



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

**CASE OF AYKAÇ v. TÜRKİYE**

*(Application no. 31226/09)*

JUDGMENT

Art 37 §§ 1 (c) and 2 • Application previously struck out based on a unilateral declaration acknowledging a violation of Art 6 §§ 1 and 3 and indicating that domestic law required reopening of criminal proceedings in such cases • Domestic courts' rejection of the applicant's reopening request rendered Government's commitments in their unilateral declaration with no practical effect in the domestic legal order • Existence of an "exceptional circumstance" which led the Court to restore the application to its list of cases • Isolated case in this regard amongst numerous similar applications struck out on the basis of unilateral declarations

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • No compelling reasons justifying the statutory restriction of the applicant's right of access to a lawyer while in police custody and the subsequent use of the statements obtained to convict him • Overall fairness of proceedings irretrievably prejudiced • Domestic's courts' decisions rejecting the applicant's reopening request based on a manifest factual or legal error, resulting in a denial of justice which the Constitutional Court failed to address

Art 6 § 1 (criminal) and Art 6 § 3 (d) • Fair hearing • Examination of witnesses • Use of written statements of absent witnesses, who were examined by the courts of their places of residence, to convict the applicant • No good reason for non-attendance of witnesses, who provided evidence of significant weight, and without sufficient counterbalancing factors

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 December 2025

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Aykaç v. Türkiye,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Péter Paczolay,

Oddný Mjöll Arnardóttir,

Gediminas Sagatys,

Stéphane Pisani,

Hugh Mercer, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 31226/09) against the Republic of Türkiye lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Ayhan Aykaç (“the applicant”), on 16 April 2009;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning the denial of legal assistance to the applicant and his alleged inability to examine witnesses in person and to declare the remainder of the application inadmissible;

the parties’ observations,

the Government’s further observations dated 23 November 2016,

the decision of 23 May 2019 to strike the present application out of its list of cases on the basis of the Government’s unilateral declaration dated 6 September 2018;

the decision to restore the application to the Court’s list of cases on 22 October 2024 on the applicant’s request;

the parties’ observations concerning the events which took place after the Court’s above-mentioned decision to strike the present application out of its list of cases on 23 May 2019;

Having deliberated in private on 18 November 2025,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The application concerns alleged unfair criminal proceedings against the applicant. The application was restored to the Court’s list of cases after being struck out by the Court on 23 May 2019 on the basis of a unilateral declaration submitted by the Government on 6 September 2018. The application raises issues in connection with (i) the systemic restriction on the applicant’s right of access to a lawyer and the use of evidence obtained in the absence of a lawyer to convict him and (ii) his alleged inability to examine witnesses during the criminal proceedings. The applicant complains of a violation of his rights under Article 6 §§ 1 and 3 (c) and (d) of the Convention.

## THE FACTS

2. The applicant was born in 1964 and is detained in Mardin. The applicant was represented by Ms R. Yalçındağ Baydemir, a lawyer practising in Diyarbakır.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, the former Head of the Human Rights Department at the Ministry of Justice to the European Court of Human Rights.

4. The facts of the case may be summarised as follows.

### I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. On 8 February 2000 the applicant was arrested by police officers and taken into custody on suspicion of membership of an armed terrorist organisation, namely the PKK (Workers' Party of Kurdistan).

6. On 10 February 2000 police officers at the Istanbul Security Directorate took a statement from the applicant in the absence of a lawyer. He confirmed his membership of and support for the PKK and gave detailed information about the unlawful activities he had undertaken while he had been a member of the PKK. In accordance with the legislation in force at the material time, the applicant could only have access to a lawyer after being placed in pre-trial detention. In his statement, the applicant indicated that he had been arrested in 1982 and that in 1983 he had been found guilty of membership of the PKK by the Second Section of the Diyarbakır National Security Court, which had sentenced him to twenty years' imprisonment. He had served eight years of this sentence in Diyarbakır, Bursa and Çanakkale prisons and had been conditionally released in March 1990. As he had been unable to set up a "normal life", he had contacted M.C.Y. to express his wish to "go to the mountains" (that is, to join the PKK). "A courier" of the PKK had visited him in Istanbul and had taken him to Cizre and had left him at a house. From the house, he had gone to the Cudi Mountain on foot and had met a PKK member with the codename "Erdal", who had taken him to the PKK's Haftanin camp in Northern Iraq, where he had received military and ideological training and had been given the codename "Haydar". Subsequently, the applicant had been sent to the other camps of the PKK and had trained the members and had been given a Kalashnikov rifle. The applicant gave a very detailed account of the places he had worked and his role and relationship with the other members and leaders of the PKK.

7. On 15 and 16 February 2000 the applicant was further questioned by the gendarmerie, still in the absence of a lawyer. He repeated his statement of 10 February 2000 and gave a thirty-eight-page long statement in which he gave details of his unlawful activities within the PKK. In that regard, the applicant indicated that, from 1990 to 2000, he had acted as an armed fighter, squad commander, platoon commander, company commander, and east and

west headquarters front officer. He went on to state that he had been involved in shelter and position preparation, food collection, food storage, transportation, deployment and surveillance activities, together with other members of the organisation. The applicant further mentioned that he had taken part in meetings organised by the PKK and he had himself held numerous meetings on its behalf. Lastly, the applicant stated that he had given ideological training to newcomers and other members for three years in Northern Iraq and for five years in Tunceli and that he regretted all his actions. The applicant also gave information about 128 other PKK members and explained the PKK's tactics, as well as the weapons, ammunition and equipment in its possession, passcodes and ciphers used in radio communications among the members, character traits and weaknesses of the PKK's group leaders, the psychological state prevailing within the organisation, and its deception tactics and financial sources. In those statements, the applicant mentioned seventeen attacks by the armed forces that he and the members acting with him had encountered. It is apparent from his statements to the police and the gendarmerie that the applicant did not acknowledge taking part in (i) the killing of six teachers in Darikent, Mazgirt on 12 September 1994 or (ii) the road blockade and armed clash with security forces on the Tunceli-Pülümür highway in the Uzuntarla village on 13 October 1994. Similarly, he stated that he had not clashed with security forces in the Mazgirt-Hiran Mountain region (Danzik forests) on 12 August 1995, but that he and several other members had merely taken shelter there.

