For the attention of the Juge de la Mise en État Judicial
Court of Paris
4th Chamber - 1st Section RG
n° 21/11358
Opinion served by RPVA on 21 November 2023

SUBMISSIONS IN RESPONSE TO INCIDENT

FOR :

Mr Murat Hakan UZAN
Born on 30 May 1967, in Istanbul (Turkey), of Turkish nationality, residing at 32 avenue Foch 75016 Paris (France), businessman, Chairman of the Genc Party, whose tax residence is in France;

Mr Cem Cengiz UZAN
Born on 26 December 1960, in Istanbul (Turkey), of Turkish nationality, residing at 32 avenue Foch 75016 Paris (France), businessman, former Chairman of the Genc Party, whose tax residence is in France;

APPLICANTS

Having as solicitors **FERAL-SCHUHL SAINTE-MARIE AARPI**
represented by SELARL FERAL-SCHUHL SAINTE MARIE ASSOCIES and SELARL WILLEMANT LAW, acting respectively through
Maître Christiane FERAL-SCHUHL and **Maître Richard WILLEMANT**
Lawyers at the Paris Bar
24, rue Erlanger 75016 Paris | Tél. 01.70.71.22.00 | Fax. 01.83.62.07.34
cferal-schuhl@feral-avocats.com | richard.willemant@feral.law | Paris **# J106**

AGAINST :

1. TASARRUF MEVDUATI SIGORTA FONU

Savings Deposit Insurance Fund, whose sign is "**TMSF**" or "SDIF", having its registered office at TMSF Büyükdere Cad. No: 143 Esentepe 34394 Şişli, Istanbul (TURKEY), represented by its legal representatives ;

DEFENDER

Represented by **Maître Jacques BELLICHACH**
Member of the Paris Bar
69, rue Ampère 75017 Paris | Tel. 01.44.01.46.48
jacques@bellichach.fr | Toque **# G334**

Representing the defendants: **GAILLARD BANIFATEMI SHELBAYA AARPI**
represented by **Benjamin SIINO and Peter PETROV**
Lawyers at the Paris Bar
22, rue de Londres 75009 Paris | Tel. 01.88.40.51.25 | Fax. 01.88.40.51.29
Toque **# R257**

2. MOTOROLA SOLUTIONS CREDIT COMPANY LLC

A company incorporated under the laws of the United States of America, formerly known as MOTOROLA CREDIT CORPORATION, having its registered office at Corporation Trust Center, 1209 Orange Street, Willmington, 19801 New Castle (UNITED STATES OF AMERICA), represented by its legal representative;

DEFENDER

Having as its solicitor : **KING & SPALDING INTERNATIONAL LLP**
represented by **Vanessa BENICHOU**
Member of the Paris Bar
48 bis, rue de Monceau 75008 Paris | Tél. 01.73.00.39.00 | Fax. 01.73.00.39.59
vbenichou@kslaw.com | Toque **# A305**

3. VODAFONE GROUP PUBLIC LTD. CO

A company incorporated in England, having its registered office at Vodafone House The Connection Newbury, Berkshire X0 RG14 2FN (UNITED KINGDOM), represented by its legal representatives;

DEFENDER

Represented by **HOGAN LOVELLS (PARIS) LLP**
represented by **Arthur DETHOMAS**
Member of the Paris Bar
17, avenue Matignon 75008 Paris | Tél. 01.53.67.47.47 | Fax. 01.53.67.47.48
arthur.dethomas@hoganlovells.com | Toque **# J033**

4. BLACKROCK FUND ADVISORS

A company incorporated in the United States, having its registered office at 400 Howard Street San Francisco CA 94105 (UNITED STATES OF AMERICA), represented by its legal representatives;

DEFENDER

Having as its solicitor : **CLIFFORD CHANCE EUROPE LLP**
Represented by **Maître Diego DE LAMMERVILLE**
Member of the Paris Bar
1, rue d'Astorg 75008 Paris | Tel. 01.44.05.52.52 | Fax. 01.44.05.52.00
Toque **# K112**

5. DIMENSIONAL FUND ADVISORS LP

A company incorporated in the United States, having its registered office at 6300 Bee Cave Road Building One Austin TX 78746 (UNITED STATES OF AMERICA), represented by its legal representatives;

DEFENDER

Incorporated counsel : **K&L GATES LLP**
represented by **Maître Charlotte BAILLOT**
Member of the Paris Bar
116, avenue des Champs Elysée 75008 Paris | Tel. 01.58.44.15.32
Toque **# J120**

6. Mr Sezai BACAKSIZ

Residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (TURKEY) ;

7. Mr Mehmet Serkan BACAKSIZ

Residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (TURKEY) ;

8. Mr Turhan Serdar BACAKSIZ

Residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (TURKEY) ;

9. Mr Aydin DOGAN

Residing Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (TURKEY) ;

10. Mrs Isil DOGAN

Residing Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (TURKEY) ;

11. Mrs Hanzade Vasfiye DOGAN BOYNER

Residing Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (TURKEY) ;

12. Ms Yasar Begumhan DOGAN FARALYALI

Residing Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, İstanbul (TURKEY) ;

13. Mr Nihat OZDEMIR

Residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (TURKEY) ;

14. Mr Batuhan OZDEMIR

Residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (TURKEY) ;

15. Mrs Ebru OZDEMIR KISLALI

Residing at Bahçekapi Mah. Güvercinlik Mevkii Limak Çimento Fabrikasi Etimesgut, Ankara (TURKEY) ;

16. Mrs Turkan SABANCI

Residing at Sabancı Center 4.Levent 34330, Istanbul (TURKEY) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (TURKEY) ;

17. 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) ;

18. Mrs Dilek SABANCI

Residing at Sabancı Center 4.Levent 34330, Istanbul (TURKEY) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (TURKEY) ;

19. Mrs Sevil SABANCI

Residing at Sabancı Center 4.Levent 34330, Istanbul (TURKEY) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (TURKEY) ;

20. Mrs Serra SABANCI

Residing at Sabancı Center 4.Levent 34330, Istanbul (TURKEY) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (TURKEY) ;

21. Mrs 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);

22. Mrs Arzuhan YALCINDAG

Residing at Burhaniye Mahallesi Kısıklı Caddesi No:65 34676 Üsküdar, Istanbul (TURKEY) ;

DEFENDERS

Having as its solicitor

ORRICK HERRINGTON & SUTCLIFFE (EUROPE) LLP
acting under the name ORRICK RAMBAUD MARTEL, represented by
Frédéric Lalance
Member of the Paris Bar
61, rue des Belles Feuilles 75116 Paris | Tel. 01.53.53.75.00 | Fax. 01.53.53.75.01
flalance@orrick.com | Toque **# P134**

23. Mrs Belgin EGELI

Residing at Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

24. Mrs Fatma Meltem GUNEL
Residing at Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

25. Mrs Sulun ILKIN
Residing at Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

26. Mr Mehmet Mustafa BUKEY
Residing at Ankara Caddesi No: 335 Bornov, Izmir (TURKEY) ;

DEFENDERS

Having as its lawyer : **DENTONS EUROPE AARPI**
represented by HOTELLIER AVOCAT SELARLU, acting through
Maître Séverine HOTELLIER
Member of the Paris Bar
5, boulevard Malesherbes 75008 Paris | Tél. 01.42.68.48.00 | Fax. 01.42.68.15.45
Toque **# P372**

27. Mrs Yildiz IZMIROGLU
Residing at Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

28. Mrs Fatma Gulgun UNAL
Residing at Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

DEFENDERESSES

Having as its lawyer : **SELAS FTPA**
represented by **Maître Serge-Antoine TCHEKOFF**
Member of the Paris Bar
1 bis, avenue Foch 75116 Paris | Tel. 01.45.00.86.20 | Fax. 01.45.00.08.19
Toque **# P010**

29. Mr Asim KIBAR
Residing Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (TURKEY);

30. Mrs Semiha KIBAR
Residing Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (TURKEY);

31. Mr Ali KIBAR
Residing Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (TURKEY);

32. Mrs Aysun KIBAR
Residing Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktav, Istanbul (TURKEY);

33. Mr Ahmet KIBAR
Residing Levazım, Koru Sokağı Zorlu Center No:2, 34340 Beşiktaş, Istanbul (TURKEY);

DEFENDERS

Having as its solicitor : **SRDB LAW FIRM**
represented by **Maître Georges SIOUFI**
Member of the Paris Bar
43, rue de Rennes 75006 Paris | Tel. 01.53.83.85.30
georgessioufi@srdb-lawfirm.com | Toque **# P372**

Represented by **SRDB LAW FIRM**
represented by **Mr Ziad BEYLOUNI**
Member of the Marseilles Bar

57, Cours Pierre Puget 13006 Marseille | Tel. 06.62.46.51.53
ziad.beylouni@srdb-lawfirm.com

34. 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) ;

35. Mr Zekeriye KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

36. Mr Adil Sani KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

37. Mr Sami KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

38. Mr Cengiz KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

39. Mr Turgut KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

40. Mr Fatih KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

41. Mr Hakan KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

42. Mr Sani KONUKOGLU

Residing at Egemenlik Mahallesi Eski Kemalpaşa Cad. No.4B Işıkkent, İzmir (TURKEY) and also residing Ankara Caddesi No: 335 Bornova, Izmir (TURKEY) ;

DEFENDERS

Associated counsel : **HERBERT SMITH FREEHILLS PARIS LLP**
represented by **Maître Clément Dupoirier** and **Maître Nicolas Pol**
Lawyers at the Paris Bar
66, avenue de Marceau 75008 Paris | Tél. 01.53.57.70.70 | Fax. 01.53.57.70.80
clement.dupoirier@hsf.com | nicolas.pol@hsf.com | Toque **# J025**

43. Mrs Suzan SABANCI

Residing at Sabancı Center 4.Levent 34330, Istanbul (TURKEY) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (TURKEY) ;

44. Ms Cigdem SABANCI

Residing at Sabancı Center 4.Levent 34330, Istanbul (TURKEY) and also residing at Kısıklı Caddesi No:38 Altunizade Üsküdar, İstanbul (TURKEY) ;

DEFENDERESSES

Having as its lawyer : **SCP AUGUST DEBOUZY**
represented by **Marie DANIS,** assisted
by **Karol BUCKI, of** the Paris Bar
7, rue de Téhéran 75008 Paris | Tel. 01.45.61.51.80 | Fax. 01.45.61.51.99
mdanis@august-debouzy.com| Toque **# P438**

45. Mrs Filiz SAHENK
Residing at Büyükdere Cad. No: 249 34398 Maslak, Sarıyer, Istanbul (TURKEY) ;

46. Mrs 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) ;

DEFENDERS

Having as its lawyer : **SELAS FTPA**
represented by **Maître Serge-Antoine TCHEKOFF**
Member of the Paris Bar
1 bis, avenue Foch 75116 Paris | Tel. 01.45.00.86.20 | Fax. 01.45.00.08.19
Toque **# P010**

48. Mr Aziz TORUN
Residing at Rüzgarlıbahçe Mahallesi Özalp Çıkmazı No: 4 34805 Beykoz, Istanbul (TURKEY) ;

49. Mr Mehmet Mustafa TORUN
Residing at Rüzgarlıbahçe Mahallesi Özalp Çıkmazı No: 4 34805 Beykoz, Istanbul (TURKEY) ;

DEFENDERS

Represented by **Ms Selda CAN**
Member of the Paris Bar
62, rue Maubeuge 75009 Paris
Toque **# C1964**

50. Mr Zeki ZORLU
Residing at Esentepe, Eski Büyükdere Cd. No:199, 34394 Şişli, Istanbul (TURKEY) ;

51. Mr Ahmet Nazif ZORLU
Residing at Esentepe, Eski Büyükdere Cd. No:199, 34394 Şişli, Istanbul (TURKEY) ;

52. Mr Olgun ZORLU
Residing at Esentepe, Eski Büyükdere Cd. No:199, 34394 Şişli, Istanbul (TURKEY) ;

DEFENDERS

Having as its lawyer : **SELAS FTPA**
represented by **Maître Serge-Antoine TCHEKOFF**
Member of the Paris Bar
1 bis, avenue Foch 75116 Paris | Tel. 01.45.00.86.20 | Fax. 01.45.00.08.19
Toque **# P010**

MAY IT PLEASE THE PRE-TRIAL JUDGE

SUMMARY

- This case involves one of the biggest frauds in history, in which claimants were cheated out of their money, without any legal basis and outside any legal framework,
  their fundamental right to dividends.

- This fraud was carefully devised by TMSF and made possible by Motorola, among others.

- TMSF alleged that there was a discrepancy between the deposits recorded and the deposits actually made with IMAR BANK.

- TMSF alleges that the amount corresponding to unregistered deposits is several billion dollars. This amount, which to date has never been proven and crystallised, has constantly
  evolved over time with an initial amount of 3.670 billion euros in July [20031] , then 4.279 billion euros in December [20032] , then 6.5 billion [euros3] , 16 billion [euros4] and finally 40 billion euros in October [20045].
  These amounts differ substantially from the information submitted by the Interpol National Central Bureau in Turkey concerning the alleged fraud against certain members of the Uzan family, which revealed that the alleged amount claimed by TMSF was 728 million US dollars and not several billion! However, the above-mentioned procedure did not convince Interpol, which rejected the requests from the Turkish National Central Bureau for lack of evidence and detailed description of any criminal activity.

- TMSF claims to have compensated all IMAR BANK depositors, including those whose deposits were allegedly not registered, following the bank's collapse with money from the Turkish Treasury.

- TMSF alleges that it has been subrogated to the rights of all depositors, including those whose deposits have allegedly not been registered, to recover their claims from the bank with a view to reimbursing the Turkish Treasury.

- These allegations are strongly contested by the Plaintiffs but are not the subject of this dispute. In fact, the various amounts advanced by TMSF relating to unregistered deposits
  should correspond to several hundred thousand depositors. No public announcement has been made by TMSF on this subject. No procedure allowing these alleged unregistered depositors to request a refund has been put in place by TMSF and no judicial process has confirmed the legitimacy of these alleged unregistered depositors to obtain a refund. Moreover, despite the Plaintiffs' numerous requests, TMSF has never been willing to provide the slightest detail or information relating to the alleged reimbursements of these

[1] Exhibit 11, Page 3 §17.
[2] Exhibit 11, page 4 §21.
[3] Exhibit 11, page 30 §153.
[4] Exhibit 26, page 11 §27.
[5] Exhibit 20, page 92, footnote 122.

alleged unregistered depositors, the total amount of which constitutes the amount(s) claimed by TMSF.

- TMSF has, moreover, which is the subject of the present dispute, alleged that these unregistered and unproven deposits have been misappropriated by the companies whose claimants are entitled to collect
  dividends.

- TMSF claimed to have a claim against these companies for these unregistered deposits allegedly misappropriated by these same companies.

- Under banking legislation, TMSF has been given the power to act as manager and to exercise the rights of the shareholders of these companies, while at the same time being obliged to protect their interests.
  dividend rights.

- A reading of the banking laws handed down by the administrative courts lists the conditions that must be met for TMSF to be able to convert its claim into a debt due to the Treasury
  and assert such a claim against the companies.

- In order to claim a debt from the Treasury, TMSF must prove for each of the companies that it had unlawful access to IMAR BANK's resources, which it transferred unlawfully,
  directly or through various structures, these resources for a given amount to the individuals, or members of their families, who control or are shareholders in the bank.

- All the criminal proceedings initiated by TMSF against these companies have been dismissed.

- Without having fulfilled the conditions for claiming a debt owed by the Treasury to the companies and without having been able to judicially establish the slightest proof of any misappropriation of these
  the existence of a claim against each of these companies, TMSF devised and implemented one of the largest fraudulent embezzlement schemes in history, with the aim of siphoning off as much money as possible from these companies under cover of an appearance of legality that is totally non-existent.

- To achieve this, TMSF organised the sale of the assets of these companies in such a way that the shareholders of the acquiring companies saw a unique opportunity to take advantage of this situation.
  illicit.

- To achieve this, TMSF persuaded MOTOROLA, which was initially fiercely opposed to this fraudulent orchestration, having identified it and fought against it before the international courts, to agree to guarantee it, to allow it to be applied and to collect a substantial sum.

- To do this, TMSF used and abused its power as manager and its power to exercise shareholders' rights, acting both in the names and on behalf of these companies and of
  their shareholders, outside any legal framework governing the functions of company manager and shareholder.

- To this end, TMSF, in its capacity as manager of these companies and representative of the shareholders, has ensured, outside any legal framework, that the companies and shareholders accept payment orders without any dispute and without any legally established claim,
  to sell their assets and goodwill, to transfer the proceeds of these sales to TMSF and to see themselves deprived and robbed of their rights to dividends in favour of the shareholders of the acquiring companies.

- This savage fraud, which was made possible by the actions of TMSF in its capacity as manager and representative of the shareholders of these companies, which are governed by private law, led to an unprecedented embezzlement of nearly 8 billion US dollars for the sole benefit of TMSF,
  amount that does not even correspond to the amount of the payment orders (5 billion US dollars) and to orchestrate a deprivation of dividends amounting to 68 billion US dollars, thereby depriving the claimants of their assets for the illicit benefit of the shareholders of the acquiring companies.

- This savage fraud deprived the claimants of their rights to dividends (68 billion US dollars), which were protected by law and which were flouted and plundered for the benefit of the shareholders of the acquiring companies, who, like TMSF, are responsible for and benefit from this fraud.
  fraud.

- Each of TMSF's actions, as described above, within the scope of its functions under private law, taken individually or collectively, constitute actions under Turkish law which
  are considered to have "no legal basis" and must therefore be considered as non-existent, so that the parties must be returned to their initial positions as if these actions had never taken place.

- Under Turkish law, an action for recognition of non-existence ("Bultan") is not subject to any limitation period.

- In the present case, TMSF's actions constitute a serious and manifest violation of the right to the protection of property and, in particular, of the Plaintiffs' right to dividends, of the right to a fair trial, of the right to an effective remedy, of the prohibition of all discrimination, being
  that Turkey is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

- Consequently, the acts taken by TMSF, taken individually and/or collectively, are totally devoid of any legal basis and are manifestly "*ill-founded*", in other words "devoid of any foundation" in
  law, namely :

    - The violation, deprivation and spoliation of the rights to dividends of the shareholders of the Companies, protected by law, for the unlawful benefit of the shareholders and/or economic beneficiaries of the purchasers of the assets who received these dividends in place of the Claimants;
    - The use and abuse by TMSF of its status as manager of the Companies and representative of the shareholders outside the legal framework governing these functions in order to misappropriate the assets of the Companies and the amount resulting from the sale of these assets with the sole aim of stripping these Companies and the rights to dividends of their shareholders for the illicit benefit of TMSF and the shareholders of the acquiring companies;

- The stripping of these companies and their shareholders' rights to dividends through the misappropriation of the companies' assets and the amount resulting from the sale of these assets in the absence of any claim whatsoever;
- The acceptance of payment orders in the name of the Companies, without any dispute, to their detriment and to that of their shareholders in the absence of an established claim against the Companies;
- TMSF's combination of roles enabled it to act both as plaintiff, in its capacity as guarantee fund, and as defendant, in its capacity as manager of the Companies and representative of the shareholders, thus violating the principle of adversarial proceedings, in order to eliminate all possibilities for the Companies and their shareholders to assert their rights and to have recourse to the courts in order to protect themselves against this uncontrolled stripping.

I. FACTS AND PROCEDURE

1. AS A PRELIMINARY POINT, ON THE FUNDAMENTALLY DISHONEST ATTITUDE OF THE DEFENDANTS

1. The Plaintiffs vigorously protest the Defendants' dishonesty.

2. As will be explained below, the Defendants are adopting a totally unacceptable attitude aimed at misleading the Pre-Trial Judge and the Court, believing that they can do so with impunity:

- Drown the Court in irrelevant developments or legal concepts that do not exist, have been repealed or are not recognised in law;

- Mislead the Court on the basis of irrelevant, incomplete, unverified or fabricated information, or truncated quotations from legal doctrine, totally distorted case law decisions or documents from foreign proceedings, the translations of which were deliberately falsified and certain decisive passages omitted in order to harm the Plaintiffs and mislead the Court;

- Misleading the Court on factual circumstances and on the very existence of TMSF's rights of claim;

- Produce forged or falsified identity documents, of totally obscure origin, attributed to Mr Murat Hakan UZAN, on which he is in no way recognisable. MOTOROLA thus accuses Mr Murat Hakan UZAN of having used a series of false identities. MOTOROLA's false allegations are particularly serious and are likely to constitute the offences of forgery and use of forgeries, and amount to a genuine attempt to defraud the court.

3. The Defendants' procedural attitude goes beyond mere bad faith; it is purely and simply fraudulent.

4. All of the Defendants' allegations should therefore lead the Pre-Trial Judge to exercise the utmost circumspection.

5. The Defendants' procedural and fraudulent opportunism can be summed up in several examples:

- TMSF contests the Plaintiffs' status as shareholders in the Companies, even though all of the documents making it possible t o establish, with certainty, the Plaintiffs' status subsequent to the disputed transfers are in its possession, as are numerous documents necessary to the resolution of the dispute, which TMSF and the Defendants as a whole are refraining from producing;

- VODAFONE falsified the translation of the TELSIM asset sale agreement (exhibit 4) that it produced in order to mislead the Examining Magistrate. VODAFONE deliberately omitted to produce paragraph 6.4. of this document, the substance of which is essential since it clearly indicates that TMSF was not authorised to dispose of all of TELSIM's assets since some of these assets were the subject of lease agreements[6] ;

- Whereas MOTOROLA, in the context of earlier legal proceedings that it brought in England, itself produced evidence of the plaintiffs' domicile in France, in particular by affidavit and the production of the results of investigations, MOTOROLA strongly contests in these proceedings that the plaintiffs' domicile is in France!

6. As the Pre-Trial Judge will note, the Defendants believe that they can require the Plaintiffs to comply with certain principles and evidentiary requirements that they do not apply to themselves and, moreover, do not hesitate to proliferate shameless lies in an attempt to give meaning to their allegations, with the sole aim of harming and misleading the Court.

7. This dishonest attitude and posture on the part of the Defendants undermines the credibility of their arguments, many of whose objections in this case are simply inadmissible and extremely ill-founded.

8. The Pre-Trial Judge will not be fooled.

2. PRESENTATION OF THE PARTIES

2.1. The Applicants: Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN

9. Mr Murat Hakan UZAN and Mr Cem Cengiz UZAN (hereinafter collectively referred to as "Mr UZAN") "**Messieurs UZAN**") are two talented businessmen of Turkish nationality, who have been domiciled in France since 3 September 2014 and 3 September 2009 respectively (**exhibits 1 and 2**).

10. Messrs UZAN are two brothers from one of Turkey's most influential families (the **"UZAN Family"**)[7], whose members have enjoyed great success in business around the world between the 1960s and 2000, in the media, telecommunications, banking and insurance sectors.

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[6] 6.4. Teslim'in Taşınmazlarının Kiralanması Ek-8'de belirtilen "Teslim'in maliki olduğu taşınmazlar ile ilgili imzalanmış ve "Kurulun İhaleyi Onay Tarihi" itibariyle yürürlüğe girecek ekli örneğe uygun kira sözlenmelerinin asılları "İhaleyi Kazanan "a teslim edilmiştir.
6.4 Lease of Teslim Property - The originals of the lease agreements in accordance with the attached sample, which have been executed in respect of the property owned by Teslim and which will take effect from the "Tender Approval Date by the Board of Directors" specified in Appendix 8, have been delivered to the "Tender Winner".

[7] It should be pointed out that there is no company or entity whatsoever called the "UZAN GROUP". This is an expression invented by the Claimants' adversaries to designate collectively companies that are directly or indirectly owned or controlled by certain members of the "Uzan family", in order to give the impression of a single legal entity. The "Uzan family" refers to Kemal Uzan (father), Melahat Uzan (mother), Cem Uzan (son), Hakan Uzan (son) and Aysegul Uzan (daughter).

industry, including cement, transport, entertainment, sport and business services (**Exhibit 4**).

11. They are acting in this case as **ultimate economic beneficiaries and as ultimate holders of the dividend rights** of numerous Turkish companies (hereinafter the "**Companies"**), either as partners or shareholders of these Companies, in which they hold, directly or indirectly, more than 25% of the capital or voting rights and whose assets were fraudulently misappropriated by the Defendants as well as the dividend rights of their shareholders (**Exhibit 4**).

12. Messrs Uzan also succeed to the rights of their sister, Mrs Aysegul Uzan, and their father, Mr Kemal Uzan, by virtue of assignment agreements, so that Messrs Uzan are *ultimately* the sole ultimate economic beneficiaries and ultimate holders of the rights to the dividends of the Companies that were the victims of the Defendants' fraudulent acts (**Exhibit 3**).

13. The table below summarises each of the Companies of which the Claimants are the ultimate economic beneficiaries, as shown in the report submitted to the proceedings (**Exhibit 4**).

Adanaspor Spor Faaliyetleri A.Ş.	Edirne Lalapaşa Çimento A.Ş.
Aktif Kablo Televizyon Teknik Hiz. San .Ve Tica.Ş.	Ergani Çimento San.Tic. A.Ş.
Altintaş Altin ve Mücevherat Ticaret A.Ş.	Filmtürk Film Prodüksiyon ve Dağitim Tic. A.Ş.
Artel - Telekom Investments - Azerbeijan	Filpark İnternet Hizmetleri Ve Paz.Tic.A.Ş.
Atasu Emlak Ticaret A.Ş.	Fontek Elektronik Tek. Ürünler Ve Mat. San.Ve Tic.A.Ş.
Aysan Anadolu Yay.San.ve Tic. A.Ş.	Gaziantep Çimento San.ve Tic. A.Ş.
Banko Muzik Ve Plak Yapim A.Ş.	Global Digital İletişim A.Ş.
Bartin Çimento Sanayi A.Ş.	Hurriyet International Gmbh
Basintaş Anadolu Basin Endüstrisi A.Ş.	Incidentally Limited
Betonsan A.Ş.	İstanbulspor Spor Faaliyetleri ve Tic. A.Ş.
Betonsan Beton ve Çimento San.İşlt.Ve Tic. A.Ş.	Kartel - Kazakhstan Mobile GSM
Betontaş Beton San. Ve Tica. AŞ	Kristal İnşaat Ve Ticaret A.Ş.
Beyaz-Basin San.ve Tic A.Ş.	Ladik Çimento San.Tic.A.Ş.
Birleşik Basın Dağıtım A.Ş.	Limaş Liman İşletmesi A.Ş.
Ceps Kurumsal Telekominikasyon Hiz. A.Ş.	Mas Marmara Alüminyum İşletmecilik San.A.Ş.
Demas Demir Mamulleri San. A.Ş.	Matbaataş Matbaacilik San.ve Tic.A.Ş.
Digisoft Yazilim Ve Diş Tic. A.Ş.	Mavi Turizm Yatirimlari Tic. A.Ş.
Digital Telefon Pazarlama A.Ş.	Media Print Basim Tic. A.Ş.
Doğan Kardeş Matbaacilik Sanayii Anonim Şirketi	Media Print Basim Tic. A.Ş.

Medya Park Yayincilik Sanayi A.Ş.

Medya Pazarlama Yayin Dağitim A.Ş.

Merkez Çimento Terminali İşleri ve Tic. A. Ş.

Merkez Hazir Beton İmalat ve Tic. A.Ş.

Merkez Kağit Torba Sa.ve Tic. A.Ş.

Merkez Nakliyat ve Tic. A.Ş.

Metaş İzmir Metalürji Fabrikasi T.A.Ş. Motorlu Araçlar Tic. A.Ş.

Neocom Telekom Ltd - Georgia

Net Bul İnternet Hiz. Ve Paz. Tic. A.Ş.

Net Digital Hiz. A.Ş.

Oksijen O2 Teknoloji Geliş. Ve Bili.Sis.San. ve Tic.A.Ş.

Pamukova Telekominikasyon Sis.San.Tic.A.Ş.

Park Medya Filimcilik Ve Reklamcilik Paz.Tic. A.Ş.

Prime Holding A.Ş.

Prime Medya Filmcilik ve Reklamcilik Sanayi A.Ş.

Prime Prodüksiyon Hiz. A.Ş.

Prime Prodüksiyon Hizmetleri Anonim Şirketi

Rt. Net İnternet Hiz. Ve Paz. Tic. A.Ş.

Rumeli Çelik Sanayi A.Ş.

Rumeli Cimento

Rumeli Elektrik Yatirim A.Ş.

Rumeli Hava Taşimacilik ve İşletmecilik Tic. A.Ş.

Rumeli Havacilik A.Ş.

Rumeli Holding A.Ş.

Rumeli Metal San. A.Ş.

Rumeli Nakliyat ve Ticaret A.Ş.

Rumeli Siogorta A.Ş.

Rumeli Tanitim Halkla İlişkiler Rek. ve Pro.San.Ve Tic. Aş.

Rumeli Teknik Komünikasyon Hiz. A.Ş.

Rumeli Telefon Sistemleri A.Ş.

Rumeli Telekom A.Ş.

Rumeli Telekom Artel Azerbaijan Data Services

Rumeli Telekom AS

Rumeli Telekom KKTC A.Ş.

Rumeli Yazilim Servis Hiz.Tic. A.Ş

Runeli Hayat Sigorta A.Ş.

Sanal İçerik İletişim Hiz.Tic. A.Ş.

Sanart Produksiyon Yapim Ticaret A.Ş.

Şanliurfa Çimento San.Tic. A.Ş.

Seba Sinema Reklamcilik ve Sosyal Tes.İşl. A.Ş

Sistem Ticaret ve İnşaat A.Ş.

Sp Ertel Ltd. Kirgizistan

Standart Alimunyum Sanayi A.Ş. (Nasas)

Standart Çimento San. A.Ş.

Standart Telekominikasyon Bilgisayar Hiz. A.Ş.

Star Digital İletişim A.Ş.

Star Digital İnteraktif Yazilim ve Hiz. A.Ş. Star Haber Ajansi A.Ş.

Star Telekomünnikasyon A.Ş.

Star Televizyon Hizmetleri A. Ş

Teleon Reklamcilik Ve Filmcilik Sanayi ve Ticaret A.Ş.

Teleon Televizyon Reklam A.Ş.

Telsim Çağri Hizmetleri Ve Danişmanlik Tic. A.Ş

Telsim Mobil Telekomünikasyon Hiz. A.Ş.

Toe Otomotiv A.Ş.

Trabzon Çimento San.Tic. A.Ş.

Turizm Endüstri Yatirim A.Ş.

Türk Otomotiv Endüstrileri A.Ş.

Türkfilmi Film Prodüksiyon Ticaret. A.Ş.

Ultra Filimcilik Ve Reklamcilik Sanayi ve Ticaret As

Ulusal Araştirma Hizmetleri A.Ş

Ulusal Basin Gazetecilik Matbaacilik Ve Yayincilik Sanayi A.Ş.
Ulusal Medya Haber Ajansi A.Ş.
Ulusal Yayin Dağitim Ve Pazarlama A.Ş.
Unikom İletişim Hiz. Paz. A.Ş.
Unitel Telefon Paz. A.Ş.
Universal Filmcilik Ve Reklamcilik Sanayi Anonim Şirketi

Utterton Limited
Van Çimento San.Ve Tic A.Ş
Wisteria Bay Limited
Yapi ve Ticaret AS
Yay- Mat Yayincilik Ve Matbaacilik San. A.Ş.

2.2. The Defendants

2.2.1. TASARRUF MEVDUATI SIGORTA FONU ("TMSF")

14. TASARRUF MEVDUATI SIGORTA FONU (hereinafter referred to as "**TMSF**") is a Turkish savings deposit insurance fund established in 1983 to guarantee savings deposits (**Exhibit 5**).

15. TMSF is an autonomous and independent legal entity, with its own budget, accounts and governance.

16. The tasks and powers of TMSF are set out in Turkish banking [law8] , including in particular :

- insuring savings deposits in banks ;
- take over the management and supervision of banks whose banking licences have been withdrawn;
- pay insured savings deposits to depositors ;
- recover debts and take legal action.

17. As a savings deposit insurance fund, TMSF guarantees the repayment of savings deposits in banks in the event of their failure.

18. The principle of guaranteeing bank deposits enables the insurance fund to reimburse depositors for the amount of their insured deposits and to be subrogated in the rights of the beneficiaries of its intervention vis-à-vis the bank in question, up to the amount of the sums it has paid, in order to take action and recover all or part of the sums paid by it.

19. It should be noted at the outset that although TMSF is a legal person governed by Turkish public law, it is being sued in this case for its seriously unlawful and fraudulent conduct **in the context of activities governed by private law**, as a company manager and as the representative of the shareholders of companies governed by private commercial law, as set out below.

[8] Turkish Banking Act no. 4389, now repealed by Banking Act no. 5411, which came into force on [1] November 2005.

20. TMSF is not being sued before the Paris Court of First Instance as an emanation of the Turkish State, but in its capacity **as manager of the Companies** and representative of the shareholders of those Companies.

2.2.2. MOTOROLA SOLUTIONS CREDIT COMPANY LLC

21. MOTOROLA SOLUTIONS CREDIT COMPANY LLC (hereinafter "**MOTOROLA**"), formerly known as MOTOROLA CREDIT CORPORATION, is a corporation governed by the laws of the State of Delaware. It is a finance company owned by MOTOROLA INC, a telecommunications equipment company (**Exhibit 6**).

22. MOTOROLA is being sued before the Paris Court because of the **fraudulent collusion** it entered into and maintained with TMSF, in particular by instigating a concerted scheme of fraudulent misappropriation of the Companies, which resulted in the spoliation of the Plaintiffs' rights to dividends.

2.2.3. VODAFONE AND THE OTHER DEFENDANTS

23. Each of the other defendants is being sued in this case in its capacity as the ultimate economic beneficiary of the entity or entities that transferred assets from the Companies, i.e. as the direct or indirect beneficiaries of the dividends generated and received in place of the Plaintiffs by the fraudulently captured assets (**Exhibit 7**).

24. VODAFONE GROUP PUBLIC LTD. CO (hereinafter "**VODAFONE**") is being sued in its capacity as the economic beneficiary having received dividends in place of the Plaintiffs from the entity or entities that are the transferees of the assets of TELSIM, which is one of the Companies.

25. VODAFONE and each of the other defendants are liable for having unlawfully received dividends in place of the Plaintiffs by participating in and contributing, directly or through companies, 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 profited from the proceeds and fruits of these illicit misappropriations.

26. The table below summarises, for each of these defendants, the company or companies that are the transferees of the said assets and of which they are the ultimate economic beneficiaries, as shown in the report submitted to the debates (**Exhibit 7**).

