



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

SECOND SECTION

CASE OF KERİMOĞLU v. TÜRKİYE

(Application no. 58829/10)

JUDGMENT

Art 34 • Victim • Quashing of applicant's conviction and acquittal occasioned by an extraordinary legal remedy after imprisonment for more than eight years • Lack of acknowledgment of any alleged breach of Art 6 and of sufficient redress • Matter not "resolved" under Art 37 § 1 (b)
Art 6 § 1 (criminal) • Fair hearing • Domestic courts' failure to deliver a reasoned judgment stating grounds for applicant's conviction

STRASBOURG

6 December 2022

FINAL

06/03/2023

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

In the case of Kerimoğlu v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Egidijus Kūris,

Pauliine Koskelo,

Saadet Yüksel,

Lorraine Schembri Orland,

Frédéric Krenç,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 58829/10) 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 Alican Kerimoğlu (“the applicant”), on 16 August 2010;

the decision to give notice to the Turkish Government (“the Government”) of complaints concerning the alleged unfairness of different aspects of criminal proceedings against the applicant and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 15 November 2022,

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

INTRODUCTION

1. The application concerns the alleged unfairness of criminal proceedings that resulted in the applicant’s conviction and his having to serve approximately eight years and seven months in prison owing to the domestic courts’ failure to (i) state the grounds on which they had found him guilty, (ii) examine the targeted person (Y.A.), a gendarmerie officer (M.A.), and a certain witness (İ.Ö.) in person, (iii) play a video-recorded statement of the targeted person during the trial, and (iv) properly assess his requests for the adducing and examination of further evidence.

THE FACTS

2. The applicant was born in 1961 and lives in Istanbul. The applicant was represented by Mr Ş. Karakış, a lawyer practising in Istanbul.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.

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

5. On 6 August 2007 a certain H.B. shot Y.A. (hereafter “the targeted person”) with a gun in Sapanca, a district in Sakarya province. The targeted person was subsequently taken to hospital, where he gave a video-recorded statement to a gendarmerie officer, M.A. When the officer informed him that he and his colleagues had heard rumours that his shooting had been occasioned by a dispute related to purchases of land that had taken place a couple of years earlier, the targeted person affirmed that that was indeed the case. He further stated that he had transferred the title deeds to the plots of land in question (which had belonged to him) to a certain company and that he had received payments for those transfers. Explaining that the dispute had been between a certain real estate agent (İ.Ö.) and a company (S.) between whom the applicant had acted as a middleman in respect of the purchases in question, the targeted person stated that the applicant had visited him together with a friend, A.T., a couple of months earlier and had asked for his help in settling a claim for compensation that İ.Ö. had lodged against the S. company in relation to that dispute. When asked whether the applicant had visited or telephoned him again, the targeted person stated that he had not, adding that A.T. on the other hand, had telephoned him and had threatened him into resolving the matter. Lastly, Y.A. attested that H.B. had asked him: “They asked you to deal with this court [case]; why didn’t you?”; H.B. had then drawn his gun and shot the targeted person.

6. On 7 August 2007 the applicant was arrested on suspicion of involvement in the shooting of the targeted person. On 8 August 2007 the applicant appeared before the Sapanca Magistrate’s Court and gave evidence, stating that he had provided assistance to the S. company, in his capacity as a businessman, in finding and purchasing plots of land on its behalf. Within the context of those activities, he had met İ.Ö. and authorised him to deal with the purchases of the plots of land; İ.Ö. had then done so. However, as the S. company had been planning to use the plots of land as collateral in order to obtain bank loans, the respective declared value of the plots of land (as recorded by the Land Registry) was higher than their actual market value. When a dispute had broken out between the two parties several years after the purchases, İ.Ö. lodged a claim for damages against the S. company, arguing that it had not paid the price of the plots of land as declared at the Land Registry. The applicant stated that he had later come to realise that the targeted person was the *de facto* business partner of İ.Ö., but claimed that he had neither seen nor visited the targeted person since 2001. Acknowledging that he had known A.T. for twenty years, the applicant denied having instructed him to threaten the targeted person, adding that the dispute had been resolved a month and a half prior to the shooting.

7. The Sapanca Magistrate’s Court then played the video-recorded statement of the targeted person in which he had stated that the applicant and A.T. had visited him a couple of months before August 2007 and asked the applicant why he had said that he had not seen the targeted person since 2001.

The applicant insisted to the court that he and A.T. had not visited the targeted person's office. At the end of the hearing, the applicant was placed in pre-trial detention.

