



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

SECOND SECTION

CASE OF ZÜLKÜF MURAT KAHRAMAN v. TURKEY

(Application no. 65808/10)

JUDGMENT

STRASBOURG

16 July 2019

FINAL

16/10/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zülküf Murat Kahraman v. Turkey,

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

Robert Spano, *President*,

Marko Bošnjak,

Işıl Karakaş,

Julia Laffranque,

Egidijus Kūris,

Arnfinn Bårdsen,

Darian Pavli, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 25 June 2019,

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

PROCEDURE

1. The case originated in an application (no. 65808/10) against the Republic of Turkey 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 Zülküf Murat Kahraman (“the applicant”), on 13 October 2010.

2. The applicant, who had been granted legal aid, was represented by Ms G. Battal Özmen, a lawyer practising in Diyarbakır. The Turkish Government (“the Government”) were represented by their Agent.

3. On 12 September 2013 the applicant’s complaint concerning the alleged violation of his right to freedom of expression was communicated to the Government, and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. On 1 June 2018 further observations were requested from the parties pursuant Rule 54 § 2 (c) of the Rules of Court.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1984 and lives in Ankara.

A. Criminal proceedings brought against the applicant under Article 220 § 6 and Article 314 of the Criminal Code, and section 7(2) of the Prevention of Terrorism Act (Law no. 3713)

6. On 26 October 2008 a press conference and a demonstration were held in Gaziantep to protest about the conditions of detention and alleged ill-treatment of Abdullah Öcalan, the leader of the PKK, an illegal armed organisation.

7. According to two police reports dated 31 December 2008 and 20 January 2009, on 26 October 2008 clashes occurred between demonstrators and the police in three neighbourhoods in Gaziantep, as a result of which eleven police officers were injured and police vehicles and public buildings were damaged by some demonstrators who threw stones. In the police reports in question, it was noted that four photographs of a crowd had been taken by DIHA (Dicle News Agency) correspondents and published in the local media and media controlled by the PKK. A person who had covered his head with a hood and his face with a *puşî*¹ was seen in the photographs. The police officers who had prepared the reports had found out that person was the applicant, and that he had been active in the Patriotic Democratic Youth Assembly (*Yurtsever Demokratik Gençlik Meclisi*), a youth organisation which was, according to the police reports, linked to the PKK.

8. On 18 February 2009 the Adana public prosecutor filed a bill of indictment against the applicant and one other person with the Adana Assize Court. The Adana public prosecutor noted that the applicant had participated in the gathering which had started in front of one of the offices of the Party for a Democratic Society (*Demokratik Toplum Partisi – DTP*) in Gaziantep, and that he had covered his face and chanted slogans. The public prosecutor relied on the photographs referred to by the police in the above-mentioned reports. The applicant was charged with membership of an illegal organisation under Article 220 § 6 and Article 314 of the Criminal Code, and disseminating propaganda in favour of the PKK, under section 7(2) of the Prevention of Terrorism Act (Law no. 3713).

9. On 12 March 2009 the applicant was arrested and subsequently detained on remand in relation to the charges brought against him in the bill of indictment of 18 February 2009.

10. On 20 March 2009 the Adana Assize Court held the first hearing in the case, during which the applicant made his defence statements. He contended that he had never participated in meetings or demonstrations organised by the DTP. Hence, he had not participated in the gathering in front of the DTP office on 26 October 2008. When shown the photographs

1. “*Puşî*” or “*poşu*” (keffiyeh) is the name of a traditional scarf that is usually worn around the neck or head.

in the case file, he denied the allegation that the person in the photographs was him. At the end of the hearing the court ordered his release pending trial.

11. At the second hearing held on 3 April 2009 the Adana public prosecutor submitted his observations on the merits of the case and asked the assize court to convict the applicant as charged.

12. At the fourth hearing held on 9 June 2009 the applicant and his co-accused made their final defence submissions. The applicant once again denied that he had participated in the gathering in question.