Last name and first name of the Beneficial Owner of the		**company which has become the assignee of the Company of the assets**	
Bacaksiz	Sezai	Limak Bati Çimento San.ve Tic.A.Ş. Siirt Registration ID: 83 Tax ID: 7700014386 (Siirt)	Gaziantep, Ergani, Sanliurfa Cement
Bacaksiz	Mehmet Serkan		
Bacaksiz	Turhan Serdar		
Bukey	Mehmet Mustafa	Batıçim Batı Anadolu Çimento Sanayii A.Ş. (BTCIM) Registration ID: 29465 K-282 (Izmir) MERSIS No: 0150000304600010	Limas
Caltagirone	Francesco Gaetano	İzmir Çimento Fabrikası Türk A.Ş.	Edirne Lalapasa Cement

Last name and first name of the Beneficial Owner of the		company which has become the assignee of the assets	of the Company
Caltagirone	Francesco	Registration ID (Izmir) 20907-K-47 MERSIS 0257003253100019	
Caltagirone	Alessandro		
Company	Vodafone Group Public Ltd. Co	Vodafone Telekomünikasyon Anonim Şirketi Commercial Register Istanbul : 564625 MERSIS 925035326100017	Telsim
Company	Vodafone Group Public Ltd. Co	Vodafone Teknoloji Hizmetleri Anonim Şirketi Commercial Register Istanbul :586553 MERSIS No : 925037237500014	O2
Company	Heidelberg Cement AG	Çimsa Çimento Sanayi ve Ticaret AS Registration # 708500 MERSIS: 0257003524500307	Standart Cimento
Company	BlackRock		Standart Cimento
Company	Cementir NV	İzmir Çimento Fabrikası Türk A.Ş. Registration ID (Izmir) 20907-K-47 MERSIS 0257003253100019	Edirne Lalapasa Cement
Company	Norges Bank Investment Management		Edirne Lalapasa Cement
Company	Dimensional Fund Advisors LP		Edirne Lalapasa Cement
Company	BlackRock Fund Advisors		
Company	Heidelberg Cement AG	Akçansa Çimento Sanayi ve Ticaret A.Ş Registration # 129269 MERSIS	Ladik Cement
Company	BlackRock		
Dogan	Aydin	Işıl Televizyon Yayıncılık A.Ş. Ticaret Sicil 429633	Star TV
Dogan	Isil		
Dogan Boyner	Hanzade Vasfiye		
Dogan Faralyali	Yasar Begumhan		
Egeli	Belgin	Batıçim Batı Anadolu Çimento Sanayii A.Ş. (BTCIM) Registration ID: 29465 K-282 (Izmir) MERSIS No: 0150000304600010	Limas
Gunel	Fatma Meltem		
Ilkin	Sulun		
Izmiroglu	Yildiz		
Kibar	Asim	Assan Galvaniz San. ve Tic A.Ş Ticaret Sicil 181517 MERSIS: 0086001830600013	Aluminium Standard (NASAS)
Kibar	Semiha		
Kibar	Ali		
Kibar	Aysun		
Kibar	Ahmet		
Konukoglu	Abdulkadir	Çimsa Çimento Sanayi ve Ticaret AS Registration # 708500 MERSIS: 0257003524500307	Standart Cimento
Konukoglu	Abdulkadir	Akçansa Çimento Sanayi ve Ticaret A.Ş Registration # 129269 MERSIS	Ladik Cement
Konukoglu	Abdulkadir	Çimko Çimento ve Beton Sanayi Ticaret A.Ş Registration # 29641 MERSIS 0257036837400016	Bartin Cement
Konukoglu	Zekeriye		
Konukoglu	Adil Sani		
Konukoglu	Fatih		

Last name and first name of the Beneficial Owner of the		company which has become the assignee of the assets	Company
Konukoglu	Hakan		
Konukoglu	Sami		
Konukoglu	Cengiz		
Konukoglu	Turgut		
Konukoglu	Sani		
Konukoglu	Abdulkadir	Batıçim Batı Anadolu Çimento Sanayii A.Ş. (BTCIM) Registration ID: 29465 K-282 (Izmir) MERSIS No: 0150000304600010	Limas
Konukoglu	Zekeriye		
Konukoglu	Adil Sani		
Konukoglu	Fatih		
Konukoglu	Hakan		
Konukoglu	Sami		
Konukoglu	Cengiz		
Konukoglu	Turgut		
Konukoglu	Sani		
Merckle	Ludwig	Çimsa Çimento Sanayi ve Ticaret AS Registration # 708500 MERSIS: 0257003524500307	Standart Cimento
Merckle	Ludwig	Akçansa Çimento Sanayi ve Ticaret A.Ş Registration # 129269 MERSIS	Ladik Cement
Ozdemir	Nihat	Limak Bati Çimento San.ve Tic.A.Ş. Siirt Registration ID: 83 Tax ID: 7700014386 (Siirt)	Gaziantep, Ergani, Sanliurfa Cement
Ozdemir	Batuhan		
Ozdemir Kislali	Ebru		
Sabanci	Turkan	Çimsa Çimento Sanayi ve Ticaret AS Registration # 708500 MERSIS: 0257003524500307	Standart Cimento
Sabanci	Omer Metin		
Sabanci	Dilek		
Sabanci	Sevil		
Sabanci	Serra		
Sabanci	Suzan		
Sabanci	Cigdem		
Sabanci	Turkan	Akçansa Çimento Sanayi ve Ticaret A.Ş Registration # 129269 MERSIS	Ladik Cement
Sabanci	Omer Metin		
Sabanci	Dilek		
Sabanci	Sevil		
Sabanci	Serra		
Sabanci	Suzan		
Sabanci	Cigdem		
Sabanci	Vuslat	Işıl Televizyon Yayıncılık A.Ş. Ticaret Sicil 429633	Star TV
Sabanci	Suzan	Direct	Arif Pasa Yalisi (Basintas)
Sahenk	Filiz	Işıl Televizyon Yayıncılık A.Ş. Ticaret Sicil 429633	Star TV
Sahenk	Deniz		
Sahenk	Ferit		
Sahenk	Filiz	A Yapim Radyo TV Yapimcilik AS Ticaret Sicil: 470357	Kral TV & Kral FM
Sahenk	Deniz		

Last name and first name of the Beneficial Owner of the		company which has become the assignee of the assets	of the Company
Sahenk	Ferit		
Torun	Aziz	Torunlar Gayrimenkul Yatirim Ortakligi A.S. Registration ID: 353242 MERSIS ID: 0946003285100019	Mecidiyekoy Land, Sistem Ticaret
Torun	Mehmet Mustafa		
Unal	Fatma Gulgun	Batıçim Batı Anadolu Çimento Sanayii A.Ş. (BTCIM) Registration ID: 29465 K-282 (Izmir) MERSIS No: 0150000304600010	Limas
Yalcindag	Arzuhan	Işıl Televizyon Yayıncılık A.Ş. Ticaret Sicil 429633	Star TV
Zorlu	Zeki	ZORLU HOLDİNG A.Ş. Registration Istanbul : 267687 MERSIS : 0999003032400010	Mugla Gocek Island Turizm Endüstri Yatirim
Zorlu	Ahmet Nazif		
Zorlu	Olgun		

3. THE FACTS

27. At the outset, the Plaintiffs wish to make it clear that the object of the present dispute is not to challenge the prerogatives vested in TMSF by Turkish law in the context of the performance of its duties, even though these powers have been heavily criticised (including and especially by MOTOROLA) as being exorbitant and shocking for a state governed by the rule of law. This is not a case against Turkish law or against an exceptional legal regime, however open to criticism.

28. These proceedings relate to acts that had no legal basis and were carried out outside any legal framework - the aim and purpose of which was to seriously prejudice the rights of the Plaintiffs, and in particular to deprive them of their right to dividends - in the circumstances set out below.

29. TMSF's allegations relating to the Difference alleged by TMSF on the IMAR BANK deposits and the alleged misappropriation of funds linked thereto are very vigorously contested by the Plaintiffs. However, these allegations are not the subject of this litigation.

30. Nevertheless, for the purposes of the case and of proving that the Defendants are liable in tort for acts committed to the detriment of the Plaintiffs, the Defendants intend to make a complete presentation of the facts necessary for the resolution of this dispute.

3.1. On the Difference alleged by TMSF on the deposits of IMAR BANK

After an orchestrated attack on the Uzan family, which began with the cancellation of the electricity concession of Turkey's only two electricity production and distribution companies (CEAS and KEPEZ) on 12 June 2003, the government continued to fuel a state of panic in order to provoke the withdrawal of deposits from IMAR BANK. After reimbursing depositors for a fortnight, and despite repeated requests from the Board of Directors and the Chairman of IMAR BANK, Mr Kemal Uzan, without any support from the State, the management of IMAR BANK was obliged to return its banking licence to the State and to seek the protection of the Turkish Banking Supervision and Regulation Agency.

("BDDK"), a measure taken by the Chairman of the Board of Directors, Mr Kemal Uzan. This measure was taken in order to protect the rights of depositors.

Management of IMAR BANK was taken over by BDDK on 4 July 2003, four days after the request made by the bank's Board of Directors and Mr Kemal Uzan on 30 June 2023.

31. At the end of July 2003, TMSF alleged the existence of a substantial difference between the amounts of the deposits declared by IMAR BANK to the authorities - and therefore insured under the deposit guarantee - and the actual amount of the deposits made with this bank (the "**Difference alleged by TMSF on the deposits of IMAR BANK**") (**Exhibit 8**).

32. On the basis of the Difference alleged by TMSF in respect of the IMAR BANK's deposits, TMSF claims that it compensated the IMAR BANK's depositors following the latter's bankruptcy using funds from the Turkish Treasury. TMSF also maintains that it subsequently subrogated itself to the rights of the reimbursed depositors in order to recover the claims held by these depositors against the IMAR BANK and to proceed with the reimbursement of the Turkish Treasury.

33. The amount of the Difference alleged by TMSF on IMAR BANK deposits has not been precisely and definitively determined or crystallized. It has, over the years, evolved and increased, without any valid reason, to implausible levels beyond all comprehension, despite the fact that TMSF controlled IMAR BANK and had carried out all the necessary audits. The alleged amount of the Difference alleged by TMSF on the deposits of IMAR BANK evolved from 3.670 billion euros in July [20039], to 4.279 billion euros in December [200310], then to 6.5 billion [euros11], 16 billion [euros12] and finally 40 billion euros in October [200413].

34. The absence of a precise determination of the amount of the Difference alleged by TMSF on the deposits of IMAR BANK is all the more abnormal and implausible as this amount should in principle be less than the sums that TMSF, as insurer of the deposits, should have paid to the depositors concerned, after the bankruptcy of IMAR BANK, which cannot form part of the deposits paid to the depositors having been registered with IMAR BANK. TMSF cannot therefore consider the total amount of the deposits refunded to the depositors to be equivalent to the amount of the Difference alleged by TMSF on the IMAR BANK deposits. In addition, TMSF should have the exact trace of the depositors' claims on the allegedly unregistered deposits, i.e. the identity of these depositors, their number, their claims, the legitimacy of these claims and the total, and individualisable, amount actually paid by TMSF to these depositors. No such information has been communicated by TMSF to the Plaintiffs despite the multiple requests made to this end by the Plaintiffs in various legal proceedings.

[9] Exhibit 11, page 3 §17.
[10] Exhibit 11, page 4 §21.
[11] Exhibit 11, page 30 §153.
[12] Exhibit 26, page 11 §27.
[13] Exhibit 20, page 92, footnote 122.

3.2. TMSF's allegations against the Companies and the 2003 interim measures

35. It is important to underline for the proper understanding of the dispute that when reference is made to the Difference alleged by TMSF on the IMAR BANK deposits, i.e. the alleged unregistered depositors and their reimbursements by TMSF which constitute the amount(s) claimed by TMSF in the form of payment orders, these allegations, although not the subject of the present dispute, are neither proven nor confirmed by any judicial decision and are strongly contested by the Claimants as noted in the summary. Consequently, all the developments relating to the Companies' liability and the Claimants' rights to dividends must be analysed in a context where the basic allegation made by TMSF, namely that some one hundred thousand custodians were fraudulently unregistered and were reimbursed by TMSF, has, to date, never been proven or confirmed by any judicial decision.

36. Following the alleged reimbursement of the unregistered depositors, TMSF **falsely** alleged that the Companies had served as a "transit platform" for the misappropriation of funds associated with the Difference alleged by TMSF on the IMAR BANK deposits.

37. TMSF has maintained, **without demonstration or the slightest proof**, that the Companies participated in these misappropriations, whereas there has never been the slightest link or proof of any role or participation whatsoever by the Companies in the facts alleged by TMSF.

38. On the contrary, the court rulings submitted to the debate show that the Companies never played the slightest role in the facts alleged by TMSF, which cannot therefore be imputed to them in any way (**Exhibit 8**).

39. Thus, without having any prima facie evidence, TMSF arbitrarily and unfairly implicated these Companies in the situation of the Difference alleged by TMSF on the IMAR BANK deposits, a state of affairs which the Turkish courts established and subsequently confirmed by decisions having the force of res judicata.

40. It is important to note that to date TMSF has never demonstrated its allegations against the Companies or any link between the Companies and the Difference alleged by TMSF on the IMAR BANK deposits.

41. In addition, at the material time, the Companies were commercial companies under private law operating in various sectors of activity and were perfectly profitable. They made substantial profits for their shareholders, including the Plaintiffs, year after year (**Exhibit 4**).

42. TMSF has obtained **provisional measures against** these Companies in order to **enable it to prove its allegations**, in relation to the Difference alleged by TMSF on the deposits of IMAR BANK, against these Companies and in the meantime to avoid a dissipation of the assets of these Companies.

43. Numerous interim measures were then ordered at TMSF's request, as well as injunctions ordered in the context of criminal proceedings (**Exhibit 8**).

44. These measures were based on false and unproven allegations that the Companies were responsible for the Difference alleged by TMSF on the IMAR BANK deposits.

45. Without any evidence of a link between the Companies and TMSF's alleged Difference in IMAR BANK Deposits, and without ever demonstrating the Companies' involvement, TMSF considered that the Companies had been used to divert funds corresponding to TMSF's alleged Difference in IMAR BANK Deposits.

46. As set out below, TMSF has persisted in its false allegations against the Companies, which it has never been able to prove before any judicial body and which led it to set up this savage fraud, without any established claim and without any legal basis in order to strip these Companies of their assets, which it fraudulently captured for its own benefit and that of the ultimate beneficiaries of the companies which acquired these assets and which received dividends in place of the Claimants with full knowledge of the facts.

3.3. On TMSF's allegations concerning Plaintiffs' liability for the Difference alleged by TMSF in IMAR BANK's deposits

47. It should be noted that the alleged imputability of any liability of the Claimants by TMSF, in the Difference alleged by TMSF on the IMAR BANK deposits (which Difference is in itself firmly contested by the Claimants), is irrelevant and without any relevance in the context of the present dispute since the Claimants' action is specifically aimed at the actions of TMSF based on its alleged claim against the Companies and not against the Claimants.

48. However, the Claimants consider it important to point out TMSF's lack of probity with regard to the documents it has produced in the context of the present proceedings. Indeed, without this having the slightest relevance to the resolution of the dispute, it is important, to take just one example, to note that the judgments handed down by the Turkish criminal courts, in particular against one of the claimants, produced by TMSF in an attempt to justify their involvement in the Difference alleged by TMSF in respect of the IMAR BANK deposits, stem from criminal proceedings the legality of which has been widely called into question.

49. Indeed, a large number of civil servants involved in these proceedings have, following the attempted coup of July 2016 attributed to the terrorist organisation Fethullah ("FETÖ"), been dismissed from their posts and sentenced to terms of imprisonment because of their affiliation to this organisation.

50. However, it is public knowledge that various members of the Uzan family, including Mr Cem Uzan, have firmly and publicly opposed this organisation and President Erdogan, with whom they had a close relationship prior to the attempted coup in 2016.

51. Consequently, the legitimacy and regularity of the investigations and legal proceedings carried out against the members of the Uzan family or in connection with the Difference alleged by TMSF on the IMAR BANK deposits, in which proven members of the FETÖ organisation participated, are very seriously questionable.

52. Mr Mustafa Aktas, former head of the Istanbul police's financial crime branch, who was in charge of the criminal investigations into the alleged TMSF discrepancy in IMAR BANK deposits, has been convicted and dismissed from his post.

53. Similarly, 16 of the 26 magistrates involved in the four criminal proceedings relating to the alleged TMSF Difference in IMAR BANK deposits, which resulted in convictions, have been disbarred from the profession and sentenced to terms of imprisonment.

54. The irregularity of the criminal proceedings, conducted by officials whose impartiality and independence were lacking, on the basis of which TMSF is attempting to legitimise the fraudulent acts it has undertaken against the Companies, is therefore obvious.

55. The irregularity of these procedures was even recognised by the Paris Tribunal de Grande Instance. When TMSF applied for an exequatur of the judgment handed down by the Istanbul Criminal Court on 29 March 2013, which ordered Mr Cem Uzan to pay part of the compensation owed to IMAR BANK, the Court rejected the application on the grounds that the Turkish criminal judgment was tainted by [bias14].

56. In this case, the President of the Criminal Division was none other than the wife of the public prosecutor who had drawn up the indictments and requested the sentences against the plaintiff. In addition, one of the assessors had, after the judgment had been handed down, been sentenced to a term of imprisonment and disbarred from the judiciary for having been an active member of the FETÖ terrorist group, which the claimant had openly opposed in numerous media statements.

57. This judgment was upheld by the Paris Court of Appeal, which pointed out that the impartiality of the trial panel had also been called into question by one of the judges hearing the case before the Turkish Court of Cassation (**Exhibit 28**) :

> *"the dissenting opinion of Judge Sevgi Saka of the Ankara Court of Cassation, who considered that* ***there was a legitimate doubt as to the court's bias***".

58. Accordingly, TMSF's allegations relating to the Plaintiffs' liability for the Difference alleged by TMSF in IMAR BANK's deposits are based on fraudulent court decisions, as they are tainted, at the very least, by partiality.

3.4. Extended powers granted by law to TMSF

59. In this context, TMSF was granted extensive powers under Turkish law. The aim was to prevent any dissipation of the Companies' assets for the duration of the legal proceedings, during which TMSF had to prove its allegations against the Companies and the existence of a debt owed to it by the Treasury by satisfying the conditions laid down by law, and specified by the Turkish courts, for this purpose in order to enable TMSF to maximise the recovery of these debts.

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[14] TGI Paris, 27 March 2019, no. 17/11704.

60. These extensive powers of recovery could only be applied and used on condition that TMSF proved its claims against the Companies, which it never did!

61. It should already be pointed out that not only has TMSF in this case never demonstrated or proved the slightest link and the slightest responsibility of the Companies in the Difference alleged by TMSF on the IMAR BANK deposits, but all the criminal proceedings brought against the Companies for this purpose have ended in dismissal. This demonstrates**, on the contrary,** the total absence of involvement of the Companies in connection with the alleged fraudulent operations of the IMAR BANK and the Difference alleged by TMSF on the deposits of the IMAR BANK (**exhibits 8 and 14**).

62. **However,** in a very serious illegal manner, **TMSF went beyond** this lack of demonstration and proof of its allegations in order to fraudulently capture the assets of the Companies, thereby seriously infringing the shareholders' right to dividends, as set out below.

63. Although it is not the purpose of these proceedings to interpret or challenge the aforementioned laws, it is essential for a proper understanding of the dispute to recall that these laws, which have been interpreted by the Turkish courts in various decisions that have the force of res judicata, make the existence and classification of a claim against the Treasury conditional upon the satisfaction of two essential conditions that must be met for each of the Companies: (i) unlawful access to IMAR BANK's resources, (ii) unlawful transfer of these resources for a specific amount, directly or through companies, to the controlling persons and/or shareholders of IMAR BANK and to the members of their families. If these conditions are not met, TMSF cannot claim a debt owed by the Treasury to the Companies, let alone use its extensive powers to pursue the recovery of its debts. Moreover, the Turkish courts insist that a mere link with one of IMAR BANK's shareholders is not sufficient to claim a debt owed to the Treasury, let alone a right to recover this pseudo debt.

64. Turkish administrative courts have ruled :

> *"According to the legislative regulation incorporated into Article 15/a of Banking Act No. 4389 by Act No. 5020,* ***claims on the Insurance of Savings Deposits Fund are only considered as claims on the Treasury if the persons defined by the Act have transferred the bank funds to their own domestic or foreign companies, financial institutions or off-shore banks under any name whatsoever or belonging to those who have a blood relationship or affinity by marriage with the controlling*** *(majority)* ***shareholders and directors,*** *and that* ***only in these circumstances would it be possible for the Savings Deposit Insurance Fund to monitor and enforce payment of the claims by judicial means***" (**Exhibit 14**).

65. However, as noted and judged by the Turkish courts, TMSF has never provided the slightest proof of the existence of transfers of funds or their amount (**Exhibit 14**) :

- *"no evidence is put forward by the defendant [TMSF] on the question of how and to what extent the plaintiff transferred bank funds in*
  his name or on behalf of the majority shareholders of T. İmar Bankası TAŞ (Bank) and how the applicant obtained access to the Bank's resources, solely on the basis of the allegations that the applicant company is one of the companies of the Uzan Group" ;

However, the deed drawn up by TMSF against the claimant holds him liable for all the public claims resulting from the Difference alleged by TMSF on the deposits of the IMAR BANK, which is absolutely not in accordance with the letter of the banking legislation.

- *"It is noted that no determination has been made by the defendant with regard to the question of how and in what amount the plaintiff transferred banking resources on his behalf and on behalf of the majority shareholders of T. Imar Bankasi (Bank) and T. Imar Bankasi (Bank).*
  how the claimant obtained access to the Bank's resources. Consequently, the deed drawn up against the claimant holding him liable for all the public claims resulting from the difference between the total amount of savings deposits subject to insurance and the total amount of savings deposits determined by the Caisse d'Assurance des Dépôts d'Epargne does not comply with the letter of the law and legislation and, consequently, it is decided to cancel the payment order".

66. This interpretation of Turkish banking law was confirmed by the Turkish government in its observations before the European Court of Human Rights. The Turkish government thus confirms that the existence of a claim against the Companies in respect of the Difference alleged by TMSF on IMAR BANK's deposits is conditional on an unlawful act carried out by the company for which the latter's shareholders should also be held liable **(Exhibit 11**, pages 80 and 81,
§185 à 187) :

- *"In addition, the following points should be mentioned: The partnership does not merely grant the partner the right to benefit from the profits of the partnership - in more general terms,*
  positive increases in the company's assets - but it also requires the shareholder to bear the risks and charges arising from the company's activities. The risks and burdens that must be borne by the company's shareholder are not limited to commercial debts incurred by the company in the course of its business activity, but also include all kinds of financial obligations arising from the ***company's unlawful acts and activities***" ;

- *"In this respect, it would be unreasonable to argue that partnership assets, which correspond to the partner's share of the partnership, should be exempt from a winding-up procedure.*
  compensation for the ***public damage resulting from the unlawful acts and actions of the company*** *by claiming that the partner of the company did not contribute to the said acts and actions*" ;

- "Given the *seriousness of the burden that the community would have to bear in the event that the* ***damage resulting from the company's unlawful acts and actions*** *were borne by the public, the the fact that a member of the partnership who, although not having made any contribution or been at fault, benefits from the facilities of the partnership must bear this damage to an extent limited to his assets in the partnership does not mean that an excessive burden is imposed on the member of the partnership.*"

67. It follows unsurprisingly from the foregoing that the implementation of banking laws must form part of a global and coherent legal framework, including the establishment of a claim by the Treasury in relation to the Difference alleged by TMSF on the deposits of IMAR BANK for the benefit of TMSF against a party on condition that it proves that this party has had illicit access to the bank's resources and has, for a determined amount, transferred these resources for the benefit of persons who control or are shareholders in the bank as well as their families. As a result, the characterisation of unlawful acts attributable to each of the Companies, which necessarily includes the demonstration of a fault, a

negligent act or a fraudulent act, is not sufficient.

TMSF never fulfilled any of these conditions in relation to the Companies and was therefore never able to rely on any claim, whether or not from the Treasury, against these Companies in relation to the Difference. **TMSF never fulfilled any of these conditions in relation to the Companies and was therefore never able to rely on any claim, from the Treasury or otherwise, against the Companies in relation to the Difference alleged by TMSF on the IMAR BANK deposits**. Consequently, TMSF had no right to issue payment orders, what is more, for the entirety of the Difference alleged by TMSF on the IMAR BANK deposits, to strip these Companies of their assets and to transfer the proceeds of these asset sales for its own benefit and for that of the economic beneficiaries of the acquiring companies who received the dividends resulting from the operation of these assets instead of the Claimants.

68. Moreover, the purely precautionary nature of the measures which TMSF was authorised to take under the Banking Law, enabling it to manage the companies and exercise the shareholders' rights, with the exception of their rights to dividends, which were to be expressly protected and not impaired, is clear from the presentation made by the Government of Turkey itself, in its observations of 17 October 2019 produced before the European Court of Human Rights, in the context of case no. 54208/11, Tunç BURUŞUKOĞLU v. Turkey (**Exhibit no. 11**, page 18, §87 et seq.).

69. Turkish law distinguishes between two types of rights conferred on a shareholder: economic rights, including the right to dividends (as the owner of shares with the right to share in profits), and administrative rights relating to the governance of the company (management, control and management), including the right to attend meetings and voting rights.

70. The Turkish government added that the exercise by TMSF of the prerogatives provided for in the aforementioned banking laws only confers on it a control strictly limited to the aforementioned administrative rights, to the exclusion of the economic rights which remain the prerogatives of the shareholders, whose financial rights are not and were not intended to be affected. There is therefore no interference or control by TMSF over these economic rights, which remain preserved, even in the event of control of the administrative rights by TMSF.

71. This presentation by the Turkish government incontrovertibly confirms that the sole purpose of TMSF's exercise of the broad powers conferred on it by Law 4389 was to safeguard the dissipation of assets.

72. Consequently, the organisation of the dismemberment of these Companies through the sale of their assets, in the absence of the slightest claim established by TMSF, had consequences for both the Companies and the shareholders that were clearly lethal. All the more so as the Companies and their shareholders were thus deprived of any possibility of dispute, of their right to defend and protect their interests in **total breach of the obligations incumbent upon it as manager of the Companies and representative of the shareholders with the** sole aim of embezzling astronomical sums over which it had absolutely no right and depriving the Claimants of their right to dividends to the benefit of the shareholders and/or economic beneficiaries of the acquiring companies.

73. This total absence of claims, the violation of the missions and duties linked to the management of the Companies and the exercise of the shareholders' rights, the alienation of the rights of the Companies and their shareholders with regard to the defence and protection of their interests, the carve-up of these Companies and the deprivation of the Claimants of their rights to dividends for the unlawful benefit of TMSF and the shareholders and/or economic beneficiaries of the companies acquiring these assets have

the consequence of tainting all the acts taken by TMSF with illegality insofar as they are totally devoid of any legal basis, namely :

- The violation, deprivation and spoliation of the rights to dividends of the shareholders of the Companies, protected by law, for the illicit benefit of the shareholders and/or economic beneficiaries of the Companies.

  purchasers of the assets who received these dividends in place of the Plaintiffs;
- The use and abuse by TMSF of its status as manager of the Companies and representative of the shareholders outside the legal framework governing these functions in order to misappropriate the assets of the Companies.

  Companies and the amount resulting from the sale of these assets with the sole aim of stripping these Companies and their shareholders' dividend rights to the illicit benefit of TMSF and the shareholders of the acquiring Companies;
- The stripping of these companies and their shareholders' rights to dividends through the misappropriation of the companies' assets and the proceeds from the sale of these assets by the absence of any claim whatsoever;
- The acceptance of payment orders in the name of the Companies, without any dispute to their detriment and to that of their shareholders in the absence of an established claim against the Companies.

  Companies ;
- TMSF's multiple roles enabled it to act both as a claimant, in its capacity as guarantee fund, and as a defendant, in its capacity as manager of the Companies, and as a defendant, in its capacity as manager of the Companies.

  of the shareholders' representative, thereby violating the principle of adversarial proceedings, in order to eliminate all possibilities for the Companies and their shareholders to assert their rights and to have recourse to the courts to protect themselves against this savage stripping.

3.5. On the issue of the first payment orders by TMSF at the end of 2003 and beginning of 2004, which took place before TMSF took control of the Companies

74. On December 31, 2003, on the basis of an alleged Difference alleged by TMSF on the deposits of the IMAR BANK, **false and never proven allegations of imputability to the Companies and in the absence of any claim**, TMSF formulated a request for payment n°4031 against them, including TELSIM, for a total amount of TL 7,552,995,710,632,93015, i.e. approximately 4,279,317,682 euros.

75. On 24 March 2004, under number 02-83/8373, TMSF issued a payment order for an identical amount against the same Companies, **even though there was no evidence that these Companies were involved** (**exhibit 12**).

76. Although TMSF maintains in its pleadings that the amount of the Difference alleged by TMSF on IMAR BANK's deposits had been fixed in 2004 at TL 7,927,704 billion[16] , it issued payment orders for a lower amount, since they amounted to TL 7,552,995 billion.

77. Consequently, it is legitimate to question the reality of the amount set by TMSF with regard to the Difference alleged by TMSF on IMAR BANK's deposits.

[15] Read or Turkish book.

[16] Amount fixed under the protocols signed between the Undersecretariat of the Treasury, the Central Bank of the Republic of Turkey, T.C. Ziraat Bankası A.Ş. and the TMSF on 7 January 2004 and between T.C. Ziraat Bankası A.Ş. and the TMSF on 14 January 2004 (TMSF Exhibit No. 41).

78. These companies, which were not yet under the control of TMSF as manager and representative of the shareholders, systematically rejected these two payment orders since they were in no way involved in the Difference alleged by TMSF on the IMAR BANK deposits, as the court decisions produced in this case demonstrate.

3.6. On the decision to dismiss the criminal complaint lodged by TMSF

79. On 7 January 2004, TMSF filed a criminal complaint against the Companies in the hope of obtaining a legal basis enabling it to claim a debt from the Treasury and to benefit from the recovery measures provided for by the Banking Act and to take action against the Companies (**Exhibit 8**).

80. In fact, as described above, **without the judicial characterisation** of such unlawful acts, TMSF was unable to legally implement such measures against these Companies, in accordance with the banciare law, which necessarily presupposed demonstrating the imputability for each of these Companies of a fault, a prejudice and a causal link founding its liability.

81. On January 21, 2004, the Sisli Public Prosecutor **dismissed all** charges against the Companies (**Exhibit 8**), noting that **TMSF's allegations had not been proven.**

82. The decision was motivated by the Prosecutor, who pointed out that :

- the audit report provided by TMSF in support of its complaint (a report which also forms part of the exhibits produced by TMSF in the course of these proceedings) did not include any conclusion demonstrating the participation of the Companies covered by the provisional measures in the alleged misappropriation that there was no question whatsoever of any criminal liability on the part of these Companies; and, in any event, that there was not the slightest accusation concerning the participation of the Companies in the alleged misappropriation of funds;

- the file did not contain any evidence likely to lead to the initiation of criminal proceedings against the companies in question.

83. This decision to dismiss the case was definitively confirmed in May 2004 by the Istanbul Court of Appeal (**exhibit 8**).

3.7. The acquisition of control of the Companies by TMSF in February 2004

84. TMSF then reacted by intensifying the precautionary measures taken against the Companies, still without any demonstration or proof of imputability to the Companies or of any link whatsoever between these Companies and the Difference alleged by TMSF on the deposits of the IMAR BANK and therefore of the Treasury's claim.

85. By a resolution of 13 February 2004, TMSF first of all dismissed the boards of directors and auditors of all the Companies, and replaced them with individuals appointed by TMSF, thereby taking full management and control of all the Companies (**Exhibit 13**).

86. From that date, all decisions and actions taken by the Companies were taken on the instructions of TMSF. As a result of this takeover, the shareholders and associates of these Companies were deprived of their administrative rights, which were transferred to TMSF so that it could exercise them on their behalf. They were therefore totally unable to take any decision and to oppose or contest the decisions taken by TMSF on their behalf.

87. TMSF thus ensured that the Companies and their shareholders were obliged to accept, as long as it was totally impossible for them to contest the payment orders issued without any legally established claim, :

- sell the assets of the Companies and their goodwill;
- transfer the proceeds of these sales to TMSF itself; and
- being deprived of their rights to dividends in favour of the economic beneficiaries of the acquiring companies.

88. Worse still, TMSF signed the attendance sheets at the Companies' general meetings for the years 2002 to 2007 on behalf of the shareholders, including the Plaintiffs, claiming to hold proxies that were obviously never granted to it by those shareholders (**exhibit 29**). As a result, all of the decisions taken at these general meetings are also tainted by serious illegality.

89. It is important to note that TMSF's decision to dismiss the Boards of Directors was taken by a simple resolution, without any judge or independent administrative authority having been asked to verify the legitimacy and legality of this assumption of powers or the veracity of the allegations on the basis of which TMSF took such a measure.

90. This is an acquisition of control provided for by Turkish law and is not criticised as such in the present dispute, even though it is highly contested by the Plaintiffs and was contested by MOTOROLA (before its volte-face and change of position).

91. This takeover marked the starting point of the fraudulent misappropriation orchestrated by TMSF, which used its status as manager of the Companies and as representative of the shareholders exercising their rights, except those relating to dividends, to fraudulently capture the Companies' assets.

92. This takeover of control of the Companies by TMSF was intended to strengthen the precautionary measures taken by TMSF against the Companies, with the stated aim of preventing the dissipation of assets that could be linked to the Difference alleged by TMSF on the IMAR BANK deposits, while TMSF was able to prove its allegations for the duration of the legal proceedings, even though TMSF had already failed to do so. This strengthening of the precautionary measures proved to be a decoy, the means for TMSF to carry out an unprecedented fraud, in the absence of any countervailing power. TMSF was thus able to totally control and muzzle the Companies and their shareholders. TMSF then had the power to demand that payment orders be issued, as a creditor of IMAR BANK, and to have these payment orders accepted by the Partnerships and their shareholders without the slightest proof as to the reality of its claim, in its capacity as manager of the Companies and representative of the shareholders, to the complete detriment of the Partnerships and their shareholders.

their shareholders, who have seen their assets and dividend rights stolen from them for the sole benefit of TMSF and the shareholders and/or economic beneficiaries of the acquiring companies.

3.8. On the surreptitious issue and acceptance by TMSF of a new payment order in March 2004

93. On 23 March 2004, when TMSF was now in charge of the management of the Companies and still without any claim and therefore without any demonstration or proof of any liability of the Companies in the Difference alleged by TMSF on the IMAR BANK deposits, TMSF issued a new payment order no. 24.03.2004/02-83/8373, for the same amount of TL 7,552,995,710,632,930, i.e. EUR 4,279,317,682, to the Companies. This payment order was subject to a time limit of 7 days from the date of issue.

94. Once again, the amount of this payment order does not correspond to the amount set by TMSF in 2004, which was TL 7,927,704 billion.

95. However, this time the payment order was accepted by the Companies, which were then represented by TMSF. Also, the takeover of the Companies and the exercise of the shareholders' rights enabled TMSF to ensure that they would not be in a position to oppose the payment orders, TMSF being at this stage the sole decision-maker on behalf of the Companies but also on behalf of the shareholders.

96. Moreover, it is staggering to note that the total amount of these payment orders then amounted to one trillion US dollars, i.e. two hundred times the amount initially alleged by TMSF in the criminal proceedings which gave rise to a decision to dismiss the case which has now become final. TMSF therefore did not simply pursue the recovery of a debt, the existence of which was refuted by the Turkish courts, but unlawfully pursued the recovery of an alleged debt, the amount of which changed in phenomenal, inexplicable and totally implausible proportions, further attesting to the total illegality of the actions in which TMSF engaged.

97. The acceptance of this payment order by TMSF, as manager of these Companies and representative of the shareholders acting in their names and on their behalf, whose sole objective was to illicitly appropriate the largest possible amount from these Companies with complete impunity, marks the first effective implementation of this unprecedented fraudulent enterprise to the detriment of the Claimants outside any legal framework and in breach of fundamental rights.

3.9. On the abuse by TMSF of its legal powers as manager of the Companies and the misappropriation of the Companies' assets

98. TMSF had its back against the wall. The precautionary measures it had taken could not last forever, especially in the absence of any evidence of an unlawful act. TMSF knew that it would never be able to prove and therefore benefit from the prerogatives of the law to collect any assets or any proceeds from the sale of these companies' assets, so it decided to change strategy and embark on a perfectly illegal path in violation of any legal framework.

99. It was in these circumstances that TMSF decided to implement its fraudulent strategy, in order to go beyond the stage of conservatory measures alone, which could no longer continue, while capturing the value of the Companies that were unjustly accused and without proof.

100. TMSF then decided to abuse its powers, by acting outside any legal framework, in order to misappropriate the Companies' assets, thereby violating the Plaintiffs' rights, including their right to dividends, which is precisely the subject of the present dispute.

101. In fact, TMSF placed itself outside the law in order to organise the capture of the Companies' assets and to obtain the settlement of payment orders, even though they were unlawful, since they were not based on any claim.

