect that :

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53 Article 26 II of Act No. 2008-561 of 17 June 2008 reforming the statute of limitations in civil matters.

54 CA Besançon, 1st ch., 17 January 2017, n°15/01896; CA Bastia, ch. civ. A, 30 November 2016, n°14/01014.

55 Cass. Civ. 3rd, 4 March 2021, n°20-11.726, Published in the bulletin.

56 Cass. Civ. 3rd, 8 February 2006, n°04-17.512, published in the bulletin.

> *"Thus, for example, the shareholder may suffer damage when the management's failure to act leads to a fall in the market value of his shares. Nevertheless, it will be almost impossible for him to establish the personal nature of the damage he has suffered, as the Court of Cassation considers that a shareholder who complains of having sold his shares at a loss because of a fall in value resulting from poor management of the company is not claiming a damage that is specific to him but a damage suffered by the company itself, of which his own is only the corollary* "[57].

The Court of Cassation has consistently held that the shareholder is not entitled to claim compensation for the loss of value of his shares, since this is only the corollary of the loss suffered by the company58.

In a context with similarities to the present case, the Court of Appeal of Aix-en-Provence perfectly recalled this in a judgment of 5 April 2012. A shareholder had brought an action for damages against the director of a company who had sold the company's only asset. The company was subsequently placed in judicial liquidation. The claimant alleged that he had lost "*his investment, i.e. the capital he had subscribed to and the potential dividends to be received*". However, the Court of Appeal declared the action inadmissible on the grounds that :

> *"the action brought by a partner against the company director is inadmissible when he invokes the loss of value of his shares, since this is a loss that is only the corollary of the damage caused to the company and is not personal in nature; Mr X is therefore not entitled to claim compensation for the loss of value of his shares, nor a fortiori for the loss of future dividends, since the reduction in the company's assets cannot constitute its own damage and is distinct from the company's damage* "[59].

To rule otherwise would be to violate the rule that "no one pleads by attorney "[60] . It would also lead to ignoring the screen constituted by the legal personality, which acts as a screen between the owners of the capital and third parties61.

40. In this case, the Claimants allege that they have suffered damage as a result of the sale of the assets and activities of the Companies in which they claim, without proving it, to be shareholders.

More specifically, the Claimants have brought an action for damages in their alleged capacity as shareholders, seeking compensation for an alleged loss which they define as follows

> *"This loss represents the market value to date of the activities and assets transferred by the Companies under the management of TMSF, including the dividends already generated by these activities and assets for the last 19 years, as well as the present and future dividends generated by these activities and assets currently held by third parties* "[62].

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57 Répertoire des sociétés, "Responsabilité civile des dirigeants sociaux", § 87, formatting added.

58 Cass. com. 26 January 1970, published in the Bulletin.

59 CA Aix-en-Provence, 5 April 2012, n°10-18704.

60 Cass. com. 18 May 1999, n°96-19.235; Cass. com. 17 December 1991, n°89-21.607.

61 Professor Y. Chartier, "*L'impossibilité pour une société mère de se substituer à sa filiale pour demander la réparation d'un préjudice personnel prenant sa source dans le préjudice subi par celle- ci*", Revue des sociétés 1992, p. 323.

62 Summons of Murat Hakan Uzan and Cem Cengiz Uzan, § 124, page 28.

Transposed to the specific case of Vodafone Group, whose subsidiaries acquired almost all of the assets of Telsim and Oksijen, the Plaintiffs seek damages to compensate for :

- the market value of the assets originally held by Telsim and Oksijen;
- the loss of income suffered as a result of the non-payment of dividends since the sale of the Telsim and Oksijen assets, as well as the present and future dividends that could have been paid to them.

However, even if the transfers had been fraudulent, as the Claimants maintain, as they are not the owners of the assets transferred, they cannot receive compensation corresponding to the value of those assets and the benefits they could have generated. These two losses - if they were established - would have been suffered by Telsim and Oksijen themselves, since it was these companies that were wrongfully deprived of their assets.

The damage alleged by the Claimants, if it is established, would therefore only be the corollary of the damage suffered by the Companies, so that it would only be suffered by ricochet.

The Claimants themselves acknowledge this, stating that they are "*the ultimate economic beneficiaries of the companies that were the victims of the fraudulent conduct*".

41. **The action brought by the Plaintiffs against Vodafone Group will be declared inadmissible, as they have no direct interest in bringing an action for compensation for their alleged damages**.

(ii) ***In the alternative*, on the Plaintiffs' lack of direct interest in obtaining compensation for the alleged damage suffered by the other members of the Uzan family**

42. Assuming that the above arguments have not led the Pre-Trial Judge to declare the claims made by the Uzan brothers inadmissible, the latter will have to be deemed inadmissible insofar as they seek compensation for a loss allegedly suffered by their father, Kemal Uzan and their sister, Ayşegül Uzan.