13. On the same day the Adana Assize Court convicted the applicant of membership of an illegal organisation, the PKK, under Article 314 § 2 of the Criminal Code, on the basis of Article 220 § 6 and Article 314 § 3 of the same Code, and sentenced him to six years and three months' imprisonment. The applicant was also convicted of disseminating propaganda in support of the PKK under section 7(2) of Law no. 3713, for which he received a sentence of ten months' imprisonment.

14. As regards the applicant, the assize court first noted that the following evidence was available: photographs of him among demonstrators with his face partially covered with a *puşi*, and the police report of 20 January 2009, according to which he was one of the people who had participated in the illegal demonstration at around 1 p.m. on 26 October 2008 and chanted slogans and thrown stones at the police.

15. In the light of the evidence in the case file, the Adana Assize Court found it established that a press conference had been held in front of the DTP building on 26 October 2008 and that a press statement had been made. The court further noted that during the press conference demonstrators had chanted slogans in support of the PKK and its leader. The assize court also noted that the security forces had intervened after having heard the slogans, and that subsequently clashes had occurred between the police and the demonstrators, which had resulted in the wounding of some police officers and damage to private and public vehicles.

16. The Adana Assize Court further found it established that the applicant had participated in the demonstration of 26 October 2008, covered his face during that illegal demonstration, and disseminated propaganda in favour of the PKK by chanting slogans supporting the PKK and its leader. The court considered it established that the person in the photographs was the applicant, although he had his face partially covered. As a result, the court decided to convict him of disseminating propaganda in support of the PKK under section 7(2) of Law no. 3713. It further noted that the applicant had participated in the demonstration in question as a result of the call put out by the PKK. According to the court, although there was insufficient evidence to show that he was a member of the PKK, his participation in the demonstration showed that he had committed criminal offences on behalf of

it, and therefore he should be convicted of membership of the PKK under Article 314 § 2 of the Criminal Code, on the basis of Article 220 § 6 and Article 314 § 3 of the same Code. Lastly, the first-instance court noted that there was no evidence showing that the applicant had been involved in acts of violence during the demonstration of 26 October 2008, and considered that he should be acquitted of any charges relating to causing injury or damage.

17. On 10 June 2009 the applicant appealed.

18. On 18 August 2009 the applicant started to serve his prison sentence.

19. On 8 July 2010 the Court of Cassation dismissed the applicant's appeal and upheld the judgment of 9 June 2009.

B. Subsequent developments

20. On 5 July 2012 Law no. 6352, amending various laws with a view to suspending proceedings and sentences given in cases concerning crimes committed through the press and media and similar expressions of opinions, entered into force.

21. On 12 July 2012 the Adana Assize Court decided to defer the execution of the sentences the applicant had been given in the judgment of 9 June 2009, pending its examination of the applicant's application for revision, reduction or suspension of the sentences in the light of the provisions of Law no. 6352 of 5 July 2012. The applicant was released from prison on the same day.

22. On 20 December 2012 the Adana Assize Court rejected the applicant's application for revision, reduction or suspension of the sentences which he had been given in the judgment of 9 June 2009 – those imposed under Article 314 § 2 of the Criminal Code, on the basis of Article 220 § 6 and Article 314 § 3 of the same Code and section 7(2) of Law no. 3713.

23. On 11 April 2013 Law no. 6459 amending Article 220 § 6 of the Criminal Code entered into force.

24. On 20 June 2013, in the light of the amendment made to Article 220 § 6 of the Criminal Code by Law no. 6459, the Adana Assize Court decided to suspend the execution of the prison sentence given to the applicant under Article 314 § 2 of the Criminal Code, on the basis of Article 220 § 6 and Article 314 § 3 of the same Code.