102. From the time it took control of the Companies, TMSF had **two antagonistic qualities**:

- TMSF acted as a **savings deposit guarantee fund**. It was in this capacity that TMSF "guarantee fund" (hereinafter "**TMSF-fonds**") instituted proceedings against the Claimants and the Companies and issued the unlawful payment orders against the Companies, for the amounts of the
  Difference alleged by TMSF on IMAR BANK deposits;

- TMSF also became the **manager of the Companies**. In this capacity, TMSF "manager" (hereinafter "**TMSF-manager**") has acted in their name and on their behalf, becoming the decision-making body of these
  Companies. It was in this capacity that TMSF accepted the illegal payment order of March 2004, in the name and on behalf of the Companies.

- TMSF has also become the representative of shareholders exercising their rights with the exception of the right to receive dividends. In this capacity, TMSF shareholder ("**TMSF shareholder**")
  acted in the name and on behalf of the shareholders. It was in this capacity that TMSF ensured that the unlawful payment order of March 2004 was accepted by the Companies without opposition from the shareholders.

- TMSF-fonds, which issues payment orders to the Companies and is obliged to prove its claims against each of the Companies, has been placed in a unique situation of
  absolute control of the Companies and shareholders' rights, with the power to act on their behalf, has used and abused his position to accept, to the detriment of the Companies and shareholders' rights to dividends, payment orders without the slightest proof of any claim whatsoever against these Companies in order to illicitly collect as much money as possible through the sale of these Companies' assets with complete impunity.

103. In this situation, TMSF erased all separation of powers between the shareholders and the managers of the Companies, thereby preventing any recourse by the shareholders against the managers and, more importantly, preventing any recourse by the Companies and/or the shareholders against TMS-fonds. Acting as both TMSF-shareholder and TMSF-manager, as defined above, TMSF and the other defendants are wrong to claim that only the Companies are the victims of this asset grab, because it is TMSF-manager who created this situation and who exercises absolute control over these Companies.

104. TMSF took advantage of its multiple roles and its position of "full powers" in relation to the Companies, which in practice enabled it to act simultaneously in a situation of clear conflict of interest:

- as the alleged creditor (TMSF-fonds) ;
- as representative of the alleged debtor, i.e. the Companies (TMSF-manager);
- as representative of the shareholders of these alleged debtors (TMSF-shareholder); and
- in its capacity as debt enforcement authority (TMSF-fonds), since TSMF itself issued the enforceable titles which it then had accepted by the Companies of which it took control.

105. TMSF took advantage of this situation to organise the misappropriation of the Companies' assets to the detriment of the Companies and for its own benefit as a purported creditor, **again without <u>any demonstration or proof</u> of imputability to the Companies or of the reality of the public debt it was claiming.**

106. In these exceptional circumstances of "full powers" and impunity, **TMSF exceeded its powers and, contrary to the law, initiated operations to capture the assets of the Companies** by means of fraudulent manoeuvres which materially consisted of (**Exhibit 18**) :

- To issue unfounded payment orders, as a TMSF-fund acting as a prosecuting authority, with a view to accepting them itself as a TMSF-manager;
- Accept or cause to be accepted, in its capacity as TMSF-manager and TMSF-shareholder on behalf of the Companies, the payment order that it had itself issued in its capacity as TMSF-fund, in the following circumstances
  conditions violating the fundamental rights of shareholders to receive their dividends;
- Prevent and dispose of as TMSF-manager and TMSF-shareholder any challenge or recourse by the Companies and their shareholders against this payment order;
- Decide, or have decided, as TMSF-manager, with the approval of the shareholders, by TMSF-shareholder, to break up the Companies and the shareholders through the realisation of the assets of the Companies.
  Companies through sales, some of which gave rise to invitations to tender, in order to satisfy the illicit payment order thus accepted ;
- To transfer or cause to be transferred as TMSF-manager, with the approval of the shareholders represented by TMSF-shareholder, the proceeds of such sales of assets and thus to employ, in their
  diverting the funds to pay the sums covered by the payment order issued by TMSF-fonds;
- *To ultimately* benefit as a TMSF-fund from the proceeds of the said asset disposals, by depriving the ultimate economic beneficiaries of the Companies of their value and their rights to dividends; and thus

- Depriving and dispossessing the shareholders of the companies whose administrative rights it exercised in their place of their right to dividends for the illicit benefit of the economic beneficiaries and/or shareholders of the purchasers of the assets.

107. It should be noted that the realisation of the assets did not begin until the collusion between MOTOROLA and TMSF was established, as explained in more detail below.

108. In some cases, the actions of TMSF-manager reached a climax when TMSF-manager took the decision, on behalf of the Companies, to sell certain assets for the benefit of TMSF-fonds, which then became the owner of the assets with a view to reselling them, thereby reaping a substantial capital gain (**Exhibit 18**).

109. It should be noted that **these asset disposals in fact amounted to a genuine transfer of the Companies' business**. In effect, the Companies were dispossessed of their assets and goodwill to such an extent that they were no longer in a position to carry on any commercial activity. At the same time, the acquiring companies benefited from the transfer of business activities because they were able to acquire and operate these assets at a lower cost. Consequently, their direct and indirect economic beneficiaries, with full knowledge of this unlawful scheme, received the dividends resulting from this activity which should have been received by the Claimants if the Companies' business had not been the subject of this unlawful transfer.

110. In these extreme situations, TMSF therefore acted as prosecuting authority, alleged creditor, representative of the alleged debtor, representative of the shareholders and beneficiary of the proceeds of this fraud, having acted knowingly, and therefore moreover as a fence.

111. This combination of qualities, outside any legal framework, enabled TMSF to orchestrate an unprecedented embezzlement of nearly 8 billion US dollars.

112. It is staggering to note that this amount is considerably higher than the amount of the payment orders issued by TMSF, in its capacity as guarantee fund on the basis of its alleged claim, which totalled USD 5 billion. **TMSF thus orchestrated, with the active participation of the Defendants, a deprivation and misappropriation of dividends amounting to USD 68 billion** to the detriment of the Plaintiffs, and to the benefit of the economic beneficiaries of the acquiring companies who were aware of the unlawfulness of the situation.

113. As a result, TMSF has been able to misappropriate the assets of the companies and, by the same token, the dividend rights of the shareholders, with complete impunity and without the slightest control or checks and balances.

114. The Companies, now under the management of TMSF, were led to accept the manoeuvres of total dispossession of which they were the object, their manager, and sole decision-maker, being himself the representative of their alleged creditor, after having acted as prosecuting authority!

115. This unbelievable and clearly illegal situation amounts to an abuse of power in every respect.

116. As will be shown, the Turkish courts have scathingly disowned TMSF by dismissing all the criminal proceedings that had been brought in an attempt to hold the Companies liable for the Difference alleged by TMSF on the IMAR BANK deposits, even though these allegations were spurious and not based on any evidence.

117. TMSF's actions are devoid of any legal basis, since TMSF has not complied with the legal conditions allowing it to implement compulsory enforcement measures and, in so doing, by exceeding its powers, which are limited to protective measures, TMSF has necessarily acted without right and therefore in an abusive manner, and outside any legal framework, in breach of fundamental principles such as the right to a fair trial, the adversarial principle, the right to a judge and to an effective remedy, freedom of trade and the protection of property rights, including the Plaintiffs' right to dividends (**exhibits 8 and 14**).

118. These acts are all the more serious in that, as manager of the Companies and as representative of the shareholders, TMSF had a legal obligation to look after the interests of the Companies and their shareholders, in particular by preserving the assets of the Companies and the dividend rights of the shareholders. However, it breached its obligations by accepting payment orders that it knew to be unfounded, thereby depriving the shareholders of their dividends.

119. It follows from the foregoing that TMSF accumulated, abused and violated the roles and duties incumbent upon it as manager of the Companies and representative of the shareholders with the sole aim of collecting as much money as possible, over which it had absolutely no right.

120. Each of the actions taken by TMSF in its capacity as manager of the Companies, as described above, are totally without legal basis, namely :

- The violation, deprivation and spoliation of the rights to dividends of the shareholders of the Companies, protected by law, for the illicit benefit of the shareholders and/or economic beneficiaries of the Companies.

  purchasers of the assets who received these dividends in place of the Plaintiffs;
- The use and abuse by TMSF of its status as manager of the Companies and representative of the shareholders outside the legal framework governing these functions in order to misappropriate the assets of the Companies.

  Companies and the amount resulting from the sale of these assets with the sole aim of stripping these Companies and their shareholders' rights to dividends for the illicit benefit of TMSF and the shareholders of the acquiring Companies;
- The stripping of these companies and their shareholders' rights to dividends through the misappropriation of the companies' assets and the proceeds from the sale of these assets by

  the absence of any claim whatsoever;
- The acceptance of payment orders in the name of the Companies, without any dispute, to their detriment and to that of their shareholders in the absence of an established claim against the Companies.

  Companies ;
- TMSF's multiple roles enabled it to act both as plaintiff, in its capacity as guarantee fund, and as defendant, in its capacity as manager of the Companies and representative of the shareholders, thereby violating the principle of adversarial proceedings, in order to alienate

  all possibilities for the Companies and their shareholders to assert their rights and take legal action to protect themselves against this savage stripping.

121. This fraudulent strategy for capturing the Companies' assets and its implementation were instigated and supported by MOTOROLA within the framework of a fraudulent and concerted collusion for fraudulent misappropriation committed *ultimately* to the detriment of the Plaintiffs and, more broadly, of the members of the UZAN Family, bordering on a "criminal conspiracy".

122. TMSF and MOTOROLA have mutually decided to "turn a blind eye" to each other's actions, which are perfectly well known to be illegal, in order to mutually benefit from them.

3.10. On the concerted strategy of fraudulent misappropriation put in place by TMSF and MOTOROLA

123. To understand MOTOROLA's decisive involvement in the fraudulent capture of the Companies' assets by TMSF, it is necessary to understand the relationship between MOTOROLA, TMSF, the Turkish Government and the UZAN family.

124. In 1998, MOTOROLA and TELSIM, one of the Companies, entered into contractual agreements relating to loans granted to TELSIM to finance the acquisition of telecommunications licences and equipment.

125. Faced with a default by TELSIM, MOTOROLA undertook to collect the balance due and had its claim of 1,803,089,316.57 US dollars (USD) in principal fixed twice:

- a 2003 US judgment against the UZAN family in tort (**exhibit 19**).
  the presumption, which has proved to be totally false, that TELSIM was completely worthless, which is totally contradicted by the sale of TELSIM to VODAFONE for US$4.5 billion and by the ICSID arbitration decision in the Kartel case; and

- an award against TELSIM by the Swiss arbitral tribunal in 2005 on a contractual basis (**exhibit 20**).

126. MOTOROLA, through these two enforceable titles, had become a competitor that could be fatal to the implementation and execution of the fraudulent capture plan envisaged by TMSF.

127. On the strength of this American judgement, accompanied by sentences totalling several billion US dollars, and its recognition in Turkey, MOTOROLA was able to take all recovery measures against the assets of each member of the UZAN family, including their holdings/shares in the various Companies.

128. This position was likely to seriously compromise any fraudulent capture plans by TMSF, which needed to be in full administrative control of the actions of these Companies and their management. In addition, MOTOROLA's arbitration award against TELSIM, which was controlled by TMSF at the time, also made it a leading competitor of TMSF with respect to all possibilities of recovering assets from TMSF.

129. Last but not least, MOTOROLA also had a fatal weapon against TMSF and the Republic of Turkey in that it had a judicial forum through the bilateral investment treaty between the United States and Turkey.

TMSF and the Republic of Turkey to expose all the illegal practices and the fraudulent and expropriatory manoeuvres of TMSF and the Republic of Turkey in the context of their will to illegally appropriate the assets of TELSIM and therefore of the Companies on the basis of pure and unsubstantiated allegations concerning the alleged Difference by TMSF on the deposits of IMAR BANK.

130. In the context of attempts to recover its debts in Turkey, MOTOROLA then largely opposed the Turkish government and TMSF for having enacted laws conferring broad powers on TMSF that were considered illegal and challenged the implementation of these laws. MOTOROLA also challenged the implementation of these laws in the context of the attempts to recover the Difference alleged by TMSF on the IMAR BANK deposits against the Companies (including TELSIM).

131. It was in this context that MOTOROLA initiated international arbitration proceedings at the ICSID against the Republic of Turkey which, if successful, would have had devastating effects for TMSF and the Republic of Turkey, whose responsibility for the fraudulent appropriation of the Companies' assets would have been exposed by an international arbitration award recognised and enforceable in Turkey (**Exhibits 16 and 17**).

132. In these proceedings, MOTOROLA took a position similar to that of the Claimants, arguing, correctly, that the Turkish State and TMSF could not validly be considered as creditors of TELSIM. MOTOROLA also asserted that the imputability of the Difference alleged by TMSF on the deposits of IMAR BANK to the Companies was based on unfounded allegations. Even more eloquently, MOTOROLA stated that TMSF's takeover of the Companies, and in particular the appointment of the managers and members of the corporate bodies appointed by TMSF in the context of the precautionary measures, had been carried out in total breach of the Companies' articles of association.

133. Finally, TMSF was well aware that, even if MOTOROLA had decided not to seize the shares of the members of the Uzan family in the Companies as part of the enforcement of the U.S. judgment, no company would have taken the risk of acquiring the assets of the Companies in the knowledge that MOTOROLA could intervene and, above all, that ICSID proceedings were underway, with the consequence of exposing the illegality of this fraudulent seizure and therefore exposing the acquiring parties to serious consequences, as is the case in this action. For example, VODAFONE, which had been interested in acquiring TELSIM's assets since 2004, did not want to take this risk until the unlawful agreement between MOTOROLA and TMSF had been sealed in October-November 2005.

134. MOTOROLA's recovery actions and the ICSID proceedings initiated by MOTOROLA threatened TMSF's chances of success in its fraudulent capture plan and conversely TMSF's actions threatened the chances of success of MOTOROLA's recovery actions in Turkey.

135. At the same time, TMSF had leverage against MOTOROLA because of its takeover and management of TELSIM and because it had contested MOTOROLA's intention to recover its debt from TELSIM.

136. TMSF, through TELSIM, had criticised MOTOROLA's claims, because MOTOROLA had had the same claim for compensation fixed twice in court, and that the "solidarity" between the two debts arising from the same claim for compensation subject to Swiss law e n t a i l s , by extinction mechanism

correlatively, a set-off of related debts whereby payment in respect of one of the two debts legally entails the correlative extinction to the same extent of the other debt.

137. TMSF therefore argued that any amount recovered by MOTOROLA in execution of the American judgment would, by virtue of this principle of solidarity, prevent MOTOROLA from recovering these same amounts against TELSIM's assets, thus obliging MOTOROLA to consider its method of recovery and its consequences.

138. TMSF thus created a dilemma for MOTOROLA when considering recovery through seizure of the Uzan family members' holdings/shares in the Companies, since any recovery through seizure would reduce MOTOROLA's entitlement and therefore its ability to recover an equivalent amount from TELSIM's assets.

139. It should be noted that MOTOROLA lost on this point in the arbitration before the Zurich Chamber of Commerce (ZCC), since the arbitration award recognised the applicability of this solidarity mechanism provided for under Swiss law. This award has not been appealed and is res judicata. Motorola has also had this award recognised in France.

140. It should be noted that TSMF's ability to harm MOTOROLA also stemmed from TMSF's management and control of the Companies, which had taken control of the administrative rights of the Companies' shareholders in the context of the precautionary measures described above. As a result, MOTOROLA was likely to be hindered by TMSF even in the event of seizure of the Companies' shares, since TMSF would have been able to continue exercising the said administrative rights and thus thwart the actions of MOTOROLA, which would only have benefited, through its seizures, from the prerogatives attached to the economic rights.

141. Obtaining a prior agreement with MOTOROLA was therefore an essential condition for TMSF to be able to act against the Companies. Without such an agreement, TMSF would necessarily have been hindered in its actions by MOTOROLA as described above.

142. This is why, in 2005, MOTOROLA, the Turkish Government and TMSF decided to reach an agreement that was the result of a veritable "criminal conspiracy". In effect, MOTOROLA authorised, without any dispute or interference, all the illegalities envisaged by TMSF in order to carry out its fraudulent appropriation plan and TMSF, in return, authorised, without any dispute or interference, the violation of the principle of solidarity in order to allow MOTOROLA to fraudulently recover much more than it was entitled to.

143. This association of criminals gave rise to a contract which, although "disguised", highlights the points set out above. In concrete terms, in exchange for the purchase by a Turkish bank (fully controlled by TMSF) of MOTOROLA's debt, MOTOROLA abandoned any challenge, criticism or claim whatsoever regarding the laws and methods of fraudulently capturing the Companies' assets by abusing the powers provided for by those same laws (**exhibits 16 and 21**).

144. MOTOROLA signed these waivers with some of the Companies managed by TMSF and whose shareholders' rights were exercised by TMSF. It is important to note that TMSF is not a signatory to the agreements, only the Companies are. These waivers are therefore made by MOTOROLA to the Companies.

This unambiguously confirms that MOTOROLA was perfectly aware of the multiple functions performed by TMSF.

145. MOTOROLA gave an undertaking to the Companies to give free rein to TMSF's fraudulent manoeuvres, thereby unquestionably becoming an accomplice of TMSF (and vice versa) by :

- renouncing all its claims, complaints and demands against the Government of Turkey and TMSF which were the subject of the arbitration proceedings initially brought by MOTOROLA before the ICSID;

- waiving any claim, right or demand that would prohibit or interfere with the sale in the Republic of Turkey by TMSF of all the Companies or their assets and not to contest the outcome of such sale.

146. In addition to simply giving TMSF free rein to exercise its "full powers" within the Companies, MOTOROLA instigated and strongly encouraged TMSF to realise the assets of these Companies.

147. MOTOROLA's undertakings and waivers were given on the express condition that TMSF-manager would not release the members of the Uzan family from any liability and that TMSF-manager and TMSF-shareholder would take legal action (recourse) against them that would be described as "substantial", for a period of at least 5 years.

148. For its part, the Turkish bank and TELSIM (then wholly controlled by TMSF) never contested MOTOROLA's breach of the principle of solidarity in its pursuit abroad of recovery of the penalties resulting from its American judgment, even though its entire claim had been irrevocably sold and assigned, for a total price of 910 million US dollars, thus allowing MOTOROLA to continue to illegally and fraudulently collect more than the transfer price on a right to recover a debt that no longer belongs to it and, moreover, no longer exists.

149. In this way, MOTOROLA, in return for the illicit advantages granted by TMSF as indicated in the previous paragraph and with full knowledge of the irregularities and illegalities of TMSF's practices and fraud against the Companies, allowed, supported and actively participated in this fraud and benefited from it by joining forces with TMSF through TMSF-manager to organise together the recovery of their respective alleged debts against the Companies by fraudulently capturing their assets.

3.11. Fraudulent appropriation of the Companies' assets by TMSF-manager for the sole benefit of TMSF-fonds

150. As soon as MOTOROLA, TMSF and the Turkish Government colluded, TMSF-manager initiated the sale of the Companies' assets to itself, to MOTOROLA or to other purchasers, in a fraudulent manner, abusing the legal prerogatives that had been conferred on it for a strictly protective purpose (**Exhibit 18**).

151. TMSF has clearly acted in an abusive and fraudulent manner by misusing its powers.

152. The sale of these assets, organised by TMSF with the instigation and incitement of MOTOROLA, enabled TMSF to collect, in a seriously illicit manner, a total sum of **7,614,190,000 US dollars (USD), taken without any justification from the Companies,** in settlement of the payment orders that TMSF had issued on behalf of the Companies, without any evidence and without any basis, as the Turkish Court of Justice will find (**Exhibits 14 and 18**), and to the shareholders and/or beneficiaries of the acquiring companies to collect 68 billion US dollars (USD) in dividends that were to have been collected by the Claimants.

3.12. On the wrongful participation of the economic beneficiaries of the purchasers in the fraudulent appropriation of the Companies' assets

153. It should be added that the purchasers of the assets fraudulently transferred by TMSF (hereafter the "**Purchasers**") and principally their direct and indirect economic beneficiaries, were necessarily informed of the fraud surrounding the sale of these assets.

154. All the economic beneficiaries of the Purchasers are **particularly well-informed investors and professionals**. They could in no way have been unaware of the perfectly fraudulent circumstances surrounding the asset sales organised by TMSF or of the fact that the dividends they would receive from the operation were misappropriated since they should have been received by the Plaintiffs.

155. In fact, a series of public announcements concerning the illicit nature of these asset sales were published throughout the world in publications with a large circulation, such as the Herald Tribune - New York Times, the Wall Street Journal, die Neue Zurcher Zeitung, Cumhuriyet Gazetesi and others (**Exhibits 24 and 25**).

156. Several transactions were even agreed by TMSF at totally abnormal or derisory prices, resulting in the sale of the Companies' assets at prices far below their market value (**Exhibit 18**).

157. Furthermore, it is totally unthinkable that the beneficial owners and/or shareholders of the acquiring companies would not have carried out any due diligence or benefited from the due diligence carried out by the acquiring companies.

158. It is unthinkable that the ultimate beneficiaries of the acquiring companies were unaware of this. They knew full well that without the fraudulent scheme put in place by TMSF they would never have had the opportunity to receive dividends totalling 68 billion US dollars (USD) through the acquisition of the Companies' assets and goodwill by their own companies.

159. If, in spite of everything and in bad faith, all of the economic beneficiaries of the Purchasers maintain in the context of the present proceedings that they were not aware of the unlawfulness of the transfers, it must be noted that they are quite incapable of providing any evidence whatsoever to establish that there was no element that would have allowed them, at the time of the facts, to doubt the legality of the transactions, such as the results of the due diligence necessarily carried out or the guarantees provided by TMSF in the context of the transfer deeds. These defendants are simply repeating the positions taken by TMSF.

the facts adopted by TMSF and MOTOROLA in the context of the dispute, without providing any demonstration or evidence of their own.

160. In view of the foregoing and the public and well-known nature of TMSF's missions, its assumption of full powers within the Companies, the court rulings cancelling the payment orders, and the more general context targeting the Uzan family, the Purchasers' beneficiaries could in no way have been unaware of the circumstances in which TMSF was proceeding to realise the Companies' assets.

161. As will be shown, these Purchasers and their direct and indirect beneficiaries clearly acted with full knowledge of the facts and in bad faith in order to serve their own interests and to receive the dividends resulting from the exploitation of the illicitly captured assets in place of the Claimants.

3.13. The Plaintiffs' prejudice

162. The deprivation and spoliation of their dividends to the illicit benefit of the economic beneficiaries and/or shareholders of the acquiring companies through the sale of the Companies' activities and assets by TMSF-manager, with the complicity and agreement of TMSF-shareholder, in order to proceed with the payment of the alleged claims held against these Companies by TMSF-fonds has caused colossal damage to the Claimants, as the ultimate economic beneficiaries of these Companies who have seen their dividends diverted to the illicit benefit of the economic beneficiaries and/or shareholders of the acquiring companies.

163. This loss represents the value of the dividends received at the date of the writ by the beneficial owners and/or shareholders of the acquiring companies, representing to date more than **68 billion US dollars (USD)** (amount to be completed) (**Exhibit 18**).

164. The Plaintiffs, who are domiciled in France and must therefore receive their dividends in France where they have their domicile and tax residence, are entitled to obtain compensation for the damage caused by the fraudulent acts and practices of TMSF in collusion with MOTOROLA, with the wrongful participation of the other Defendants.

II. DISCUSSION OF THE INCIDENT

1. PRELIMINARY RULING ON THE REQUEST FOR REFERRAL BACK TO THE BENCH

165. The Plaintiffs request that the Pre-Trial Judge refer the Defendants' pleas of non-admissibility back to the panel for *final judgment*, since these pleas of non-admissibility require that questions of substance first be decided, in particular with regard to the application of Turkish law to the substance of the dispute.

166. Article 789 ^{6e} of the Code of Civil Procedure provides:

> *"Where the plea of inadmissibility requires that a substantive issue first be decided, the Pre-Trial Judge* shall *rule on the substantive issue and on the plea of inadmissibility. However,* ***in cases that do not fall within the jurisdiction of the single judge or that are not assigned to him, a party may object****. In such a case, and by way of exception to the provisions of the first paragraph,* ***the Pre-Trial Judge shall refer the case back to the formation of the court, if*** *necessary without closing the investigation, so that it may rule on the substantive issue and on the objection.* ***The court may also order this referral if it considers it necessary****. The referral decision is a measure of judicial administration*.

167. In addition, the parties may request that the appeal be referred to the bench when (i) the appeal requires that a substantive issue first be decided and (ii) the case is not within the jurisdiction of the single judge or is not assigned to him. In addition, the Pre-Trial Judge may, of his own motion, order the referral of the pleas of inadmissibility to the formation of the court if he deems it necessary.

168. In the present case, all of these conditions have been met. The Plaintiffs object to the Pre-Trial Judge ruling on these issues and request that the pleas in bar, with the exception of the plea in bar alleging immunity from jurisdiction, be referred to the bench of judges.

169. Such a referral back to the bench is all the more justified as these pleas of inadmissibility are not likely to put an end to the present litigation, so that according to the practice established by several chambers of the Paris Court of First Instance, it is neither necessary nor justified to rule, at the pre-trial stage, on such pleas of inadmissibility. Moreover, it is in the interests of the proper administration of justice for the debates on the admissibility of the Plaintiffs' claims to take place before the panel of judges ruling *in fine*.

1.1 The existence of prior substantive issues

170. The notion of "substantive issue" refers to the situation in which the examination of the plea of non-receipt involves first assessing the merits of a claim or defence on the merits.

171. Questions relating to the statute of limitations[17], standing and interest in bringing proceedings[18] or the existence of a claim[19] may therefore constitute grounds for dismissal relating to the merits of the case.

172. Questions relating to the determination of the applicable law and the interpretation of foreign law are classically and logically considered by the case law as substantive issues falling within the jurisdiction of the trial court:

- In a judgment of 16 May 2018, the Paris Court of Appeal ruled that "**the determination of the applicable law**, which, as the pre-trial judge rightly said, **is a question of substance** "[20] ;

- The Montpellier Court of Appeal also ruled in a decision dated 16 September 2022 that "Pursuant to Article 789 of the Code of Civil Procedure, if the pre-trial judge has jurisdiction to rule on procedural objections, such as the plea of lack of territorial jurisdiction, **only the court hearing the case on the merits has jurisdiction to rule on the** question of **the law applicable to the dispute** "[21].

173. In this case, the pleas of inadmissibility based on prescription, interest and standing to sue and defend require a number of substantive issues to be decided beforehand, relating to :

- determining the applicable law under private international law ;

- the interpretation of Turkish law as regards the conditions for admissibility of an action for non-existence, namely interest and standing to sue and defend, as well as the statute of limitations.

174. Consequently, the examination of the conditions for the commencement of the Claimants' action and its limitation period is subject to the prior determination of the applicable law and the merits of the action for non-existence under Turkish law.

175. In addition, as an action for non-existence is a derogatory action designed to protect the victim of a serious breach of the law or of his fundamental rights and freedoms, it would be contrary to the spirit of this doctrine to require him to demonstrate his interest and his standing to sue in a manner that is unrelated to the merits of the case.

176. It has to be said, therefore, that in order to resolve these objections, a number of substantive issues have to be decided beforehand, some of which are quite complex, as in the case of private international law.

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[17] Bourges Court of Appeal, 16 December 2021, no. 21/00610.
[18] E. VAJOU, "*Fin de non-recevoir. De la première instance, à l'appel... en passant par les voies de recours*", Procédures n°4, LexisNexis, April 2022.
[19] CA Limoges, 6 January 2022, no. 21/00680.
[20] CA Paris, 16 May 2018, no. 17/20599.
[21] Montpellier Court of Appeal, 16 September 2022, no. 22/01564.

1.2 Failure to assign the case to a single judge

177. In order to benefit from the procedural possibilities offered by article 789 of the Code of Civil Procedure, the case must also not fall within the remit of the "single judge" or not be assigned to him.

178. In this case, the dispute is not being heard by a single judge, but by a panel of the Fourth Chamber of the Paris Court of First Instance.

179. It will then be up to the Pre-Trial Judge to rule, at the pre-trial stage of this case, only on the plea of lack of international territorial jurisdiction raised by all of the Defendants and on the plea of inadmissibility based on the immunity from jurisdiction that TMSF is trying to invoke.

Consequently, the Pre-Trial Judge is requested to refer the pleas in law, with the exception of the plea in law alleging immunity from jurisdiction, to the bench of judges.

2. ON THE ABSENCE OF IMMUNITY OF JURISDICTION OF TMSF-GESTIONARY and TMSF-ACTIONAIRE

180. French case law traditionally grants immunity from jurisdiction not only to foreign States, but also to entities that "*emanate from*" or act by order of and on behalf of the State.

181. However, immunity from jurisdiction is not absolute and does not necessarily apply automatically to a legal person governed by foreign public law simply because it is a legal person governed by foreign public law.

182. The scope of immunity from jurisdiction was defined by the Mixed Chamber of the Court of Cassation in a ruling dated 20 June 2003.

183. According to the principles of customary international law reiterated by the Court of Cassation's established case law :

> *"foreign States and the bodies which emanate from them enjoy immunity from jurisdiction only in so far as* ***the act which gives rise to the dispute is, by its nature or purpose, part of the exercise of the sovereignty of those States and is therefore not an act of management***".[22]

184. This case law was recently confirmed by a decision of the First Civil Chamber of the Court of Cassation on 3 March [2021].

[22] Cass. mixed court, 20 June 2003, no. 00-45.629; Cass. [1st] Civil court, 9 March 2011, no. 09-14.743; Cass. [2nd] Civil court, 12 July 2017, no.
15-29.334.
[23] Cass. [1st] Civil Division, 3 March 2021, no. 19-22.855.

185. Although the criterion relating to the personality of the entity invoking the benefit of immunity seems to be disappearing in favour of the criterion relating to the nature of the disputed act, this criterion, which is now secondary, has nevertheless not been completely discarded by the courts, which continue to take it into consideration.

186. In view of the foregoing, it will be shown that TMSF cannot in any way benefit from any immunity from jurisdiction in this case, which involves the liability of **TMSF-manager and TMSF-shareholder**.

2.1 About TMSF

187. As mentioned above, in order to qualify for immunity from jurisdiction, the entity in question must :

- Can be assimilated to the State; or
- Have acted by order of and on behalf of the [latter24].

188. Accordingly, an entity that enjoys de jure and de facto autonomy from the State will not be described as an emanation of the State or considered to have acted at its behest and on its behalf.

2.1.1 On the quality of TMSF

189. In the absence of a legal definition of the concept of emanation of the State, the French courts assess the status of the entity in question in the light of a body of concordant evidence.

190. Various factors are thus taken into consideration to exclude the benefit of immunity with regard to the personality of the entity in question, namely :

- The **legal personality** of the entity, **distinct** from that of the [State25] ;
- The existence of **its own assets** and **separate accounting** from that of the [State26] ;
- The entity's **budgetary independence** from the [State27] ;
- The statutory independence of the [entity28], etc.

191. These indicators may be drawn from the entity's founding documents and the law applicable to [it29].

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[24] 1st Civil Court, 4 February 1986, no. 84-16.453.
[25] Cass. 1st Civil Court, 12 June 1990, no. 86-40.242.
[26] Cass. 1st Civil, 6 February 2017, no. 04-13.108 and 04-16.889; Cass. 1st Civil, 15 July 1999, no. 97-19.742.
[27] Cass. 1st Civil Court, 12 June 1990, cited above.
[28] Cass. 1st Civil, 6 February 2017, cited above.
[29] Cass. 1st Civil, 6 February 2007, cited above.

192. In the present case, an analysis of TMSF's personality reveals a large number of elements attesting to its independence from the Turkish State.

193. With regard to TMSF's legal personality, Banking Act No. 5411 states unequivocally that TMSF is "*a legal person governed by public law*" (**Exhibit 30**).

194. This is also confirmed by TMSF in its written submissions: "In 2003, the TMSF (...) became an **independent entity, a legal person under public law**" (TMSF Conclusions, § 12).

195. TMSF thus has its own legal personality, separate from the Turkish state.

196. With regard to the statutory independence enjoyed by TMSF, Article 111 of Banking Act 5411 provides that:

> *"The Savings Deposit Guarantee Fund (...) has* ***administrative and financial autonomy*** *(...). The Fund is* ***independent*** *in the performance of its duties. The Fund's decisions shall* ***not be subject to review as to their appropriateness****.* ***No body, authority or person may give orders or instructions*** *to influence the decisions of the Board of Directors.*"

197. The law governing t h e organisation and operation of TMSF explicitly provides for its statutory independence.

198. This is also confirmed by TMSF in its written submissions: "In 2003, the TMSF (...) became an **independent entity (...**) with (...) **operational autonomy**" (TMSF Conclusions, § 12).

199. **With regard to TMSF's assets and accounts**, it is clear from TMSF's balance sheets, published in its annual financial reports (**Exhibit 31)**, that it has its own assets, which in 2021 amounted to TL 72,561,915,395.

200. It is therefore clear that TMSF has its own assets and accounts, separate from those of the Turkish State.

201. With regard to TMSF's budgetary independence :

- Article 111 of Banking Act 5411 clearly states that "The Savings Deposit Guarantee Fund (...) is **financially autonomous**";
- It is clear from the combination of Articles 117 and 129 of the same law that the annual budget of the TMSF is prepared, debated and decided by the Board of Directors of the fund itself;
- The provisions of Article 129 of Banking Act No. 5411 also state that TMSF's expenditure is financed by its income and that it may use this income **autonomously**;
- In its written submissions, TMSF states that it enjoys budgetary independence: *"In 2003, TMSF (...) became an* ***independent entity (…) with its own budget***" (TMSF Conclusions, § 12).

202. It cannot therefore be disputed that TMSF has extensive budgetary independence.

203. TMSF's autonomy is further demonstrated by a number of other factors:

- Its **ability to sue or be sued**. Banking Act no. 5411 allows TMSF to bring various legal actions in its name and on its behalf (liability [claims30], claims arising from its [receivables31], etc.) and to intervene as a civil party in criminal [proceedings32].

  The same law states that TMSF may be sued in particular on the basis of decisions taken by its Board of [Directors33].

- Its **ability to own, hold, acquire and dispose of assets**. It appears from the documents provided by TMSF that it personally acquired one of the assets of which it has arranged the disposal as TMSF-manager of the Afif Pasha Mansion property (TMSF Exhibit 1).

204. Furthermore, it has been established that the entity's independence does not disappear as a result of the supervision or control exercised by the State over its activities, which are not sufficient to confer on it the status of an emanation, even when it is entrusted with a public service [mission34].

205. In the light of the foregoing, TMSF is clearly independent of the Turkish State. Consequently, it cannot validly be described as an emanation of the State.

2.1.2 TMSF's independence from the State

206. While it is true that the French courts have been able to grant immunity from jurisdiction to legal entities that do not have the status of emanations of the State, the latter must have acted by order of and on behalf of the [State35].

207. Case law has held that an entity is acting on the instructions and on behalf of the State on the basis of the following elements:

- A public service [delegation36];
- A contract signed with the [State37];

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[30] Article 133 of Banking Act no. 5411.
[31] Article 132 of Banking Act no. 5411.
[32] Article 133 of Banking Act no. 5411.
[33] Article 73 of Banking Act no. 5411.
[34] 1st Civil Court, 4 January 1995, no. 93-10.175.
[35] 1st Civil Court, 4 February 1986, cited above.
[36] Cass. 1st Civil Division, 14 December 2004, no. 01-15.471 and 01-15.472.
[37] Cass. 1st Civil Division, 14 December 2004, cited above.

- A special authorisation issued by the State[38].

208. In the present case, TMSF's operations are governed by specific banking laws which do not in any way provide for it to act on behalf of the Turkish State, particularly when it acts as manager of the companies under its control and in exercising shareholders' rights.

209. Nor has it been established that TMSF is acting pursuant to a contract with the State, a public service delegation or any other State authorisation.

210. In its written submissions, TMSF confirms that it did not act on the orders of the State, but on its own initiative, when it states that it "decided [alone] to take control and management of the companies in the Uzan group, in accordance with the powers granted to it by Article 15 of Banking Law No 4389" (TMSF Conclusions, §84).