The Claimants rely on two "confirmatory deeds of rights assignment agreements" under which Kemal Uzan and Ayşegül Uzan are said to have assigned to them:

> *"all rights arising from [their] direct and indirect ownership in the companies (Companies listed in the Annex - a list of which is attached to this confirmation of declaration), which include, but are not limited to, rights to dividends, the right to sue for wrongful acts (...)*" (**Adverse Exhibit 3**).

These confirmatory deeds - dated 30 May 2021 - are elliptical to say the least. None of the essential elements of the alleged transfers that these deeds would confirm are specified, such as the date and price. They appear to have been drafted for the exclusive purpose of the present proceedings.

In any event, these confirmatory acts cannot give the Applicants an interest in the case, for two reasons.

43. Firstly, the Claimants do not put forward any evidence in the proceedings to establish that Kemal and Ayşegül Uzan would have held shares in Telsim and Oksijen. **Without such evidence, it is inconceivable that the confirmatory deeds could have any effect**.

This fact alone should be sufficient to declare inadmissible the Plaintiffs' claims relating to the damage allegedly suffered by their father and sister.

44. Secondly, if the pre-trial judge were to assume that the latter were shareholders, these confirmatory acts could not produce any legal effect. In order to examine the present dismissal, the exact nature of these documents and their legal value must be analysed.

The confirmatory deeds state that Kemal Uzan and Ayşegül Uzan retained "*direct and indirect ownership*" of their shares in the Companies. They would only have assigned the right to act in respect of those shares to obtain compensation for the loss claimed by the Claimants, namely (*1)* loss of market value of securities, and (*2*) loss of dividends.

However, French law does not accept the validity of such an assignment of the right to act.

The authors are opposed to the principle of autonomous transmission of the legal action: an action cannot be transmitted independently of the legal prerogative whose sanction it ensures63.

In other words, it is not possible under French law for the owner of a share to assign the right to act in relation to that share (for example, to obtain compensation for loss of value of that share or loss of dividends), without assigning the share itself.

This opposition to the assignment of the right to act alone is all the clearer in the case of the right to act in respect of dividends: as the right to dividends has no legal existence of its own and results only from the decision of the general meeting distributing the profit64 , it cannot be assigned in advance and independently of the corresponding shares.

In this case, to assign as Kemal and Ayşegül Uzan would have done the right to act in relation to their securities while retaining ownership of them (which remains to be demonstrated) is therefore not valid under French law.

As a result, this assignment has no legal value, so that the Claimants have no interest in claiming compensation for the damage allegedly suffered by Kemal Uzan and Ayşegül Uzan.

The Pre-Trial Judge can only declare the Claimants' action inadmissible in this respect.

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63 Professors L. Cadiet and E. Jeuland, Droit judiciaire privé, LexisNexis, 11th ed. 2020, §396.

64 Dictionnaire permanent de droit des affaires, Dalloz, 2022, § 28 and following.

(d) **In the further alternative, on the inadmissibility of claims made in US dollars**

If none of the grounds for dismissal set out below were to succeed, the Pre-Trial Judge will find that the Claimants are making their claims in US dollars, which is not admissible before a French court.

45. In law, Article 1343-3 of the Civil Code provides in its first paragraph that:

"Payment in France of a monetary obligation is made in euros. Under Article L. 111-1 of the Monetary and Financial Code,

"The currency of France is the euro. One euro is divided into one hundred centimes. It is therefore the only legal tender in France.

Claims formulated in a foreign currency must be declared inadmissible65 , since the court cannot (i) substitute itself for the parties to modify the content of their claims, pursuant to Articles 4 and 5 of the Code of Civil Procedure, and in particular convert them into another currency, and (ii) pronounce an order in a currency other than the legal tender currency (*i.e.* the euro in France)[66].

46. In this case, the Claimants are bringing claims in US dollars before the Paris Court.

Consequently, in application of the principles recalled above, the pre-trial judge can only declare these claims inadmissible.

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47. Finally, it would be particularly unfair to leave VODAFONE GROUP PUBLIC LTD. CO. to pay the costs incurred in its defence in the present proceedings, whereas the claims of Murat Hakan and Cem Cengiz Uzan, brought before an incompetent court, are all inadmissible in several respects.

In these circumstances, VODAFONE GROUP PUBLIC LTD. CO. asks the Pre-Trial Judge to order Murat Hakan and Cem Cengiz Uzan jointly and severally to pay it 200,000 euros under Article 700 of the Code of Civil Procedure, as well as the entire costs of the proceedings.