8. On 17 February 2000 the applicant was heard by the Tunceli public prosecutor, again in the absence of a lawyer. In his statements to the public prosecutor, the applicant stated that he had responded in detail to the questions posed by the police, but that he had denied killing six teachers in Darikent, Mazgirt on 12 September 1994. The applicant maintained that the order to kill the teachers in question had been given by a certain "Haydar", a person with a burned face, and another member with the codename "Felak", and that the act in question had been carried out by the members under their command. The rest of his statements concerned his travel from Tunceli to Istanbul and the families he had stayed with in Istanbul prior to his arrest.

9. Later, on the same day, the applicant made statements to the investigating judge of the Tunceli Magistrates' Court in the absence of a lawyer and acknowledged the statements he had made to the police, the gendarmerie and the public prosecutor. Subsequently, the Tunceli Magistrates' Court placed him in pre-trial detention.

10. On 9 March 2000 the Malatya Public Prosecutor's Office attached to the Malatya State Security Court filed a bill of indictment against the applicant, charging him, under Article 125 of the former Criminal Code, with undermining the unity of the State and its territorial integrity. The public prosecutor summed up the applicant's involvement in the PKK as reflected in the statements he had made to the police and accused him of carrying out

fifteen different armed attacks conducted by the PKK against the Turkish armed forces, killing six teachers in Darı Kent, Mazgirt (incident no. 13 in the bill of indictment), and abducting a soldier and holding him hostage for three days in 1995. Two out of the fifteen incidents were (i) an armed clash with security forces in the Mazgirt-Hiran Mountain region (Danzik forests) on 12 August 1995 (incident no. 4 in the bill of indictment) and the road blockade and armed clash with security forces on the Tunceli-Pülümür highway in Uzuntarla village on 13 October 1994 (incident no. 14 in the bill of indictment). The bill of indictment was based on the statements made by the applicant in the absence of a lawyer and the statements made by other individuals accused of membership of the PKK, namely A.Ü., S.A., M.A., S.D., H.Ş., İ.T., N.Ç., A.İ.D., F.K., S.As., S.G., V.Ş., O.A. and İ.A.D., as well as photo identification and conflict reports.

11. The applicant was committed to stand trial before the Malatya State Security Court (“the trial court”).

12. On various dates, witnesses M.A., İ.A.D., Ö.K., Ş.S., V.Ş., E.Ç., D.A.K., S.G., O.A., H.E., F.K. and Ç.Ç. gave evidence to the courts having jurisdiction over the area in which their places of residence were located, pursuant to letters of request issued by the trial court. The trial court sent these rogatory letters to the relevant courts, informing them of the witnesses’ places of residence and requesting that they obtain statements from the witnesses on the basis that they lived or remained in prisons located in different cities. Once the trial court had obtained the copies of their written statements, it admitted them as evidence and read them out during the trial to enable the applicant and his lawyer to make their defence submissions *vis-à-vis* those statements.

13. In 2004, following a change in the legislation during the proceedings, state security courts were abolished and the case was transferred from the Malatya State Security Court to the Malatya Assize Court.

14. On 22 November 2007 the Malatya Assize Court convicted the applicant of undermining the unity of the State and its territorial integrity under Article 125 of the former Criminal Code and sentenced him to life imprisonment. The first-instance court based its decision on several pieces of evidence, such as the applicant’s statements to the police, the gendarmerie, the public prosecutor and the investigating judge, as well as the identification parade records and the statements of several co-accused persons who had been heard as witnesses pursuant to the rogatory letters sent by the trial court. The part of trial court’s reasoned judgment, entitled “Discussion of evidence and reason[s]”, reads as follows:

“As the evidence gathered as a result of the trial conducted by [this] court has been evaluated as a whole, it has been established that the defendant was tried by the Second Section of the Diyarbakır State Security Court in 1982 and was sentenced to twenty years’ imprisonment by that court at the end of 1983; [he] served eight years of his sentence in Diyarbakır, Bursa and Çanakkale prisons and was conditionally released in March 1990; he established contact with M.C.Y., whom he had known to be a member

of the terrorist organisation at the end of 1990 ...[; he] went abroad from Cizre with the courier sent by that person and joined the PKK terrorist organisation, taking the code name “Dara Haydar” in the organisation ...[; he] first received political training and then military training within the organisation; he started his activities in the Tunceli region in 1993; he served as an armed fighter, squad commander, platoon commander, company commander and east and west headquarters front officer for ten years between 1990 and 2000; he was involved in shelter and position preparation, food collection, food storage, transportation, deployment and surveillance activities, together with the members of the organisation; ... [and] during this period he was involved in [(i)] the killing of six teachers in the Darikent subdistrict of Mazgirt District in the Tunceli Province on 12 September 1994 (incident no. 13 in the bill of indictment), [(ii)] a road blockade and armed clash with security forces on the Tunceli-Pülümür highway [in] Uzuntarla village on 13 October 1994 (incident no. 14 in the bill of indictment), and [(iii)] an armed clash with security forces in Mazgirt-Hiran Mountain region (Danzik forests) on 12 August 1995 (incident no. 4 in the bill of indictment).

The applicant’s defence submission that he did not take part in the incidents indicated in the bill of indictment or in any close combat was not found credible in view of the witness statements, incident reports and the applicant’s position within the organisation. [His] statements were regarded as attempts to evade punishment.

Although it has been understood from the witness statements obtained during the investigation stage that the applicant took part in the grave incidents listed in the bill of indictment, it has ultimately been decided not to hold the applicant criminally liable for incidents nos. 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 15, 16 or 17 [as listed in the bill of indictment], in respect of which guilt could not be established beyond reasonable doubt and for which no incident reports could be found despite exhaustive inquiries.