211. Therefore, it cannot be considered that TMSF, and in particular TMSF-manager and TMSF-shareholder, acted on behalf of the State.

212. TMSF has proven de facto and de jure autonomy from the Turkish State and cannot therefore claim the benefit of the latter's immunity from jurisdiction.

2.2 On the nature of the acts of TMSF-manager and TMSF-shareholder

2.2.1 In law, on the criterion relating to the nature of the act

213. As indicated above, the French courts grant immunity from jurisdiction on the basis of a criterion according to which the disputed act relates to the exercise of State sovereignty and is therefore not a simple act of management[39].

214. The concept of an act of public authority, which arises from the very exercise of sovereignty, was clarified by the Court of Justice of the European Union in a judgment of 7 May 2020[40], in which it stated :

- "It is irrelevant that certain activities were carried out by delegation from a State, the Court having held, in this connection, that **the mere fact that certain powers are delegated by an act of a State is not a ground for refusal.**
  public authority does not imply that these powers are exercised iure imperii";

- "The fact that certain activities have a public purpose does not in itself constitute a sufficient element to qualify these activities as being performed iure imperii, insofar as they

[38] Cass. 1st Civil Court, 17 April 2019, no. 17-18.286.
[39] Cass. mixed ch. 20 June 2003; Cass. 1st Civ. 9 March 2011; Cass. 2nd Civ. 12 July 2017; Cass. 1st Civ. 3 March 2021, cited above.
[40] CJEU, 7 May 2020, Case C-641/18, LG and others v Rina SpA .

do not correspond to the exercise of exorbitant powers with regard to the rules applicable in relations between private individuals";

- "Similarly, the fact that, having regard to their purpose, certain acts are carried out in the interest of a State does not, of itself, mean that the transactions at issue in the main proceedings are in the interest of that State.
  carried out in the exercise of public authority".

215. The Court of Justice of the European Union has also held that it is not sufficient for a power to have been conferred by statute for its implementation to fall within the exercise of State sovereignty:

> "the *fact that a power or authority has been conferred by statute is not in itself decisive in concluding that a State authority has acted in the exercise of its public power* "[41].

216. Applying this criterion, the French courts have ruled that acts covered by immunity from jurisdiction do not include :

- The contract concluded in the form, according to the methods and according to the data of private [law42] ;
- An endorsement given by a bank on behalf of a State where it "constitutes a simple commercial act carried out in the normal course of its banking business and does not in any way fall within the scope of
  the exercise of public authority "[43].

217. In view of the foregoing, TMSF cannot in any way benefit from immunity from jurisdiction for acts carried out in its capacity as manager of the Companies and as representative of the shareholders under its control.

2.2.2 In this case, on the nature of the acts of TMSF-manager and TMSF-shareholder

218. In the present case, as has been shown, TMSF is being sued and prosecuted for its actions as manager of the Companies and as a person authorised to exercise shareholders' rights, with the exception of the right to dividends, i.e. in the context of **legal relationships governed by private law (company law)**.

219. It is clear that in that capacity TMSF was not exercising prerogatives falling within the sovereignty of the Turkish State, if only because of the need, in its capacity as manager of companies, to safeguard the interests of the shareholders of those companies, whose economic rights had to be respected.

220. TMSF is therefore being prosecuted for activities and actions that fall within the scope of a private law relationship, exclusive of the exercise of any prerogative of a public authority.

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[41] CJEU, 16 July 2020, Case C-73-19, Belgische Staat et al v Movic et al.
[42] 1st Civil Court, 7 October 1969, Sté pour l'exploitation des cigarettes nationales c/ Sté nationale des tabacs et allumettes, Rev. crit. DIP 1970, table p. 774; JDI 1971. 95, note Huet.

[43] Cass. 1st Civil Court, 18 November 1986, no. 85-11.404.

221. In a similar case, the Paris Tribunal de Grande Instance rejected the immunity from jurisdiction claimed by a central bank that had acted as manager of a private bank, whose licence it had revoked on suspicion of financial fraud, under a national ordinance on the supervision of banks and credit institutions.

222. Noting that, in its capacity as manager, the central bank did not exercise any prerogative of public authority, the Court refused to grant it immunity from jurisdiction:

> ***"the [Central Bank of Curaçao and Saint Martin] is being sued as the person vested with the powers of management and supervision of the*** *[First Curaçao International Bank], a* ***private commercial company****, as a result of the emergency measure taken pursuant to the national ordinance on the supervision of banks and credit institutions,* ***so that it does not exercise any prerogative of a State nature*** "[44].

223. In this case, the same applies to TMSF-manager and TMSF-shareholder.

224. It was in its capacity as manager of the Companies that TMSF accepted the payment orders that it had issued as TMSF-fonds, and then arranged for the sale of the Companies' assets and the transfer of the funds resulting from these sales.

225. TMSF does not dispute that it dissipated the assets in its capacity as manager of the Companies. On the contrary, it states that it acted in this capacity in accordance with Turkish banking law which, according to TMSF, authorises it to :

> The TMSF also stated that it could "***take control of companies*** *owned directly or indirectly by the shareholders of a bank under its management* ***and exercise the rights of those shareholders in those companies*** *(with the exception of the right to receive dividends).* ***The managers and members of the corporate bodies that the TMSF appointed within these companies could then sell the companies' assets*** *in order to pay the TMSF's claims*" (TMSF Conclusions, §74).

226. The disputed acts must therefore be analysed as relating to the exercise by TMSF of the rights of shareholders in the Companies and the powers of manager in the Companies.

227. Consequently, those acts, **taken in the context of the management of private commercial companies and in the exercise of the functions of representative of the shareholders**, are necessarily of a purely commercial nature and cannot be analysed as falling in any way within the exercise of the sovereignty of the Turkish State or any application of public law.

228. TMSF **itself** has indisputably **acknowledged** that the disputed acts are acts of management within the meaning of the aforementioned case law.

229. In fact, in the context of arbitration proceedings before the ICSID and proceedings before the ECHR, TMSF has put forward the following arguments, bearing in mind that the claims of the

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[44] TGI Paris, 30 June 2015, RG no. 13/13177.

The requests for RUMELI and TELSIM below are made by these companies in the person of TMSF, the manager who controls them at this date (**Exhibit 15**) :

" ¶184. *According to the Claimants, Rumeli and Telsim :*
- remain legal entities incorporated in Turkey;
- remain commercially registered legal entities;
- have employees and assets;
- have full legal capacity;
- pay social security contributions and taxes and are not immune from enforcement;
- are not owned, but simply managed by TMSF;

" ¶195. As to the letter from Dr. Yasar Akgün, Vice President of Rumeli, to VimpelCom, stating that Rumeli was now a "state-owned enterprise", ***it is in no way an admission that the Claimants' Rumeli and Telsim were assimilated to the Turkish State for the*** *purposes of jurisdiction.* ***Rather, it is simply a statement that the TMSF was naturally concerned as the managing authority of the Claimants****." ;*

" ¶198. In summary, ***the Claimants emphasize that they are neither the Turkish State nor the TMSF****, and that Article 25 of the ICSID Convention and the BIT clearly grant this Tribunal jurisdiction rationae personae to adjudicate the dispute." ;*

" ¶211. According to the Claimants, ***even if TMSF were somehow the "real party" to this dispute****, the Tribunal would in all likelihood still have jurisdiction to hear it. Indeed, as Mr. Broches points out in his article, a state-owned entity* ***may be considered a national of another Contracting State unless it is acting as an agent of the government or performing an essentially governmental function****" ;*

" ¶212. In the only ICSID case where this situation has been addressed, the CSOB case, 15 it was held that ***the only determining factor is the nature of the activities of the entity concerned****: "While there is no doubt that in carrying out the aforementioned activities, CSOB was promoting the governmental policies or objectives of the State, the activities themselves were essentially commercial rather than governmental in nature." Furthermore, the CSOB tribunal went even further and reasoned that the standing of a state entity under Article 25 of the ICSID Convention should be examined not on the basis of the acts and function of the state entity in general, but rather* ***on the basis of its acts*** *and function in relation to the actual dispute under consideration." ;*

" ¶213. In this regard, the Plaintiffs point out that the Defendant mischaracterized their position by stating that "the test formulated by Broches and applied by the CSOB court would be entirely meaningless if the question were whether it was an essentially governmental function to bring suit." Indeed, the Plaintiffs do not argue that the Pins test, as applied by the CSOB court, would give the court jurisdiction every time a state agency brought suit. Rather, the point is that following ImarBank's banking violations, the TMSF appointed managers for Rumeli and Telsim. ***These new managers continued to run Rumeli and Telsim as telecommunications companies****. In April 2003,* ***as any commercial entity would do when faced with the expropriation of a valuable asset****, the former managers of Rumeli and Telsim wrote to the defendant emphasising that they intended to submit the dispute to the International Centre for Settlement of Disputes.*

relating to investments. When the previous management of Rumeli and Telsim was ***replaced by management appointed by the TMSF, the new managers simply carried out the commercial plans of the previous management*** *to submit the dispute between Rumeli and Telsim and Kazakhstan for final settlement to ICSID. The TMSF-appointed managers did not exercise any particular prerogative to carry out the 'firm intentions' of the previous managers." ;*

" ¶214. According to the Claimants, the Cayman Islands case TMSF v. Wisteria Bay cited by the Defendant in this context is ***wholly irrelevant*** *for the following reasons:*
- in this case, the TMSF was a party to the proceedings; and
- the ***TMSF exercised special privileges*** *to confiscate assets" ;*

" ¶325. We note that following the problems encountered by Bank Imar in Turkey, owned by the Uzan family, ***the Turkish Parliament enacted various laws that empowered the TMSF****, a state-owned body,* ***to take control of companies*** *previously controlled directly or indirectly by the Uzan family* ***and, in particular, to take over the management of those companies****.* ***On this basis, the TMSF appointed directors for Rumeli and Telsim****.* ***These new directors continued to manage the plaintiffs as telecommunications companies****. In April 2003, the former directors of Rumeli and Telsim wrote to the defendant stating that they intended to submit the dispute to ICSID.* ***The new management implemented the former management's business plans*** *and commenced ICSID arbitration proceedings. However, TMSF is not a claimant in these arbitration proceedings. The case was initiated by Rumeli and Telsim. They are the real claimants in this arbitration".*

230. Thus, according to TMSF-manager's own statements, TMSF does not have any special privileges and therefore does not exercise any prerogative of public authority in its capacity as TMSF-manager, but merely manages the Companies, as did the former management, limiting itself to exercising normal powers in the context of normal commercial management.

231. Furthermore, if the Arbitral Tribunal had considered that TMSF-manager was acting as a public authority, it would have declared itself incompetent and TMSF would not have been able to invoke and benefit from the bilateral investment treaty between Turkey and Kazakstan. The fact that the tribunal recognised its jurisdiction confirms that the companies managed by TMSF were indeed private companies acting in a private capacity. The Arbitral Tribunal's ruling on this point also confirms that the TMSF-manager is in no way acting as a representative of the Turkish state and is not exercising any prerogative of public authority.

232. Similarly, in arbitration proceedings before the ICSID, TMSF-fonds stated that it was not a signatory to the agreement with MOTOROLA relating to TELSIM. Consequently, it was the Companies that were signatories to the acts taken under TMSF's management:

"The settlement agreement was entered into by Telsim, Rumeli, Bayindirbank A.S, Motorola Inc, Motorola Credit Corporation, Motorola Limited and Motorola Komunikasyon Ticaret Ve Servis Ltd. ***Neither the Republic of Turkey nor TMSF were signatories***. (**Exhibit 15, § 194**)

233. In view of TMSF's personality and the purely commercial nature of its activities, which are therefore governed solely by private law, the Pre-Trial Judge cannot but reject all the arguments by which TMSF attempts to claim the benefit of immunity from jurisdiction.

The Pre-Trial Judge will therefore have to rule that TMSF cannot claim immunity from jurisdiction in this case, consequently dismiss TMSF's appeal, and rule that the plaintiffs' action is admissible against TMSF.

3. THE TERRITORIAL JURISDICTION OF THE FRENCH COURTS

3.1 Inadmissibility of the plea o f lack of jurisdiction raised by TMSF and Consorts ZORLU, IZMIROGLU and SAHENK

234. TMSF, as well as Consorts ZORLU, IZMIROGLU and SAHENK, raise *in limine litis* an alleged procedural objection based on the lack of jurisdiction of the French courts to hear the dispute on the basis of the principle of international law according to which the French courts are prohibited from questioning an act taken by a foreign state body for the needs of its public services.

235. However, it will be shown that this alleged procedural objection is in fact a plea in bar based on the alleged lack of jurisdictional power of the French courts.

236. As this plea of inadmissibility was raised, for each of the defendants concerned, before the procedural objections raised subsequently in their pleadings, the latter are clearly inadmissible.

3.1.1 Reclassification of the procedural objection as a plea in bar

a) The distinction between lack of jurisdiction and lack of judicial power

237. It is widely accepted that jurisdiction, the ability granted to a court to hear a dispute, and judicial power, the power to decide a dispute, are two distinct concepts that should not be confused.

238. Jurisdiction necessarily implies a division of matters in dispute between the various courts vested with jurisdictional powers.

239. Professor Alland defines competence as a "functional concept which makes it possible, when several bodies are vested with an identical power, to designate the body which will exercise it in practice. This designation is made on the basis of various criteria (substantive, geographical, chronological, etc.) that make it possible to characterise the situation "[45].

[45] D. ALLAND, S. RIALS, Dictionnaire de la culture juridique, PUF.

240. It follows from this definition that jurisdiction is intended to resolve situations of competition between different courts.

241. In this sense :

- Professor Pierre Callé considers that "lack of jurisdiction implies **hesitation between two courts before which the same claim could have been brought** for the same purpose "[46] ;
- Professor Mayer maintains that the term competence implies that the body or person in question is in a **position of** competition[47].

242. Jurisdiction applies only where there is a conflict of jurisdictions, because it presupposes that those jurisdictions are, *a priori,* vested with the power to rule on the merits of the claim in question[48].

243. Therefore, for jurisdiction to play its role in distribution, this power must exist.

244. Professor Théry states:

> ***"A** functional and contingent concept, **jurisdiction logically only comes into play once** the very principle of judicial intervention, i.e. **the possibility of implementing jurisdictional power, has been accepted**. **Logically, the question of power takes precedence over that of jurisdiction**"* (**Exhibit 32**, §14 and 18).

245. The existence of the power to rule is therefore distinct from jurisdiction in that it is a prerequisite and necessary condition for the recognition of jurisdiction.

246. This finding was made by the Cour de cassation, which held "that **the judgment under appeal cannot be criticised for having, prior to any connection of international jurisdiction** based on the nationality or location of the defendants, **deduced from the very subject-matter of the claims [linked to the exercise of prerogatives of public authority]** by the Republic of Guatemala **the lack of jurisdiction** "[49].

247. Apart from the fact that the question of the existence of jurisdictional power arises prior to that of competence, jurisdictional power is closely linked to the concept of sovereignty[50].

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[46] P. CALLÉ, Répertoire de procédure civile, Dalloz.

[47] P. MAYER, "Droit international privé et droit international public sous l'angle de la notion de compétence", Rev. Crit. DIP 1979, in Choix d'articles de Pierre Mayer, LGDJ, 2015, p. 21.

[48] M. DOUCHY-OUDOT, "*Compétence*", Répertoire de procédure civile, Dalloz: "*Competence must not be confused with the imperium of the judge, i.e. the power to settle a dispute. It presupposes, in fact, this power*".

[49] Cass. Civ. 1re, 2 May 1990, no. 88-14.687.

[50] **Exhibit 32**, §32: "*The link between jurisdictional power and sovereignty is essential, and the very principle of the power conferred on the judge by the State that institutes him is to be found in it: justice is delegated. Because this power is delegated by the Sovereign, it will only exist within the limits that he has set. In this respect, jurisdictional power is immediately dependent on the sovereignty of the forum*".

248. Professor Gaudemet-Tallon states that "the rules of jurisdiction allow disputes to be divided up on the basis of specific connecting factors (the defendant's domicile, the location of the property, the place where the damage occurred, etc.), whereas **the concept of jurisdictional power arises when a ground is put forward which makes it possible to escape the jurisdictional power of the State** "[51].

249. Professor Théry also considers that the question of jurisdictional power arises when
In this context, the Court of Justice of the European Communities has stated that "disputes are excluded from judicial assessment by reason of the personality of the defendant - immunities of jurisdictions - or **by reason of the character of the disputed act - the act of government** "[52].

250. Consequently, the concept of jurisdictional power implies the manifestation of sovereignty, and in particular that of foreign sovereignty, which will indirectly influence and limit the power of the court of the forum.

b) The nature of "exclusive jurisdiction" rules

251. On the basis of the distinction between jurisdictional power and jurisdiction in international law, eminent authors assert that the rules of exclusive jurisdiction belong to the first category, since they are in fact an expression of State sovereignty:

- "Although these cases appear positively in the form of rules of (exclusive) jurisdiction, the resulting incompetence of other States in reality reflects an international lack of (exclusive) jurisdiction.
  jurisdictional power "[53] ;

- "The "exclusive powers" of Article 22 of the Brussels I Regulation in matters of public registers, patents and enforcement, for example, are rather powers of jurisdiction.
  strictly territorial rather than simply competences "[54].

252. The concept of exclusive jurisdiction has the effect of reserving jurisdiction over certain disputes to the courts of a particular State, denying any concurrent jurisdiction to foreign courts.

253. Consequently, in the absence of competition between courts, which is intended to be resolved on the basis of specific connecting factors, there can be no rules of jurisdiction in the proper sense.

254. Professor Etienne Pataut points out that "by its very nature, therefore, the concept of exclusive jurisdiction is incompatible with the possibility of an option of jurisdiction "[55].

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[51] H. Gaudemet-Tallon, "*Receivabilité du pourvoi en cassation contre une ordonnance rejetant une exception d'incompétence et détermination du juge internationalement compétent pour connaître d'une loterie publicitaire*", Rev. crit. DIP 2010, p. 558.
[52] P. THÉRY, "*Le désordre des moyens de défense: exception d'incompétence et fin de non-recevoir...*", RTD Civ. 2012, p. 566.
[53] D. BUREAU, H. MUIR-WATT, Droit international privé, T. I, Partie générale, PUF, 2017, n°73.
[54] L. USUNIER, "*Observations sur la nature des règles de compétence judiciaire internationale*", p. 62, no. 52.
[55] E. PATAUT, Principe de souveraineté et conflits de juridictions, Paris, LGDJ, 1999, p. 260, n°389.

255. Moreover, the development of these rules of exclusive jurisdiction is, like jurisdictional power, directly linked to sovereignty. These rules respond to the need to protect state sovereignty.

256. Examination of the areas reserved for the exclusive jurisdiction of the French State thus highlights the concept of sovereignty, either because its territory is physically involved or because the dispute concerns the operation of its public services: rights in rem in immovable property, enforcement of court decisions, validity of intellectual property rights or entries in public registers.

257. Thus, despite their name as rules of jurisdiction, the rules of exclusive jurisdiction would in reality fall within the domain of jurisdictional power as an attribute of sovereign power.

258. In the present case, no universally recognised and applied rule of international jurisdiction provides for the exclusive jurisdiction of the courts of the forum in matters of review or annulment of acts taken in the context of a public service of the State.

259. The principle of public international law according to which a State may not infringe the sovereignty of another State by interfering in the operation of its public services or by exercising control over their activities cannot be assimilated to a rule of jurisdiction as such.

260. Moreover, this principle makes no reference to the notion of competence.

261. Rather, it is a **rule of international courtesy**, as in the case of immunity from jurisdiction. As the French State cannot accept that a foreign State annul or modify an act of authority that emanates from its organs, conversely its courts are not empowered to question an act taken by a foreign State.

262. Consequently, regardless of any criteria for connecting the dispute with the court of the forum, the latter is prohibited from trying a case that involves the sovereignty of a foreign State.

263. It is therefore the judge's power and not his competence that is being denied.

c) Reconciling the principle of prohibition of interference in the operation of foreign public services with immunity from jurisdiction

264. The impossibility for the court of the forum to challenge an act taken by a foreign state body for the purposes of a public service may be regarded as a parallel to immunity from jurisdiction, linked to the nature of the claim.

i. On the basis of immunity - the protection of foreign sovereignty

265. The similarity between these two concepts stems initially from their common basis.

266. The principle prohibiting the court of the forum from interfering in the operation of foreign public services is derived, like immunity from jurisdiction, from the adage "*Par in parem non habet".*

iurisdictionem", according to which no sovereign State may subject another sovereign State to its jurisdiction.

267. Thus, the doctrine quoted by TMSF recognises that "immunity from jurisdiction is thus similar in its basis to that other limit on the judge's jurisdiction which constitutes the prohibition of interference in the functioning of foreign public services. But here the foreign State is the subject of the relationship, whereas there it was content to intervene (through its organs) in private relations "[56].

268. It is clear that these authors are confusing jurisdiction and jurisdictional power by maintaining that the prohibition on interfering in the operation of foreign public services is, like immunity from jurisdiction, a "*limit on the judge's jurisdiction*".

269. It is widely accepted that immunity from jurisdiction relates to the power, not the jurisdiction, of the courts.

ii. Consequences of disregarding immunity - misuse of powers

270. Based on an identical principle, the prohibition of interference in foreign public services and immunity from jurisdiction pursue the same goal, namely the protection of foreign sovereignty.

271. Consequently, failure to comply with these rules inevitably constitutes a misuse of powers.

272. In view of the seriousness of this transgression, the Court of Cassation allows an immediate appeal to the Court of Cassation in order to prevent a possible excess of power in matters of immunity, but also in matters of international incompetence:

- The Court of Cassation has accepted that "an appeal to the Court of Cassation against a decision ruling on immunity f r o m jurisdiction or execution, imposed by a foreign State, is immediately admissible".
  admissible if its purpose is to prevent the court from exceeding its jurisdiction "[57] ;

- An identical solution was given in the case of international lack of jurisdiction: "in international matters, a dispute as to the jurisdiction of the French court seised does not concern a
  distribution of jurisdiction between national courts, but tends to withdraw from it the power to decide the dispute in favour of a court of a foreign State; that consequently, the appeal in cassation against the judgment having ruled on this procedural objection has as its purpose to prevent an excess of power; that it is immediately admissible, even if the proceedings are not terminated "[58].

[56] P. Mayer, V. Heuzé, B. Remy, Précis DOMAT, Droit international privé, 12th edn, p. 229.
[57] Cass. Civ. 1re, 9 March 2011, no. 10-10.044.
[58] Cass. Civ. 1re, 7 May 2010, no. 09-14.324, no. 09-11.177 and no. 09-16.811.

273. While in the second case the Court of Cassation's reasoning was criticised by academic writers, since it concerned a private law dispute with a foreign element and not a public law dispute, the solution was widely approved[59].

274. In light of these criticisms, the Court of Cassation's reasoning would be perfectly valid in the context of a public law dispute, which is what TMSF and ZORLU, IZMIROGLU and SAHENK firmly maintain in the present case.

275. Some authors thus assert that the French judge commits an excess of power whenever his decision is likely to encroach on the sovereignty of a foreign State concerned by the dispute[60].

276. Consequently, the prohibition on interfering in the operation of foreign public services, the purpose of which is to protect foreign sovereignty, necessarily aims to prevent the court of the forum from exceeding its powers.

277. The Court of Cassation considers that excess of power means that the judge must ***"disregard the scope of its power to judge*** "[61].

278. Excess of power therefore occurs when the judge refuses to recognise a power conferred on him by law, as well as in cases where he goes beyond his legal powers. The judge therefore commits an excess of power when he goes beyond his legal powers.

279. Thus, if the court violates the prohibition against interfering in the operation of foreign public services, it inevitably seriously disregards its powers by arrogating to itself a power that is not its own[62] . It then rules that it has no jurisdictional power and consequently commits a misuse of power.

280. If the two concepts have the protection of sovereignty as their foundation and common objective, it is perfectly logical that their disregard by the judge constitutes an excess of power.

iii. Consequences of the application of immunity - lack of jurisdiction of the court of the forum

281. The consequence of their implementation is also identical: they deprive the court seised of the power to judge.

282. This consequence has been accepted by the Cour de cassation in relation to immunity from jurisdiction[63] , but must also be accepted in relation to the principle of prohibition of interference in foreign public services.

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[59] A. Bolze, L. Perreau-Saussine, Recueil Dalloz, "*Vers une nouvelle configuration de l'exception d'incompétence internationale*", 2010, p. 2196.
[60] A. Bolze, L. Perreau-Saussine, Recueil Dalloz, "*Vers une nouvelle configuration de l'exception d'incompétence internationale*", 2010, p. 2196.
[61] Cass. Civ 1ère, 20 February 2007, no. 06-13.134.
[62] C. Tahri, "*Immunité de juridiction d'un État étranger : office du juge de la mise en état*", Recueil Dalloz, 2011, p. 889.
[63] Cass, Civ. 1re, 27 April 2004, no. 01-12.442.

283. Respect for foreign sovereignty, which underlies these rules, imposes a negative limit on the judge's powers.

284. The judge's power is thus denied as soon as the solution to be given to the dispute encroaches on the sovereignty of a foreign State:

- The principle of sovereignty is located "at the frontier of the notion of imperium" and "at the hinge of the power of jurisdiction, since the **involvement of the State will lead to the refusal to recognise the power of any other State to interfere in the solution to be given to the dispute** "[64] ;

- "If it is true that the sovereignty of a State evokes exclusive power, it must be noted that **sovereignties are limited**. From this come other limits, for it is impossible to **conceive of power as being exclusive.**
  jurisdictional power that goes beyond the sovereignty of which it is merely the expression (...). **Foreign sovereignty will therefore** indirectly **influence jurisdictional power**". (**Exhibit 32, §32**).

285. The protection of foreign sovereignty can only be validly ensured by a negative delimitation of the judge's powers.

286. This limitation on the court's power is perfectly illustrated by the principle prohibiting the court of the forum from questioning an act taken by a foreign state body for the purposes of a public service.

287. It is the very expression of the freedom of each State to decide sovereignly on the extension of the sphere of jurisdiction of its courts within the limits of refraining from interfering with the sovereignty of a foreign State.

288. It is therefore the power and not the jurisdiction of the court that disappears at the frontier of foreign sovereignty.

289. Since competence presupposes power, to say that only the judge's competence is in question would be to take a shortcut. If the judge is incompetent, it is because he is not, *a priori*, invested with the power to judge in such a case. As the judge is not empowered to interfere in the operation of foreign public services, he is, by consequence, incompetent.

290. As in the case of immunity from jurisdiction, it is therefore the judge's power that is lacking, not his competence.

iv. The nature of the defence of lack of jurisdictional power - the plea of non-receipt

291. In the light of the foregoing, it would be illogical to consider that the procedural rules governing the prohibition of interference in the operation of foreign public services should differ from those governing the prohibition of interference in the operation of foreign public services.

[64] E. PATAUT, Principe de souveraineté et conflits de juridictions, Paris, LGDJ, 1999, p.256, n°376.

immunity from jurisdiction: the first is said to constitute a procedural objection[65] , while the second is described as a plea in bar.

292. The Court of Cassation has established the solution whereby "**the plea of immunity from jurisdiction constitutes a plea in bar** and not a plea of lack of jurisdiction" [66].

293. The authors broadly approve this solution, considering that immunity from jurisdiction, which tends to deprive the judge of the power to judge, necessarily affects the plaintiff's right to act and justifies its classification as a plea in bar:

- "It [immunity] deprives him [the plaintiff], in effect, of recourse to the courts of a given judicial order to rule on his substantive right, whether or not that right is well founded".[67]

- Professor Théry proposes an alternative reading of Article 32 of the Code of Civil Procedure: "Article 32 N. cpc. declares "inadmissible any claim made by or against a person deprived of the right to act". It is not forbidden to propose a transposition: '**any claim addressed to a judge without the power to examine it is inadmissible**'" (**Exhibit 32**, §153) ;

- Article 122 defines a plea of inadmissibility as "a plea which seeks to have the opposing party's claim declared inadmissible, without examination of the merits, for lack of the right to sue...", this "right to sue" being "the right to sue".
  which is itself defined by Article 30: "An action is the right of the author of a claim to be heard on the merits of the claim so that the court may decide whether or not it is well-founded". **The lack of power to rule on the law must therefore be sanctioned by inadmissibility of the claim**" (**Exhibit 32**,
  §259).

294. This solution has been even more widely accepted by the Cour de cassation, which considers that **a plea based on the lack of jurisdictional power of the court seised constitutes a plea of inadmissibility** and not a plea of lack of jurisdiction[68].

295. In addition, as in the case of immunity from jurisdiction, the mere fact that the plaintiff may bring an action before a foreign court is not such as to preclude a claim from being dismissed.

296. Indeed, "the impossibility of acting is assessed in relation to the French courts. The fact that an application before a foreign court may still be possible is not such as to exclude the classification as a fin de non-recevoir "[69].

297. The court must therefore confine itself to determining whether the French courts have jurisdiction to hear the case; "*the possibility of acting abroad need not be taken into consideration* "[70].

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[65] Article 81 of the Code of Civil Procedure provides that: "***Where the court considers that the case falls within the jurisdiction of a*** *criminal, administrative, arbitral or* ***foreign court, it shall simply refer the parties to take further action***.
[66] Cass. Civ. 1re, 15 April 1986, no. 84-13.422; Cass. Soc. 23 February 2005, no. 02-41.870.
[67] C. KESSEDJIAN Répertoire de droit international, Dalloz, "Immunités".
[68] Cass. Civ 2ème, 8 January 2015, no. 13-21.044; Cass. Civ. 2ème, 15 April 2021, no. 19-20.281.

[69] I. PÉTEL-TEYSSIÉ, Répertoire de Procédure civile, Dalloz, Défense, exceptions, fins de non-recevoir, 2021.
[70] I. PÉTEL-TEYSSIÉ, Répertoire de Procédure civile, Dalloz, Défense, exceptions, fins de non-recevoir, 2021.

298. Since the application of the principle of non-interference in the operation of foreign public services also has the effect of depriving the French court of the power to rule, it must be classified as a fin de non-recevoir.

d) Reconciling the principle of non-interference in the operation of foreign public services with the court's lack of power to rule on a request from a foreign State relating to the exercise of public authority

299. The prohibition on the court of the forum interfering in the operation of foreign public services can also be linked to the lack of power of the court of the forum to rule on an application by a foreign State whose object is linked to the exercise of public authority.

300. The Court of Cassation has ruled that the French courts do not have the power to hear claims (i) brought by a foreign State, (ii) based on provisions of public law, the object of which is linked to the exercise of public authority:

- "It follows from the principles of international law governing relations between States that, insofar as from the point of view of the law of the forum, their object is linked to the exercise of public authority,
  the claims of a foreign State based on provisions of public law cannot be brought before the French courts (...); (...) that the judgment under appeal cannot therefore be criticised for having, prior to any connection of international jurisdiction based on the nationality or location of the defendants, deduced from the very subject-matter of the claims of the Republic of Guatemala the **lack of jurisdictional authority** "[71] ;

- "It follows from the combination of the rules of international law governing relations between States and article 3 of the Civil Code that **the French courts are**, in principle, **deprived of jurisdiction**
  to hear applications from a foreign State or a foreign public body, based on provisions of public law, insofar as, from the point of view of French law, **their object is linked to the exercise of public power** "[72].

301. It should be noted that this last decision is cited by ZORLU, IZMIROGLU and SAHENK in support of their alleged procedural objection based on the lack of jurisdiction of the French courts to rule on the legality of an act adopted by a foreign State. However, as has just been explained, this judgment does not in any way rule in favour of a procedural objection, but rather of a lack of jurisdictional power.

302. This position is also in line with the resolution of the Institute of International Law, which states that :

> "Insofar as*, from the point of view of the State of the forum, their subject-matter is connected with the exercise of public power, legal proceedings brought by a foreign authority or a foreign public body,*

[71] Cass. Civ. 1re, 2 May 1990, no. 88-14.687.

[72] Cass. civ. 1re, 29 May 1990, no. 88-13.737, Consorts Duvalier et al v. État Haïtien et al.

based on provisions of its public law, should in principle be considered as ***inadmissible*** "[73].

303. However, it is difficult to see why the solution would be different if the same request - based on provisions of public law and whose object is linked to the exercise of public power - were made not by a State but by a private person.

304. If we follow the reasoning developed by the defendants, the procedural nature of the abstention of the courts of the forum seised of an application seeking to challenge an act performed by a foreign State organ taken on the basis of public law provisions would differ according to the person of the applicant.

305. If submitted by a foreign state body, this application would be inadmissible on the grounds that the French courts had no jurisdiction to hear it.

306. On the other hand, if the same claim were made by a private person, that person would be referred to a higher court on the grounds that the French courts did not have jurisdiction.

307. However, as in the case of immunity from jurisdiction, it is not just the person of the State that prevents the court from hearing the claim, but also the nature of the claim in question and, consequently, of the decision to be handed down.

308. Whether the claim is brought by a private or public person, the consequences of non-compliance with this rule are the same: the court of the forum will be encroaching on foreign sovereignty.

309. Accordingly, the prohibition on the court of the forum questioning an act performed by a foreign State body on the basis of public law provisions should be analysed as a limitation on its power, regardless of whether the plaintiff is a public entity.

e) On the procedural nature of the principle prohibiting the courts of the forum from interfering in the operation of foreign public services

310. In the light of the foregoing, the principle prohibiting the court of the forum from calling into question an act adopted by a foreign State body for the purposes of a public service must therefore be analysed as the consequence of a lack of jurisdictional power and, consequently, be classified as a plea of inadmissibility.

311. Some authors argue that the implementation of this principle of public law effectively amounts to a limitation of jurisdictional power:

[73] Institute of International Law, Oslo Session 1977, "*Requests based by a foreign authority or a foreign public body on*

provisions of its public law".

- *"the question of immunity does not arise where the court of the forum is not empowered under public international law to decide the dispute submitted to it, as is shown by the lack of jurisdiction of the courts of the forum.*
  French administrative courts to rule on the legality of acts attributable to foreign public authorities. (...) the ***lack of power to judge*** *does not result from the immunity of the defendant and* ***is absolute and unconditional****, a possible 'waiver' not being able under any circumstances to allow the court of the forum to exercise a power incompatible with public international law* "[74] ;

- *"The abstention of the court seised is based on respect for foreign sovereignty, which entails an absence of power, a denial of the status of judge with regard to certain acts which, in the opinion of the court seised, are contrary to the law of the country concerned.*
  directly manifest that sovereignty" (**Exhibit 32, §256**).

312. Echoing the aforementioned doctrine, the Cour de cassation ruled in the same direction in the context of an application for the annulment of a will drawn up by a foreign public official:

> *"In the case where the sincerity and the very reality of the statements contained in a foreign public deed receiving a will are in question, that is to say the fraud of the foreign public official who would have falsely reported his personal observations and attested the declarations of the testator,* ***the French judge has the power*** *neither* ***to annul the foreign public deed*** *nor to take the measures in the margin of the false deed and to issue an injunction to the public official depositary of the disputed deed. "[75]*

313. In addition, earlier decisions referred to a **lack of "*standing to judge*"**:

- *"French courts* ***are not qualified*** *to determine the nationality of foreign citizens* "[76] ;

- *"the French judge has* ***no authority*** *to give orders to a foreign administration* "[77].

314. On this point, Professor Théry considers that "***standing to judge*** *(...) this expression is not coined for the purposes of demonstration; it is found on several occasions in case law in situations which, basically, are always the same: the plaintiff wants the court to assess the legality of an act emanating from a foreign public authority.* ***In this case, the expression has no meaning other than that of the lack of power of the court seised, which is not entitled to judge this foreign sovereign***". (**Exhibit 32**, §155).

315. The use of this expression confirms that the prohibition on the court of the forum interfering in the operation of foreign public services must be analysed as the counterpart of lack of standing.