25. On 5 November 2013 the Adana Assize Court quashed the applicant's criminal conviction under Article 314 § 2 of the Criminal Code, on the basis of Article 220 § 6 and Article 314 § 3 of the same Code. As to his conviction under section 7(2) of Law no. 3713, the assize court rejected his application for the conviction to be quashed, in the light of its considerations in its judgment of 9 June 2009 and, in particular, in the light of the fact that he had participated in the demonstration of 26 October 2008 while he had his face partially covered.

C. Criminal proceedings brought against the applicant under the Meetings and Demonstration Marches Act (Law no. 2911)

26. In 2009 the applicant was also charged with obstructing the security forces in the execution of their duties during the demonstration of 26 October 2008, under sections 32 and 33 of the Meetings and Demonstration Marches Act (Law no. 2911).

27. On 13 December 2012 the Gaziantep Criminal Court convicted the applicant as charged and sentenced him to two years' imprisonment.

28. On 30 December 2013 the Court of Cassation quashed the judgment of 13 December 2012, holding that there was no evidence in the case file in support of the allegation that the applicant had obstructed the security forces in the execution of their duties during the demonstration of 26 October 2008.

29. On 15 May 2014 the Gaziantep Criminal Court acquitted the applicant of the charges brought against him under sections 32 and 33 of Law no. 2911.

D. Photographs in the case file

30. The applicant submitted four photographs to the Court which served as the basis for his convictions. All photographs show a group of people consisting of men, women and children, standing in front of a building. In the photographs, a man is seen with a loudhailer, and women and children hold banners. A young man who has his head covered with the hood of his jacket and his face covered with a *puşi* is seen standing in all the photographs.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL MATERIALS

31. A description of the relevant domestic law applicable at the material time, the domestic practice and the relevant international materials can be found in *Işıkırık v. Turkey* (no. 41226/09, §§ 30-37, 14 November 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

32. The applicant complained about his conviction for participating in a demonstration and the allegedly disproportionate sentences imposed on him. He relied on Article 10 of the Convention.

33. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicant or the Government. The Court considers that in the circumstances of the present case Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis*. Accordingly, the Court will examine these complaints from the standpoint of Article 11 of the Convention (see *Kasparov and Others v. Russia*, no. 21613/07, § 82, 3 October 2013; *Lütfiye Zengin and Others v. Turkey*, no. 36443/06, § 35, 14 April 2015; *Gülcü v. Turkey*, no. 17526/10, § 75, 19 January 2016; *Işıkırık v. Turkey*, no. 41226/09, §§ 40-42, 14 November 2017; and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018).

34. However, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly enshrined in Article 11 (*Işıkırık*, cited above, § 43).

Article 11 of the Convention reads:

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

35. The Government contested the applicant’s allegations.

A. Admissibility

36. Referring to the Court’s decisions in *Kartal v. Turkey* ((dec.), no. 29768/03, 16 December 2008) and *Çıraklar v. Turkey* (no. 19601/92, Commission decision of 19 January 1995), the Government argued that Article 11 of the Convention was not applicable in the present case. They contended that the demonstration of 26 October 2008 and the applicant’s conduct on those occasions did not fall within the scope of Article 11. In that regard, they submitted that during the demonstration the applicant had triggered and enhanced violence and also promoted terrorism by chanting slogans. The Government further argued that the applicant had failed to exhaust the domestic remedies available to him, within the meaning of Article 35 § 1 of the Convention. In this respect, they first contended that the applicant had not raised his grievance under Article 11 before the

domestic authorities. The Government also submitted that on 20 December 2012, 20 June 2013 and 5 November 2013 the Adana Assize Court had revised its judgment of 9 June 2009 pursuant to Laws nos. 6352 and 6459, and that the applicant should have applied to the Constitutional Court, as those decisions had been rendered after 23 September 2012, that is to say after the individual application system to that court had been put in place.