Although witnesses elucidated the incidents in which the applicant had taken part, during the investigation and trial stages of the proceedings against them, they retracted those statements in the context of the trial held before our court.

The behavioural style of terrorist organisation members is to explain in detail the statements that will produce results in their favour in the cases in which they are personally tried – particularly when such statements may yield legal benefits – only to subsequently retract those statements in proceedings concerning other defendants, once the legal advantages have been secured. In the present case, the court did not give preference to the witnesses’ later retractions of statements that had legal significance and evidentiary value in their favour. Instead, their earlier statements, made during the criminal proceedings concerning themselves, were found to be capable of forming [the basis of] this court’s assessment. ...”

15. By submissions dated 23 November 2007 and 19 February 2008, the applicant’s lawyer appealed against the trial court’s judgment and challenged, among other things, the credibility and veracity of the statements made by the witnesses at the different stages of the proceedings. By her submissions dated 24 September 2008, the lawyer submitted supplementary grounds of appeal and complained of, among other things, breaches of the applicant’s right to a fair trial and his defence rights, specifically his inability to have access to a lawyer when giving statements during the preliminary investigation stage and to question witnesses while he had been present in the trial court.

16. On 16 October 2008 the Court of Cassation upheld the judgment, without specifically addressing the points raised in the appeals lodged on behalf of the applicant.

## II. THE STRIKING OUT OF THE APPLICATION FROM THE LIST OF CASES ON THE BASIS OF THE GOVERNMENT'S UNILATERAL DECLARATION

17. On 16 April 2009 the applicant lodged the present application with the Court.

18. On 20 June 2013 the Court gave notice of the application to the respondent Government and invited them to comment on whether “*the applicant had a fair trial within the meaning of Article 6 of the Convention, in particular in light of the lack of legal assistance during police custody (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 45–63, 27 November 2008),*” and whether “*he had been able to examine the co-accused and submit his counter-arguments as required by Article 6 § 3 (d) of the Convention.*”

19. By a letter dated 12 October 2016, the Registry invited the Government to submit further written observations, if they so wished, on the admissibility and merits of certain applications, including the present one, in the light of the Grand Chamber’s judgment in *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, 13 September 2016). In that regard, the Government were invited to demonstrate whether the absence of access to legal advice during the applicants’ police custody and the use of their statements in their subsequent convictions had caused irretrievable prejudice to the fairness of the respective trials. By a letter dated 23 November 2016, the Government stated, among other things, that they had already submitted their observations regarding the present case.

20. Following the failure to reach a friendly settlement, by a letter of 6 September 2018, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applicant. They further requested the Court to strike the application out of its list of cases in accordance with Article 37 of the Convention, based on the following declaration:

“The Government of Turkey acknowledge that in the present case there has been a violation of the applicants’ rights under Articles 6 §§ 1 and 3 of the Convention in the light of the well-established case-law of the Court.

The Government also recalls that Law no. 4928 on 15 July 2003 repealed the provision concerning the systemic restriction on the right of access to a lawyer.

The Government further emphasises that Article 311 § 1 (f) of the Code on (sic) Criminal Procedure, as amended by Law no. 7145 of 31 July 2018, now requires reopening of criminal proceedings in cases where the European Court of Human Rights decides to strike an application out of its list of cases following a friendly settlement or a unilateral declaration. The Government considers that the aforementioned remedy is

capable of providing redress in respect of the applicants' complaints under Article 6 of the Convention.

The Government thus offer to pay the applicant Ayhan AYKAÇ, EUR 500 (five hundred euros) to cover any pecuniary and non-pecuniary damage as well as costs and expenses, plus any tax that may be chargeable to the applicant with a view to resolving the above-mentioned case pending before the European Court of Human Rights.

This sum will be converted into Turkish liras at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the decision by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case."

21. By a letter of 9 October 2018, the applicant indicated that he was not satisfied with the terms of the unilateral declaration, arguing that his purpose was not to obtain a strike-out decision in exchange for 500 euros, but to have it established that the criminal proceedings which had resulted in his having to spend his life in prison had been conducted in way that had breached his rights under the Convention, in order to have those proceedings reopened at the domestic level.

22. On 23 May 2019 the Court, sitting as a three-judge committee, decided to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, holding that that it was no longer justified to continue the examination of the application (see, for details *Aykaç v. Turkey* [CTE], no. 31226/09, 23 May 2019). In doing so, regard was had to the nature of the admissions contained in the Government's declaration and the amount of compensation proposed, which was consistent with the amounts awarded in similar cases, and the existence of clear and extensive case-law regarding the subject. It was also satisfied that respect for human rights as defined in the Convention and the Protocols thereto did not require it to continue the examination of the application (Article 37 § 1 *in fine*). However, the Court emphasised that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to its list of cases, in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

### III. SUBSEQUENT DEVELOPMENTS

23. On 27 February 2019 the applicant's lawyer asked the Malatya Third Assize Court to reopen the criminal proceedings against the applicant on the basis of the Government's unilateral declaration in which they had acknowledged a violation of the applicant's rights under Article 6 §§ 1 and 3 of the Convention. The applicant's lawyer urged the Assize Court not to wait

for the outcome of the procedure before the Court, stressing that the applicant had been deprived of his liberty for more than eighteen years as a result of the criminal proceedings forming the basis of his request. The lawyer indicated that the applicant had not accepted a friendly-settlement proposal submitted by the Government in the earlier stage of the proceedings before the Court because, at that time, the Code of Criminal Procedure had not provided for the possibility of applying for the reopening of criminal proceedings on the basis of strike-out decisions by the Court based on friendly settlements and unilateral declarations. However, the lawyer pointed out that the Code of Criminal Procedure had been amended on 31 July 2018 so as to make that possible and asked the court to reopen the criminal proceedings.