316. Consequently, this defence must logically be classified as a plea in bar.

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[74] I. Prezas, JurisClasseur Droit international; Fasc. 409-50: Immunités internationales, 2022.
[75] Cass. civ. 1re, 20 March 2001, Mme Hassan ép. Bitan c. Mme Dana veuve Hassan et Maître Borromeo, note H. Muir Watt, "*Du juge compétent pour annuler un testament dressé par un notaire italien et argué de faux*", Rev. crit. DIP, 2011, p. 697.
[76] Cass. civ, 20 February 1901, Coll, S. 1902.I. 281 note AUDINET; JDI 1901. 571 (cf. thesis by P. THÉRY).
[77] 27 November 1972, Vigliotti, R. 1975. 240, note MASSIP (*see* **Exhibit 32**).

317. This is also what Professor Théry maintains:

> *"Although it [the solution according to which the lack of power must be sanctioned by the inadmissibility of the application] has only given rise to discussion in the case of immunity,* ***the same solution must be accepted when the court is asked to order the release of a seizure carried out abroad, to rectify a foreign civil status record or to declare the invalidity of a patent issued by a foreign body***" (**Exhibit 32**, §259).

318. Finally, the Pre-Trial Judge will note that the judicial decisions cited by the defendants in support of their alleged procedural objection are wholly irrelevant, namely :

- A ruling handed down by the Metz Court of Appeal on 7 February 2017 (no. 15/01586), which was issued on the basis of the provisions of the Code of Tax Procedure relating to recovery assistance
  within the European Union. The Court of First Instance held, on the basis of the aforementioned provisions, that the legality of the claim and of an enforcement order issued by a German tax authority to recover a debt owed by the German State fell within the jurisdiction of the courts of the requesting Member State.

- A ruling by the Nancy Court of Appeal on 6 February 2017 (no. 15/02482) based on the principle of mutual recognition of transnational administrative acts and Union
  Europe.

- A judgment of the Nancy Court of Appeal of 8 November 2017 (no. 15/03361), the provisions of which do not make it possible to ascertain the basis on which the Court ruled that it is not
  the Commercial Court to rule on the legality of an individual administrative act issued by a foreign administrative authority.

- A ruling by the Douai Court of Appeal on 20 June 2018 (no. 18/01236) which, once again, gives no indication of the basis on which the Court reached its decision. In
  Moreover, this decision is clearly irrelevant since it concerns the jurisdiction of the French courts to rule on compliance with the customs procedural rules of a foreign State by customs officials of that same State.

319. Therefore, contrary to what the defendants assert, the aforementioned court decisions are manifestly irrelevant and in no way illustrate the lack of jurisdiction of the French courts with regard to the principle of international law underlying the procedural exception that the defendants claim.

320. In the light of the foregoing, the procedural objection raised by TMSF and ZORLU, IZMIROGLU and SAHENK, which maintains that the dispute is a matter of public law, which is firmly contested by the Claimants, must in fact be analysed as a plea in bar based on the alleged lack of jurisdictional authority of the French courts to hear the dispute.

The Pre-Trial Judge can only find that the procedural objection raised by TMSF and ZORLU, IZMIROGLU and SAHENK is in fact a plea of no contest based on the lack of jurisdictional power of the Paris Court of First Instance.

3.1.2 On the inadmissibility of a plea of lack of jurisdiction raised after an objection has been lodged

321. As the plea that the French courts lacked jurisdiction was raised before the procedural objections, which were raised later in the defendants' pleadings, the latter are clearly inadmissible.

322. In accordance with Article 74 of the Code of Civil Procedure :

> ***"Objections must, on pain of inadmissibility, be raised*** *simultaneously and* ***before any*** *defence on the merits or* ***plea of inadmissibility****. This is the case even if the rules invoked in support of the objection are of public policy*.

323. Considering that this text is to be interpreted strictly, the Cour de cassation has ruled that a party is not entitled to raise a procedural objection after a plea of no contest, regardless of whether these objections were raised in the same pleadings[78].

324. Consequently, the order in which these defences are presented in the same pleadings is far from irrelevant. Where a plea of inadmissibility and a procedural objection are presented in the same pleadings, the objection is inadmissible if it is presented before the plea of inadmissibility.

325. In the present case, the objection to jurisdiction based on the aforementioned principle of public law is no more than a plea in bar presented before the objections to jurisdiction raised by TMSF and Mr ZORLU, Mr IZMIROGLU and Mr SAHENK in their pleadings.

326. Consequently, all of the procedural objections raised by these defendants are inadmissible.

The Pre-Trial Judge will therefore only be able to re-characterise the procedural objection raised by TMSF and Consorts ZORLU, IZMIROGLU and SAHENK as a plea of non-receivability based on a lack of jurisdictional power and, consequently, rule that all of the jurisdictional objections raised by TMSF and Consorts ZORLU, IZMIROGLU and SAHENK are inadmissible.

3.1.3 The jurisdiction of the Tribunal Judiciaire de Paris to hear the case

327. Mesdames Sulun ILKIN, Belgin EGELI and Fatma Meltem GUNEL, as well as Mr Mehmet Mustafa BUKEY raise, as do TMSF and Consorts ZORLU, IZMIROGLU and SAHENK under cover of an alleged plea of lack of jurisdiction, a plea of non-receivability based on the alleged lack of jurisdictional power of the Tribunal Judiciaire de Paris to hear the dispute which, according to these defendants, is of a public nature.

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[78] Cass. Civ. 2nd, 8 July 2004, no. 02-19.694; Cass. Civ. 3rd, 8 March 1977, no. 75-14.834.

a) The plea of lack of jurisdiction of the Tribunal judiciaire de Paris raised by TMSF and Consorts ZORLU, IZMIROGLU and SAHENK

328. The Pre-Trial Judge can only note the weakness of the plea of inadmissibility presented, under the guise of an alleged procedural objection, by TMSF and ZORLU, IZMIROGLU and SAHENK.

329. On the basis of the principle of international law according to which the French courts are prohibited from questioning an act taken by a foreign state body, the defendants clumsily attempt to have it ruled that the Tribunal Judiciaire de Paris lacks the jurisdictional power to hear the dispute.

330. However, contrary to what the defendants maintain, the action brought by the Claimants does not in any way seek to challenge the measures taken by TMSF as a savings deposit guarantee fund, but rather the acts taken by TMSF in its capacity as manager and representative of the shareholders, exercising their rights apart from those relating to dividends, of commercial companies governed by private law, namely the acceptance of illicit payment orders, the disposals of assets decided by the Companies under its control and the transfer of funds resulting from these disposals. In addition, TMSF exercised, under cover of the functions and roles of TMSF-manager and TMSF-shareholder, the dismemberment of the Companies to their detriment and to its benefit and the spoliation and misappropriation of the Claimants' rights to dividends for the sole benefit of the economic beneficiaries and/or shareholders of the acquiring companies.

331. Accordingly, it cannot be validly contested that decisions taken by the management bodies of a company governed by private law via the exercise of the administrative rights of the shareholders of such companies are necessarily of a private nature and do not fall within the scope of public law.

332. It would be equally implausible to consider that these decisions could be assimilated to acts of public authority or that TMSF-gestionnaire exercises, in this capacity, prerogatives of public authority.

333. Indeed, as demonstrated above, in its capacity as manager and representative of the shareholders acting in their names and on their behalf, TMSF does not act as a State body vested with prerogatives of public authority, but merely exercises the rights attached to the shares of the Companies and shareholders over which it has taken control as any shareholder would have done.

334. Furthermore, neither the Companies nor the shareholders' rights were nationalised. It was the Companies, with the approval of their shareholders, all under the control of TMSF, that accepted the unfounded payment orders, sold their assets and goodwill, and transferred the proceeds of these sales to TMSF-fonds while alienating and diverting the shareholders' right to dividends to the economic beneficiaries and/or shareholders of the acquiring Companies.

335. This position was confirmed by the Tribunal de grande instance de Paris which, in an even less obvious context than the present case, ruled that a central bank, in its capacity as manager of a company over which it had taken control by virtue of a national order, did not exercise any prerogative of public authority in that capacity:

"the [Central Bank of Curaçao and Saint Martin] is being ***sued as the person vested with the powers of management and supervision*** *of the [First Curaçao International Bank], a private commercial company, as a result of the emergency measure taken pursuant to the national ordinance on the supervision of banks and credit institutions, so that it does* ***not exercise any prerogative of a State nature*** "[79].

336. Accordingly, it cannot be held that TMSF, in respect of the acts at issue, acted as a State body exercising prerogatives of public authority.

337. Furthermore, it is difficult to understand how decisions taken by the management bodies of a commercial company governed by private law could be assimilated to administrative acts.

338. The principle is very simple, however, since the character of administrative acts is recognised when the act is taken by a legal person governed by public law within the framework of a public administrative service.

339. However, the acts for which a declaration of non-existence is requested were not taken by TMSF itself, but by the Companies (legal persons under private law) for whose management it was responsible and for which it exercised the rights of their shareholders, with the exception of the right to dividends. Moreover, these acts, which are part of the life of a company, have no connection whatsoever with any public service.

340. It is therefore clear that the acts whose non-existence the Claimants are seeking to have found and remedied were taken by TMSF in the context of the management of the Companies and therefore fall within **the** scope of **private law legal relationships.** Furthermore, **these acts cannot be assimilated to acts of public authority, the calling into question of which would deprive the French courts of the power to hear the dispute.**

341. Consequently, the Tribunal Judiciaire de Paris is vested with the jurisdictional power to decide this dispute and the defendants mentioned above are therefore ill-founded in their plea of non-receipt.

b) The plea of lack of jurisdiction of the Tribunal judiciaire de Paris raised by Ms Sulun ILKIN, Ms Belgin EGELI, Ms Fatma Meltem GUNEL and Mr Mehmet Mustafa BUKEY

342. Nor will the Pre-Trial Judge follow the arguments of Ms Sulun ILKIN, Ms Belgin EGELI, Ms Fatma Meltem GUNEL and Mr Mehmet Mustafa BUKEY, and will note that the only case [law80] cited by these defendants in support of their plea of inadmissibility is not applicable in the present case, since it conditions the lack of jurisdiction of the French courts on two conditions being met:

i) Requests must originate from a foreign State or a foreign public body; and
ii) Be based on provisions of public law whose purpose is related to the exercise of public authority.

[79] TGI Paris, 30 June 2015, RG no. 13/13177.
[80] Cass. Civ. 1ère, 29 May 1990, no. 88-13.737.

343. If, as argued above, the condition relating to the status of the Claimants, who cannot be assimilated to a foreign State, is disregarded, the fact remains that the Claimants' claims are in no way based on public law provisions relating to the exercise of public authority.

344. As indicated above, the Plaintiffs' action is an action for non-existence under Turkish law relating specifically to acts taken by TMSF-manager and TMSF-shareholders in the context of the management of the Companies under its control.

345. TMSF cannot deny, in view of all the contemporaneous documents submitted to the debate and set out above, that it proceeded to dissipate the assets in its capacity as manager of the Companies. On the contrary, it states that it acted in this capacity in accordance, according to TMSF, with Turkish banking law, which authorises it to :

> The TMSF also stated that it could "***take control of companies*** *owned directly or indirectly by the shareholders of a bank under its management and* ***exercise the rights of those shareholders in those companies*** *(with the exception of the right to receive dividends).* ***The managers and members of the corporate bodies that the TMSF appointed within these companies could then dispose of the assets of the companies*** *in order to pay the TMSF's claims*" (TMSF Conclusions, §74). (DI there is plenty of other evidence, including the contract with Motorola, see my document which was sent to you in April with all the references).

346. The acts - acceptance of the unlawful payment orders, assignment of the Companies' assets and transfer of the funds resulting from these assignments - which the Claimants are seeking to be found not to exist and to be remedied must therefore be analysed as arising, not from the exercise of prerogatives of public authority, but from the exercise of the corporate rights attached to the shares of private companies and their shareholders taken over by TMSF when it took control of the Companies.

347. Furthermore, in its capacity as manager and representative of the shareholders, TMSF does not exercise any prerogative of public authority. Furthermore, it is inconceivable that an entity could act as a public authority while preserving shareholders' rights to dividends when those shareholders are not the State.

348. Nevertheless, in order to justify the public nature of the action, the defendants believe that they can simply assert that the acts taken by TMSF-manager relate to the exercise of prerogatives of public authority granted by Turkish banking laws to TMSF and which placed it in a privileged position in relation to the public.

349. On this point, the Court of Justice of the European Union considers that it is not sufficient for a power to have been conferred by statute for its implementation to fall within the exercise of State sovereignty:

> ***"the fact that a competence or a power has been conferred by a statute is not*** *in itself* ***decisive for concluding that a*** *State* ***authority has acted in the exercise of public power*** "[81].

[81] CJEU, 16 July 2020, Case C-73-19, Belgische Staat et al v Movic et al.

350. Moreover, according to TMSF's own statements, it was entitled to "***exercise the rights of those shareholders*** [*shareholders of the banks whose shares were transferred to it]* ***in those companies***", no more and no less. Therefore, in that capacity, TMSF had to exercise prerogatives that were indisputably subject to private law, namely the prerogatives of the shareholders of the Companies, as those shareholders would have exercised them themselves, that is to say, in application of company law, which is necessarily subject to private law.

351. This is what TMSF has acknowledged in the context of arbitration proceedings before the ICSID and proceedings before the ECHR, bearing in mind that the claims of the plaintiffs RUMELI and TELSIM below are made by these companies in the person of TMSF-manager, which controls them at that date (**exhibit 15)**:

> *" ¶213. In this regard, the Claimants point out that (...).* ***These new managers continued to run Rumeli and Telsim as telecommunications companies****. In April 2003,* ***as any commercial entity would do when faced with the expropriation of a valuable asset****, the former managers of Rumeli and Telsim wrote to the Defendant emphasising that they intended to submit the dispute to the International Centre for Settlement of Investment Disputes. When the former management of Rumeli and Telsim was* ***replaced by management appointed by the TMSF, the new managers simply carried out the former management's business plans*** *to submit the dispute between Rumeli and Telsim and Kazakhstan for final settlement at ICSID.* ***The TMSF-appointed managers did not exercise any particular prerogative to carry out the 'firm intentions' of the previous managers****." ;*
>
> *" ¶214. According to the Claimants, the Cayman Islands case TMSF v. Wisteria Bay cited by the Defendant in this context is* ***wholly irrelevant*** *for the following reasons:*
> *- in this case, the TMSF was a party to the proceedings; and*
> *- the* ***TMSF exercised special privileges*** *to confiscate assets" ;*

352. Furthermore, if the Arbitral Tribunal had considered that TMSF-manager was acting as a public authority, it would have declared itself incompetent and TMSF would not have been able to invoke and benefit from the bilateral investment treaty between Turkey and Kazakstan. The fact that the tribunal recognised its jurisdiction confirms that the companies managed by TMSF were indeed private companies acting in a private capacity. The Arbitral Tribunal's ruling on this point also confirms that the TMSF-manager is in no way acting as a representative of the Turkish state and is not exercising any prerogative of public authority.

353. According to TMSF-gestionnaire's own statements, it does not have any special privileges and therefore does not exercise any prerogative of public authority in its capacity as manager, but merely manages the Companies, as did the former management, limiting itself to exercising normal powers in the context of normal commercial management.

354. Consequently, TMSF-manager is not in a privileged position, but in a position identical to that of any manager and shareholder of a commercial company governed by private law exercising the rights attached to its shares.

355. The defendants also claim that the public nature of the dispute arises from the public nature of the claim allegedly held by TMSF on the Difference alleged by TMSF on the deposits of IMAR BANK.

356. It is revealing to note that the arguments developed by Ms Sulun ILKIN, Ms Belgin EGELI and Ms Fatma Meltem GUNEL as well as by Mr Mehmet Mustafa BUKEY are based exclusively on the statements of TMSF (whose writings are cited in the footnote). However, TMSF's allegations concerning the exercise of prerogatives of public authority and the public nature of the alleged claim that it holds against IMAR BANK and the Companies have no probative value as such and are not supported by any legally established evidence.

357. In the light of the foregoing, it is clear that the acts at issue, taken by TMSF in the context of the management of the Companies and the exercise of shareholders' rights apart from the right to dividends, fall within the scope of **private law legal relationships, exclusive of the exercise of any prerogative of a public authority**.

358. Consequently, the Tribunal Judiciaire de Paris is necessarily vested with the jurisdictional power to decide this dispute.

The Pre-Trial Judge will therefore not be able to dismiss TMSF, ZORLU, IZMIROGLU, SAHENK, Sulun ILKIN, Belgin EGELI, Fatma Meltem GUNEL and Mehmet Mustafa BUKEY's appeal on the grounds of lack of jurisdictional authority.

4. ON THE INTERNATIONAL TERRITORIAL JURISDICTION OF THE JUDICIAL COURT OF PARIS

359. The Paris Court of First Instance has jurisdiction to hear the Claimants' action, on the dual basis of Article 6(2) of Regulation No 1215/2012, known as "Brussels I bis", and Article 14 of the French Civil Code **(4.1)**. Indeed, apart from the fact that there is no circumstance likely to disregard the first **(4.2)** or the second **(4.3)** of these texts, the Claimants are indeed domiciled in France **(4.4)**. The combined application of Article 6(2) of Regulation No 1215/2012 and Article 14 of the Civil Code is, moreover, unlikely to undermine the principle of non-discrimination or the Defendants' right to a fair hearing **(4.5)**.

4.1 Summary of the Claimants' argument

360. Article 6 of the "general provisions" section of European Regulation 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters states:

> *"(1) If the defendant is not domiciled in a Member State, jurisdiction in each Member State shall be governed by the law of that Member State, subject to Articles 18(1), 21(2), 24 and 25.*
>
> *2.* ***Any person, irrespective of nationality, domiciled in a Member State may, in the same manner as 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 the Member States must notify to the Commission pursuant to Article 76(1)(a)."*

361. Among the rules of territorial jurisdiction in force in France and benefiting nationals of French nationality is Article 14 of the Civil Code, which states:

"A foreigner, even one not resident 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 with French persons*".

The aforementioned Article 14 is therefore the basis of a privileged international jurisdiction, which is applied in a subsidiary manner when the ordinary rules of international jurisdiction do not allow the French court to be found competent.

This provision has been consistently interpreted broadly in case law. Thus, even though it refers only to *"contracted obligations"*, the Cour de cassation has extended its application to all actions relating to property and non-property. The doctrine notes that *"the hypothesis of 'contracted obligations' could legitimately be extended to delictual matters "*[82].

It follows from the combined application of this European Regulation and Article 14 above that any foreigner whose domicile is in France is treated in the same way as French nationals as regards the possibility of invoking Article 14 of the Civil Code to establish the international jurisdiction of the French courts, where the defendant is not domiciled in a Member State of the European Union.

The solution in principle is that a person domiciled in France must be able to rely on article 14 of the Civil Code in the same way as a French person, whatever their nationality, in a dispute with a defendant domiciled outside the European Union.

362. The most authoritative writers on the subject confirm that Article 6 of Regulation 1215/2012 allows the benefit of Article 14 of the Civil Code to be extended to foreigners domiciled in France.

For example, Professor André Huet notes that Article 6(2) of Regulation No 1215/2012 authorises "any person domiciled on French territory, whatever his nationality, to rely on Article 14 of the Civil Code against a defendant who is not domiciled in one of the States bound by [this] instrument "[83].

Professors Bernard Audit and Louis d'Avout also note that "the Brussels [ancestor of Regulation 1215/2012] and Lugano Conventions have extended the scope of Article 14 by allowing, in a dispute falling within the scope of these Conventions, any person domiciled in France to invoke it against a defendant not domiciled in a Contracting State "[84].

On the subject of Article 4(2) of European Regulation No 44/2001, the forerunner of Article 6(2) of Regulation No 1215/2012 and containing identical provisions, these same Professors note that *"where the dispute is not covered by a direct rule of jurisdiction laid down by the Regulation, the latter expressly refers to the rules of international jurisdiction in force in each State (...). Among*

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[82] B. Audit and L. d'Avout, *Droit international privé*, 7th edn, Economica, 2013, §421.
[83] A. Huet, JCl Droit international, Fasc. 581-30, §16.

[84] B. Audit and L. d'Avout, *Droit international privé*, 7th edn, Economica, 2013, §420.

the rules of jurisdiction thus referred to include the ***exorbitant*** *rules of jurisdiction in force in various countries (such as in France Articles 14 and 15 C. civ.) and which are listed, in a non-exhaustive manner, in Annex 1 to the Regulation "*[85].

363. Admittedly, Regulation 1215/2012, like its predecessor, does not include an annex listing the rules referred to in Article 6(2).

However, Article 76(1) states that "*Member States shall notify the Commission of: a) the rules on competence referred to (...) in Article 6(2)*".

Pursuant to Article 76(2) and (4), the Commission shall draw up and publish in the *Official Journal of the European Union* a list of such rules of jurisdiction.

The latest version of this list, published in the *Official Journal of the European Union* on 9 January 2015, states unambiguously that :

"The rules of national jurisdiction referred to in Articles 5(2) and 6(2) of the Regulation are as follows: (...) In France, Articles 14 and 15 of the Civil Code.

364. The texts in force are therefore absolutely clear and self-explanatory: Regulation 1215/2012 not only confirms the exorbitant jurisdiction rule set out in Article 14 of the Civil Code, but also extends its scope.

There is therefore no doubt as to the effect of the link between Article 6(2) of Regulation No 1215/2012 and Article 14 of the Civil Code: this link enables any foreigner domiciled in France to sue persons domiciled outside the European Union before the French courts in an action in tort - regardless of the law and the qualifications applicable to the facts justifying that action.

365. In this case, although the Claimants are of foreign nationality, they are all domiciled in France, and have been for several years (see section 4.4 below).

In addition, the Defendants are all domiciled outside the European Union.

With regard to the civil liability action for depriving and dispossessing the Claimants of their right to dividends, in particular through the fraudulent capture by TMSF of the assets of the Companies of which the members of the Uzan Family are the ultimate economic beneficiaries, and for misappropriating these rights to dividends for the sole benefit of the economic beneficiaries and/or the shareholders of the acquiring companies through the fraudulent acquisition of the assets of these Companies by the Acquirers, the French courts have territorial jurisdiction by virtue of the combined application of Article 6 of European Regulation No. 1215/2012 and Article 14 of the Civil Code, by virtue of the place of domicile of the claimants located in France and in the absence of a criterion for connecting the ordinary rules to France.

4.2 Regulation 1215/2012 is applicable in this case

366. Some of the Defendants argue that Regulation 1215/2012 is inapplicable to the present case insofar as it applies only to actions in civil and commercial matters.

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[85] B. Audit and L. d'Avout, *Droit international privé*, 7th edn, Economica, 2013, §577.

that decisions of an administrative authority taken in the exercise of regulatory powers conferred on it by national legislation fall within the scope of administrative matters. They also contend that the Regulation excludes "*bankruptcies, compositions and analogous proceedings*" from its scope. They deduce that, as the Claimants' action relates to acts performed by TMSF in the context of the recovery of the Difference alleged by TMSF on the Imar Bank deposits, the case falls within the scope of administrative matters.

367. However, the summons shows that TMSF is being sued in these proceedings for its actions as manager of the Companies and in the exercise of its functions as TMSF-shareholder, i.e. in the context of legal relationships governed purely by private law. TMSF is not being sued as an administrative authority.

368. Moreover, the Claimants' action is based not on Turkish administrative law but on Turkish civil law, which provides that acts taken without any basis and outside any legal framework in breach of the rights recognised by the Convention for the Protection of Human Rights and Fundamental Freedoms (i) must be considered non-existent and (ii) must give rise to compensation for their victims on the basis of tort liability.

369. The action therefore falls within the scope of civil and commercial matters, so Regulation 1215/2012 is perfectly applicable.

4.3 Article 14 of the Civil Code also applies in this case

370. None of the arguments put forward by the Defendants is such as to preclude the application of Article 14 of the Civil Code. Just as this article is not reserved for French nationals **(4.3.1)**, it does not require any connection between the dispute and France to be established **(4.3.2)**, nor is it limited to the case of an obligation contracted by the defendant towards the plaintiff **(4.3.3)**. In addition, Mr Uzan's claims do not relate to foreign enforcement measures or to real estate matters **(4.3.4),** nor do they show any fraud intended to artificially give the French court jurisdiction **(4.3.5)**.

4.3.1 Article 14 of the Civil Code is not reserved for French nationals only

371. Contrary to what the Defendants maintain, the benefit of Article 14 of the Civil Code is not reserved solely for French nationals.

372. It is all in vain that they cite case law that is perfectly inapplicable to this case and whose meaning they shamelessly distort to serve their purpose:

- The decision of the First Civil Chamber of 28 June 1989 concerns the resolution of a sale between a French company, a Senegalese company and a Spanish company, the debates on which are still ongoing.
  having focused on the question of the French company's personal interest in taking action;

- The judgment of the First Civil Chamber of 6 December 1988 concerned a divorce case between a French woman and an Algerian man.
  Article 14 of the Civil Code and Article 1070 of the Code of Civil Procedure, which g o v e r n s territorial jurisdiction in divorce matters;

- The decision of the Lyon Court of Appeal of 18 November 2011 rules on the relationship between Article 14 of the Civil Code and other grounds of jurisdiction under ordinary law,

  to rule that the latter cannot prevent the application of the former;

- The Versailles Court of Appeal's ruling of 20 October 2016 applies Article 14 of the Civil Code in a classic way in a case where the claimant was

  French nationality and where, therefore, the question of the relationship between the European regulation and this article did not at all arise in the same terms as in the present case;

- The judgment of the First Civil Chamber of 25 June 2002 simply recalls that Article 14 cannot be held in abeyance by the existence of other rules of jurisdiction where those rules are not applicable.

  The Court of Justice of the European Communities held that the Dutch courts did not designate the French courts, and logically set aside a judgment which had made the application of Article 14 subject to the justification of the fact that the Dutch courts, designated by other rules of jurisdiction, refused to hear the action;

373. Certain Defendants, including MOTOROLA, also vainly attempt to invent a distinction between, on the one hand, the ordinary rules of jurisdiction, which they claim are *"based on criteria other than French nationality",* and the exorbitant rules of jurisdiction such as that derived from Article 14 of the Civil Code.

On this point, their entire argument is based on the theory - as bold as it is misleading - that, by allowing foreigners domiciled in the territory of a Member State to rely, *"like nationals of that Member State", on* the rules of jurisdiction in force there, Article 6(2) of Regulation No 1215/2012 would not allow those foreigners to rely on the *"rules of jurisdiction provided exclusively for nationals of that State".*

According to them, the European legislator wished to exclude from the benefit of Article 6(2) *"rules of jurisdiction based solely on the nationality of the parties"*.

However, a simple reading of the Regulation in several languages shows that the European legislator has expressed the notion of *"nationals"* as *"nationals"* in the English version of the text, and as *"nacionales"* in the Spanish version - which speaks for itself...

French version of Article 6 §2	**English** version of the article 6 §2	**Spanish** version of the article 6 §2

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 are required to notify to the Commission pursuant to	As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), **in the same way as nationals of that Member State.** **Member State.**	Toda persona, sea cual sea su nacionalidad, domiciliada en el territorio de un Estado miembro, podrá invocar frente a dicho demandado, **del mismo modo que los nacionales de este Estado miembro,** las normas de competencia judicial vigentes en el mismo, y en particular aquellas que han de comunicar a la Comisión los Estados miembros de conformidad con lo esta-
Article 76(1)(a).		blecido en el artículo 76, apartado 1, letra a).

Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

The Defendants' fanciful exegesis of an alleged distinction between the concepts of
The distinction between *"national"* and *"citizen"* is therefore completely irrelevant, as is the administrative case law relied on by some - which has, incidentally, been overturned by the Conseil d'État[86].

The intention of the European legislator is clear: the rules of jurisdiction applicable to nationals of a Member State must benefit foreigners domiciled in that State.

374. In this respect, the judgment of the Paris Court of Appeal of 24 November 2020, in holding that Article 14 of the Civil Code applies "in the absence of an ordinary criterion of territorial jurisdiction when it is justified that the proceedings are connected to French territory in accordance with the requirements of the proper administration of justice", adds a condition to the text that it does not contain, Article 14 is simply subsidiary to the body of ordinary rules on territorial jurisdiction and applies when these rules do not allow the French courts to assume jurisdiction, without it being necessary to demonstrate any connection between the proceedings and French territory... This interpretation by the Paris Court of Appeal has also been criticised by academic writers, who consider that, "unlike the Cour de cassation", the Paris Court of Appeal "persists in requiring conditions outside this text that are very difficult to meet "[87].

375. In fact, all of the Defendants' arguments are destroyed by two judgments handed down on 29

June 2022 by the First Civil Chamber of the Court of Cassation and published in the Bulletin[88], which state absolutely clearly that a foreigner domiciled in France may rely on article 14 of the Civil Code to

[86] Conseil d'Etat, 10th and 9th joint sub-sections, 27 June 2005, no. 251766, published in Recueil Lebon - It should be noted that the case concerned the payment of allowances to compensate for the moral prejudice suffered by the harkis, moghaznis and former members of the supplementary forces and assimilated groups as a result of their departure from Algeria after its independence, the Conseil d'Etat having ruled that *"a difference in treatment with regard to the granting of these allowances depending on whether the people concerned opted to adopt French nationality or refrained from making such a choice does not justify a difference in treatment, given the purpose of each of these allowances"*. We will be looking for a long time to find the slightest connection with the present case...

[87] C. de Haas, "*La compétence internationale étriquée du juge français en matière de contrefaçon*", Com. com. élect. n° 10, Oct. 2021, study n° 18.

[88] Cass. 1st Civil, 29 June 2022, no. 21-10.106 (published in the Bulletin); and no. 21-11.722 (published in the Bulletin).

against a defendant established outside the European Union without any other criteria having to be met.

376. In the first[89] case, the Court ruled as follows:

> *"Under article 14 of the French Civil Code, a French citizen, by virtue of his or her nationality alone, has the right to sue a foreigner before a French court of his or her choice, where no ordinary criterion of territorial jurisdiction applies in France.*
>
> *It follows from the combination of [Article 14 of the Civil Code and Articles 6 and 21 of Regulation No. 1215/2012] that, where neither the defendant's domicile, nor the place where the work was carried out, nor the place where the establishment that took on the employee is located are situated in the territory of a Member State,* ***the conflict of jurisdictions is settled in accordance with the provisions of national law which have been notified to the European Commission, including Article 14 of the Civil Code, and that foreigners domiciled in the State of the forum may rely on them in the same way as nationals****.*
>
> *As the Court of Appeal found that* ***the plaintiff was domiciled in France and the defendants were domiciled outside the European Union****, and that Mr [E] [I] had been employed in the Democratic Republic of Congo where his professional activity took place,* ***it follows that the plaintiff could rely on Article 14 of the Civil Code****.*

The Cour de cassation therefore gives normative value to the Article 14 declaration made to the European Commission pursuant to Article 76(1) of the Brussels I bis Regulation.

It also pays no attention to the imaginary distinction between "nationals" and "non-nationals".
"This is because it considers that Article 6(2) of Regulation No 1215/2012 (which uses the term "nationals") allows foreign nationals domiciled in France to rely on Article 14 *"in the same way as* ***nationals****"*!

377. In the second judgment[90] delivered on the basis of Article 6 of Regulation No 1215/2015 and Article 14 of the Civil Code, the Court held that:

> *"It follows [from Article 14 of the Civil Code],* ***which is one of the provisions notified to the Commission*** *pursuant to [Articles 6(2) and 76(1)(a) of the Brussels I bis Regulation], that a French person, solely by virtue of his nationality, has the right to sue a foreigner before a French court of his choice, where no ordinary criterion of territorial jurisdiction is met in France.*
>
> *It is the responsibility of the courts of the Member States to ensure the legal protection afforded to individuals by the direct effect of European Union law.*
>
> *In denying Mr [Y] [O] the benefit of Article 14 of the Civil Code and declaring that the French courts lacked jurisdiction, the judgment held that equal treatment between nationals and refugees, provided for in Article 16 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, refers to the rules governing the enjoyment of rights and not to the rules governing jurisdiction and cannot lead to*

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[89] Ruling no. 21-11.722.
[90] Ruling no. 21-10.106.

extend the jurisdiction of the French court to the detriment of that of the foreign court resulting from the normal operation of the rules of conflict of jurisdictions.

In so ruling, even though Article 6(2) of the Brussels I bis Regulation allows a foreigner to rely on Article 14 of the Civil Code, on the sole condition that he is domiciled in France and that the defendant is domiciled outside a Member State of the European Union, the Court of Appeal, whose task it was to verify the application of the latter text in the light of the provisions of that Regulation, infringed the aforementioned texts.

Once again, the Cour de cassation has given normative effect to the notification of article 14 of the Civil Code to the European Commission.

Above all, it confirms that the **only** conditions necessary for a foreigner to be able to invoke Article 14 are (i) that the foreign plaintiff is domiciled in France and (ii) that the defendant is domiciled outside the European Union[91].

There is therefore no need to establish any connection between the dispute and France, and the asylum status of the foreign claimant is no more relevant!

378. Commenting on the aforementioned decisions, Professor Hélène Péroz noted that this was "the first time" that the Cour de cassation had "had the opportunity to rule on the relationship between Regulation (EU) No 1215/2012 Brussels I bis of 12 December 2012 and Article 14 of the Civil Code" (**Exhibit 33**) - thus confirming that the previous and sometimes contra legem solutions adopted by certain courts are no longer relevant.

It also notes that "*Article 6(2) provides for the application of exorbitant jurisdiction to any person, whatever his nationality, provided that he is domiciled in a Member State. Consequently,* ***Article 6(2) makes the application of exorbitant fora dependent not on the French nationality of the claimant, but on the claimant's domicile in France****. To put it simply, Article 6-2 in conjunction with Article 14 of the Civil Code replaces the criterion of French nationality with that of domicile in France*.

It concludes very clearly that *"the Court of Cassation applied the* aforementioned texts *correctly".*

379. Confirming this analysis, Tiphaine Ducrocq, editor-in-chief of the Journal du droit international - Clunet notes that "as the defendant is not domiciled in a Member State, the Brussels I bis Regulation refers to national law to determine the jurisdiction of the courts (Article 6(1)). **In France, this is Article 14 of the Civil Code, which was in fact notified to the Commission** (...). Thus, by applying European Union law, and more specifically the combined effect of Article 6(2) of the Brussels I bis Regulation and Article 14 of the Civil Code, **a foreigner can benefit from a right reserved for a national on the sole condition that he is domiciled in the Member State. Domicile in France thus replaces nationality**". (**Exhibit 33)**.

380. François Mélin, Councillor at the Paris Court of Appeal, notes that "these two judgments of the First Civil Chamber **are worthy of attention, as they recall the existence of a**

[91] In addition to the subsidiary nature of Article 14, which applies only if there is no other legal basis for finding that the French courts have jurisdiction, which is not disputed in this case.

the classic but little-applied mechanism of the Brussels I bis Regulation (...) Article 6 of the Regulation provides for a mechanism that is well known in private international law. (...) In both cases, it had to be inferred from Article 6 that, since the defendant was not domiciled in a Member State, jurisdiction was to be determined by French law (Art. 6(1)) and that **the Congolese national who had brought the action could rely, in so far as he was domiciled in France, on the rules of jurisdiction in force and in particular Article 14 of the Civil Code, which had been the subject of a notification by France under Article 76(1)** (Art. 6(2))". (**Exhibit 33**)

In short, the Court of Cassation, endorsed by a unanimous body of doctrine, confirms the interpretation upheld by the Plaintiffs from the outset of this case.

Article 14 of the Civil Code is therefore applicable to the Claimants, who are domiciled in France, and by the mere fact of that domiciliation, by application of Articles 4 §2 and 6 §2 of Regulation No 1215/2012.

4.3.2 The texts do not require that the proceedings be connected to French territory.

381. Certain Defendants claim that, in addition to requiring that the plaintiff be of French nationality, Article 14 of the Civil Code also requires that a connecting link between the proceedings and French territory be established.