37. The Court notes that it has already examined and dismissed identical objections submitted by the Government (see *Yılmaz and Kılıç v. Turkey*, no. 68514/01, §§ 35-44, 17 July 2008; *Öner and Türk v. Turkey*, no. 51962/12, §§ 14-18, 31 March 2015; and *Işıkırık* cited above, § 47). The Court finds no particular circumstances in the instant case which would require it to depart from this jurisprudence. Accordingly, it rejects those objections of the Government.

38. The Court further considers that although the respondent State did not raise any objection as to the Court's competence *ratione personae* in relation to the applicants' complaints under this head, the issue of victim status calls for consideration by the Court (see *Gülcü*, cited above, § 78, and *Döner and Others v. Turkey*, no. 29994/02, § 81, 7 March 2017). In that regard, the Court observes that on 12 July 2012, after the entry into force of Law no. 6352, the applicant was released from prison. Taking into account the provisions of Law no. 6459, on 20 June 2013 the Adana Assize Court also suspended the execution of the prison sentence he had been given following his criminal conviction under Article 314 of the Criminal Code, and later on 5 November 2013 quashed that criminal conviction.

39. The Court, however, does not lose sight of the fact that between 18 August 2009 and 12 July 2012 the applicant served his prison sentence arising from the judgment of the Adana Assize Court in part. Thus, he was deprived of his liberty for two years and eleven months within the context of the criminal proceedings brought against him. The decisions of 20 June and 5 November 2013 neither acknowledged nor afforded redress for the alleged breach of the applicant's right to freedom of assembly in respect of his previous conviction under Articles 220 § 6 and 314 § 2 of the Criminal Code. The Court therefore finds that, following the decisions of 20 June and 5 November 2013, the applicant did not lose his victim status to complain of a breach of Article 11 on account of his conviction (see *Gülcü*, cited above, § 100).

40. The Government further stated that since the applicant had denied having taken part in the demonstrations before the domestic courts, he had failed to show how his conviction affected his right to freedom of assembly. They argued therefore that the applicant's complaints under this head were incompatible *ratione materiae* with the provisions of the Convention.

41. The Court considers that this objection is closely linked with the question of whether there was an interference with the applicant's right to freedom of assembly. Accordingly, the Court holds that the Government's

objection that the applicant's complaint is incompatible *ratione materiae* should be joined to the merits of the applicant's complaints under this head (see paragraph 44 below).

42. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

43. The applicant submitted that his conviction on account of his participation in the press conference held on 26 October 2008 constituted an unjustified interference with his rights to freedom of expression and assembly. He contended that the person in the photographs which had served as the basis for his conviction was not him. He further submitted that, even assuming that he had participated in the press conference of 26 October 2008, as established by the first-instance court, it could not be asserted that he had committed any crime, given that there was no evidence showing that he had chanted any slogans or been involved in acts of violence during that public gathering. He further asserted that the press declaration in question had aimed to criticise the conditions of detention of Abdullah Öcalan, and thus should be considered the use of freedom of expression. According to the applicant, there was also no evidence in the case file demonstrating that he had attended the press conference upon the instructions of the PKK.

44. The Government submitted that the applicant's conviction had been based on Article 220 § 6 and Article 314 § 2 of the Criminal Code, as well as section 7(2) of Law no. 3713. They noted that these provisions were accessible and foreseeable. They further argued that the interference in question had pursued the legitimate aims of protecting national security, territorial integrity, public safety and public order, as well as the prevention of crime. As regards the necessity of the interference, the Government contended that the applicant's criminal conviction had corresponded to a pressing social need and had been necessary in a democratic society in view of the conduct of the applicant during the demonstration of 26 October 2008, organised by the PKK. They argued that the applicant had chanted slogans in favour of the PKK, committed offences on behalf of that terrorist organisation and also been a member of the youth assembly of a sub-group of the PKK. The Government asserted that the PKK had been included on a list of terrorist organisations by a number of states and international organisations, such as the United States of America, the United Nations and NATO.