24. On 2 April 2019 the Malatya Third Assize Court dismissed the applicant's application for the reopening of the criminal proceedings against him on the grounds that it had not been based on any of the grounds for the reopening of criminal proceedings set out in Article 311 § 1 of the Code of Criminal Procedure, including its subsection (f), which provided for such reopening in the event that the Court found a violation of a right protected by the Convention and the Protocols thereto and established that the criminal conviction had been based on that violation. The applicant objected to that decision and his objection was also dismissed.

25. On 11 June 2019, following the Court's decision to strike the application out of its list of cases on 23 May 2019, the applicant's lawyer lodged another application for the reopening of the proceedings against him. The lawyer pointed out that, by a decision dated 23 May 2019, the Court had decided to strike the application out of its list of cases on the basis of the unilateral declaration submitted by the Government on 6 September 2018.

26. On 5 July 2019 the Malatya Third Assize Court dismissed the applicant's application, holding that it was not based on any of the grounds listed in Article 311 of the Code of Criminal Procedure.

27. On 29 July 2019 the applicant's lawyer lodged an objection against the decision to dismiss the reopening request, arguing that the court had disregarded Article 311 § 1 (f) of the Code of Criminal Procedure, which provided for, as of 31 July 2018, the reopening of criminal proceedings in cases where the Court had decided to strike an application out of its list of cases following a friendly settlement or a unilateral declaration.

28. On 6 August 2019 the Malatya Fourth Assize Court dismissed the applicant's objection, stating as follows:

"Having regard to the scope of the case file under examination, the decision of the Malatya Third Assize Court dated 5 July 2019 does not contain any aspect contrary to the procedure and laws ..."

29. On 11 September 2019 the applicant lodged an application with the Constitutional Court and complained, among other things, that the domestic courts' rejection of his request to have the criminal proceedings reopened on the basis of the Court's strike-out decision, which in turn had been based on the Government's unilateral declaration acknowledging violations of his

rights under Article 6 §§ 1 and 3 of the Convention, had constituted a breach of his right to a fair trial. In his application, the applicant further complained that the criminal proceedings culminating in the Court of Cassation's judgment dated 16 October 2008 had also failed to meet the requirements of a fair trial on account of the statutory restriction placed on his right of access to a lawyer during the preliminary investigation stage, the use by the trial court of the statements he had made in the absence of a lawyer and his inability to question witnesses while he had been present in the trial court. Lastly, the applicant argued that the state security courts which had conducted part of his trial had lacked independence and impartiality, thereby breaching Article 6 § 1 of the Convention.

30. On 25 May 2021 the Constitutional Court declared the application inadmissible. As regards the complaints concerning the alleged unfairness of the criminal proceedings resulting in the applicant's conviction, which had become final with the Court of Cassation's decision dated 16 October 2008, the Constitutional Court rejected them as being incompatible *ratione temporis*, given that its temporal jurisdiction had only covered acts and decisions that had become final after 23 September 2012. As regards the complaint concerning the alleged breach of the right to a fair trial stemming from the decision to dismiss the application for the reopening of criminal proceedings against the applicant, the Constitutional Court took the view that those complaints were inadmissible as being incompatible *ratione materiae* with Article 36 of the Constitution (the provision corresponding to Article 6 of the Convention).

31. On 22 October 2024 the Court decided to restore the present application to its list of cases, following a request submitted by the applicant for its restoration, in accordance with Article 37 § 2 of the Convention, on the basis of the domestic courts' rejection of his request to have the criminal proceedings against him reopened.

## RELEVANT LEGAL FRAMEWORK

32. The relevant provisions of the former Code of Criminal Procedure (Law no. 1412), namely Articles 135, 136 and 138, as in force at the material time, provided that anyone suspected or accused of a criminal offence had a right of access to a lawyer from the moment when he or she was taken into police custody. In accordance with section 31 of Law no. 3842 of 18 November 1992, which amended the legislation on criminal procedure, the above-mentioned provisions were not applicable to persons accused of offences falling within the jurisdiction of the national security courts. Law no. 4928 of 15 July 2003 lifted the restriction on an accused's right of access to a lawyer in proceedings before the national security courts (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 27-29, ECHR 2008).

## THE LAW

## I. PRELIMINARY REMARKS

33. In the present case, the Government submitted a unilateral declaration on 6 September 2018 acknowledging a violation of Article 6 §§ 1 and 3 of the Convention and indicated that Article 311 § 1 (f) of the Code of Criminal Procedure required, as of 31 July 2018, the reopening of criminal proceedings in cases where the Court had decided to strike an application out of its list of cases following a friendly settlement or a unilateral declaration. In the Government's view, the remedy in question was capable of providing the applicant with redress in respect of his complaints under Article 6 of the Convention. The Court decided to strike the application out of its list of cases having regard, *inter alia*, to its clear and extensive case-law on the topic of right of access to a lawyer under Article 6 §§ 1 and 3 (c) of the Convention (see, among other authorities, *Mehmet Duman v. Turkey*, no. 38740/09, 23 October 2018; *Ömer Güner v. Turkey*, no. 28338/07, 4 September 2018; *Girişen v. Turkey*, no. 53567/07, 13 March 2018; *Canşad and Others v. Turkey*, no. 7851/05, 13 March 2018; *İzzet Çelik v. Turkey*, no. 15185/05, 23 January 2018; and *Bayram Koç v. Turkey*, no. 38907/09, 5 September 2017) and the right to examine or have examined witnesses under Article 6 §§ 1 and 3 (d) of the Convention (see, among other authorities, *Daştan v. Turkey*, no. 37272/08, 10 October 2017).

34. By its decision dated 23 May 2019, the Court took note of the terms of the respondent Government's declaration under Article 6 §§ 1 and 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein and decided to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention. The Court indicated that the reopening of the domestic proceedings was the most appropriate way to provide an effective solution to an alleged breach of Article 6 of the Convention, should the applicant so request. In that regard, the Court further noted that Article 311 § 1 (f) of the Code of Criminal Procedure, as amended by Law no. 7145 on 31 July 2018, entitled applicants to lodge an application for the reopening of criminal proceedings following a decision by the Court to strike their case out of its list of cases on the basis of a friendly settlement or a unilateral declaration, as these two situations are now exhaustively listed in Article 311 § 1 (f) of the Code of Criminal Procedure as grounds for the reopening of criminal proceedings. Accordingly, the Court concurred with the Government's submission that the reopening of criminal proceedings under Article 311 § 1 (f) of the Code of Criminal Procedure was capable of providing redress in respect of the applicant's complaints under Article 6 of the Convention.