8. On 2 November 2007 the Sapanca Magistrate's Court ordered the applicant's release.

9. On 9 January 2008 the targeted person made a statement to the public prosecutor and complained that he had been shot upon the instructions of the applicant, owing to the dispute relating to the purchases of the plots of land and the legal action connected thereto.

10. On 8 February 2008 the Sakarya public prosecutor filed a bill of indictment with the Sakarya Assize Court in respect of the applicant, A.T. and H.B., accusing them of the attempted murder of the targeted person. The public prosecutor asserted that the applicant and A.T. had incited H.B. to shoot the targeted person; the public prosecutor cited, *inter alia*, the numerous telephone calls made between the applicant and A.T., as evidenced by the relevant telephone records.

11. At the first hearing, held on 11 March 2008, certain witnesses gave evidence in person (S.C., A.D., M.Ö., T.K., B.Ç., S.K., and S.A.); two of them asserted that H.B. had asked the targeted person (before shooting him) why he hadn't withdrawn the case – this assertion was not contained in either of the statements that they had made to the gendarmerie.

12. At the second hearing, held on 12 April 2008, the applicant gave evidence in person, stating that he had not had any motive to incite other people to kill the targeted person, with whom he had had no legal or financial problems. The applicant explained that prior to the shooting incident he had gone to the town of Sinop for a business trip; on his way to Sinop he had stopped at a service station owned by the targeted person and had talked to the targeted person's brother, O.A. O.A. had told him that his brother could be of help in resolving the problem with the targeted person, because he was friends with İ.Ö. At a meeting that had taken place the following day, the targeted person had told the applicant that he could not do anything to resolve the matter, because İ.Ö. was of bad character. Subsequently, the applicant and A.T. had met with İ.Ö. and also contacted other people who might be able to act as mediators in an effort to resolve the matter, but those attempts had been fruitless. However, the applicant stated that he had stopped concerning himself with this matter when the S. company had finally told him that it was something for the courts to solve. At the end of the hearing, the trial court ordered that the applicant be placed in pre-trial detention.

13. During the criminal proceedings, the targeted person and İ.Ö. -- pursuant to the letters of request issued by the trial court -- gave evidence to the courts under whose jurisdiction lay their respective places of residence, contrary to the applicant's requests that they be examined in person by the trial court. Similarly, the trial court dismissed a request lodged by the applicant that further investigative steps be taken, including (i) hearing

evidence from M.A., the gendarmerie officer who had taken the targeted person's statement at the hospital in the immediate aftermath of the shooting, and (ii) playing at the trial the video-recorded statement given by the targeted person, holding that the facts of the case had been sufficiently established.

14. On 2 December 2008 the Sakarya First Assize Court found the applicant guilty of incitement to attempted murder (*kasten adam öldürmeye teşebbüs*) of the targeted person and sentenced him to eighteen years' imprisonment. The court held that the applicant had acted as a middleman between the S. company and İ.Ö. with a view to assisting the S. company to purchase certain plots of land that belonged to various respective owners (one of whom was the targeted person). However, several years after the transactions had taken place, İ.Ö. had alleged that he had not received part of the fees owed to him and a dispute had therefore arisen between İ.Ö. and the S. company. As a result, İ.Ö. had lodged a claim for compensation against the S. company, which had been pending before the civil courts. The court went on to hold that when the applicant had understood that the S. company would lose the case, he and his co-accused, A.T., had tried to convince İ.Ö. to withdraw the claim for compensation. Their efforts had proved futile and, in the meantime, the applicant and A.T. had understood that the targeted person and İ.Ö. had been acting in concert. When their meeting with the targeted person had not produced a favourable outcome, the applicant had allegedly instructed A.T. to threaten the targeted person in order to persuade him to withdraw the case; after those threats had proved ineffective, they had incited H.B. to kill the targeted person. The court went on to hold that on 6 August 2007, H.B. had shot the targeted person with a gun and had uttered the following question: "Why didn't you withdraw your case?" However, the reasoned judgment did not include any substantiation or detail in respect of its crucial finding as to how the applicant had incited H.B. to kill the targeted person.

15. On 15 February 2010, following an appeal by the applicant, the Court of Cassation upheld the first-instance court's judgment and the applicant's conviction became final, meaning that the execution of his sentence commenced on that date.

16. On 18 August 2010 the applicant lodged an application with the Court and submitted various complaints in relation to the criminal proceedings under which he had been found guilty (see paragraph 11).