However, as the two aforementioned judgments of the Cour de cassation demonstrate, this is not the case. Neither of those judgments requires the claimant, who relies on Article 14 of the Civil Code and Article 6(2) of Regulation No 1215/2012, to demonstrate such a connecting link.

4.3.3 The scope of Article 14 is not limited solely to "obligations contracted" by a foreign national towards the applicant.

382. Certain Defendants, including BLACKROCK FUND ADVISORS, claim that the application of Article 14 is limited to cases in which "*a foreigner is likely to be under an obligation to a French person*", and that its application is excluded if the summons does not make it possible to determine the content of such an obligation. They therefore argued that as Messrs Uzan had not demonstrated the obligation that would be incumbent on the defendants, Article 14 was inapplicable.

This is not the case.

383. As mentioned above, article 14 of the Civil Code is consistently interpreted broadly in case law. Thus, even though it refers only to *"obligations contracted"*, the Cour de cassation has extended its application to all property and non-property actions. Academic writers have noted that *"the hypothesis of 'contracted obligations' could legitimately be extended to delictual matters "*[92].

384. Both the summons and the summary submissions on the merits filed by the Plaintiffs demonstrate that the Defendants were liable in tort to the Plaintiffs.

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[92] B. Audit and L. d'Avout, *Droit international privé*, 7th edn, Economica, 2013, §421

some by fraudulently capturing and disposing of the Companies' assets, and others by acquiring dividend rights in place of the Plaintiffs through the acquisition of these assets in bad faith and with full knowledge of the unlawful nature of this fraudulent scheme that allowed these various misappropriations to take place outside any legal framework.

385. The argument is therefore inoperative.

4.3.4 The claims do not relate to enforcement measures ordered abroad or to real estate matters

386. Some of the Defendants rely on a line of case law that excludes the application of Article 14 of the Civil Code when the claims made relate to foreign enforcement procedures to conclude that Article 14 of the Civil Code does not apply in this case.

387. It should be noted that the cases which rule out the application of Article 14 in the case of enforcement measures are decided precisely when the claims made are aimed at challenging the enforcement measures themselves and are therefore intrinsically linked to an alleged infringement of the rules relating to such measures: action for conversion of a precautionary attachment into an enforcement attachment[93] ; action for cancellation of a precautionary mortgage constituted on a foreign[94] property ; claim for restitution of furniture seized abroad[95]..

In other words, where the claims relate to the implementation of the enforcement procedures themselves and therefore involve the procedural and substantive rules applicable to them, the case effectively falls within the sovereignty of the foreign State and justifies the latter's jurisdiction to hear it.

388. On the other hand, the claims made by Mr Uzan relate to the commission of fraud and abuse of rights, both by TMSF and by all the other Defendants.

As the action for non-existence and misuse of rights is an autonomous action based on a completely separate foundation from Turkish enforcement law, there is no reason to consider that its submission to the Paris Court would infringe the sovereignty of the Republic of Turkey.

389. European case law - applicable to the present case through Regulation 1215/2012 - also calls for a similar solution.

In a judgment of 9 December 2021, the Court of Justice of the European Union ruled on the interpretation of Article 22(5) of Regulation No 44/2001, which, like Article 24(5) of Regulation No 1215/2001, provides that :

"Only the courts of the Member State of the place of enforcement shall have jurisdiction, irrespective of domicile: (...) (5) in matters relating to the enforcement of judgments, the courts of the Member State of the place of enforcement.

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[93] Cass. 1re civ. 5 Feb 1962: JDI 1963, p. 144, obs. J.-B. S. - CA Paris, 8 Jan. 1971: Gaz. Pal. 1971, 1, p. 300, note R.S.
[94] TGI Lyon, 4 May 1993: D. 1994, p. 55, note by J.-P. Rémery.
[95] CA Paris, 18 Dec. 1996: Rev. crit. DIP 1998, p. 527, note by M. Santa-Croce

Ruling on the question whether proceedings brought for the restitution of sums wrongly received in the context of enforcement proceedings which were subsequently annulled fell within the exclusive jurisdiction of the courts of the State of the place of enforcement, the Court held that the aforementioned provisions had to be interpreted restrictively, i.e. that the jurisdictional rule in the aforementioned Article 22(5) was strictly confined to challenges to measures of enforcement of a judicial decision and was therefore inapplicable in the case of an independent judicial action.

The Court ruled that :

> *"An action the object of which is a claim for restitution based on unjust enrichment does not seek to have decided a dispute relating to the use of force, coercion or dispossession of movable and immovable property in order to ensure the material implementation of a decision or act, within the meaning of the case-law cited in the preceding paragraph. It is an autonomous action which, as such, is neither an enforcement procedure nor an appeal against such a procedure. It follows that such an action does not fall within the scope of Article 22(5) of Regulation No 44/2001, even if that unjust enrichment were to result from the annulment of a levy of execution.* "[96]

390. In this case, the jurisdiction of the French courts results from the reference made by Article 6(2) of Regulation No 1215/2012. This jurisdiction cannot therefore be called into question on the grounds that the action brought by Messrs UZAN simply *"follows"* an enforcement procedure.

In accordance with the aforementioned decision, an action for recovery of sums paid but not due is an "autonomous action which as such is neither an enforcement procedure nor an appeal against such a procedure".

The same necessarily applies to an action in tort based on the theory of non-existence derived from Turkish law.

The Claimants' action is therefore entirely independent of the procedural and substantive rules applicable to Turkish enforcement procedures, and therefore does not fall within the jurisdiction of the Republic of Turkey.

391. Finally, Zorglu and Izmiroglu argue that Article 44 of the Code of Civil Procedure, which provides that *"in matters relating to immovable property, the court of the place where the immovable property is situated shall have exclusive jurisdiction"*, *de facto* sets aside Article 14 of the Civil Code and that Article 12 of the Turkish Code of Procedure, which also provides that "*The court of the place where the immovable property is situated shall have exclusive territorial jurisdiction in disputes arising from rights in rem in immovable property [...]*", should be applied. They claim that the Turkish courts would have exclusive jurisdiction to rule on the transfer of (i) Zeytin Adasi, which is an island, i.e. a group of immovable assets, situated in Turkey, and (ii) Limas insofar as the port and the immovable assets located there are situated in Turkey.

392. This argument is inoperative: Mr Uzan's action is a tort action, not a real estate action. The fact that the assets that are the subject of the disputed transfers are immovable property has no impact on the classification of their action.

393. Article 14 of the Civil Code is therefore applicable to the entire dispute.

[96] CJEU, 9 Dec. 2021, aff. C-242/20, spec. §32

4.3.5 No fraud aimed at artificially giving jurisdiction to the French courts has been committed

394. The Defendants maintain that Mr Uzan committed a fraud aimed at artificially giving jurisdiction to the French judge, and that the Court should be declared incompetent on this ground. This is not the case.

395. Certain Defendants firstly criticise the Plaintiffs for having excluded from the case certain beneficiaries who received dividends in place of the Plaintiffs through the fraudulent transfer of the Companies' assets, on the grounds that they were domiciled in the European Union. In their view, this alleged "sorting" was an indication of fraud under Article 14, which should be punished.

396.

However, the attraction of only Defendants residing outside the European Union in the present proceedings is not the result of any fraud: it is merely the consequence of the pure and simple application of the rules of jurisdiction arising from Regulation No. 1215/2012, which *de facto* prevent the Plaintiffs from suing, before the French Court, the beneficiaries of fraudulent transfers domiciled within the Member States of the Union. Indeed, such parties could only be sued in the respective courts of the Member States where they are domiciled - which would moreover lead to a significant splintering of litigation and give rise to a risk of contradictory decisions.

It is much better administration of justice to bring only Defendants domiciled outside the Union (who, incidentally, are far more numerous than those domiciled within the Union) in a single proceeding.

Mr Uzan's alleged "selection" of the Defendants is therefore not indicative of any fraud.

397. Also in the Defendants' sights is the Plaintiffs' alleged lack of a direct and personal interest in bringing the action - which, for the Defendants, would be an additional reason to set aside the application of Article 14 of the Civil Code.

In this regard, the Defendants rely on a decision of the Cour de cassation of 22 February [200597] upholding an appeal decision which had ruled out the jurisdiction of the French court to hear an action brought by the French director of a foreign company seeking compensation for the loss suffered by the latter as a result of its waiver of the benefit of an arbitration award.

The facts of the aforementioned judgment in no way correspond to the case in point, as the Claimants suffered damage resulting from the deprivation and spoliation of their rights to dividends for the benefit of the economic beneficiaries and/or shareholders of the acquiring companies who received these dividends in place of the Claimants. This loss is the result of a fraud that deprived the Companies and shareholders who control these Companies of their right to dividends.
of action, as they were under the control of TMSF. These arguments are therefore inoperative, especially as the damage suffered by the Claimants is personal and distinct from that suffered by the Companies whose assets were fraudulently captured.

Furthermore, it should be remembered that the most recent case law of the Cour de cassation sets out that the only conditions for the application of Article 14 - coupled with Article 6(2) of the Brussels I bis Regulation - are (i) that the claimant is domiciled in France and (ii) that the defendant is domiciled outside the European Union.

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[97] Cass. 22 Feb. 2005, no. 02-10.481

The existence of a direct and personal interest in bringing an action must be assessed at the stage of admissibility of the action and not of the Court's jurisdiction.

In any event, and where necessary, express reference will be made to the discussion in section **6.2** below concerning the existence of the Plaintiffs' direct and personal interest in bringing the action.

398. Finally, the Consorts Kibar maintain that the fact that Messrs Uzan did not attempt to obtain compensation for the harmful consequences of the sale of STANDART ALUMINYUM before the Turkish courts is indicative of fraud - without it being clear how fraud would be demonstrated here.

399. In short, the Defendants have failed to show that the Plaintiffs committed any fraud intended to artificially confer jurisdiction on the French Court - and for good reason: the Plaintiffs' action is perfectly legitimate.

4.4 The Plaintiffs are domiciled in France and can therefore rely on article 14 of the French Civil Code.

400. Since leaving Turkey, Messrs UZAN have established the centre of their family, emotional, legal and property interests in France, having continuously, consistently and persistently demonstrated their intention to establish their domicile on French territory.

Their domicile in France is purely and simply indisputable, as will be shown below.

4.4.1 Mr Murat Hakan Uzan

401. Whether the Defendants like it or not, France is the country where Mr Murat Hakan UZAN has the centre of his interests.

Moreover, as the Defendants are plaintiffs in the objection of lack of jurisdiction and contest the domicile of Mr Murat Hakan UZAN in France, it is up to them to prove where, according to them, he could be domiciled, given that one can only be domiciled in one State. The Defendants do not prove - or even attempt to prove - that Murat Hakan UZAN is domiciled in a State other than France.

And with good reason, as he can demonstrate that his family, property, legal and medical interests are centred in France, where he has a permanent establishment.

402. **With regard to his family interests,** Murat Hakan Uzan's direct family lives in France:

- Mr Murat Hakan UZAN holds a residence permit in France, bearing the words "*vie privée et familiale" ("private and family life*"), for the purpose of reuniting his family in France (**Exhibit 1)**.
  This is required by law between 2014 and 2022 (**Exhibits 34 and 84**), and has been regularly renewed since then.
- His family is the subject of a group file at OFPRA (**Exhibit 86**) ;

- Her mother and sister, **Ms Melehat and Ms Aysegul UZAN**, reside permanently in France, where they arrived in 2014 (**exhibits 35 and 96**); their status as asylum seekers requires them t o reside [there98]. They have each opened a
  (**Exhibits 87 and 88**) and were vaccinated against Covid-19 in France (**Exhibits 89 and 90**) ;
- His brother**, Mr Cem Cengiz UZAN**, lives in France (see below);
- His ex-wife lived in France from 2014 to 2016, when they separated - the circumstance invoked by MOTOROLA that the marriage took place in Turkey
  is irrelevant, since this marriage took place before Mr Murat Halan UZAN arrived in France nearly ten years ago. It should also be noted that the divorce proceedings between Mr Murat Hakan UZAN and his ex-wife took place entirely before the French courts. It is also clear from the divorce judgment and decree that the minor child's residence was set at his father's home in Paris, with his mother being granted visiting and accommodation rights (the Family Affairs Judge even prohibited his leaving French territory without the authorisation of both parents! Then, having been educated at a boarding school abroad, he indicated that he *"returned to Paris to stay with his father during the school holidays"* (**exhibits 36 and 37**) - which clearly shows that it was in France that father and son met, and for good reason, since the father could not leave the country. Previously, this same child had attended school in the Paris region **(exhibit 38**). It does not matter that he has now reached the age of majority, since the evidence submitted in court shows that it was in France that he lived out his relationship with his father until he recently came of age;
- His youngest child, whom he had with his new partner, was born in France (**exhibits 40 and 42**), where he lives and goes to school (**exhibit 41**). He is of French nationality (**Exhibit**
  n°39). The Defendants' speculation that the child's residence in France would be justified by his mother's presence in Paris, but not by his father's, is moreover ridiculous given that the child's birth certificate shows the parents' joint domicile at 32 Avenue Foch - Paris [16ème] (**Exhibit 40**).

403. **With regard to his property interests**, Mr Murat Hakan UZAN does own real estate in France, contrary to what MOTOROLA maintains, and declares all his accounts in France.

- It has initiated two property claims, one before the Paris Court of First Instance concerning a flat at 32 avenue Foch, and the other before the Paris Court of First Instance concerning an apartment at 32 avenue Foch.
  Tribunal judiciaire d'Évreux concerning a château located at 33 Grande Rue in Chambray.
  The Paris Court upheld Murat Hakan Uzan's claim and recognised him as the owner of the property located on Avenue Foch (Exhibit 32); this judgment is currently under appeal. The Judicial Court of Évreux dismissed Mr Murat Hakan UZAN's claim in a judgment that has also been appealed (Exhibit 31);

[98] See point 4.4.3 below.

- He has also declared his income in France to the French tax authorities since 2017 as a French tax resident (**exhibits 43 and 44**);
- He is also the sole shareholder and declared beneficial owner of VERTU AK FRANCE, a French company with its registered office in Paris (**Exhibit 45**).

404. With regard to its legal interests :

- Mr Murat Hakan UZAN declares an address in France in all the disputes concerning him: in his divorce proceedings (**exhibits 36 and 37)**, in the property claim proceedings (exhibits 31 and 32) in the present proceedings, or
  in cases where Mr Murat Hakan UZAN, the victim, filed criminal complaints (**Exhibit 46**). He also declared an address in France in his *affidavits in the* context of proceedings in Singapore (**Exhibit 91**);
- MOTOROLA's own counsel acknowledged that Mr Murat Hakan UZAN was indeed domiciled in France. Thus, in her certificate dated 13 July 2017, Ms Sarah
  WALKER stated that: *"We understand from the Respondent's own affidavit in foreign proceedings that he has been seeking political asylum in France,* ***and there is good reason to believe that he is domiciled there****"* (**Exhibit 47, §103**)[99]. And another affidavit dated 13 December 2018 from Ms Sarah WALKER also states that *"Hakan arrived in Paris, France with his wife Ozlem Hanife Uzan, née Kizilkaya and their son, Ata, around September 2013. They live together at 32 Avenue Foch. Ozlem and Ata have since returned to Istanbul, but Hakan continues to reside at that address"* **(Exhibit 80, §14**)[100] ;
- In 2017, MOTOROLA itself sought and obtained permission from the High Court in the United Kingdom to serve all pleadings relating to English proceedings on
  Mr Murat Hakan UZAN in France! It should be emphasised that this is a special request for service by alternative means on Mr Murat Hakan UZAN's domicile in France, proof of which was provided by MOTOROLA to the English judge (**Exhibit 48**);
- On 20 April 2018, MOTOROLA served its writ of exequatur on Mr Murat Hakan UZAN before the Tribunal Judiciaire de Paris, expressly stating in the
  appearances the address in France at which he is "domiciled" (MOTOROLA states), without merely indicating "residing" at such and such an address (**Exhibit 49**) ;
- On 22 February 2019, MOTOROLA served a court order and notices on Mr Murat Hakan UZAN by means of a writ under Dutch law.
  France (**exhibits 50 and 92**). On 26 June 2023, MOTOROLA served a summons for the purposes of seizure and sale at the same address (**Exhibit 93**), this document having been served personally on MOTOROLA;
- The Republic of Turkey, the Turkish courts and the Turkish Embassy in Paris shall notify their decisions and acts to Mr Murat Hakan UZAN at his domicile in France.
  (**Exhibit no. 51**);

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[99] *"We understand from the Defendant's own attestations in foreign proceedings that he is an asylum seeker in France, and we have good reason to believe that he is domiciled there".*

[100] "*Hakan arrived in Paris, France, with his wife Ozlem Hanife Uzan, née Kizilkaya, and their son, Ata, around September 2013. They live together at 32 avenue Foch. Ozlem and Ata have since returned to Istanbul, but Hakan continues to reside at this address.*"

405. **With regard to his medical interests,** Mr Murat Hakan UZAN has systematically sought medical treatment in France since he settled there:

- He regularly attended the American Hospital in Paris and other medical institutes, as did the rest of his family (**exhibits 52 and 53**) - as part of a medical treatment programme.

  regular, long-term medical care;
- Mr Murat Hakan Uzan was vaccinated against Covid-19 in France and has a French health pass (**Exhibit 54**).

406. **With regard to the stability of** Mr Murat Hakan UZAN's **establishment** in France, the Pre-Trial Judge will note that :

- Mr Murat Hakan UZAN has not left mainland France since he moved there in 2014 and has not resided anywhere else, as his status as an asylum seeker makes it necessary for him to remain in France.

  the obligation to reside in France[101] (**exhibits 82 and 83**);
- He did take part in civic training under the Contrat d'Intégration Républicaine (Republican Integration Contract), which also attests to his desire to settle in France (**Exhibit 55).**

  and 85);
- He pays his energy bills there (**Exhibit 56**) ;
- He has loyalty cards (**exhibit 57**) and an RATP transport card (**exhibit 58**).

407. Mr Murat Hakan Uzan is therefore undeniably domiciled in France.

408. Put in difficulty by the detailed and concordant evidence of Mr Murat Hakan UZAN's centre of interests in France, MOTOROLA will stop at nothing to try and discredit him in the eyes of the Pre-Trial Judge, who will not be taken in.

MOTOROLA also stated that Mr Murat Hakan UZAN had used various aliases or assumed identities in the past. According to MOTOROLA, this simple fact - which is very strongly contested - should lead the Pre-Trial Judge to consider Mr Murat Hakan UZAN as a kind of elucidator, and not to give any credence to the numerous and concordant elements attesting to his domicile in France.

Firstly, MOTOROLA's production of these forgeries constitutes serious misconduct.

Secondly, the false documents produced by MOTOROLA are totally irrelevant and have absolutely no bearing whatsoever on proof of domicile in France, in addition to the fact that these documents relate to a period prior to the establishment of domicile in France. Assuming that these identity documents are genuine (which they are not), and this is very strongly contested, their existence adds nothing to the debate on proof of domicile and serves only to undermine the claimant's credibility.

[101] See point 4.4.3 below.

Mr Murat Hakan UZAN has filed a complaint against MOTOROLA for forgery, use of forgeries and attempted fraud in relation to the fabrication of the false identity documents attributed to him (**exhibit 59**).

In any event, these false documents in no way prove that Murat Hakan UZAN is established outside France. It should be noted that in the context of other proceedings involving MOTOROLA, these arguments were rightly accepted by the Paris Court, as set out below.

4.4.2 Mr Cem Cengiz Uzan

409. Like his brother, Mr Cem Cengiz UZAN has his centre of interests in France.

410. With regard to his family interests :

- It has already been demonstrated that the mother, sister and brother of Mr Cem Cengiz UZAN resided in France;
- He has been married to a French national, and not a Monegasque national as MOTOROLA claims, Mrs Fanny Blanchelande, since 2012 (**exhibits 60 and 61**).
  - MOTOROLA's speculations, repeated by the other Defendants, about the alleged continued residence of MOTOROLA and her husband in Monaco are irrelevant, especially as they are only supported by four undated photographs published on Mr Cem Cengiz UZAN's Instagram account in 2014, 2016 and 2017!
- It was in France that he initiated divorce proceedings against his ex-wife, and it was again from France that an investigation was opened against her for
  (Exhibit **62**) *"Abduction of minors by ascendant, with the circumstance that the minors concerned were retained outside the territory of the Republic, to the detriment of Cem UZAN (minors concerned: R. UZAN, born on 23/08/1999 and J. UZAN, born on 29/08/2003, who have their habitual residence in France)".*

411. **As far as his medical interests are concerned**, Mr Cem Cengiz UZAN carries out his health monitoring and his most important operations in France:

- He regularly attended the American Hospital in Paris and other medical institutes (**Exhibit 63**).
- He has had a Carte Vitale since 7 July 2016 (**Exhibit 64**).
- He was vaccinated against Covid-19 in France and has a French health pass (**Exhibit 65**).

412. With regard to the stability of Mr Cem Cengiz UZAN's establishment in France, it should be noted that :

- He arrived in France in 2009 and has not lived anywhere else since (**exhibits 2 and 66**),

- He pays his energy bills there (**exhibits 67 and 68**) and has taken out telephone and Internet subscriptions with Orange and Free (**exhibit 69**).

413. Messrs UZAN are therefore undeniably domiciled in France within the meaning of Article 102 of the French Civil Code.

4.4.3 On the domicile of applicants in France under aliens law and its consequences

414. In addition to the above, Mr UZAN's status under the law governing foreign nationals means that they are permanently resident in France.

Mr Murat Hakan Uzan has been an asylum seeker since his arrival in France in 2014, while Mr Cem Cengiz Uzan has been a beneficiary of subsidiary protection since 23 May 2013.

a) **Concerning Mr Murat Hakan UZAN, asylum seeker :**

415. The asylum procedure necessarily presupposes that the person concerned is domiciled on French territory throughout the examination of the application - so much so that the State has a positive obligation to provide the means to reside in France to foreigners who do not have it.

Article R. 551-6 states that: *"Asylum seekers are required to reside in the region in which they are domiciled for the duration of the procedure for examining their asylum application"*.

Mr Murat Hakan UZAN is therefore formally obliged to reside in Île-de-France because of his status as an asylum seeker. Contrary to MOTOROLA's assertion, he has perfectly demonstrated that he was an asylum seeker and has produced the receipts for his asylum application and the safe conduct document issued on his arrival by the Border Police (**exhibits 34 and 81**).

In the same way, Mr Cem Cengiz UZAN was formally obliged to have his permanent residence there between his arrival in 2009 and the grant of subsidiary protection in 2013 - although this grant did not allow him to settle permanently in another State, as the following will show.

b) **With regard to Mr Cem Cengiz UZAN, beneficiary of subsidiary protection :**

416. Mr Cem Cengiz UZAN has demonstrated that he has regularly renewed his applications to OFPRA since his arrival in France in 2009 (**exhibit 70**).

417. Residence on French territory is an essential condition of subsidiary protection status, since :

- On the one hand, the renewal of the beneficiary's multi-annual residence permit could be called into question if he were to settle in another State (residence in France being, moreover, a condition for this residence permit to be converted into a resident's card, which Mr Cem Cengiz UZAN has (**Exhibit 66**) ;

- Secondly, the beneficiary's movement outside the host country is strictly controlled by a travel document. It is precisely because of this travel document that Mr Cem Cengiz UZAN was able to travel to Monaco from time to time, without this meaning that he is permanently resident there.

In other words, if Mr Cem Cengiz UZAN established his permanent residence elsewhere than in France, he would risk losing the benefit of subsidiary protection. Article L. 512-3 paragraph 1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile states that :

> *"The French Office for the Protection of Refugees and Stateless Persons shall, on its own initiative or at the request of the administrative authority, terminate the grant of subsidiary protection when the circumstances which justified the grant of this protection have ceased to exist or have undergone a sufficiently significant and lasting change such that it is no longer required.*

Thus, while movement outside national territory is unrestricted (article L. 414-2 of the CESEDA), since residence in France is a condition for the granting of protection, any departure from France by the person concerned could lead OFPRA to refuse to renew the permit or to demand that the permit be withdrawn if the beneficiary fails to continue to meet the conditions for its issue.

Therefore, if Mr Cem Cengiz UZAN had been living permanently in Monaco for years, he would have lost his asylum status a long time ago.

418. In a consultation dated 17 February 2015 produced on the occasion of an investment arbitration between Mr Cem Cengiz UZAN and the Republic of Turkey (**Exhibit No. 71**), Professor Pascal Beauvais also had occasion to confirm that he could be considered a person permanently resident in France under French law, insofar as:

(i) Subsidiary protection means that the beneficiary must be permanently present on the territory of the granting State, having severed all links with his or her State of origin.

(ii) The factual situation of Mr Cem Cengiz UZAN reflects a primary attachment to French territory: he has lived in France continuously since 2009, has a family home with his French wife in Paris, has stable resources of his own sufficient to meet his needs, carries out all his activities from Paris and declares his income in France.

The Defendants are therefore vainly trying to make the Pre-Trial Judge believe that the Plaintiffs are domiciled elsewhere than in France.

4.5 Whether there has been any breach of the principle of non-discrimination or of the Defendants' right to a fair trial

419. Some of the Defendants argue that the combined application of Article 14 of the Civil Code and Article 6 §2 of Regulation No. 1215/2012 would infringe their right to a fair trial and the principle of non-discrimination, protected by Articles 6 and 14 respectively of the ECHR.

In substance, these Defendants claim that the combined application of these rules "*would place French nationals and foreign nationals domiciled in France in a situation which enables them to bring proceedings before a French court without any link with the forum, and to enjoy extremely broad and facilitated enforcement powers, without a foreign national domiciled outside the European judicial area enjoying similar powers vis-à-vis a French national or a foreign national domiciled in France" and would therefore make it possible to bring proceedings against them before a court.*
"Inequitably competent".

420. This criticism does not find the slightest echo in positive law, the state of which is expressed with the greatest clarity by the judgment of 29 June 2022 of the Court of Cassation, according to which *"Article 6(2) of the Brussels I bis Regulation allows a foreigner to rely on Article 14 of the Civil Code, on the* ***sole condition*** *that he is domiciled in France and that the defendant is domiciled outside a Member State of the European Union "*[102].

In this respect, the judgment of 13 May 1976 cited by certain Defendants[103] does not have the meaning that they attribute to it. The Defendants deduce from this decision that, from Article 6, the requirement of an equitably competent judge follows, which implies that the international jurisdiction of a court depends on the existence of a sufficient link between the dispute and the court seised. In other words, according to the Defendants, Article 6 of the ECHR expressly reintroduces the requirement of a connecting link between the dispute and the territory of the court seised.

However, this is simply a decision in which the European Court of Human Rights ruled that the British courts had not breached the right to a fair trial by agreeing to hear a family dispute because there were sufficient links with the United Kingdom.

This is a far cry from the positive requirement of a connecting link between the dispute and the court seised, as presented by the Defendants...

Commenting on this judgment, one author considers that "it is difficult to deduce that a State would be committing an excess of jurisdiction incompatible with the right to a court if its courts were to hear a case with no or insufficient connection with the forum".[104]

421. It should also be noted that the Cour de cassation refused to refer to the Conseil constitutionnel a question prioritaire de constitutionnalité relating precisely to the alleged infringement of the right to a fair trial and the principle of equality by Article 14 of the Civil Code[105].

422. In any event, and as will be shown below, the Pre-Trial Judge of the Court of Appeal has already rejected such an argument relating to the allegedly discriminatory nature of the application of Article 14.

4.6 In any event, the Pre-Trial Judge has already accepted the reasoning of the Claimants

423. In any event, in a separate case involving exactly the same arguments as those discussed here, the Juge de la Mise en Etat considered the Paris Tribunal Judiciaire

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[102] Cass. 1st Civil, 29 June 2022, no. 21-10.106 (published in the Bulletin), cited above.
[103] Commission EDH, 13 May 1976, B.A. v. United Kingdom, req. 6200/73.
[104] Marchadier, Fabien. "L'indifférence de la Cour européenne des droits de l'homme à l'égard du for de nécessité. (ECHR, gr. ch., 15 March 2018, no. 51357/07)", *Revue critique de droit international privé*, vol. 3, no. 3, 2018, pp. 663-670.
[105] Cass. 1 st civ. 29 Feb. 2012, no. 11-40.101

competent, on the dual basis of Article 14 of the Civil Code and Article 6 §2 of Regulation 1215/2012, to rule on the claims for compensation made by Mr Murat Hakan Uzan against MOTOROLA (**Exhibit 72**).

It ruled that :

- As Article 14 of the Civil Code is one of the provisions notified to the Commission pursuant to Article 6(2) of Regulation No 1215/2012, **a foreign national may rely on Article 14 of the Civil Code on the sole condition that he is domiciled in France and that the defendant is domiciled outside a Member State of the European Union**, regardless of whether there is any other element connecting the proceedings to French territory;

- **MOTOROLA's arguments concerning the discriminatory nature of the application of this provision** in a dispute between a foreigner domiciled in France and a French citizen. to a foreigner domiciled in a third country, for a dispute with no connection to France, **were therefore irrelevant**;

- If it were appropriate to reserve the case of fraud intended to artificially give jurisdiction to the French court in order to remove the debtor from his natural courts, **the MOTOROLA did not prove that the Plaintiffs had acted fraudulently**;

- Mr Murat Hakan Uzan's claims for compensation did not arise from the enforcement measures that MOTOROLA had taken in Singapore, **but rather were based on an independent fault committed by the latter, and that it was therefore an autonomous action**, the examination of which by the French courts did not infringe the sovereignty of the State of Singapore;

- It is for the plaintiff to show that the plaintiff on the merits is not domiciled where he claims to be; and that

- **Mr Murat Hakan Uzan demonstrated perfectly well that he was domiciled in France**, without MOTOROLA being able to prove the contrary, and without the allegations made by MOTOROLA being substantiated.
  MOTOROLA's completely abusive and unfounded claims regarding its alleged use of false identities do not alter this in any way.

The reasoning of the Pre-Trial Judge in that case is perfectly transposable to the present proceedings.

The Pre-Trial Judge will therefore be asked to reject all of the Defendants' objections to jurisdiction and to rule that the Paris Court has jurisdiction to hear the Plaintiffs' action.

5. THE LEGALITY OF THE SUMMONS

424. In their written submissions, BLACKROCK and DIMENSIONAL FUND ADVISORS argue that the writ of summons is invalid due to a lack of purpose that prevents the defendants from defending themselves.

effectively and t h a t service of the summons on DIMENSIONAL FUND ADVISORS was irregular.

425. Under article 115 of the Code of Civil Procedure :

> *"the nullity is covered by the subsequent regularisation of t h e act if n o preclusion has occurred and if the regularisation does not leave any grievance*.

426. Thus, the nullity of an irregular procedural document may be retroactively covered provided that the rectification of the document (i) eliminates the defect, (ii) no foreclosure has occurred in the meantime, and (iii) no grievance remains.

427. As regards the condition that the claim is not time-barred, the Cour de cassation considers that the writ of summons, even if it is defective in substance, has an interruptive effect[106] . Accordingly, a writ of summons, even if unlawful, interrupts the limitation period and the claim can be put right until the court has given its ruling[107].

428. The case law has also specified that the regularisation of the writ of summons before the pre-trial judge may be effected "*by an act of the same nature and scope, either, in the case of the writ of summons, by a* ***new writ of summons or by submissions on the merits before the court within the*** *meaning of Article 753 of the Code of Civil Procedure* "[108].

429. In the present case, the summons was put in order by the Plaintiffs in their submissions on the merits before the Pre-Trial Judge gave his ruling, so the plea of nullity based on the alleged lack of purpose of the summons is irrelevant.

430. The Plaintiffs' submissions on the merits unambiguously set out the facts and legal basis of the claims against all of the Defendants, including BLACKROCK and DIMENSIONAL FUND ADVISORS.

431. The latter are therefore being sued before the Paris Court of First Instance for compensation for the non-contractual loss suffered by the Claimants as a result of the non-existence of the fraudulent acts taken by TMSF- gestionnaire, which entails the retroactive annulment of all subsequent acts, including the transfer of assets of which they are the direct and/or indirect beneficiaries, namely :

- BLACKROCK FUND ADVISORS, Standart Cimento, Edirne Lalapasa Cement and Ladik Cement;
- DIMENSIONAL FUND ADVISORS, Edirne Lalapasa Cement and Standart Cimento.

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[106] Cass. Civ. 1ère, 11 March 2015, no. 14-15.198.
[107] Cass. Civ. 2nd, 1 June 2017, no. 16-14.300.
[108] TGI Paris, 12 May 2016, no. 15/16518.

432. Accordingly, the loss for which the Claimants seek compensation, on the basis of an action for non-existence under Turkish law, corresponds to the fraudulent collection by BLACKROCK and DIMENSIONAL FUND ADVISORS, in their capacity as direct and/or indirect shareholders or partners of the companies that sold the aforementioned assets (**exhibits 94 and 95)**, of the profits made by the aforementioned companies and, in particular, of the income (dividends) derived from the exploitation of these assets in place of the Claimants.

433. The submissions on the merits thus remove the complaint that the summons was irregular on the basis of its alleged lack of purpose, BLACKROCK and DIMENSIONAL FUND ADVISORS being perfectly capable of understanding the nature and basis of the claims made against them.

434. With regard specifically to DIMENSIONAL FUNDS ADVISORS, the defendant is attempting to rely on the nullity of the service of the summons on the grounds that the document was delivered to a person who was not authorised to receive it on its behalf, without justifying any grievance.

435. However, in accordance with the case law of the Cour de cassation, the provisions of article 654 of the Code of Civil Procedure, which provide that "*service on a legal person is made in person when the document is delivered to its legal representative, to an authorised representative of the latter, or to any other person authorised for this purpose*", are only prescribed on pain of nullity if the party claiming an irregularity can prove the prejudice it causes[109].

436. This solution was recently reiterated by the Paris Court of Appeal in a ruling dated 16 June 2022 :

> *"According to case law, the provisions of article 654 are only sanctioned by nullity if their violation has caused harm to the party invoking them* "[110].

437. Accordingly, in the absence of any evidence that the alleged irregularity of service caused it any harm, the defendant, who appeared in court and was perfectly capable of defending itself by filing incidental pleadings, cannot validly rely on the nullity of the summons.

438. Consequently, the Pre-Trial Judge can only reject the plea of nullity.

The Pre-Trial Judge can only reject the objection of nullity raised by BLACKROK and DIMENSIONAL FUND ADVISOR.

6. ADMISSIBILITY OF THE NON-EXISTENCE ACTION

6.1 On the absence of a limitation period for the non-existence action

[109] Cass. Civ. 2ème, 16 July 1982, no. 81-11.174.
[110] Paris Court of Appeal, 16 June 2022, no. 22/01186.

439. All of the Defendants claim that the Plaintiffs' action is time-barred under both French and Turkish law. This is not the case and these claims are perfectly admissible.

440. In addition, as explained above, in order to rule on this objection, the Pre-Trial Judge will necessarily have to rule on the question of the law applicable to the limitation period, which is considered by the French courts to be a substantive issue that does not fall within the jurisdiction of the Pre-Trial Judge.

441. As a result, the Pre-Trial Judge can only refer this dismissal back to the bench.

6.1.1 Law applicable to limitation periods

442. Under the terms of Article 2221 of the Civil Code, which enshrines a solution established by case law under the law prior to the Law of 17 June 2008 :

"Extinctive prescription is subject to the law governing the right which it affects".

443. More generally, both the doctrine and contemporary case law reject the idea that the law of the forum has jurisdiction to govern the pleas of non-receivability which are extinctive prescription and the limitation period[111].

444. Professor Laurence Usinier notes that "In French private international law, the linking of prescription to the lex causae is a relatively old solution in the case-law and is now explicitly enshrined by the legislature in article 2221 of the Civil Code. It is supported by the majority of legal writers "[112].

445. Professors Bernard Audit and Louis d'Avout are also in favour of the jurisdiction of the substantive law, noting that "French case-law has generally made prescription and limitation periods subject to the law which governs the right: thus the prescription of actions of status to the personal law, that of actions for nullity to the law of the contested act, **those of contractual and extra-contractual actions to the law of the obligation** (...) "[113].