35. It goes without saying that the Court's strike-out decision did not amount to a judgment finding a violation of the Convention (see, *mutatis*

*mutandis, Willems and Gorjon v. Belgium*, nos. 74209/16 and 3 others, § 61, 21 September 2021). In that decision, the Court merely took note of the Government's unilateral declaration and the applicant's view on the terms thereof before striking the application out of its list. The Court did not examine the admissibility, let alone the merits of the applicant's complaint. It is nonetheless important to stress that, in a spirit of shared responsibility on the part of States and the Court, to ensure respect for Convention rights, applicants are entitled to expect the national authorities, including the courts, to draw fair-mindedly the conclusions that follow from a unilateral declaration by the Government acknowledging a violation of Article 6 and giving rise to a decision of the Court taking note of it (see, *mutatis mutandis, Boutaffala v. Belgium*, no. 20762/19, § 51, 28 June 2022).

36. This means that the terms of the Government's unilateral declaration, read together with the Court's strike-out decision in the present case, imposes a duty on domestic courts to examine the reopening request in a manner that gives effect to the Government's commitments and the Court's case-law.

37. In this connection the Court has clearly stated that it does not have jurisdiction to order the reopening of domestic proceedings. However, where an individual has been convicted following proceedings that have entailed breaches of Article 6 of the Convention, the Court may indicate that a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation, and often the most appropriate one (see, *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], no. 32772/02, § 89, ECHR 2009, and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 49 and 52, 11 July 2017, wherein the Court recommended a retrial or the reopening of the case respectively). This is in keeping with the guidelines of the Committee of Ministers, which in Recommendation No. R(2000) 2 called on the Contracting Parties to the Convention to introduce mechanisms for re-examining cases and reopening proceedings at domestic level, finding that in exceptional circumstances such measures represented "the most efficient, if not the only, means of achieving *restitutio in integrum*" (see *Verein gegen Tierfabriken Schweiz (VgT)*, cited above, §§ 33 and 89). This also applies in the event that a violation of the right of access to a lawyer and a violation of the right to examine witnesses have been found (see the cases cited in paragraph 33 above).

38. Given that the applicant in the present case requested that the criminal proceedings against him be reopened, it was incumbent on the domestic courts to draw the necessary conclusions to give effect within the domestic legal order to the Government's unilateral declaration and to the Court's decision acknowledging it. This task formed part of the shared responsibility between national authorities and the Court in ensuring the protection of the rights and freedoms defined in the Convention and its Protocols, and more specifically, the primary responsibility of national authorities in this regard.

39. Nevertheless, the domestic courts in the present case rejected the applicant's request to have the criminal proceedings reopened on the basis of the Court's decision to strike the present application out of its list of cases, which in turn was based on the Government's unilateral declaration dated 6 September 2018. The domestic courts relied on the grounds that such a reopening request did not meet the criteria for the reopening of criminal proceedings, despite the fact that strike-out decisions based on unilateral declarations were explicitly cited by Article 311 § 1 (f) of the Code of Criminal Procedure as a ground which required the reopening of criminal proceedings – a view which was also taken by the Government in their above-cited unilateral declaration. Moreover, the applicant's individual application on this point was declared inadmissible by the Constitutional Court, which found his complaints concerning the manner in which the reopening of criminal proceedings had been determined incompatible *ratione materiae* with the right to a fair trial.

40. The domestic courts' above-mentioned stance with regard to the applicant's request to have the criminal proceedings against him reopened meant that the commitments made by the Government in their unilateral declaration of 6 September 2018 had no practical effect in the domestic legal order. Such a state of affairs constituted an "exceptional circumstance" which led the Court, on 22 October 2024, to restore the present application to its list of cases at the applicants' request (see paragraph 31).

41. Accordingly, the Court is called upon to examine the alleged unfairness of the criminal proceedings against the applicant which culminated in the Court of Cassation's judgment dated 16 October 2008 due to the alleged breaches of Article 6 §§ 1 and 3 (c) and (d) of the Convention. In doing so, the Court will also consider the domestic courts' rejection of the applicant's request for the reopening of the criminal proceedings in question, based on the Court's decision of 23 May 2019 to strike the present application out of its list of cases, which in turn was based on the Governments' unilateral declaration dated 6 September 2018.

## II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

42. The applicant complained that he had not been reminded of his rights or provided with a lawyer during the preliminary investigation stage. However, in convicting him, the domestic courts had still attached weight to the statements he had made without the assistance of a lawyer thereby disclosing a breach of Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

...”

## **A. Admissibility**

43. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

44. The applicant reiterated his complaint, arguing that the Government's submissions were tantamount to acknowledging the finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention. Accordingly, the applicant invited the Court to find a violation of the provision in question.

45. In their initial observations of 11 December 2013 – submitted prior to the Court's decision to strike the present application out of its list of cases on 23 May 2019 – the Government stated that they “were aware of the case-law of the Court under Article 6 § 3 (c) of the Convention.” In their subsequent observations, submitted in response to the Registry's letter dated 12 October 2016, the Government indicated that they had already submitted their position in the present case and did not file any additional observations based on the *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, 13 September 2016) judgment.

46. The applicant further submitted that, following the Court's decision to strike the present application out of its list of cases on 23 May 2019 on the basis of the Government's unilateral declaration dated 6 September 2018, the domestic courts had simply disregarded the explicit wording of Article 311 § 1 (f) of the Code of Criminal Procedure, the Court's decision to strike the present application out of its list, and the unilateral declaration in question.