17. On 23 September 2013 the Sakarya First Assize Court dismissed an application lodged by the applicant's lawyer on 13 September 2013 for the reopening of the criminal proceedings, holding that it did not fulfil the eligibility criteria laid down in Article 311 of the Code of Criminal Procedure (Law no. 5271, which entered into force on 1 June 2005 (hereafter "the CCP"). On 8 November 2013 the Sakarya Second Assize Court dismissed an objection lodged by the applicant against that decision.

18. On 7 February 2014 the General Directorate for Criminal Matters of the Ministry of Justice (hereafter “the Directorate for Criminal Matters”) availed itself of an extraordinary remedy – namely, an “appeal in the interests of the law” (as provided for in Article 309 of the CCP) against the judgment of the Sakarya Second Assize Court dated 8 November 2013. It requested the Chief Public Prosecutor at the Court of Cassation (“the Chief Public Prosecutor”) to bring the case before the Court of Cassation with a view to having the impugned judgment quashed. On 9 June 2014 the First Section of the Court of Cassation refused that request.

19. On 22 January 2015 the Directorate for Criminal Matters availed itself of another extraordinary remedy, as provided for in Article 308 of the CCP -- namely, it requested the Chief Public Prosecutor to lodge an objection against the above-mentioned judgment of the First Section of the Court of Cassation seeking that it be reconsidered and quashed by the same Section. On 30 January 2015 the Chief Public Prosecutor forwarded the Directorate’s request to the First Section of the Court of Cassation.

20. On 25 February 2015 the First Section of the Court of Cassation returned the case file to the office of the Chief Public Prosecutor, asking the latter to first determine whether it would accept the request in question. On 12 March 2015 the Chief Public Prosecutor decided not to use his discretion under Article 308 of the Code of Criminal Procedure to forward the Ministry’s request.

21. On 7 April 2015 the Directorate for Criminal Matters reiterated its request that the Chief Public Prosecutor lodge an application for the above-mentioned judgment of 9 June 2014 to be quashed.

22. On 14 September 2015 the First Section of the Court of Cassation refused that request and decided to send the case file to the plenary criminal divisions of the Court of Cassation (“the plenary”), the highest judicial unit of that court in criminal matters.

23. On 19 February 2016 the plenary held that there was no valid objection that ought to be examined, and returned the case file to the Chief Public Prosecutor. Meanwhile, when the proceedings before the plenary were pending, the Chief Public Prosecutor lodged another objection, in accordance with Article 308 of the CCP, seeking that the First Section’s judgment dated 15 February 2010 be quashed, arguing that the applicant should have been acquitted in the absence of sufficient or conclusive evidence justifying his conviction. On 18 January 2016 the First Section dismissed that objection and sent the case file to the plenary.

24. On 15 November 2016 the plenary quashed the applicant’s conviction, remitted the case to the trial court, and ordered his immediate release, holding that the applicant should have been acquitted on the grounds that there had been no conclusive evidence showing beyond reasonable doubt that he had incited A.T. or H.B. to shoot the targeted person. On the same day the applicant was released.

25. Subsequently, fresh criminal proceedings against the applicant were opened before the Sakarya First Assize Court, which acquitted him on 29 September 2017, essentially on the same grounds as those indicated by the plenary. In its reasoned judgment, the trial court indicated that the applicant had the right to lodge a claim for compensation under Article 141 of the CCP in respect of his arrest and pre-trial detention (but not the execution of his sentence), which had been based on the offence of incitement to attempted murder. In the absence of any appeal against it, this judgment became final.

26. According to the information provided by the parties, the applicant did not lodge a claim for compensation under Article 141 of the CCP.

27. On 11 May 2020 the Government were given notice of the present application.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

28. The relevant parts of Article 141 § 1 of the CCP entitled “Compensation [for damage sustained] as a result of preventive measures” provide:

“Compensation for damage ... may be claimed from the State by anyone ...

(a) who has been arrested or taken into or kept in detention under conditions or in circumstances not complying with the law;

...

(e) who, after being arrested or detained in accordance with the law, was not subsequently committed for trial or was acquitted; ...”

29. Article 142 § 1 of the CCP reads as follows:

“A claim for compensation may be lodged within three months of the person concerned being informed that the decision or judgment has become final, and in any event within one year of the decision or judgment becoming final.”

30. The third chapter of Book Six of the CCP, entitled “Extraordinary legal remedies”, consists of three Sections, each of which lays down a different extraordinary legal remedy that may be resorted to in order to contest a final judicial decision.