446. Thus, in matters relating to tort, delict or quasi-delict, case law links the limitation period to the law applicable to the tort, delict or quasi-delict.

447. The Cour de cassation has held that, "in French private international law, unless there is an international agreement to the contrary, **the extinctive prescription of an obligation is subject to the law governing that obligation** "[114].

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[111] A. HUET, JCl. Procédure Civile, Fasc. 2000-25, §89 et seq.
[112] L. USINIER, Répertoire de droit international, Dalloz, 2014, §79.
[113] B. AUDIT and L. D'AVOUT, Droit international privé, 7th edn, Economica, 2013, §502.
[114] Cass. Civ. 1ère, 8 February 1983, no. 81-14.573.

448. Similarly, the Paris Court of Appeal recently held, in no uncertain terms, that "the limitation period for legal proceedings is subject in French private international law to the law applicable to the substance of the case "[115].

449. Consequently, as regards the action in tort necessarily arising from the non-existence of the acts in question, the law applicable to the merits is the law governing the action in non-existence - i.e. Turkish law.

450. Consequently, it is Turkish law that governs the limitation period for the non-existence action brought by the Claimants.

451. Furthermore, the Claimants note that TMSF, BLACKROCK FUND ADVISORS and VODAFONE GROUP, SABANCI, SAHENK, IZMIROGLU, ZORLU, KIBAR and KONUKOGLU,
Ms Sulun ILKIN, Ms Belgin EGELI, Ms Fatma Meltem GUNEL, Ms Cigdem SABANCI BILEN, Ms Suzan SABANCI DINCER and Mr Mehmet Mustafa BUKEY also agree that the law applicable to the merits and to the limitation period is Turkish law.

The Pre-Trial Judge can only find that Turkish law is the law governing the limitation period applicable to Mr Uzan's claims.

6.1.2 On the provisions of Turkish law on the limitation period for actions for non-existence

452. The Claimants maintain that all the acts taken by TMSF which led to the deprivation and spoliation of dividend rights by means of the fraudulent appropriation of the Companies' assets followed a process as described below, namely :

- The violation, deprivation and spoliation of the rights to dividends of the shareholders of the Companies, protected by law, for the unlawful benefit of the shareholders and/or economic beneficiaries of the purchasers of the assets who received these dividends in place of the Claimants;
- The use and abuse by TMSF of its status as manager of the Companies and representative of the shareholders outside the legal framework governing these functions in order to misappropriate the assets of the Companies.
  Companies and the amount resulting from the sale of these assets with the sole aim of stripping these Companies and their shareholders' rights to dividends for the illicit benefit of TMSF and the shareholders of the acquiring Companies;
- The undermining of these Companies and their shareholders' rights to dividends through the misappropriation of the Companies' assets and the amount resulting from the sale of these assets in the absence of
  of the smallest claim;
- The acceptance of payment orders in the name of the Companies, without any dispute to their detriment and to that of their shareholders in the absence of an established claim against the Companies.
  Companies ;
- TMSF's multiple roles have enabled it to act both as a claimant, in its capacity as guarantee fund, and as a defendant, in its capacity as manager of the Companies and of the guarantee fund.
  shareholders' representative, thereby violating the adversarial principle, in order to alienate all

[115] CA Paris, 19 November 2021, RG no. 16/22163.

opportunities for companies and their shareholders to assert their rights and take legal action to protect themselves against this savage stripping.

453. These acts infringe fundamental rights and freedoms, including the right to a fair trial, the right to a judge and to an effective remedy, the prohibition of discrimination and the right to protection of property, protected by the European Convention on Human Rights, so that these acts, and subsequent acts, must be deemed non-existent under Turkish law.

454. Given the seriousness of the breach on which the action is based, the non-existence action is not subject to any limitation period and may be brought at any time.

455. Professor Ahmet Turk clearly states in his legal opinion that the action under Turkish law for non-existence is not subject to any statute of limitations (**Exhibit 73**) :

- "In *Turkish law, acts lacking a legal basis ("Butlan") have no legal effect, as they are deemed non-existent;* ***there is no statute of limitations for acts lacking a legal basis***;

- *"A contract subject to the sanction of non-existence cannot become valid with the consent of the parties or the performance of acts. Consequently,* ***an action for non-existence is imprescriptible. Even if the cause of non-existence disappears***".

456. Consequently, the non-existence action brought by the Plaintiffs is not subject to any limitation period and is therefore perfectly admissible.

457. On the other hand, a claim for compensation for loss arising from an act that is deemed to be non-existent is subject to the statute of limitations. Nevertheless, Professor Ahmet Turk points out that on this point the judgment declaring that the disputed act does not exist is the starting point for the limitation periods relating to the corresponding action for compensation:

- "When an *act that lacks a legal basis is declared absolutely null and void (inexistent), the circumstance that prevented the limitation period from running disappears and* ***the limitation periods begin to run again.***
  begin to run from the date of this judgment";

- *"In other words, the starting point for any limitation period is the date of the final judgment handed down by a court declaring an act to be non-existent,*
  because it has no legal basis".

458. The starting point for the limitation period applicable to a claim for compensation for loss resulting from a non-existent act is therefore the date on which the court decision declaring the act non-existent is handed down.

459. This is the position adopted by the Turkish Court of Cassation (Yargıtay), which ruled in a judgment of 9 March 1955:

> *"if the pledge on the property securing the loan is annulled because the creditor's act is manifestly unfounded, thereby rendering the contract non-existent,* ***the time limit within which the claim must be lodged is the same as that for the claim on the property.***

This period begins to run on the date of the decision annulling the pledge on the grounds that it does not exist "[116].

460. Therefore, as Professor Ahmet Turk points out, under Turkish law, two limitation periods may apply to actions for damages:

> *"The limitation periods applicable to an action for compensation for damage caused by a non-existent act are as follows:*
>
> *Where the claimant is seeking compensation in tort, the limitation period is 2 years from the date of the final judgment handed down by the court declaring the act to be non-existent.*
>
> *Where the claimant seeks compensation on a basis other than tort, the limitation period is extended to 10 years from the date of the final judgment handed down by the court declaring the act to be non-existent*.

461. However, regardless of the basis of the present claim for compensation, the limitation period for this action will only begin to run from the date of the final judgment in the case.

462. In the light of the foregoing, neither the action for non-existence nor the subsequent action for damages is time-barred under Turkish law.

6.1.3 In this case, on the absence of a statute of limitations

463. As the action for non-existence brought by the Plaintiffs is, in accordance with Turkish law applicable to the merits, imprescriptible, this action cannot in any event be time-barred.

464. As regards the claims for damages arising from the non-existence of the acts taken by TMSF and all subsequent acts, the limitation period applicable in tort has not yet begun to run.

465. Also, contrary to the Defendants' assertion, the Plaintiffs' action is in no way time-barred.

466. On the contrary, the limitation period for the claims for compensation made in these proceedings will only begin to run once a final judgment has been handed down ruling on the non-existence of the acts taken by TMSF-gestionnaire.

As the action for non-existence brought by the Plaintiffs is not time-barred, the Pre-Trial Judge can only dismiss the Defendants' plea of non-receivability based on the statute of limitations.

6.2 Interest and standing

[116] Consultation of Professor Dr. A. TURK, p. 5, Exhibit 73.

467. All of the Defendants maintain that Mr Uzan's action is inadmissible on the grounds that the Plaintiffs do not have an interest or standing under French law.

468. However, as will be shown, the admissibility of the Turkish law action for non-existence brought by the Claimants must be determined in the light of Turkish law, which authorises any person with a legal interest to bring such an action and to make claims for compensation on that basis.

469. The Defendants, with the exception of TMSF and MOTOROLA, also seek to rely on their alleged lack of interest and standing to defend, even though they knowingly took advantage of the unlawful opportunity offered to them by TMSF in order to benefit from the distribution of substantial dividends in place of the Plaintiffs, and consequently used their companies and gave their approval to the disputed transfers in full knowledge of the unlawfulness surrounding these transfers and of the entire process of fraudulently dispossessing of the Plaintiffs' dividends.

470. That being the case, in order to rule on the grounds of lack of interest and standing on the part of the Plaintiffs and lack of interest and standing on the part of the Defendants, the Pre-Trial Judge would necessarily have to rule on the question of applicable law and interpret the elements of Turkish law relating to the theory of non-existence. However, as explained above, the determination of the applicable law and the interpretation of foreign law are substantive issues that fall outside the jurisdiction of the Pre-Trial Judge.

471. As a result, the Pre-Trial Judge can only refer these claims to the bench.

6.2.1 On the law applicable to interest and standing to sue and defend

472. In the context of a dispute with a foreign element, the law of the forum is, as a matter of principle, the applicable law in procedural [matters117] . However, there are exceptions to this principle, as in the case of limitation periods.

473. However, no text designates the competent law with regard to the system of legal proceedings, the conditions under which they may be instituted and the grounds on which they may be extinguished, in particular interest and standing to bring an action.

474. On this point, the majority of legal writers, supported by eminent authors, maintain that the determination of the applicable law must depend on whether the procedural rule at issue is procedural or substantive. According to this doctrine, the hybrid nature of the action, both processual and substantive, should lead to the application of the law of the forum when the condition is primarily processual in nature and to the law of the substance when it is substantive in nature.

475. Referring to the work of Professors Henri Moluski, François Terré, Dominique Holleaux, Jean Foyer and Géraud de Geouffre De La Pradelle, Professor André Huet confirms "*that the intermediate position of the action must command multiple qualifications of the various conditions of existence*

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[117] Cass. Civ [1ère], 22 February 1978, no. 77-10.109; Cass. Civ [1ère], 4 November 2009, no. 08-20.355.

of the right of action: ***depending on whether a particular condition is primarily procedural or substantive, it will be governed by the lex fori or by another law***". [118]

476. This argument has also been implemented by the Cour de cassation, which has ruled that "the requirement of a born and present interest is dictated, **because of its procedural nature**, by the law of the forum "[119].

a) On the law applicable to the interest to act

477. In this case, the defendants argue that Mr Uzan has no direct and personal interest in bringing the action and no legitimate interest in bringing it, wrongly assuming that the law applicable to these elements of interest in bringing the action is the law of the forum, i.e. French law.

478. Nevertheless, with regard to the direct and personal interest in bringing an action, although the question has not been settled by case law, Professor Laurence Usinier maintains that the direct and personal interest falls within the scope of the substantive law by virtue of its primarily substantial function of protecting the parties, i.e. avoiding the interference of third parties in the parties' affairs.

479. Professor Usinier thus argues that this substantial nature should lead to the retention of "the jurisdiction of the lex causae in matters of direct and personal interest in bringing proceedings, since the condition is at the very least linked, if not confused, with that of standing, which is unquestionably a matter for the substantive law "[120].

480. In the present case, as will be shown below, the determination of an interest in bringing an action for non-existence is, as Professor Ahmet Türk points out in his opinion, open to any person with a legal interest. Turkish legal writers consider that, when an action for non-existence relates to decisions taken by the general meeting of a limited company, the expression
The term "any person having a legal interest (all interested parties)" should be understood as referring to certain categories of persons only, such as shareholders, creditors, the board of directors, individual members of the board of directors, etc. (**Exhibit 73**).

481. Consequently, the interest in bringing an action for non-existence of an act is necessarily confused with standing to bring an action and must therefore be governed by the law of the case, in this case Turkish law.

482. Furthermore, with regard to the claimant's legitimate interest, there is a consensus in the legal literature that the requirement of a legitimate interest to bring an action, in the sense of a "*legally protected legitimate* interest", is a matter of substance and must therefore be subject to the law of the case. In this sense:

- Professor Laurence Usinier argues that "the requirement of a legitimate interest to act (...) is indisputably a matter of substance, so that it must be subject to the lex causae. There is a relative

[118] A. Huet, JurisClasseur Droit international, Fasc. 582-10: Procédure civile et commerciale dans les rapports internationaux

(DIP). - Competence of the lex fori. - Domaine de la lex fori : action en justice, 2018, p. 30 (referring to the works of : H. Motulsky; F. Terré; D. Holleaux, J. Foyer and G. Geouffre de La Pradelle).

[119] Cass. Civ. 1ère, 4 December 1990, no. 89-14.285.

[120] L. Usinier, Dalloz, Répertoire de droit international, Action en justice, 2021, p. 31.

consensus on this point, which is perfectly logical given that this condition is unanimously criticised as a vestige of the past confusion between right and action and would in fact relate to the legitimacy of the substantive right claimed "[121] ;

- Professor André Huet also states that "The law of the forum must be disregarded if, as has been done in the past, legitimate interest is understood to mean 'legal' interest or 'legitimate' interest.
  legally protected', i.e. the interest based on a right, which has no processual character "[122] ;

- Similarly, Professor Sandrine Clavel states that "in the absence of a solution in the case law, the doctrine considers that the condition of legitimacy of the interest to act should be defined by consideration of the law applicable to the substance, because of the close link between it and the substance. (...) it is for the procedural law to say whether the requirement of legitimacy of the interest applies; but in order to assess that legitimacy, it is necessary to take account of the law applicable to the substance of the law. "[123] ;

483. The doctrine is therefore unanimous that the law applicable to the legitimacy of the interest to act, which corresponds to the legal interest to act, is the substantive law.

484. In this case, the law applicable to this condition is none other than Turkish law, which governs the non-existence action brought by the Plaintiffs.

b) The law applicable to standing to sue and defend

485. The defendants also argue that Mr Uzan lacks standing to bring an action, on the basis of French case law, which is inapplicable in this case, and that their loss is not distinct from that suffered by the Companies. Consequently, the Plaintiffs' action should be analysed as the exercise of the social action reserved for the Company alone. Contrary to what the defendants would have us believe, the applicable law in terms of standing to sue is not French law, but Turkish law.

486. This is acknowledged by Consorts KIBAR in their written submissions.

487. The majority of authors consider that standing to sue is determined by reference to the substantive law, thus applying the doctrine according to which the determination of the law applicable to the conditions of the action depends on the substantive or procedural nature of the condition in question. In this sense :

- Professor André Huet considers that "*the substantive character prevails - and consequently the* ***law of the forum is excluded by the substantive law*** *-* ***as regards standing to sue****. (...) it*
  it is often said that in private international law it ***[standing] concerns the substance of the law*** *(...).*

[121] L. Usinier, Dalloz, Répertoire de droit international, Action en justice, 2021, p. 32.
[122] A. Huet, JurisClasseur Droit international, Fasc. 582-10: Procédure civile et commerciale dans les rapports internationaux (DIP). - Competence of the lex fori. - Domaine de la lex fori : action en justice, 2018, p. 56.
[123] S. Clavel, Dalloz, Hypercours, Droit international privé, 2021, p. 504.

This characterisation should exclude the application of the law of the forum (…) and order the application of the lex causae "[124] ;

- Similarly, Professor Laurence Usinier maintains that "*the substantive nature of the requirement [standing] is marked (...), insofar as standing appears fundamentally as a means of exercising subjective rights. (...).* ***The jurisdiction of substantive law in this area is*** *therefore* ***logical and is unanimously supported by legal writers*** "[125] ;

- Professor Thierry Vignal also points out that "*insofar as it is traditionally considered that only the person who claims to be the holder of the subjective right has standing to bring an action, it is not a question of the person who claims to be the holder of the subjective right. is not a procedural matter: it is* ***subject to the substantive law*** "[126] ;

- This view is also supported by Professor Sandrine Clavel, who states that "*In all cases, the basis for granting standing is essentially substantive (...).* ***Doctrine and case law*** *therefore* ***tend to consider that standing to sue should be governed by the law applicable to the substance of the law****, rather than by the procedural law of the forum* "[127].

488. The doctrine is therefore unanimous in rejecting the general application of the law of the forum to standing to sue on the basis of a personal interest.

489. Case law has thus made standing to sue subject to the substantive law in a number of different situations:

- The capacity of collaterals of one of the spouses to bring an action for nullity of the marriage depends on the law governing the condition of validity that has been breached[128] ;

- The status of collaterals of the person who has acknowledged a natural child in order to challenge the acknowledgement is governed by the national law of the person who has acknowledged the child and of his collaterals[129] ;

- The capacity to bring an action for nullity of a disguised gift made by the deceased to his or her spouse is governed by the law of succession[130] ;

- The capacity of the adopter to apply for the nullity of the adoption is subject to the law governing the adoption131 ;

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[124] A. Huet, JurisClasseur Droit international, Fasc. 582-10: Procédure civile et commerciale dans les rapports internationaux (DIP). - Competence of the lex fori. - Domaine de la lex fori : action en justice, 2018, p. 57.
[125] L. Usinier, Dalloz, Répertoire de droit international, Action en justice, 2021, pp. 34-35.
[126] T. Vignal, Sirey, Droit international privé, 2020, p. 206.
[127] S. Clavel, Dalloz, Hypercours, Droit international privé, 2021, p. 505.
[128] T. Civ. Seine, 11 June 1929, JDI 1930. 974; Cass. req., 5 November 1839: S. 1839, 1, p. 822.
[129] Cass. civ. 1ère, 17 January 1899, DP 1899. 1. 329, note Bartin.
[130] Cass. civ. 1ère, 3 March 1971, Rev. crit. DIP 1972. 291, note Batiffol.

[131] CA Paris, 11 June 1975, Rev. crit. DIP 1976, p. 695, note J. Foyer; D. 1976, p. 682, note E. Poisson; Gaz. Pal. 1975, 2, p. 760, note by J. Viatte.

- Standing to sue on the basis of legal subrogation is governed by the law of the institution for whose operation it was [created132] ; etc.

490. The law applicable to standing is therefore the substantive law and not the law of the forum, in this case Turkish law.

491. In addition, the very requirement of standing must be determined by the substantive law.

492. Professor Laurence Usinier states in this regard that "given the clear links that the question has with the substance of the rights in question, the **jurisdiction of the substantive law is not contested when it comes to determining whether an action brought on the basis of a personal interest is an ordinary action**, open to any interested party, **or a designated action**, reserved for certain interested parties only "[133].

493. It is therefore necessary to refer to the law of the action, and not that of the forum, in order to determine whether or not it is a reserved action that can only be brought by specific persons. The same law will then be used to determine whether or not the plaintiff is entitled to bring the action in question.

494. In the present case, the Plaintiffs' action must be considered as a designated action under both Turkish and French law.

495. The Defendants maintain, on the basis of French law, that the action brought by Messrs Uzan is an action reserved for the company alone, i.e. a designated action that can be brought by certain persons only.

496. Similarly, they maintain that they do not have standing to defend, arguing that shareholders or members of a company cannot be held liable on the basis of decisions taken by the company. Therefore, as with standing, the defence would also be reserved.

497. With regard specifically to corporate action, the doctrine considers that the applicable law must be that of the law to which the company is subject:

- Professor André Huet states that "it *is for the organic law of a grouping to determine whether an individual member is entitled to exercise in his personal name the action which belongs to the grouping.*
  to the group (social action exercised ut singuli) "[134] ;

- Professor Laurence Usinier also argues that "***standing to act in the context of ut singuli social action****, which may seem to be driven by a logic similar to that of action*
  oblique, ***logically falls within the scope of the lex societatis, given the intimate links that such an action has with the functioning of society*** "[135].

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[132] Cass. Civ. [1ère], 17 March 1970, no. 68-13.577.
[133] L. Usinier, Dalloz, Répertoire de droit international, Action en justice, 2021, p. 37.
[134] A. Huet, JurisClasseur Droit international, Fasc. 582-10: Procédure civile et commerciale dans les rapports internationaux (DIP). - Competence of the lex fori. - Domaine de la lex fori : action en justice, 2018, p. 54.
[135] L. Usinier, Dalloz, Répertoire de droit international, Action en justice, 2021, p. 46.

498. This solution must also be applied to standing to defend. This standing is intrinsically linked to the existence of the liability that underlies the action, the status of partner or shareholder of the defendants, having benefited from the dividends through the acquisition by their companies of the assets fraudulently captured or economic beneficiaries of these Companies.

499. Similarly, under Turkish law, an action for non-existence is, as indicated above, also an action reserved, in particular, for persons with shareholder status.

500. Consequently, regardless of the law taken into consideration, the Plaintiffs' action is an action in rem. Standing to sue and defend in such an action must therefore be determined on the basis of the substantive law.

501. In any event, the action for non-existence brought by the Plaintiffs has no equivalent in French law. It would therefore be totally illogical to make the conditions for admissibility of this action, which include interest and standing to sue and defend, dependent on French law. For the sake of consistency, these requirements must necessarily be determined by reference to the law governing the action, i.e. Turkish law.

502. Consequently, the law applicable to interest and standing is, in all respects, Turkish law.

6.2.2 The Plaintiffs' standing and interest in bringing proceedings under Turkish law

a) In law, on standing and interest in bringing an action for the non-existence of an act lacking a legal basis

503. Under Turkish law, which applies to interest and standing, any person with a legal interest may seek a declaration that an act does not exist and compensation for the resulting loss.

504. Thus, Professor Dr. Ahmet Türk states in his consultation (**Exhibit 73**) that Turkish doctrine affirms that the action for non-existence is open to any person with a legal interest:

- *"Any person with a legal interest is entitled to plead the non-existence of a transaction and to institute legal proceedings to have this non-existence established, or to plead the non-existence of a transaction and to institute legal proceedings to have this non-existence established, or to institute legal proceedings to have this non-existence established, or to institute legal proceedings to have this non-existence established.*
  of the transaction in the context of an ongoing legal action;

- *"Not only the parties to the deed, but also all the persons concerned, may take legal action to have the non-existence of a deed established*".

505. Similarly, with regard specifically to the non-existence of a decision taken by the general meeting of a limited liability company, Professor Ebru Tüzemen Atik confirms that "***Any person with a legal interest (all interested parties) may request a finding of non-existence*** *(...).* ***It is presumed that the shareholders have a legal interest in bringing this action****; no further investigation is necessary for this purpose*" (**Exhibit 74**). This author specifies that the expression "*any person with a legal interest (all interested parties)*" should be understood as referring to certain

categories of persons only, such as shareholders, creditors, members of the board of directors, etc.

506. Professor Ebru Tüzemen Atik points out that shareholders are presumed to have a legal interest in bringing an action for the non-existence of such an act:

> ***"It is presumed that the shareholders have a legal interest in bringing this action*** *[the action for non-existence]; no further investigation is necessary for this purpose*".

507. In addition, Professor Ahmet Türk points out that the subsequent action for damages resulting from the non-existence of the disputed act is open to any person with an interest:

> *"A person who has been robbed by an act that is manifestly devoid of any legal basis may demand restitution of what has been taken from him, in the form of property or compensation*".

508. Consequently, as shareholders of the Companies, the Claimants are presumed to have an interest and standing to bring an action for the non-existence of acts manifestly lacking any legal basis taken by TMSF-manager and TMSF-shareholders and to seek compensation for the loss thus suffered.

b) In the present case, on the Plaintiffs' standing and interest in bringing an action for non-existence

509. In this case, the Defendants cannot validly contest the Plaintiffs' status as shareholders.

510. The latter cannot, on the one hand, maintain that the Companies are owned by members of the Uzan family, including the Claimants, and, on the other hand, contest their status as shareholders and ultimate economic beneficiaries of these same Companies whose assets were fraudulently captured and transferred by TMSF :

- BLACKROCK FUND ADVISORS states in its pleadings that "*TMSF organised the auction of numerous* ***assets and companies belonging to the UZAN family***";
- In Swiss arbitration proceedings and only five months before its about-face, MOTOROLA referred to the Companies as the "***Uzan companies***" (**Exhibit 20**) ;
- Similarly, the KONUKOGLU Estate states that "*between 2005 and 2008, in accordance with Turkish law, the TMSF then transferred* ***assets belonging to the Uzan Companies*** *(the "Transfers of Assets") to companies (the "Transferee Companies") for the purpose of using the proceeds of the Transfers of Assets to repay the funds used to compensate depositors who lost their assets in the Imar Fraud*" ;

511. The Defendants are, moreover, ill-advised to contest this status when it is common knowledge in Turkey that the banking laws hijacked by TMSF were enacted and/or amended in order to specifically capture the assets of the Companies owned by members of the Uzan family. So much so that these laws were commonly referred to as "*the Uzan laws*".

512. This position is all the more implausible given that it is also supported by TMSF, which firmly maintained in the ICSID arbitration proceedings that it had taken control of more than two hundred companies owned or controlled by members of the Uzan family and even went so far as to designate the Difference alleged by TMSF in the IMAR BANK deposits as a
"This is despite the fact that it alone has all the documents needed to establish with certainty the status of the Claimants (**exhibit 15**).

513. In addition, various contemporaneous documents attest to the Plaintiffs' status as shareholders.

514. In the ICSID arbitration proceedings, the arbitral tribunal confirmed that the members of the Uzan family were, and remained after TMSF took control of the Companies, shareholders of the Companies (**Exhibit 15**) :

> "¶154. ***the nominal shareholders continue to be members of the Uzan family***".

515. Similarly, in the Swiss arbitration proceedings, the arbitral tribunal stated unambiguously that :

> *"In a letter dated 19 February 2004, counsel for the Claimant [TELSIM] informed the Arbitral Tribunal that, (...) the Turkish Savings Deposit Insurance Fund (or "SDIF", sometimes also referred to by its Turkish acronym, "TMSF", adopted below) had taken over the management and cancelled all shareholders' rights (except dividend rights) of 219 companies owned by the Uzan family*" (**Exhibit 20, §42**).

516. The Poncet report drawn up in the context of Swiss criminal proceedings (**Exhibit 97**) also stated:

- *"The Turkish government has, through its organs, its institutional organs,* ***confiscated the businesses of the members of the Uzan Family***" (§24 and §238);

- *"The prosecutor also asked whether the* ***seizure of the Uzan family's businesses,*** *including the banks in Turkey, constituted provisional administration of the receivership by the Turkish authorities.*
  Turkish authorities" (§277).

517. In addition, the list of companies owned by members of the Uzan family, including the Claimants, was drawn up in the context of proceedings before the Istanbul High Criminal Court, showing that the Companies on this list were in fact owned by the Claimants (**Exhibit 75**).

518. Appendix 1 to the Asset Sharing Agreement entered into between TMSF, MOTOROLA and NOKIA concerning the "*Uzan Assets*" on March 23, 2009 further attests to the Plaintiffs' status as it lists the members of the Uzan family as well as the entities directly or indirectly owned or controlled by them (**Exhibit 76**). The Defendants can only note that the Companies and the Plaintiffs are listed.

519. The status of the Claimants is apparent from numerous other contemporary documents, such as the letter sent to the Swiss Public Prosecutor in connection with a request for mutual legal assistance (**Exhibit 77**), decision no. 11921 taken by TMSF for the appointment of the provisional directors of the Companies (**Exhibit 78**) and various court decisions:

- In a decision dated 31 July 2003, the American court acknowledged that the Plaintiffs are both "*officers, directors and/or owners of various companies controlled by the Uzan family*" (**Exhibit 19**);

- Similarly, an injunction issued by the Turkish criminal court lists the companies held, directly or indirectly, by the majority shareholders and managers of the IMAR BANK, of which it is not disputed that the Claimants were members (**Exhibit 79**).

520. The fact that the Plaintiffs are interested, as shareholders, in the Companies cannot be validly disputed, since these facts are known and have been acknowledged, in particular by the Defendants.

521. Furthermore, it is important to emphasise that TMSF is contesting the Plaintiffs' standing to sue even though it is in possession of all the evidence needed to definitively and indisputably establish the Plaintiffs' status as shareholders. Indeed, as manager of the Companies, TMSF necessarily has a list of the shareholders of the companies under its control and the number of shares held by each of these shareholders.

522. The bad faith shown by TMSF is all the more obvious given that, in the ICSID arbitration proceedings, the arbitral tribunal confirmed that the members of the Uzan family had remained shareholders of the Companies after the takeover, on the basis of documents that TMSF had been forced to disclose (**Exhibit 15**) :

> " ¶154*. The documents reluctantly disclosed by the Plaintiffs show that the nominal shareholders continue to be members of the Uzan family.*"

523. The same is true for all of the Defendants, who, as shareholders of the companies that received the fraudulently captured assets, are in a position to obtain proof of the Plaintiffs' status as shareholders.

524. On the other hand, the Claimants who have been unfairly deprived of the administrative rights attached to their shares, which are exercised by TMSF, are dependent on the latter to demonstrate their status as shareholders subsequent to the takeover of the Companies by TMSF-manager.

525. Furthermore, the Pre-Trial Judge can only find that the Defendants are merely contesting the Plaintiffs' status as shareholders without providing any evidence to the contrary.

526. The defendants also argue, again on the basis of inapplicable French court rulings, that the loss suffered by the Plaintiffs should be analysed as a loss by ricochet since it would result from the loss suffered by the Companies for which only the Companies would have standing to sue. However, as manager of the Companies, TMSF was the only person entitled to bring such an action, since it controlled the management of the Companies and exercised the administrative rights of the shareholders. The Companies and shareholders thus found themselves in an implausible situation that totally prevented them from taking action against TMSF.

527. In addition to the fact that this case law is not applicable in the present case, it is important to take into account the unusual context in which the Plaintiffs' action is taking place and which results from acts totally devoid of legal foundation taken by TMSF-manager and TMSF-shareholder.

528. Indeed, in application of this case law, TMSF-manager and TMSF-shareholder, which exercised the administrative rights of the shareholders with the exception of their right to dividends (which is why the Claimants are designated as ultimate economic beneficiaries and not as shareholders for the purposes of dividend rights), would be the only person authorised to bring an action for compensation for the damage suffered by the Companies as a result of its own illegal actions. However, it is clear that TMSF - manager and TMSF - shareholder have no interest in bringing such an action.

529. Consequently, this reasoning would unfairly and definitively deprive all the economic beneficiaries and those entitled to dividends from these Companies of any recourse and of their right to compensation for the damage resulting from the non-existent acts and decisions taken by TMSF-manager and TMSF-shareholder.

530. Finally, with regard to the Defendants' legitimate interest in bringing an action, which corresponds to the legal interest in bringing an action, which, as set out above, must be determined under Turkish law, the Defendants do not provide any evidence to establish the existence and substance of such a requirement under Turkish law.

531. Any serious challenge to the Plaintiffs' standing as beneficiaries of the Companies' dividends is absurd. The Defendants cannot, on the one hand, argue that the recovery process took place on the basis of the Uzan family's involvement in the allegations of fraud relating to IMAR BANK and, on the other hand, argue that they do not have standing as shareholders whose rights were taken over and exercised by TMSF-shareholder or as economic beneficiaries. In the absence of any serious challenge to the Plaintiffs' status as shareholders, the Plaintiffs are presumed to have an interest in and standing to bring an action for the non-existence of acts manifestly lacking any legal basis taken by TMSF-manager and to seek compensation for the loss thus suffered.

532. The Defendants further argue that the assignments of rights with the Plaintiffs' father and sister were fraudulent without providing any evidence of the allegedly fraudulent nature of these assignments, as is incumbent upon them.

Consequently, the Pre-Trial Judge can only find that Messrs Uzan have an interest in and standing to bring proceedings in this case, and dismiss TMSF, MOTOROLA, BLACKROCK FUND ADVISORS, DIMENSIONAL FUND ADVISORS and VODAFONE GROUP, Consorts SANBANCI and others, ZORLU, IZMIROGLU, KIBAR, SAHENK, KONUKOGLU and TORUN, Mesdames Fatma Meltem GUNEL and Sulun ILKIN,
Belgin EGELI, Cigdem SABANCI BILEN and Suzan SABANCI DINCER as well as Mr Mehmet Mustafa BUKEY of their dismissal.

6.2.3 The interest and standing of the secondary defendants under Turkish law

533. The Defendants, with the exception of TMSF and MOTOROLA, attempt to avoid liability by arguing that they have no interest and no standing to defend in this litigation, without, however, providing the slightest proof of this.

534. As a preliminary matter, these defendants cannot validly raise against the Plaintiffs the fact that their status as economic beneficiaries (shareholders or partners) of the companies that received the assets that were fraudulently captured and transferred has not been proven, even though this evidence is in their possession. The Defendants merely assert that they are not interested in these companies and do not provide any evidence in support of their dismissal.

535. However, it should be noted that, as set out in the table below, the following defendants have provided initial evidence of their position within the transferee companies:

Defendant	Transferee company	Quality	Rating share (%)	Reference
Yildiz Izmiroglu	Baticim Bati Anadolu Cimento	Partner	8,17	Adverse Exhibit 8 bis
Fatma Gulgun Unal	Baticim Bati Anadolu Cimento	Partner	9,97	Adverse Exhibit 8 bis
Mehmet Mustafa Bükey	Baticim Bati Anadolu Cimento	Partner	-	Exhibit 3
Fatma Meltem Günel	Baticim Bati Anadolu Cimento	Partner	-	Exhibit 3
Sülün İlkin	Baticim Bati Anadolu Cimento	Partner	-	Exhibit 3
Belgin Egeli	Baticim Bati Anadolu Cimento	Partner	-	Adverse findings (§ 1.2.3)
Çigdem Sabanci Bilen	Çimsa Çimento Sanayi ve Ticaret AS	-	0,24	Opposing claims (§ 145)
Suzan Sabanci Dinçer	Çimsa Çimento Sanayi ve Ticaret AS	-	0,24	Opposing claims (§ 145)
Zeki Zorlu	Zorlu Grand Hotel	Partner	0,3	Exhibit 8
Olgun Zorlu	Zorlu Grand Hotel	Partner	0,6	Exhibit 8
Ahmet Nazif Zorlu	Zorlu Grand Hotel	Partner	0,8	Exhibit 8
Consorts Kibar	Assan Galvaniz	Shareholders and directors	-	Adverse findings (§ 3.2.2)
Consorts Torun	Torunlar	Shareholders	-	Opposing submissions (summary of facts)

536. With regard specifically to Mrs Fatma Meltem GUNEL, Mrs Sulun ILKIN and Mr Mehmet Mustafa BUKEY, who claim to have sold all their shares in Baltiçim in April 2021, none of the documents they have produced establishes the existence of such a sale. Indeed, the business report on which their allegations are based simply states that they resigned from their positions on the company's board of directors on 17 April 2021 (Exhibit 3).

537. In addition, certain defendants implicitly acknowledge that they are shareholders or partners in the transferee companies, merely stating that they did not personally acquire the assets of the Companies, since these assets were acquired through companies, without disputing the fact that they have interests in these companies, such as the KONOKUGLU Consorts, who state in their pleadings that they
Only the Assignee companies were involved". *Only the transferee companies were involved*";

538. Consequently, the defendants do not validly contest the transferees' status as shareholders or partners, whether direct or indirect.

539. In addition, all of the defendants' arguments based on French law, which is inapplicable in this case, and in particular French case law to the effect that the direct or indirect shareholders of a company cannot substitute themselves for the company in an action against the company, must be rejected. In addition, it should be noted that the defendants were not mere accomplices in the fraud perpetrated by the acquiring companies, but were on the contrary the instigators of that fraud, which they knew would enable them to receive substantial dividends in place of the plaintiffs, and for which they used their companies as tools to achieve their ends.

540. Indeed, as demonstrated above, the law applicable to the interest and standing to be defended is Turkish law. Consequently, all of the defendants' arguments based on French law must be rejected.

541. The defendants also maintain that they have no interest or standing to defend since they are not accused of any personal fault. Nothing could be further from the truth!

542. The defendants are being sued before the Paris Court because of their participation, with full knowledge of the facts, in the organisation and execution of the fraudulent transfers and the deprivation of dividends to the detriment of the plaintiffs for the benefit of the defendants. Their aim was to ensure that their companies could acquire these assets, which were the result of a massive fraud organised by TMSF, so that they could unlawfully benefit from the dividends produced by these assets in place of the Claimants, as shareholders or partners in the transferee companies:

- Agreed to these transfers; and
- Received (and continue to receive) the fruits (dividends) from the exploitation of the captured assets, in place of the Plaintiffs.

543. As a result, they are being held liable for compensation for the loss resulting from the actions taken by TMSF that had no legal basis and were therefore non-existent from the outset, as well as from subsequent actions, including the unlawful transfers from which they benefited and continue to benefit with full knowledge of the facts.