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65 Professors F. Grua and N. Cayrol, Fasc. 40, JCl Civil Code, § 167.

66 CA Paris, ch. 7, 12 February 2015, n°12/10144.

THEREFORE

Having regard to Article 6 of Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012,

Having regard to Articles 42 et seq., 31, 32, 74 et seq. and 122 of the Code of Civil

Procedure, Having regard to Articles 14, 102, 1343-3 and 2221 et seq. of the Civil Code,

Having regard to Article L. 111-1 of the Monetary

and Financial Code, Having regard to Article 60 of

the Turkish Code of Obligations,

The Pre-Trial Judge is asked to :

By way of introduction :

- **DECLARE that** the Paris Court has no jurisdiction to hear the action brought by Cem Cengiz Uzan and Murat Hakan Uzan, the competent courts being those of Turkey;

Mainly :

- **JUDGE** that VODAFONE GROUP PUBLIC LTD. CO. has no standing to defend the action brought by Cem Cengiz Uzan and Murat Hakan Uzan;

  As a result,

  - **DECLARE** all the claims made by Cem Cengiz Uzan and Murat Hakan Uzan against VODAFONE GROUP PUBLIC LTD. inadmissible CO;

In the alternative :

- **JUDGE** that the action initiated by Cem Cengiz Uzan and Murat Hakan Uzan against VODAFONE GROUP PUBLIC LTD. CO. is time-barred;

  As a result,

  - **DECLARE** all the claims made by Cem Cengiz Uzan and Murat Hakan Uzan against VODAFONE GROUP PUBLIC LTD. inadmissible CO;

In the infinite alternative:

- **JUDGE** that Cem Cengiz Uzan and Murat Hakan Uzan have no interest in bringing an action against VODAFONE GROUP PUBLIC LTD. CO. in the context of the present action;

  As a result,

  - **DECLARE** all the claims made by Cem Cengiz Uzan and Murat Hakan Uzan against VODAFONE GROUP PUBLIC LTD. inadmissible CO;

Alternatively :

- **JUDGE** that Cem Cengiz Uzan and Murat Hakan Uzan have no interest in bringing an action against VODAFONE GROUP PUBLIC LTD. CO. for compensation for the alleged damage suffered by Kemal and Ayşegül Uzan ;

  As a result,

  - DECLARE inadmissible the claims made by Cem Cengiz Uzan and Murat Hakan Uzan against VODAFONE GROUP PUBLIC LTD. CO. as compensation for the alleged damage suffered by Kemal and Ayşegül Uzan;

In the further alternative:

- **JUDGE** that the claims of Cem Cengiz Uzan and Murat Hakan Uzan are made in US dollars;

  As a result,

  - **DECLARE** inadmissible the action initiated by Cem Cengiz Uzan and Murat Hakan Uzan against VODAFONE GROUP PUBLIC LTD. CO;

In any case :

- **TAKE NOTE** that VODAFONE GROUP PUBLIC LTD. CO. reserves the right to conclude the case on the merits;

- **ORDER** Cem Cengiz Uzan and Murat Hakan Uzan jointly and severally to pay VODAFONE GROUP PUBLIC LTD. CO. the sum of 200,000 euros under Article 700 of the Code of Civil Procedure;

- **ORDER** Cem Cengiz Uzan and Murat Hakan Uzan jointly and severally to pay all the costs of the proceedings.

WITHOUT PREJUDICE

LIST OF DOCUMENTS SUBMITTED

Exhibit 1: Extract from the register of companies of Vodafone Group Public Limited

Exhibit 2: Extract from the registration register of Vodafone Telekomunikasyon

Exhibit 3: Extract from the registration register of Vodafone Teknoloji (formerly known as Vodafone IT)

Exhibit 4: Telsim Asset Transfer Agreement

Exhibit 5: Announcement of the sale of the Oksijen commercial and economic complex

Exhibit 6: TMSF Council Decision 394 of 17 August 2006 for the sale of the Oksijen commercial and economic complex

Exhibit 7: Oksijen Asset Transfer Agreement

Exhibit 8: Collocation statement for the commercial and economic package of Oksijen assets published in the Official Journal on 27 April 2007

Exhibit 9: Extract from the Turkish company register concerning the liquidation of Oksijen

Exhibit 10: Judgment of the Ankara Civil Executive Court dated 28 December 2006

Exhibit 11: Judgment on the dismissal of proceedings dated 3 April 2007

Exhibit 12: Judgment of the Supreme Court of New York dated 9 September 2009

Exhibit 13: Judgment of the Supreme Court of New York dated 5 October 2007