2. The Court's assessment

(a) As regards the applicant's conviction under Articles 220 § 6 and 314 of the Criminal Code

(i) Whether there was an interference

45. The Court notes that in his application form and in his observations in reply to those of the Government submitted to the Court on 12 August 2014, the applicant contended, for the purposes of his complaint under Article 6 of the Convention, that the Adana Assize Court had failed to properly assess the evidence in the case file and correctly establish the facts of the case. He denied that he was the person identified as him by the domestic courts. In the alternative, he submitted that the demonstration of 26 October 2008 should be considered to be protected under Article 10 of the Convention without explicitly stating that he had participated in the demonstration in question. The Court recalls that the applicant's complaint under Article 6 of the Convention was declared inadmissible by the Court on 12 September 2013. It further notes that in his submissions dated 7 August 2018 the applicant contended that he had attended the demonstration of 26 October 2008 and exercised his rights to freedom of expression and freedom of assembly. In any case, the Court observes that the applicant's criminal conviction under Articles 220 § 6 and 314 § 2 of the Criminal Code was indisputably directed at activities falling within the scope of freedom of assembly, and that he was sanctioned for participating in the demonstration held on 26 October 2008. The Court considers that, in such circumstances, the applicant's conviction must be regarded as constituting an interference with the exercise of his right to freedom of assembly. To hold otherwise would be tantamount to requiring him to acknowledge the acts of which he stood accused. In this respect, it should be borne in mind that the right not to incriminate oneself, although not specifically mentioned in Article 6 of the Convention, is a generally recognised international standard which lies at the heart of the notion of a fair procedure under that provision (see, *mutatis mutandis*, *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015; and also in the context of exhaustion of domestic remedies, *Yılmaz and Kılıç v. Turkey*, no. 68514/01, §§ 39-41, 17 July 2008; and in the context of civil proceedings, *Stojanović v. Croatia*, no. 23160/09, § 39, 19 September 2013; and compare *Kasparov and Others v. Russia*, no. 21613/07, §§ 72-73, 3 October 2013). Moreover, not accepting that a criminal conviction constituted an interference, on the grounds that an applicant denied any involvement in the acts at issue, would lock him in a vicious circle which would deprive him of the protection of the Convention (see *Müdür Duman*, cited above, § 30). Lastly, the Court cannot overlook the fact that the applicant's complaint under Article 6 of the Convention was declared inadmissible. Thus, in the light of its decision of 12 September

2013, the Court must examine the case on the basis of the facts as established by the national courts. As a result, the Court concludes that the applicant's criminal conviction for membership of the PKK as well as the imposition of a prison sentence upon him, constituted an interference with the exercise of his right to freedom of assembly as guaranteed by Article 11 of the Convention. The Government's objection that the applicant's complaint is incompatible *ratione materiae* must therefore be dismissed.