### *2. The Court's assessment*

#### **(a) General principles**

47. The general principles with regard to the right of access to a lawyer may be found in *Beuze v. Belgium* ([GC], no. 71409/10, §§ 119-50, 9 November 2018) and *Ibrahim and Others* (cited above, §§ 249-74).

48. In the determination of whether the proceedings were fair, the Court does not act as a court of fourth instance in deciding on whether the evidence

was obtained unlawfully in terms of domestic law, its admissibility or the guilt of an applicant (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 149, 18 December 2018). These matters, in line with the principle of subsidiarity, are the province of the domestic courts. It is not the Court's task to rule on whether the available evidence was sufficient for an applicant's conviction and thus to substitute its own assessment of the facts and the evidence for that of the domestic courts.

49. Moreover, the Court considers that where a procedural defect has been identified, it falls to the domestic courts in the first place to carry out the assessment as to whether that procedural shortcoming has been remedied in the course of the ensuing proceedings, the lack of an assessment to that effect in itself being *prima facie* incompatible with the requirements of a fair trial according to Article 6 of the Convention. In the absence of any such assessment, the Court must nevertheless make its own determination. In doing so, it is, however, not the Court's task to embark upon an assessment of evidence so as to determine whether a given procedural shortcoming has or has not irretrievably prejudiced the overall fairness of the proceedings, matters that primarily fall within the domain of the national courts (see *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 51, 28 January 2020).

**(b) Application of the above principles to the present case**

*(i) Whether there was a restriction on the right of access to a lawyer*

50. In the present case, the applicant was denied access to a lawyer from 8 to 17 February 2000 as a result of the statutory restriction laid down in section 31 of Law no. 3842. As a result, he was without legal assistance when he made his statements to the police and the public prosecutor. The Court has already examined the same legal problem and found violations of Article 6 §§ 1 and 3 (c) of the Convention in cases against Türkiye (see *Mehmet Zeki Çelebi*, cited above, § 52, with further references). It will therefore be guided by the well-established case-law principles in the assessment of the present case.

*(ii) Whether there were compelling reasons for the restriction*

51. The Court further notes that the Government have not argued that there were compelling reasons justifying the restriction placed on the applicant's right of access to a lawyer. Accordingly, the Court finds that no such reasons existed in the present case.

*(iii) Fairness of the proceedings as a whole*

52. In the absence of any compelling reasons to restrict the applicant's right of access to a lawyer while he was in police custody, the Court must apply very strict scrutiny to its fairness assessment, especially as there were statutory restrictions of a general and mandatory nature (see *Beuze*, cited

above, § 165). The burden therefore lies with the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice. The Court also reiterates that it is only in very exceptional circumstances that it can conclude that a given trial has not been prejudiced by the restriction of an applicant's right of access to a lawyer (see *Mehmet Zeki Çelebi*, cited above, § 57).

53. In this regard, the Court must first ascertain whether the prejudice caused by the systemic restriction on the applicant's right of access to a lawyer while in custody rendered the trial as a whole unfair or whether it was remedied through necessary safeguards at the national level, which were, moreover, subsequently raised by the Government in the examination of the case before the Court (*ibid.*, § 59).

54. The Court notes, however, that the Government advanced no such arguments in the present case. This being so, the Registry invited the Government, by a letter dated 12 October 2016, following the Grand Chamber's judgment in *Ibrahim and others* (cited above), to specifically address, if they so wished, the question whether the absence of access to legal advice during the applicants' police custody and the use of their statements in their subsequent convictions, had not caused irretrievable prejudice to the fairness of the respective trials. Yet, the Government solely indicated that they had submitted their observations.

55. Accordingly, and bearing in mind that very strict scrutiny applies in cases where there were no compelling reasons to restrict an applicant's right of access to a lawyer, the Court finds that the Government failed to discharge their burden to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the criminal proceedings against the applicant was not irretrievably prejudiced by the statutory restriction placed on his right of access to a lawyer and the subsequent use of his statements in the absence of a lawyer to convict him. On that account, the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

56. Last but not least, the Court cannot but note that the violation of the applicant's rights under Article 6 §§ 1 and 3 of the Convention was acknowledged in the Government's unilateral declaration dated 6 September 2018, which led to the Court's decision on 23 May 2019 to strike the present application out of its list of cases. What is more, the unilateral declaration in question contained an indication by the Government that Article 311 § 1 (f) of the Code of Criminal Procedure, as amended by Law no. 7145 of 31 July 2018, provided for the reopening of criminal proceedings in cases where the Court had decided to strike an application out of its list of cases following a friendly settlement or a unilateral declaration, which the Government regarded as a remedy that was capable of providing redress in respect of the applicant's complaints under Article 6 of the Convention.

57. Nevertheless, the domestic courts, which were called upon to examine the applicant’s request for the reopening of criminal proceedings on the basis of the Court’s above-mentioned strike-out decision, rejected it, holding that it did not meet the conditions for the reopening of proceedings as set out in Article 311 § 1 (f) of the Code of Criminal Procedure. In their decision to reject the request, the domestic courts failed to provide any reasons as to why, despite the clear wording of the relevant provision and the Government’s reassurance that the Code of Criminal Procedure provided for the reopening of criminal proceedings in cases where reopening requests were based on a strike-out decision following a unilateral declaration, the applicant’s request did not satisfy the criteria under Article 311 § 1 (f) of Code of Criminal Procedure.

58. In the Court’s view, the domestic courts’ decisions on this subject – which provided no relief to the applicant, who had been imprisoned for more than eighteen years at the time of his request – were based on a manifest factual or legal error, resulting in a denial of justice (see *Moreira Ferreira*, cited above, § 85). The Court also notes that the Constitutional Court failed to address this crucial shortcoming (see *Çelebi v. Türkiye* (dec.), no. 55657/09, 25 June 2024, where the Court found that an application to the Constitutional Court was an effective remedy that had to be exhausted in cases where applicants complained of the domestic courts’ failure to comply with undertakings contained in the Government’s unilateral declarations in respect of applications that had been struck out of the Court’s list of cases on the basis of such declarations).