31. Article 308 of the CCP, entitled “The Chief Public Prosecutor’s authority to lodge an objection”, provides as follows:

“(1) The Chief Public Prosecutor at the Court of Cassation may, of his or her own motion or upon request, lodge an objection against a decision delivered by one of the criminal divisions of the Court of Cassation within thirty days of being served with it. In respect of an objection [lodged] for the benefit of an accused, no time-limit shall be applied.

(2) Upon [the lodging of an] objection, the case file [in question] shall be sent to the division in respect of whose decision the objection was lodged.

(3) The division [in question] shall examine the objection within the shortest possible time and shall rectify its decision if it upholds [the objection]; if [it does] not, it shall transfer the file to the plenary criminal divisions of the Court of Cassation.”

32. Article 309 of the CCP, entitled “Appeal in the interests of the law”, provides as follows:

“(1) In the event that it is informed that a decision or a judgment given by a judge or a court that has become final without having been the subject of an appeal or cassation examination was unlawful, the Ministry of Justice shall [lodge a request], in writing, with the Chief Public Prosecutor at the Court of Cassation ... that the impugned decision or judgment be quashed by the Court of Cassation, indicating the legal grounds [for that request].

(2) The Chief Public Prosecutor at the Court of Cassation shall lodge a document [setting out] the [above-mentioned] grounds ... (together with [a] request that the decision or judgment be quashed) with the relevant criminal division of the Court of Cassation.

(3) If the relevant division of the Court of Cassation finds that the grounds set out are appropriate, it shall quash the decision or the judgment in the interests of the law.

(4) [If] the reasons for quashing [the decision or judgment in question]

a) concern a decision which is defined in Article 223 [of the CCP] and which does not resolve the substance of the case, the judge or the court that gave that decision shall render a fresh decision after [conducting] the necessary examination and inquiry.

b) concern an aspect of a conviction judgment which does not resolve the substance of the case or [which concerns] a procedural act resulting in the restriction or extinguishing of the rights of defence, the judge or the court that handed down the [earlier] decision shall render a [fresh] judgment, ... which shall be carried out anew (*yeniden yapılacak yargılama*). This judgment shall not [impose] a heavier [sentence] than the sentence set out in the earlier judgment.

c) concern an aspect of a judgment (other than a conviction) that resolves the substance of a case, it shall not lead to an outcome [that is] detrimental [to the accused] and shall not require a retrial (*yeniden yargılama*).

d) call for the lifting of the convicted person’s sentence, a decision to lift [it] shall be delivered; [if the reasons] call for a lighter sentence to be imposed, this lighter sentence shall be imposed directly by the criminal division of the Court of Cassation.

(5) A decision to quash [which has been] rendered in accordance with this provision cannot be insisted upon [by the lower-instance courts].”

33. Article 311 § 1 of the CCP, entitled “Grounds for reopening criminal proceedings (*yargılamanın yenilenmesi*) for the benefit of convicted persons”, provides as follows:

“Criminal proceedings terminated by a final judgment shall be re-examined by way of reopening the proceedings for the benefit of convicted persons if:

a) it is understood that a document which was used during the trial and which affected the judgment was false;

b) it is understood that a witness or an expert who testified under oath gave false evidence or voted against the convicted person in a manner that affected the judgment;

c) one of the judges who [was on the bench that] convicted the person was at fault in relation to the performance of his or her duties to an extent that necessitated his or her criminal prosecution or conviction, save for in cases where the fault was attributable to the convicted person;

d) a civil court judgment that was relied on as the basis for the criminal conviction [in question] has been rendered null and void by another final judgment;

e) new facts or new evidence are presented which either alone or in relation to evidence [previously presented] may lead to the acquittal of the person who was convicted, or to his conviction on the basis of a more lenient criminal-law provision;

f) the European Court of Human Rights finds a violation of a right protected by the Convention and its Protocols and establishes that the criminal conviction is based on that violation. In such a case, a request for the proceedings to be reopened may be made within one year of the date of the judgment of the European Court of Human Rights becoming final.

...”

34. Article 323 § 3 of the CCP, entitled “Judgment to be rendered following a rehearing”, which forms part of the third Section of the Third Chapter (entitled “Reopening of criminal proceedings”) of Book Six of the same Code, provides:

“(1) [Following] the rehearing ..., the court shall either uphold the previous judgment or quash it and render a fresh judgment.

(2) If the application for the reopening of the proceedings was lodged for the benefit of the accused, the fresh judgment ... shall not impose a heavier sentence than the sentence set out in the previous judgment.

(3) In the event that an acquittal or a decision not to impose a sentence (*ceza verilmesine yer olmadığı kararı*) is delivered following reopened criminal proceedings, then, in accordance with Articles 141-44 of this Code, the person in question shall be compensated for any pecuniary and non-pecuniary damage that he or she sustained owing to the partial or full execution of the earlier conviction judgment.”