(ii) *Whether the interference was justified*

46. The Court notes that it has already examined an almost identical grievance in the case of *Işıkırık v. Turkey* (cited above, §§ 55-70) and found a breach of Article 11 of the Convention. In that case, having examined the application of Article 314 § 2 of the Criminal Code alone and in connection with Article 220 § 6 of the same Code, the Court firstly found that when applied in connection with Article 220 § 6, the criteria for a conviction under Article 314 § 2 were extensively applied to the detriment of the applicant (*ibid.*, § 66). It also observed that the array of acts that potentially constituted a basis for the application of a severe criminal sanction in the form of imprisonment, under Article 220 § 6 of the Criminal Code, were so vast that the wording of the provision, including its extensive interpretation by the domestic courts, did not afford a sufficient measure of protection against arbitrary interferences by the public authorities (*ibid.*, § 67). The Court further observed that on account of Mr Işıkırık's conviction, for acts which fell within the scope of Article 11 of Convention, there remained no distinction between him, a peaceful demonstrator, and an individual who had committed offences within the structure of the PKK. For the Court, such an extensive interpretation of a legal norm could not be justified when it had the effect of equating mere exercise of fundamental freedoms with membership of an illegal organisation in the absence of any concrete evidence of such membership. It considered that the very essence of the right to freedom of peaceful assembly and, thereby, the foundations of a democratic society, had been undermined when Mr Işıkırık had been held criminally liable under Articles 220 § 6 and 314 of the Criminal Code for the mere fact of attending a public meeting and expressing his views therein (*ibid.*, § 68). Noting that when demonstrators faced the charge of membership of an illegal armed organisation, they risked an additional sentence of between five and ten years in prison, the Court found that Article 220 § 6 of the Criminal Code would inevitably have a particularly chilling effect on those who were found criminally liable on re-exercising their rights under Articles 10 and 11 of the Convention. In the Court's view, the provision in question would also have a great deal of potential to deter other members of the public from attending demonstrations and, more generally, from participating in open political debate (*ibid.*, § 69). The Court as a result concluded that Article 220 § 6 of the Criminal Code had not been

“foreseeable” in its application since it did not afford the applicant the legal protection against arbitrary interference with his right under Article 11 of the Convention (*ibid.*, § 70).

47. The Court notes that the applicant in the instant case was convicted under Articles 220 § 6 and 314 § 2 of the Criminal Code on the sole basis of his participation in the demonstration of 26 October 2008, covering his face during that demonstration and chanting slogans supporting the PKK and its leader. In the light of these circumstances, the Court finds that its considerations in the above-mentioned case of *Işıkırık* also apply in the present case and that there is nothing in the case file that would require it to reach a different conclusion from the one reached in that case. Hence, the interference resulting from the application of Article 220 § 6 of the Criminal Code in the present case was not prescribed by law.

Accordingly, there has been a violation of Article 11 of the Convention.

(b) As regards the criminal proceedings brought against the applicant under section 7(2) of Law no. 3713

48. In view of its finding of a violation of Article 11 of the Convention above, the Court does not consider it necessary to examine whether the criminal proceedings brought against the applicant under section 7(2) of Law no. 3713 constituted an interference with his right to freedom of assembly and, if so, whether they were justified (see *Işıkırık*, cited above, § 71).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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

50. The applicant claimed 20,000 euros (EUR) and EUR 30,000 in respect of pecuniary and non-pecuniary damage respectively. As regards his claim in respect of pecuniary damage, he stated that, had he not been imprisoned, he would have graduated from university and started to work.

51. The Government submitted that the applicant’s claims were unsubstantiated and excessive.

52. As regards the alleged pecuniary damage, the Court observes that the applicant did not provide information specifying the details of any

pecuniary loss. It therefore rejects that claim. However, it awards the applicant EUR 7,500 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed EUR 5,760 for costs and expenses incurred before the domestic courts and before the Court. In support of his claim, he submitted a breakdown of the hours spent by his lawyer on his case, showing that she had carried out twenty hours of legal work. The applicant also referred to the Diyarbakır Bar Association's scale of fees in respect of legal representation before the Court.

54. The Government claimed that the applicant's claims under this head were not substantiated.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 to cover costs under all heads. From this sum should be deducted the EUR 850 granted by way of legal aid under the Council of Europe's legal aid scheme.

C. Default interest

56. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the Government's objection regarding the compatibility *ratione materiae* of the applicant's complaints under Article 11 of the Convention to the merits, and *dismisses* it;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 11 of the Convention on account of the applicant's conviction under Article 314 § 2 of the Criminal Code in connection with Article 220 § 6 of the same Code;

4. *Holds* that there is no need to examine whether there has been a violation of Article 11 of the Convention on account of the criminal proceedings brought against the applicant under section 7(2) of Law no. 3713;
5. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), less EUR 850 (eight hundred and fifty euros) granted by way of legal aid, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President