59. Be that as it may, the Court does not lose sight of the fact that the present case appears to be an isolated example, given that amongst the numerous applications against Türkiye concerning the right of access to a lawyer under Article 6 § 3 (c) of the Convention which were struck out of the list of cases on the basis of unilateral declarations, the present application has, so far, been the only case that has been restored to the Court’s list of cases.

60. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

61. The applicant complained that that he had been deprived of his right to examine witnesses in person and before the trial court that had ultimately convicted him, in breach of Article 6 §§ 1 and 3 (d) of the Convention, which reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

...”

#### **A. Admissibility**

62. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### **B. Merits**

##### *1. The parties' submissions*

63. The applicant submitted that his right to question witnesses in person had been breached as a result of the trial court's decision to hear evidence from witnesses by way of rogatory letters sent by that court, which meant that those witnesses had given evidence to the courts near their respective places of residence. In his view, this arrangement had also failed to comply with the principles of immediacy and equality of arms.

64. The Government submitted that the witnesses had been heard by way of letters rogatory and that their statements had been read out during the public hearings in the criminal proceedings against the applicant, which had provided him with a possibility to challenge them. In any event, the statements made by the witnesses had neither been the sole nor the “primary” evidence for the applicant's conviction. That was because the trial court had found the applicant guilty on the basis of different pieces of evidence, such as the applicant's statements and identification reports. In other words, the trial court had only relied on the statements made by the witnesses as “additional evidence”. Accordingly, the Government contended that there had been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

##### *2. The Court's assessment*

###### **(a) General principles**

65. The general principles with regard to complaints relating to the examination of absent witnesses and the use by the courts of the evidence given by those witnesses may be found in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015) and *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; see also *Faysal Pamuk v. Turkey*, no. 430/13, §§ 44-50, 18 January 2022 for a concise summary of those principles).

66. The Court will therefore apply the three-pronged test formulated in the above-cited case-law and examine:

(i) whether there was a good reason for the non-attendance of the witnesses at the trial;

(ii) whether the evidence given by the absent witnesses was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard; and

(iii) whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured as regards the evidence given by the absent witnesses.

**(b) Application of these principles to the present case**

(i) *Whether there was a good reason for the non-attendance of witnesses at the trial*

67. Good reasons for the absence of a witness must exist from the trial court's perspective and the factual or legal grounds of such reason must be reflected in the domestic courts' judgments. According to the Court's established case-law, there are a number of reasons why a witness may not attend trial, such as absence owing to death or fear, absence on health grounds or the witness's unreachability (see *Schatschaschwili*, cited above, § 119 with further references therein).

68. In the present case, the Court notes that the domestic courts issued letters of request to the courts located in the cities in which M.A., İ.A.D., Ö.K., Ş.S., V.Ş., E.Ç., D.A.K., S.G., O.A., H.E., F.K. and Ç.Ç. resided with a view to, among other things, taking their statements. As a result, the witnesses in question gave evidence to various courts other than the trial court and the latter admitted the copies of their written statements as evidence in lieu of their live in-court testimony. In doing so, the trial court read out those statements to the applicant and his lawyer at the hearings so that they could submit their views on those testimonies.

69. The Court has already found, in *Faysal Pamuk* (cited above), that the procedure known as "letters of request", whereby a court seeks the assistance of another domestic court in examining a witness who resides in a place other than that where the trial is to take place, precludes any individualised assessment of the question whether there were good reasons for a witness's non-attendance at the trial. Accordingly, the Court found in that case that that procedure absolved the domestic courts of their duty to make all reasonable efforts to secure the attendance of witnesses and could not be considered a good reason to do away with the applicants' right to confront witnesses before their triers of fact.

70. The same considerations also hold true in the present case, where the trial court followed the same procedure as in the *Faysal Pamuk* case (cited above). Moreover, the Government did not argue that the trial court relied on

reasons other than the witnesses' places of residence for their non-attendance at the trial.

71. In view of the considerations above, the Court concludes that no good reason has been shown for the non-attendance of the above-mentioned witnesses at the trial.

*(ii) Whether the evidence of the absent witnesses was the sole or decisive basis for the applicant's conviction or carried significant weight in that regard*

72. The Court observes that the domestic courts did not evaluate the significance of the evidence provided by the absent witnesses. Consequently, the Court will carry out its own assessment on this matter. In this context, it notes that, although the applicant admitted to membership of the PKK and maintained this stance throughout the criminal proceedings, he consistently denied participating in the armed operations for which he was ultimately convicted. This distinction was critical in the present case, as involvement in those activities constituted the essential material element of the offence of "carrying out activities aimed at bringing about the secession of part of the national territory" under Article 125 of the former Criminal Code – the offence for which the applicant was ultimately convicted. In fact, his conviction and the resulting life sentence were based on the determination that he had taken part in three armed attacks perpetrated by the PKK, namely (i) the killing of six teachers in Darikent, Mazgirt on 12 September 1994; (ii) the road blockade and armed clash with security forces on the Tunceli-Pülümür highway in Uzuntarla village on 13 October 1994, and (iii) an armed clash with security forces in Mazgirt-Hiran Mountain region (Danzik forests) on 12 August 1995.

73. As the trial court made clear in its reasoning, the applicant's involvement in the three aforementioned armed attacks was established by witness statements made in the courts of the cities in which the witnesses resided. Accordingly, the statements of the absent witnesses should be regarded as carrying at least significant weight in respect of the applicant's conviction.

*(iii) Whether there were sufficient counterbalancing factors to compensate for the handicaps under which the defence laboured*

74. The Court has considered the following elements relevant in this context: the trial court's approach to the evidence in question; the availability and strength of further incriminating evidence; and the procedural measures taken to compensate for the lack of opportunity to directly cross-examine the witnesses at the trial (see *Schatschaschwili*, § 145, and *Faysal Pamuk*, § 63, both cited above).