35. The Government cited two judgments delivered by the Twelfth Criminal Division of the Court of Cassation in support of their contention that a claim for compensation, as provided for by Article 323 § 3 of the CCP, constituted an effective remedy capable of providing redress in respect of the applicant’s grievances in the present case. In the first judgment, which was delivered on 9 April 2018, the Court of Cassation posited the view that Article 323 § 3 of the CCP provided that in cases where a person had been acquitted following the reopening of criminal proceedings, he or she was entitled to lodge a claim for compensation under Articles 141-44 of the CCP in respect of any damage that he or she might have sustained in connection with the partial or full execution of a sentence stemming from a conviction that had subsequently been overturned. In that case, the Court of Cassation upheld a claim for compensation lodged by a person who had been acquitted after the reopening of criminal proceedings against him and after serving the sentence imposed on him in the earlier set of criminal proceedings. The

second judgment, dated 11 January 2016, concerned a claim for compensation lodged by a plaintiff who had had to serve part of his final sentence for a second time owing to an omission on the part of the domestic authorities. It did thus not concern a set of proceedings to which any extraordinary legal remedy applied.

THE LAW

I. PRELIMINARY REMARKS

36. At the time that the Government were given notice of the application, the Court invited the parties to submit their observations regarding the question of (i) whether the applicant could still claim to be a victim of a violation of his rights under Article 6 of the Convention and (ii) whether the matter could be regarded as “resolved” within the meaning of Article 37 § 1 (b) of the Convention. The principal reason for that approach was the Court of Cassation’s decision of 15 November 2016 whereby – after becoming aware of the matter – it quashed the applicant’s final conviction by way of an extraordinary remedy and ordered his immediate release, which led to his eventual acquittal by the trial court in 2017 with final effect.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicant complained that he had not had a fair trial owing to the domestic courts’ failure to deliver a reasoned judgment when convicting him. The relevant parts of Article 6 § 1 of the Convention read as follows:

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

A. Admissibility

1. *The parties’ submissions*

38. As regards the first question, namely the applicant’s victim status, the Government invited the Court to declare the application inadmissible as being *ratione personae* incompatible with the provisions of the Convention, arguing that he could not be regarded as a victim within the meaning of Article 35 of the Convention in view of the following points. In the first place, the plenary had reviewed the applicant’s final conviction following the application of an extraordinary remedy provided for by Article 308 of the CCP, which had been set in motion by the Chief Public Prosecutor. More importantly, the plenary had not only ordered the applicant’s immediate release, but it had also quashed his final conviction and remitted the case to the trial court. Thirdly, both the plenary and the trial court had held that there had not been conclusive and sufficient evidence to prove beyond any doubt that the applicant had

instigated the shooting; that which had resulted in his acquittal with final effect. The domestic courts' decisions in the present case had also acknowledged and brought "the breaches of law" to an end. In view of the above, the Government took the view that the applicant's conviction and the consequences stemming therefrom had been removed; therefore, he could no longer claim to be a victim of a breach of his right to a fair trial.

39. Furthermore, the Government argued that Turkish law provided for a remedy in respect of persons who had been convicted with final effect and who had served their prison sentence either in full or in part, in the event that their convictions were later overturned owing to the use of an extraordinary remedy. Indeed, such persons, including the applicant, could lodge a claim for compensation under Article 323 § 3 of the CCP read in the light of Article 141 et seq. of the CCP in respect of pecuniary and non-pecuniary damage that they might have sustained in respect of time spent in prison as a result of a conviction that was subsequently overturned. In support of that contention, the Government submitted two judgments delivered by the Court of Cassation and pointed out that the trial court had in the acquittal decision explicitly cited the legal avenue provided by Article 323 § 3 of the CCP. At this juncture, had the applicant deemed that his release and subsequent acquittal had not afforded him sufficient relief, he could have lodged a claim for compensation for the damage caused to him. By not doing so, the applicant had not availed himself of the possibility to obtain redress in respect of his complaints. Accordingly, the applicant should not be regarded as a victim within the meaning of Article 34 of the Convention.

40. As regards the second question, namely whether the matter could be regarded as "resolved" within the meaning of Article 37 § 1 (b) of the Convention, the Government submitted that the matter had been resolved, given that (i) the circumstances forming the basis of the applicant's complaints had ceased to exist, in view of the applicant's acquittal, and (ii) Turkish law had provided him with the possibility to seek redress in respect of the alleged negative consequences of his conviction.