544. Professor Ebru Tüzemen Atik points out that an action for non-existence makes it possible to seek compensation for loss from third parties acting in bad faith in cases where the persons authorised to bring the action do not have the authority to do so.

represent the company, on the basis of decisions taken by a company's general meeting that were acknowledged to be non-existent, entered into transactions with third parties (**Exhibit 74**).

545. In this case, the defendants' bad faith is obvious and blatant.

546. It is totally inconceivable that they would have been unaware of the fraud surrounding the sale of assets by TMSF, since their primary objective was to profit from it. It is even more unthinkable, given the amounts at which the disposals were made, that the acquiring companies would not have carried out any due diligence which, however superficial, would have enabled their shareholders or partners to identify the extent of the illicit opportunity and the fraud of which they were complicit by giving their approval to the acquisition of these assets.

547. The defendants now maintain that they had no knowledge that the transfers were illegal. However, they are unable to provide any evidence to establish that, at the time of the events, there was nothing that would have allowed them to doubt the legality of the transactions, such as the results of the due diligence that had to be carried out or the guarantees provided by TMSF in the context of the deeds of sale. The defendants are content to adopt the factual positions adopted by TMSF and MOTOROLA in the context of the dispute, without providing any demonstration or evidence of their own.

548. As direct or indirect shareholders or associates of the transferee companies, the defendants, who are the principal and ultimate beneficiaries of the transferees, with knowledge of the unlawfulness of the transfers of the companies' assets, gave their approval, encouraged and received the dividends resulting from the exploitation of these assets, in place and stead of the Plaintiffs, therefore have an interest and standing to defend in these proceedings, and the action for restitution of the dividends thus received is therefore admissible against them.

Consequently, the Pre-Trial Judge can only declare that the companies BLACKROCK FUND ADVISORS, DIMENSIONAL FUND ADVISORS and VODAFONE GROUP, the Consorts SANBANCI and Others, ZORLU, IZMIROGLU, KIBAR, SAHENK, KONUKOGLU and TORUN, Mesdames Fatma Meltem GUNEL, Sulun ILKIN, Belgin EGELI, Cigdem SABANCI BILEN and Suzan SABANCI DINCER as well as Mr Mehmet Mustafa BUKEY have an interest in defending themselves in the context of the present proceedings, and consequently to dismiss them.

6.3 On the absence of res judicata attached to the dispute

549. TMSF is not afraid to invoke the plea of res judicata that is allegedly attached to the dispute, while refraining from communicating almost all of the court decisions on which it nevertheless bases its plea of inadmissibility and from demonstrating that they are in fact res judicata.

550. TMSF merely produces four court rulings in support of its objection and refers for the rest to a "*summary table of asset disposals of Uzan Group companies carried out by TMSF*" (TMSF Exhibit 1). However, this table does not identify the judgments in question, the references of which are not even given, nor does it demonstrate that they have the force of res judicata in France, which is incapable of doing so.

551. In the absence of these elements and of communication of the court decisions to which TMSF refers, the Claimants are not in a position to respond to the dismissal of the claim with regard to the said decisions, which can only be ill-founded.

552. Moreover, the plea of inadmissibility based on the alleged negative authority of res judicata attached to the dispute raised by TMSF cannot be upheld in the absence of recognition of the judgments handed down by the Turkish courts in France or even of threefold identity of subject-matter, cause of action and parties.

6.3.1 On the lack of res judicata effect in France of Turkish administrative decisions

553. Case law has consistently held that the res judicata effect of a foreign judgment depends on the fact that it has been granted exequatur[136].

554. Consequently, the principle of res judicata does not apply to foreign court decisions, unless they are exequatur.

555. With regard specifically to judgments handed down by foreign administrative courts, the Aix-en-Provence Court of Appeal ruled in two recent decisions that, in the absence of an exequatur of the foreign administrative judgment, the latter lacks the authority of res judicata and cannot validly be invoked in support of a plea of non-receivability based on the exception of res judicata :

> *"The Republic of Turkey [the appellant]* ***does not demonstrate and does not claim to have sought recognition of the res judicata effect of the decision of 18 December 2015 of the Ankara Administrative Court by way of exequatur****. Consequently, the Republic of Turkey [the appellant] cannot validly rely in support of its objection on the effects of a Turkish decision that* ***lacks the authority of res judicata****. "*[137]

556. In the present case, TMSF has not adduced any evidence to show that the Turkish administrative judgments on which it bases its objection were the subject of applications for exequatur granted by the French courts.

557. In the absence of exequatur or any other form of recognition of these judgments in France, the plea of inadmissibility based on the alleged negative authority of res judicata attached to the dispute cannot therefore succeed, as the Turkish judgments have no effect in France.

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[136] Cass. req., 6 Jan. 1875: S. 1875, 1, p. 308; Cass. civ., 8 Oct. 1940: DC 1942, p. 153, note M. N; CAA Nantes, 25 June 1992, Cne de Charge, no. 90NT00383.

[137] CA Aix-en-Provence, 12 June 2020, no. 18/01466 and no. 18/01460.

558. If, by chance, the Pre-Trial Judge were to consider that the decisions of the Turkish administrative courts should produce their effects in France, it will be shown that the admissibility of this objection also comes up against the absence of threefold identity between the decisions in question and the present proceedings, which is essential for the recognition of res judicata.

6.3.2 The absence of a triple identity

559. Under the terms of Article 1355 of the Civil Code :

> *"The authority of res judicata applies only to what is the subject of the judgment. The thing sought must be the same; the claim must be based on the same cause; the claim must be between the same parties, and made by them and against them in the same capacity*".

560. Consequently, the admissibility of the plea of inadmissibility based on res judicata presupposes a threefold identity:

- An **object identity** ;
- An **identity of cause** ;
- An **identity of parts**.

561. It is therefore impossible to rely on res judicata when one or more elements of the triple identity are missing.

562. However, TMSF does not provide the slightest demonstration of the aforementioned triple identity, and for good reason this condition is not met at all in this case.

6.3.3 Lack of identity of purpose

563. For there to be identity of purpose, the thing requested must be the same.

564. However, TMSF, which, unlike the Plaintiffs, was a party to the proceedings in question, cannot be unaware that they had a radically different purpose:

- The judgment handed down on 14 January 2008 by the Istanbul Administrative Court (no. 537) was aimed at "**annulling the adjudication decision of 14.10.2005 concerning the sale of the factory".**
  Gaziantep Cimento San Tic AS" (TMSF Exhibit 146);

- The purpose of the decision handed down on 11 March 2011 by the Turkish Council of State (no. 1505) was to
  "the annulment of Fund Board decision no. 481 of 17.11.2005 approving the sale
  Star TV's commercial and economic entity" (TMSF Exhibit 147);

- The purpose of the decision handed down on 11 March 2011 by the Turkish Council of State (no. 1506) was to
  "the annulment of the decision of 24.05.2006 no: 243 of the Fund's Board approving the sale the commercial and economic package of Telsim's assets" (TMSF Exhibit 144);

- The purpose of the decision issued on 3 April 2014 by the Turkish Council of State (no. 15400) was to overturn the decision issued by the Council of State on 11 March 2011 (no. 1506) (TMSF Exhibit no. 145).

565. Since an application seeking the annulment of a decision to award a sale taken by a legal person governed by public law clearly does not have the same object as a claim for compensation based on the non-existence of acts of a commercial and private nature taken by that same person in a completely different capacity, the res judicata effect of those decisions cannot be relied upon against the Claimants.

566. As the actions brought before the Turkish courts clearly do not have the same object as that brought in the present proceedings, the plea of inadmissibility raised by TMSF cannot succeed.

6.3.4 Lack of identity of the parties

567. The identity of the parties presupposes that the parties who appeared or were represented in the proceedings that a judgment has extinguished are present in the current proceedings in the same capacity as in the previous proceedings.

568. Therefore, where a person did not appear in the proceedings or did not appear in the same capacity, he or she cannot rely on res judicata.

569. In the present case, it is clear from the decisions submitted in support of the dismissal that the Plaintiffs were never parties to these proceedings in any capacity whatsoever.

570. The three decisions produced by TMSF were handed down between :

- **Mr. Ihsan Hasan PILAV**, plaintiff in his capacity as shareholder of the company PAMUKOVA TELEKOMUNIKASYON SISTEMLERI SANAYI VE TICARET A.S., and **TMSF**, defendant, in the proceedings which gave rise to the decision of the Turkish Council of State of 11 March 2011 (No 1505);

- **Mr. Ihsan Hasan PILAV**, plaintiff in his capacity as shareholder of the company PAMUKOVA TELEKOMUNIKASYON SISTEMLERI SANAYI VE TICARET A.S., and **TMSF**, defendant, in the proceedings which gave rise to the decisions of the Turkish Council of State of 11 March 2011 (no. 1506) and 3 April 2014 (no. 15400) ;

- **Mr Kemal Uzan**, plaintiff, and **TMSF**, defendant, in the proceedings giving rise to the judgment delivered by the Istanbul Administrative Court on 14 January 2008 (n° 537) ;

571. Mr Hakan and Mr Cem Uzan, the Plaintiffs in their capacity as shareholders of the Companies, were therefore not present or represented at these proceedings.

572. In addition, although it appears that TMSF was a party to these proceedings, it was acting in a completely different capacity.

573. In this case, TMSF is not being sued in its capacity as a guarantee fund, as was the case before the Turkish administrative courts, which had to rule on the legality of acts taken by TMSF-fonds, but in its capacity as manager of the Companies.

574. There is therefore no identity of parties between the bodies in question.

6.3.5 Lack of identity of cause

575. The case must be understood to mean what has actually been discussed in fact and in law.

576. However, what was discussed before the Turkish administrative courts concerned the compliance of the procedure followed by TMSF to approve the sale of the assets of certain Companies with Turkish banking law, whereas the present proceedings concern the liability of all the Defendants, including TMSF, in its capacity as manager of the Companies and as the person authorised to exercise the rights of the shareholders, apart from their rights to dividends, in the context of an action for non-existence under Turkish law.

577. These issues are so far apart that the former fall within the jurisdiction of the administrative courts, while the latter necessarily fall within the jurisdiction of the judicial courts.

578. Accordingly, the question to be resolved in the present proceedings could not be more different from those referred to the Turkish administrative courts.

579. No res judicata can therefore be set up against the Plaintiffs, in the absence of court decisions rendered between the same parties and having an identical cause of action and object.

580. For all intents and purposes, the same necessarily applies to the thirty decisions listed in the table produced by TMSF (TMSF Exhibit 1). Indeed, the actions underlying these decisions - for which TMSF does not bother to indicate the identity of the plaintiff(s) - were aimed at challenging the validity of the procedure followed by TMSF in the context of asset disposals. Consequently, these decisions have absolutely no connection with the present dispute in terms of either their subject matter or their cause.

The Pre-Trial Judge can therefore only dismiss TMSF's appeal on the grounds of res judicata.

6.4 On the alleged plea of abuse of the right to institute legal proceedings

581. TMSF is trying to rely on a hypothetical plea of inadmissibility based on an alleged abuse of the Plaintiffs' right to institute legal proceedings. However, as the Pre-Trial Judge noted, such a plea of non-receivability is in no way enshrined in French law.

582. Contrary to what TMSF would have us believe, neither doctrine nor case law has established a solution whereby abuse of the right to sue could be sanctioned by the inadmissibility of the plaintiff's action.

583. In fact, the legal literature cited by TMSF in support of its dismissal does not defend this position at all, but considers possible sanctions for forum shopping in the context of prospective studies. It should be pointed out that the only sanction allowed by positive law for conduct assimilated to forum shopping is a negative sanction consisting of the court before which the case is brought declaring that it does not have jurisdiction to hear the dispute.

584. Thus, the passage in Étienne Cornut's purely academic study devoted to the inadmissibility of a claim on the grounds of abuse of the choice of forum does not consider the inadmissibility of the claim on the basis of abuse of the right to sue, but with regard to the legitimacy of the interest in suing:

> *"The abuse of the choice of forum may be taken as a factor in assessing the legitimacy of the plaintiff's interest in bringing proceedings*".

585. It should also be noted that the Plaintiffs strongly contest the existence of any ground of dismissal based on the alleged illegitimacy of the Plaintiff's interest in bringing the action.

586. Similarly, it is clear that Professor Marie-Laure Niboyet is not arguing a particular position or thesis, but proposing to consider possible solutions that would make up for the failure of the draft Hague Convention and punish forum shopping behaviour:

> *"After the failure of the global Hague Convention project, the chances of drawing up a comparable instrument outside the European judicial area seem very slim. However,* ***the project may inspire a methodological guideline. The aim should be to achieve the same result, i****.e. better international coordination of proceedings, while respecting the principles of good faith and proximity, but employing unilateral procedures, using the resources of national law.* ***The applications could be numerous and diverse. They will be listed, distinguishing between cases of abuse of process and those of correction of imperfections in the connecting factor.***
>
> ***There are various ways of*** *combating abuse of process, depending on whether it is the court of the forum or the foreign court that appears to be abusive.*

587. As the doctrine clearly does not state that abuse of the right to sue can be sanctioned by the inadmissibility of the plaintiff's action, TMSF seems to be developing a theory of its own.

588. Furthermore, TMSF is ill-advised to accuse the Plaintiffs of conduct resembling forum shopping when it has itself played its various roles and hats in order to bring proceedings before the courts of its choice.

589. In addition, TMSF simply cites a single court decision handed down by the Clermont-Ferrand Commercial Court on 24 March 2016 (no. 2013003812) in support of its hypothetical objection. However, far from confirming TMSF's claim that it should be dismissed, this decision,

rendered on the basis of article 1232 of the French Civil Code, merely a w a r d e d the defendant damages for abusive proceedings.

590. TMSF clearly has **no jurisprudential basis** and **no** serious **doctrinal basis** to support its objection.

591. In the present case, TMSF asserts that the Claimants' action is an abuse of rights since the "Uzan family" had already challenged the measures taken by TMSF-fonds before the Turkish administrative courts and had never challenged the administrative nature of those acts or attempted to bring the matter before the civil courts.

592. However, TMSF cannot reasonably be unaware that the Plaintiffs' action does not seek to challenge the measures taken by TMSF-fonds, but those taken by TMSF-manager and TMSF-shareholder in the context of the takeover of the Companies and the rights of the shareholders, which, as demonstrated above, are matters of private law and therefore fall within the jurisdiction of the civil courts.

593. Moreover, the Claimants cannot be criticised for having challenged the acts taken by TMSF, in its capacity as guarantee fund, before the Turkish administrative courts since the acts in question, unlike those at issue in the present dispute, were administrative acts. The administrative courts therefore had exclusive jurisdiction to hear these disputes.

594. In short, TMSF criticised the Claimants for failing to challenge the administrative nature of acts which it was certain had an administrative character and for bringing their claim before the administrative courts, which have sole jurisdiction to hear such acts.

595. Finally, TMSF cannot reasonably seek to have the action brought by the Plaintiffs before the civil courts dismissed on the grounds that the Plaintiffs had not previously attempted to bring an action before the civil courts. This argument simply does not make sense.

596. This totally illogical reasoning demonstrates the lack of seriousness and the very ill-founded nature of the defendant's objection based on an alleged lack of legitimate interest in bringing the action.

The Pre-Trial Judge can therefore only dismiss TMSF's appeal.

6.5 On the regularisation of claims made in US dollars

597. Article 126 of the Code of Civil Procedure states:

> "If *the situation giving rise to the objection can be rectified, the objection will be dismissed if the cause of the objection has disappeared by the time the court gives its ruling*.

598. Under the terms of this article, it is possible to regularise a plea of inadmissibility when (i) it can be regularised and (ii) the reason for inadmissibility has disappeared by the time the court gives its ruling.

599. With regard to the inadmissibility of claims formulated in a foreign currency, this dismissal can be regularised if the claimant has the possibility of regularising his claims by filing pleadings on the merits, as in the case of a plea of nullity[138].

600. In this case, the summons was regularised by the submissions on the merits made by the Plaintiffs before the Pre-Trial Judge ruled, so the objection raised by VODAFONE GROUP is irrelevant.

601. Under the terms of the submissions on the merits, the amounts of the compensation claims are expressed in euros.

602. As a result, the Pre-Trial Judge will not be able to declare that the objection raised by VODAFONE GROUP has been properly dealt with.

The Pre-Trial Judge can therefore only dismiss VODAFONE GROUP's appeal.

7. INADMISSIBILITY OF CLAIMS FOR ABUSE OF PROCESS

603. Consorts TORUN, IZMIROGLU, SAHENK, ZORLU, Mesdames Cigdem SABANCI BILEN, Suzan SABANCI DINCER, Fatma Meltem GUNEL, Belgin EGELI, Sulun ILKIN as well as Mr. Mehmet Mustafa BUKEY are particularly ill-advised to formulate requests with regard to the alleged abuse by the Plaintiffs of their right to institute legal proceedings since these requests do not fall at all within the powers of the Pre-Trial Judge.

604. Under the terms of articles 780 to 797 of the Code of Civil Procedure, which delimit the powers of the pre-trial judge, it is not within his powers to award damages or a civil fine for an abuse of process. The assessment of such a claim therefore falls within the powers of the trial judge.

605. A number of recent rulings have confirmed that applications for damages or civil penalties for abuse of process do not fall within the remit of the pre-trial judge:

- In a judgment of 12 April 2023, the Colmar Court of Appeal ruled that "***neither the powers of the pre-trial judge*** *under Articles 763 to 787 of the Code of Civil Procedure, nor those of the court ruling on the case, are subject to the provisions of the Code of Civil Procedure.*
  on appeal and within the limits of the referral to the court of first instance, ***do not include the power to impose a civil fine pursuant to Article 32-1 of the Code of Civil Procedure or to award damages to a party to compensate for the harm caused by legal proceedings found to have been abusive, which is a matter for the court hearing the case on the merits to decide*** "[139] ;

[138] TGI Paris, 12 May 2016, no. 15/16518.
[139] CA Colmar, 12 April 2023, no. 21/04717.

- Similarly, the Versailles Court of Appeal ruled in a judgment of 24 January 2023 that "***a claim for damages for abusive proceedings (...) does not fall within the jurisdictional powers of the pre-trial judge*** "[140].

606. This solution is perfectly logical given that an award of damages or a civil fine on the basis of abuse of the right to sue is refused when the plaintiff in the action succeeds, even partially, in his [claims141].

607. As a result, if the plaintiff is found to have abused his right to bring an action at the pre-trial stage, it will be presumed that all his claims will be dismissed on the merits. However, the pre-trial judge has no jurisdiction over the merits of the action other than the examination of the grounds for dismissal.

608. The defendants' claims before the Pre-Trial Judge for abuse of process are therefore inadmissible, as the Pre-Trial Judge cannot validly hear them.

The Pre-Trial Judge can therefore only dismiss the claims of Mr and Mrs TORUN, Mr and Mrs IZMIROGLU, Mr and Mrs SAHENK, Mr and Mrs ZORLU, Mrs and Mrs Cigdem SABANCI BILEN, Mrs and Mrs Suzan SABANCI DINCER, Mrs and Mrs Fatma Meltem GUNEL, Mrs and Mrs Belgin EGELI, Mr and Mrs Sulun ILKIN and Mr and Mrs Mehmet Mustafa BUKEY for abuse of process.

8. IRREDUCIBLE COSTS AND EXPENSES

609. It would be unfair to leave the Plaintiffs to bear the fees and expenses that they were forced to incur, given the manifestly unfounded objections and pleas in bar raised by the Defendants, in order to safeguard their rights.

610. Accordingly, the Pre-Trial Judge is asked to order the defendants *jointly and severally to* pay the plaintiffs the sum of **200,000 euros**, in respect of costs incurred but not included in the costs and relating to the incidents, on the basis of Article 700 of the Code of Civil Procedure, and to pay all the costs.

[140] Versailles Court of Appeal, 24 January 2023, no. 22/03202.
[141] Cass. Civ. 2nd, 23 October 2008, no. 07-14.506; Cass. Civ. 3rd, 11 May 2010, no. 09-10.935.

FOR THESE REASONS

Having regard to applicable Turkish law,
Having regard to Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Having regard to Article 14 of the Civil Code;
Having regard to articles 122, 700 and 789 of the Code of Civil Procedure;
Having regard to Article 4 §2 and Article 6 §2 of Regulation (EU) No 1215/2015 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Having regard to the declaration made by France to the European Commission pursuant to Articles 6 §2 and 76 §1,
a) of the above-mentioned Regulation, as resulting from publication No. 2015/C 4/02 in the Official Journal of the European Union of 9 January 2015;
Having regard to Article 4 §1 of Regulation (EC) No 864/2007 of 11 July 2007 on the law applicable to non-contractual obligations;

The Pre-Trial Judge is requested to :

ON A PRINCIPAL BASIS

REJECT the plea in law put forward in the alternative by TASARRUF MEVDUATI SIGORTA FONU, alleging immunity from jurisdiction;

JUDGE inadmissible the objection of lack of international territorial jurisdiction, raised belatedly, by TASARRUF MEVDUATI SIGORTA FONU, Yildiz IZMIROGLU, Fatma Gulgun UNAL, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU ;

REJECT the plea of lack of international territorial jurisdiction raised by MOTOROLA SOLUTIONS CREDIT COMPANY LLC, Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN BOYNER, Yasar
Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR, Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan
SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Aziz TORUN, Mehmet Mustafa TORUN, Arzuhan YALCINDAG ;

DISMISS all the pleas in law in the alternative raised by TASARRUF MEVDUATI SIGORTA FONU, MOTOROLA SOLUTIONS CREDIT COMPANY LLC, Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN
BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR, Batuhan

OZDEMIR, Ebru OZDEMIR KISLALI, Turkan SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan

YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU, before the formation of the Court of First Instance, adjudicating on the following questions
in fine and join them to the merits;

DEBUT Aziz TORUN, Mehmet Mustafa TORUN, Zeki ZORLU, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Ahmet Nazif ZORLU, Olgun ZORLU, Yildiz IZMIROGLU, Fatma Gulgun UNAL, SABANCI, Cigdem SABANCI BILEN, Suzan SABANCI DINCER, Fatma Meltem GUNEL, Belgin EGELI, Sulun ILKIN, Mehmet Mustafa BUKEY from their claims for abuse of process;

IN THE ALTERNATIVE

REJECT the plea of non-admissibility based on the lack of jurisdictional power of the Tribunal judiciaire de Paris, raised by TASARRUF MEVDUATI SIGORTA FONU, Yildiz IZMIROGLU, Fatma Gulgun UNAL, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU;

REJECT the plea of inadmissibility based on the lack of jurisdictional power of the Paris Tribunal, raised in the alternative by Mehmet Mustafa BUKEY, Sulun ILKIN, Belgin EGELI and Fatma Meltem GUNEL;

JUDGE that the law applicable to the limitation period is Turkish law;

REJECT the plea of non-admissibility based on the statute of limitations, raised in the alternative by TASARRUF MEVDUATI SIGORTA FONU, MOTOROLA SOLUTIONS CREDIT COMPANY LLC, Sezai BACAKSIZ, Mehmet
Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye
DOGAN BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR,
Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU;

JUDGE that the law applicable to interest and standing is Turkish law;

REJECT the plea of non-admissibility based on the Applicants' lack of interest and standing to bring proceedings, raised in the alternative, by TASARRUF MEVDUATI SIGORTA FONU, MOTOROLA SOLUTIONS CREDIT
COMPANY LLC, Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin
DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR, Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI,

Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU;

JUDGE that the law applicable to the interest and the standing to defend is Turkish law;

REJECT the Defendants' lack of interest and standing to defend, raised in the alternative by Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND
ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR, Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan
SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU;

DISMISS the objection of nullity, raised by BLACKROCK and DIMENSIONAL FUND ADVISORS LP, based on the nullity of the summons;

REJECT the plea of res judicata raised in the alternative by TASARRUF MEVDUATI SIGORTA FONU;

REJECT the plea of misuse of the right to bring proceedings, raised in the alternative by TASARRUF MEVDUATI SIGORTA FONU ;

IN ANY EVENT

DEBUT TASARRUF MEVDUATI SIGORTA FONU, MOTOROLA SOLUTIONS CREDIT COMPANY LLC, Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat
OZDEMIR, Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU from all their claims;

ORDER the continuation of the hearings on the merits of the claims presented by Messrs UZAN ;

CONDEMN *in solidum* TASARRUF MEVDUATI SIGORTA FONU, MOTOROLA SOLUTIONS CREDIT COMPANY LLC, Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR,

Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR, Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU to pay the Plaintiffs the sum of **200,000 euros**, in respect of costs incurred but not included in the costs and relating to the incident;

CONDEMN in solidum TASARRUF MEVDUATI SIGORTA FONU, MOTOROLA SOLUTIONS CREDIT COMPANY LLC, Sezai BACAKSIZ, Mehmet Serkan BACAKSIZ, Turhan Serdar BACAKSIZ, Mehmet Mustafa BUKEY, VODAFONE GROUP PUBLIC LTD. CO, BLACKROCK, DIMENSIONAL FUND ADVISORS LP, Aydin DOGAN, Isil DOGAN, Hanzade Vasfiye DOGAN BOYNER, Yasar Begumhan DOGAN FARALYALI, Belgin EGELI, Fatma Meltem GUNEL, Sulun ILKIN, Yildiz IZMIROGLU, Asim KIBAR, Semiha KIBAR, Ali KIBAR, Aysun KIBAR, Ahmet KIBAR, Abdulkadir KONUKOGLU, Zekeriye KONUKOGLU, Adil Sani KONUKOGLU, Sami KONUKOGLU, Cengiz KONUKOGLU, Turgut KONUKOGLU, Fatih KONUKOGLU, Hakan KONUKOGLU, Sani KONUKOGLU, Nihat OZDEMIR, Batuhan OZDEMIR, Ebru OZDEMIR KISLALI, Turkan SABANCI, Omer Metin SABANCI, Dilek SABANCI, Sevil SABANCI, Serra SABANCI, Suzan SABANCI, Cigdem SABANCI, Vuslat SABANCI, Filiz SAHENK, Deniz SAHENK, Ferit SAHENK, Aziz TORUN, Mehmet Mustafa TORUN, Fatma Gulgun UNAL, Arzuhan YALCINDAG, Zeki ZORLU, Ahmet Nazif ZORLU and Olgun ZORLU to pay all costs relating to the incident, with the right of direct recovery by Maître Richard Willemant, attorney at the Paris Bar, in accordance with Article 699 of the Code of Civil Procedure.

WITHOUT PREJUDICE

PARTS LIST

List of documents submitted :

1. Proof of residence in France for Mr Murat Hakan UZAN :
2. Proof of residence in France for Mr Cem Cengiz UZAN (residence permit from 06/09/16 to 05/09/26)
3. Deeds confirming the agreements to transfer the rights of Mrs Aysegul Uzan and Mr Kemal Uzan to Mr Murat Hakan Uzan and Mr Cem Cengiz Uzan, and translation into French;
4. Expert report on the Claimants' status as ultimate beneficiaries in the Captured Companies and on their activities, and translation into French ;
5. TMSF annual report for 2019, and French translation of extracts from the document ;
6. Extracts relating to MOTOROLA SOLUTIONS CREDIT COMPANY LLC, and translation into French;
7. Expert report on the defendants' status as ultimate beneficiaries, and translation into French ;
8. Documents relating to the rejection of criminal complaints by the TMSF ;
9. Banking Act 4389, and French translation ;
10. Law 6183, and French translation ;
11. Observations of 17 October 2019 produced before the European Court of Human Rights, in case no. 54208/11 Tunç BURUŞUKOĞLU v. Turkey, and French translation;
12. Payment order dated 24 March 2004, and translation into French ;
13. TMSF management resolutions ;
14. Res judicata judgments from Turkish courts, translated into French;
15. ICSID Proceedings ARB/05/16, RUMELI, TELSIM v. Republic of Kazakhstan, and French translation ;
16. Details of the ICSID arbitration proceedings, MOTOROLA against the Republic of Turkey, ARB/04/21, and French translation ;
17. Memorandum to Prosecutor Lucienne Fauquex by Epstein & Reich Rechtsanwälte, and translation into French ;
18. Expert report on asset disposals and losses suffered, and translation into French;
19. Judgment of the United States District Court for the Southern District of New York of July 31, 2003 (Motorola Credit Corporation et al. vs. Kemal Uzan et al.) as amended on August 8, 2003, and French translation of the judgment as amended on August 8, 2003;
20. Zurich Chamber of Commerce (ZCC) arbitration award of 13 June 2005, and French translation ;
21. Contract for the assignment of unpaid receivables held by the Motorola companies on Telsim dated 28 October 2005, and translation into French ;
22. United States Court of Appeals for the Second Circuit (Motorola Credit Corporation et al. vs. Kemal Uzan et al.):
23. Ruling of the Supreme Court of the United States dated 16 May 2005 (Uzan v. Motorola Credit Corp.), and translation into French;
24. Various TMSF announcements relating to the sale of companies and assets, and translation into French ;
25. Opinions published worldwide in high-circulation publications such as The Herald Tribune - New York Times, The Wall Street Journal, die Neue Zurcher Zeitung, Cumhuriyet Gazetesi, and translated into French;
26. Extracts from submissions before the Stockholm Chamber of Commerce, Case No V 2014/023 Cem Cengiz Uzan v Republic of Turkey, and French translation;
27. Letter from VODAFONE to the Head of the Office of the Prime Minister of Turkey, dated 23 November 2004, and translation into French.
28. Paris Court of Appeal ruling of 3 November 2020;
29. Attendance sheet for the general meeting of Standart Telekomunikasyon Bilgisar Hizmetleri Anonim Sireketi on 29 June 2007, and translation into French;
30. Banking Act 5411, and French translation ;
31. TMSF annual report for 2021, and translation into French ;
32. Thesis by Professor Philippe Théry, "Pouvoir juridictionnel et compétence" Paris II, 1981;
33. Comments on the Court of Cassation rulings of 29 June 2022 (no. 21-11.722 and 21-10.106):
34. Proof of renewal of Mr Murat Hakan UZAN's residence permit;

35. Receipt of application for asylum from Mrs Melehat UZAN ;
36. Murat Hakan UZAN divorce decree of 5 February 2019 (extracts) ;
37. Judgment of the Paris Court of Appeal concerning the divorce of Mr Murat Hakan UZAN (extracts), and letter accompanying the certificate of non-referral;
38. Report card for a child of Mr Murat Hakan UZAN, and translation into French ;
39. Extract from the family record book of Mr Murat Hakan UZAN ;
40. Birth certificate of the last child of Mr Murat Hakan UZAN ;
41. Proof of residence and schooling in France of the youngest child of Mr Murat Hakan UZAN ;
42. Proof of French nationality of the youngest child of Mr Murat Hakan UZAN ;
43. Murat Hakan UZAN's first tax return in France;
44. Screenshot of the <impots.gouv.fr> account of Mr Murat Hakan UZAN tax returns since 2017 ;
45. Kbis extract from VERTU AK France and declaration of beneficial owner;
46. Handrail declaration of Mr Murat Hakan UZAN of 17 July 2017;
47. Affidavit of Ms Sarah Y. Walker of 13 July 2017 before the High Court of Justice of England and Wales and French translation;
48. Decision of the HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION, COMMERCIAL COURT (United Kingdom) authorising, at MOTOROLA's request, service of process on Mr Murat Hakan UZAN in France, and translation into French;
49. Application for enforcement of the District Court judgment of 31 July 2003 before the Tribunal de Grande Instance de Paris;
50. Minutes of service, at the Paris address of Mr Murat Hakan UZAN, of seizure documents issued in the Netherlands;
51. Decisions, acts and letters from the Republic of Turkey, its courts and its embassy in Paris notified to the address in France of Mr Murat Hakan UZAN, and translation into French ;
52. Various care invoices for Mr Murat Hakan UZAN, Ms Melehat UZAN and Ms Aysegul UZAN;
53. Murat Hakan UZAN's medical analysis receipts;
54. Covid-19 vaccination certificates for Murat Hakan UZAN ;
55. Certificate of attendance by Mr Murat Hakan UZAN at the civic training provided for in his Contrat d'Intégration Républicaine (Republican Integration Contract);
56. Various EDF bills in the name of Mr Murat Hakan UZAN ;
57. Murat Hakan UZAN loyalty cards;
58. Mr Murat Hakan UZAN's Navigo card;
59. Certificate of complaint filed by Mr Murat Hakan UZAN against MOTOROLA ;
60. Extract from the family record book of Mr Cem Cengiz UZAN ;
61. Minutes of the hearing of Mr Cem Cengiz UZAN and Ms Fanny BLANCHELANDE (extract) ;
62. Extracts from proceedings relating to the divorce of Mr Cem Cengiz UZAN and proceedings concerning his children;
63. Invoices for treatment and bills for fees relating to Mr Cem Cengiz UZAN ;
64. Mr Cem Cengiz UZAN's "carte vitale" and certificates of payment from the Assurance Maladie;
65. Covid-19 vaccination certificates for Mr Cem Cengiz UZAN ;
66. Temporary residence permit for Mr Cem Cengiz UZAN dated 4 September 2009 and valid residence permit;
67. Various EDF bills in the name of Mr Cem Cengiz UZAN ;
68. Various GDF-Engie documents on behalf of Mr Cem Cengiz UZAN ;
69. Various telecommunications invoices in the name of Mr Cem Cengiz UZAN ;
70. Proof of renewal of Mr Cem Cengiz UZAN's residence permit;
71. Consultation by Professor Pascal Beauvais on 17 February 2015;

72. Order of the Paris Court of First Instance of 12 January 2023 (no. 21/05467) ;
73. Consultation (legal opinion) by Professor Dr. Ahmet Türk, and translation into French ;
74. Research article by Professor Ebru Tüzement dated 10 May 2022;
75. Istanbul High Criminal Court ruling no. 2010/158, and French translation;
76. Appendix 1 to the Asset Sharing Agreement entered into by TMSF, MOTOROLA and NOKIA on 23 March 2009;
77. Letter sent to the Public Prosecutor of Switzerland on 3 May 2005, and translation into French ;
78. TMSF decision no. 11921 of 3 September 2004, and translation into French ;
79. Injunction issued by the Criminal Court on 26 August 2003 (no. 2003/442), and translation into French;
80. Affidavit of Ms Sarah Yasmin Walker of 18 December 2018 before the High Court of Justice of England and Wales, and French translation;
81. Safe conduct issued to Mr Murat Hakan UZAN on 5 September 2014 by the Border Police;
82. Asylum application form for Mr Murat Hakan UZAN ;
83. Notice of referral from the Cour National du Droit d'Asile dated 25 January 2023;
84. Press release from the Ministry of the Interior of 24 April 2020 on the extension of residence permits due to the Covid-19 pandemic ;
85. Summoning Mr Murat Hakan UZAN to civic training (4th day) ;
86. UZAN Family group sheet to OFPRA on 22 October 2014;
87. Bank details for Mrs Aysegul UZAN ;
88. Bank details for Mrs Melehat UZAN ;
89. Covid-19 vaccination certificate for Ms Aysegul UZAN ;
90. Covid-19 vaccination certificate for Mrs Melehat UZAN ;
91. Affidavit (sworn statement) of Mr Murat Hakan UZAN of 16 June 2016 before the High Court of Singapore, and translation into French (extract) ;
92. Minutes of service, at the Paris address of Mr Murat Hakan UZAN, of a Dutch procedural document dated 14 February 2019, and translation into French ;
93. Minutes of service of a writ of seizure and sale dated 26 June 2023 ;
94. Evidence relating to the shareholders of CIMSA CIMENTO SANAYI VE TICARET AS, HEIDELBERG MATERIALS AG, AKÇANSA ÇIMENTO SANAYI VE TICARET ANONIM SIRKETI, CEMENTIR HOLDING NV and CIMENTAS IZMIR CIMENTO FABRIKASI TURK AS, and translation into French ;
95. Extracts from the HEIDELBERG MATERIALS AG website;
96. Receipt of the asylum application lodged by Mrs Aysegul UZAN ;
97. Poncet report of 24 December 2014.