75. In this connection, the Court has already concluded that the hearing of witnesses in courts having jurisdiction over the area in which their places of

residence are located – instead of having them give evidence in the court of trial – is not capable of operating as a procedural safeguard in the absence of good reasons for the non-attendance of the absent witnesses, and that a trial court should not have recourse to that solution without considering alternative measures for obtaining evidence from them (see *Faysal Pamuk*, cited above, §§70-71).

76. In the present case, the Court sees no reason to depart from the conclusions reached in *Faysal Pamuk*, since there was no good reason for the absence of Y.Ö. and B.K. from the trial and no consideration was given to alternative measures which could have limited the restriction of the rights of the defence to what was strictly necessary.

77. Moreover, the Court notes that there is no indication in the national courts' judgments that they approached the statements given by the absent witnesses with particular caution or that the fact that they had not testified and had not been cross-examined in person before the trial court led the national courts to attach less weight to their statements (see *Daştan*, cited above, § 31). This was so despite the fact that the applicant contested the credibility of the absent witnesses who had made incriminating statements against him. What is more, while the trial court did not hear evidence from the absent witnesses in person, it concluded that “[t]he behavioural style of terrorist organisation members is to explain in detail the statements that will produce results in their favour in the cases in which they are personally tried – particularly when such statements may yield legal benefits – only to subsequently retract those statements in proceedings concerning other defendants, once the legal advantages have been secured.” On that basis, the trial court found the statements that the absent witnesses had made in the preliminary investigation stage to be more credible, and thus attached weight to those statements in convicting the applicant.

78. At this point, the Court reiterates that the right to a fair trial requires the accused to be able to confront the witnesses in the presence of a judge, who must ultimately decide the case. This is because the judge's observations on the demeanour and credibility of a witness may have consequences for the accused. The assessment of the trustworthiness of a witness is a complex task which cannot usually be achieved by a mere reading of his or her recorded words (see *Daştan*, cited above, § 33, with further references).

79. Accordingly, the trial court's assessment of the credibility of witnesses who were absent from the trial without a good reason, based solely on copies of their written statements taken by other courts, cannot be regarded as a sufficient safeguard capable of remedying the procedural defect identified in the present case. To hold otherwise would be tantamount to replacing the rule —namely, the “production and examination of all evidence against the accused while he or she is present at a public hearing with a view to adversarial argument”— with the exception to that rule, that is, the examination of such evidence in the accused's absence.

80. In any event, while the Court is prepared to assume that the reasons given by the trial court may be considered relevant, it cannot consider them sufficient, given the broad scope of its reasoning and its exclusion of the potential contribution of the direct examination of witnesses. This would have provided the members of the trial court and the defence, with an opportunity to form their own impression of the reliability, credibility and demeanour of the absent witnesses, and would have given the defence the possibility of questioning them.

81. Moreover, the Court has already found that the evidence given by the absent witnesses carried at least significant weight for the trial court's conclusion that the applicant had been involved in the three armed attacks carried out by the PKK. The remaining evidence relied on for that conclusion, namely the incident reports and the applicant's position within the PKK, was not sufficient to counteract the adverse impact that the admission of the evidence given by the absent witnesses had on the fairness of the criminal proceedings against the applicant.

82. Lastly, the Court notes that the Government did not indicate any factors which could be regarded as sufficient to counterbalance the difficulty encountered by the defence to challenge the reliability and the credibility of the absent witnesses.

83. In view of the foregoing, the Court concludes that the non-attendance of the absent witnesses at the trial, without any good reason, coupled with the use of their statements by the trial court to convict the applicant and sentence him to life imprisonment, without applying the necessary procedural safeguards to enable him to challenge the reliability and veracity of those statements, irretrievably undermined the overall fairness of the criminal proceedings against him.

84. There has accordingly been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

#### IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

##### **A. Damage, costs and expenses**

86. In his just satisfaction claims submitted on 11 April 2014, the applicant claimed, *inter alia*, 40,000 euros (EUR) for non-pecuniary damage, arguing that he had been in prison for more than fourteen years as a result of proceedings which had violated his right to a fair trial. In his submissions

following the Court's decision to restore the application to its list of cases on 22 October 2024, the applicant invited the Court to accept the just satisfaction claims he had lodged in 2014.

87. The Government contested those claims, arguing that they were excessive and contrary to the Court's case-law.

88. The Court notes that its decision of 23 May 2019 to strike the present application out of its list of cases was based on the Government's unilateral declaration dated 6 September 2018, where the amount of compensation offered to the applicant for pecuniary and non-pecuniary damage, as well as costs and expenses, namely EUR 500 was found to be consistent with the amounts awarded in similar cases (see *Aykaç*, cited above, § 18). That being the case, and given that the applicant did not submit any claims pecuniary damage or for costs and expenses either in his request to restore the application to the Court's list of cases, or in the observations he had submitted after the Court's decision to restore the case to its list of cases, the Court sees no reason to rule on pecuniary damage or costs and expenses.

89. However, regarding non-pecuniary damage, the Court notes the exceptional circumstances of the case, consisting of (i) the Government's unilateral declaration dated 6 September 2018 whereby they acknowledged a violation of the complaints under consideration in the present case –which led to the Court's decision to strike-out the present case on 30 April 2019, (ii) the domestic courts' subsequent rejection of the applicant's request for the reopening of the criminal proceedings, contrary to the Government's commitments, as well as (iii) the Constitutional Court's failure to remedy this shortcoming.

90. In view of the above, and deciding on an equitable basis, the Court awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable, without prejudice to any amount already paid or agreed to be paid to the applicant under the Government's unilateral declaration dated 6 September 2018.

91. Notwithstanding that conclusion, the Court reiterates that the most appropriate form of redress would be a retrial in accordance with the requirements of Article 6 of the Convention, should the applicant so request (see *Soytemiz v. Turkey*, no. 57837/09, § 64, 27 November 2018, and *Süleyman v. Turkey*, no. 59453/10, § 110, 17 November 2020).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (d) of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. Dismisses the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 9 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Registrar

Arnfinn Bårdsen  
President