41. The Government further submitted, albeit only in their "Further observations and comments on the applicant's claims for just satisfaction concerning the application" dated 13 September 2021, that the applicant had also failed to exhaust the available domestic remedies, owing to his failure to lodge a claim for compensation in accordance with Article 141 of the CCP.

42. The applicant submitted that while the highest judicial body in respect of criminal matters in Türkiye (namely, the plenary) had held that he should have been acquitted, that judgment had been delivered only after he had already served a major part of his sentence (that is to say approximately eight years and seven months of imprisonment). Furthermore, even though the applicant had brought the violations of his rights under the Convention to the attention of the domestic courts and the Ministry of Justice, none of the domestic authorities had recognised – either explicitly, implicitly or in

substance – the infringements of his right to a fair trial under Article 6 of the Convention, which had formed the basis of his application to the Court. Against this background, the applicant submitted that it was impossible to agree with the Government’s argument that his acquittal had served to remove the negative consequences of his conviction.

43. As regards his reported failure to lodge a claim for compensation under Article 323 of the CCP, the applicant contended that the remedy in question concerned only the “reopening of criminal proceedings”, which was a specific extraordinary remedy provided for under the relevant Chapter of the CCP of that name (that is to say “Reopening of criminal proceedings”). To mark the difference (that is to say the difference between the “reopening of criminal proceedings” and “an objection lodged by the Chief Public Prosecutor”), the applicant pointed out that when he had attempted to avail himself of the specific remedy of requesting the reopening of the criminal proceedings, the trial court had dismissed his request. On that basis, and given that his acquittal had been occasioned by another extraordinary remedy (namely, an objection lodged by the Chief Public Prosecutor), the applicant argued that the remedy suggested by the Government did not apply to his individual situation. In his view, even the title of Article 141 of the CCP (“Compensation [for damage sustained] as a result of preventive measures”) supported this state of affairs. Even assuming that the remedy provided for by Article 323 was applicable to the present case, neither the case-law examples submitted by the Government nor the above-noted provisions required the finding of a violation in order that the domestic courts might award compensation under Article 323. In any event, the two judgments of the Court of Cassation cited by the Government were not pertinent to the present case: the first of those cases had concerned, unlike the present case, the reopening of the proceedings in question, while the second case had dealt with the issue of pre-trial detention and had not related to a judgment delivered as a result of the remedy provided for by Article 308 of the CCP; by contrast, the instant case concerned the enforcement of a sentence imposed by a final judgment. Similarly, the remedy provided for by Article 323 of the CCP could not lead to the recognition of the violations of his rights, as payment of compensation was “quasi automatic” in the kinds of cases set out in that provision. In view of the above-mentioned considerations, the Government had failed to explain how the said remedy offered any reasonable prospect of success in respect of the applicant.

2. *The Court's assessment*

(a) **Whether the applicant could still claim to be a victim of a violation of Article 6 of the Convention**

(i) *General principles*

44. The Court reiterates that a person may not claim to be a victim of a breach of his or her right to a fair trial under Article 6 which allegedly took place in the course of proceedings in which he or she was acquitted or which were discontinued (see *Webster v. the United Kingdom* (dec.), no. 32479/16, 24 March 2020).

45. However, acquiring and losing victim status are two different concepts, which have been the subject of different lines of case-law (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 66, 2 November 2010). An applicant may lose his or her victim status if two conditions are met: firstly, the authorities must have acknowledged, either expressly or in substance, a breach of the Convention, and secondly, they must have afforded redress for it (see, among many other authorities, *Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, § 218, 22 December 2020). That exercise involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006). Only when the two above-mentioned conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude an examination of an application (see *Arat v. Turkey*, no. 10309/03, § 46, 10 November 2009).

46. The Court has already held that a full acquittal or the discontinuation of the proceedings against an applicant may constitute appropriate redress in respect of the criminal-limb guarantees of Article 6 of the Convention (see *Sakhnovskiy*, cited above, § 70, with further references), provided that an applicant is no longer affected and has been relieved of any effects to his or her disadvantage (see *Güneş v. Turkey* (dec.), no. 53916/00, 13 May 2004, where the applicant – who never began serving his sentence – could thus no longer claim to be the victim of an alleged breach of his right to be tried by an independent and impartial tribunal under Article 6 of the Convention, given that her conviction had first been suspended and then lifted on the grounds that she had not committed any new offence within the suspension period; this was also the situation of the first applicant in *Koç and Tambaş v. Turkey* (dec.), no. 46947/99, 24 February 2005; *Tapkan and Others v. Turkey*, no. 66400/01, §§ 47-48, 20 September 2007, where the applicant – who never began serving his sentence – was regarded as having lost his victim status when the decriminalisation of the offence in respect of which he had been convicted prompted the lifting of his final conviction and its removal from his criminal record; and *Kerman v. Turkey*, no. 35132/05, §§ 97-107, 22 November 2016).

47. Thus, an applicant can maintain his victim status if he or she has already served all or part of his or her sentence (see *Tapkan and Others v. Turkey*, no. 66400/01, § 49, 20 September 2007, and *Halil Kaya v. Turkey*, no. 22922/03, § 16, 22 September 2009) and no compensation has been offered or is available in respect of the alleged violation (see *Menesheva v. Russia* (dec.), no. 59261/00, § 3, 15 January 2004; *Zementova v. Russia*, no. 942/02, § 63, 27 September 2007; *Birdal v. Turkey*, no. 53047/99, § 24, 2 October 2007; and *Arat*, cited above, § 47).

(ii) *Application of the principles to the instant case*

48. The Court notes that on 2 December 2008 the Sakarya First Assize Court found the applicant guilty of incitement to attempted murder and sentenced him to eighteen years' imprisonment, which became final on 15 February 2010 upon the Court of Cassation delivering a decision upholding it. As a result, the applicant served approximately eight years and seven months in prison, before his conviction was quashed on 15 November 2016 by the plenary, to which the matter was referred after the last attempt of the Ministry of Justice to use the extraordinary remedy provided for in Article 308 of the CCP had been successful. In doing so, the plenary took the view that the applicant should have been acquitted, holding that the evidence on which his conviction had been based was not sufficient and conclusive of his guilt. At the same time the plenary also ordered the applicant's immediate release and suspended the execution of his sentence. The case against the applicant was subsequently remitted to the trial court, which on 29 September 2017 delivered a decision acquitting him on the basis, essentially, of the same reasons as those cited by the plenary; that decision became final in the absence of any appeal against it.

49. In view of the above, the Court will firstly ascertain whether the domestic authorities acknowledged the breaches of the Convention alleged by the applicant; secondly, it will ascertain whether they afforded redress for those breaches.

(α) Whether the domestic courts acknowledged any alleged breach of Article 6 of the Convention

50. The Court observes that neither the plenary nor the Sakarya First Assize Court acknowledged any procedural breach, including those alleged breaches that formed the basis of the applicant's complaints before the Court. In fact, the Court of Cassation did not quash the decision of the Sakarya Assize Court to convict the applicant owing to a procedural violation *stricto sensu*, but for the lack of sufficient and conclusive evidence against him. Accordingly, the Court cannot conclude that the plenary's decision to quash the applicant's conviction, and his subsequent acquittal, were tantamount to an acknowledgement that his initial conviction had been in breach of his right to a reasoned judgment under Article 6 § 1 of the Convention (compare

Constantinescu v. Romania, no. 28871/95, § 42, ECHR 2000-VIII; *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 37, 24 October 2002; and *Kaymaz v. Turkey*, no. 6247/03, § 18, 26 June 2007).

- (β) Whether the applicant was afforded sufficient redress in respect of the purported breach of his rights under Article 6 of the Convention

51. The Court considers that the applicant's release and full acquittal cannot, in and of themselves, be regarded as having afforded him sufficient redress in respect of the breach of his right to a fair trial, given that he served approximately eight years and seven months in prison as a result of his conviction (compare *Leblon v. Belgium* (striking out), no. 34046/96, 1 June 1999). That being the case, the notion of "redress" calls for some form of tangible compensation, given the circumstances of the present case (see *Webster*, cited above, § 30, and *Chervonenko v. Russia*, no. 54882/00, § 37, 29 January 2009). The Court must thus ascertain whether Turkish law provided the applicant with a remedy whereby he could seek compensation in respect of the detrimental effects that his above-mentioned trial brought to bear upon him.

52. In that connection, the Government argued that anyone who had partially or fully served a sentence stemming from a final judicial decision had the right to lodge a claim for compensation, in accordance with Article 323 § 3 of the CCP (taken together with Articles 141 et seq. of the same Code), in the event that he or she had later been acquitted following the application of an extraordinary remedy. In support of that contention, the Government submitted two judgments handed down by the Twelfth Criminal Division of the Court of Cassation and asserted that the trial court's decision to acquit the applicant had also made an explicit reference to the remedy provided for in Article 323 § 3 of the CCP.

53. The Court notes that, contrary to the Government's assertions, the trial court's acquittal decision in the present case (dated 29 September 2017) contained no reference – let alone an explicit one – to the above-mentioned remedy.

54. Furthermore, the relevant Chapter of the CCP, entitled "Extraordinary legal remedies", provides for three such remedies under three different Sections, but subjects each of those remedies to different rules and arrangements. A claim for compensation under Article 323 § 3 of the CCP is provided for in the Code's third Section, entitled "Reopening of criminal proceedings", which contains the relevant provisions concerning the extraordinary remedy of that name. Conversely, the extraordinary legal remedy that brought about the quashing of the applicant's conviction, his release and eventual acquittal is a different one – namely, an objection lodged by the Chief Public Prosecutor. It is regulated under Article 308 of the CCP, which is laid down in the first Section of the above-mentioned Chapter. In short, these two extraordinary legal remedies constitute two separate courses

of action, and the wording of Article 323 § 3 of the CCP does not indicate that a claim for compensation under that provision – which is provided for in respect of, *inter alia*, acquittals following the “reopening of criminal proceedings” – also covers acquittals occasioned by an objection lodged by the Chief Public Prosecutor. The difference between those two remedies is further borne out by the dismissal of the applicant’s application for the reopening of the criminal proceedings, which had no bearing on the outcome of the objection lodged by the Chief Public Prosecutor.

55. The Court ought therefore to determine whether the case-law of the Court of Cassation was such as to demonstrate that a claim for compensation under Article 323 § 3 of the CCP was an available and effective remedy capable of offering redress in respect of the applicant’s grievances – that is to say covering his acquittal, which stemmed from the objection lodged by the Chief Public Prosecutor (compare *Atilla Taş v. Turkey*, no. 72/17, § 87, 19 January 2021). While the Government asserted that that was the case and supported their contention by citing the two judgments rendered by the Twelfth Criminal Division of the Court of Cassation, the Court notes that the first of those judgments concerned a claim for compensation lodged by a person who had been acquitted as a result of the reopening of criminal proceedings, after serving in full the sentence previously imposed on him. Therefore, that judgment did not concern a person who had been acquitted (like the applicant) following a decision – that had been prompted by an objection lodged by the Chief Public Prosecutor under Article 308 of the CCP – adopted by the plenary to quash an earlier conviction. The second case cited by the Government did not concern a set of criminal proceedings that had been reopened, nor a final domestic court decision that had been quashed by virtue of another extraordinary legal remedy; thus, it cannot serve as a precedent in the present case either.

56. In view of the foregoing, the Court concludes that the Government failed to demonstrate that a claim for compensation under Article 323 § 3 of the CCP could have provided redress in respect of the applicant’s complaints and offered him reasonable prospects of success.

57. Accordingly, the applicant can still claim to be a “victim” of a violation of Article 6 of the Convention, and the Government’s preliminary objection centred on that point must be dismissed (see *Arat*, cited above, § 47, where the annulment of the applicant’s conviction was not sufficient to deprive him of his victim status on the grounds that (i) he had already served part of his sentence and, more importantly, (ii) the Government was unable to indicate any legal avenues via which to seek compensation in respect of his imprisonment).

(b) Whether the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention

58. In order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) and that there is therefore no longer any objective justification for the applicant to pursue his application, the Court must examine, firstly, whether the circumstances complained of directly by the applicant still exist and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see, *Pisano*, cited above, § 42).

59. The Court has already found that the domestic courts' decision to quash the applicant's conviction (which resulted in his release and acquittal) were not, in and of themselves, sufficient to afford him redress in respect of the breach of his right to a fair trial. This was because the significant damage that the applicant had sustained under the original conviction (namely his lengthy imprisonment) called for compensation, given the specific circumstances of the present case, whereas Turkish law did not provide him with an effective, adequate and accessible remedy in that regard. In sum, the applicant could not directly secure the resolution of the matter complained of.

60. In view of the foregoing considerations, the Court cannot conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) of the Convention (compare *Pisano*, cited above, § 47).

(c) Non-exhaustion of domestic remedies

61. The Court reiterates that according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rules 51 and 54 of the Rules of Court (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 60, 15 November 2018, and the cases cited therein). Only exceptional circumstances – in particular, the fact that the reason prompting an objection to admissibility became known only at a later stage – could dispense a Government from the obligation to raise their objection in their said observations before the adoption of the Chamber's admissibility decision (see *Mooren v. Germany* [GC], no. 11364/03, § 57, 9 July 2009, and the cases cited therein).

62. In the present case, the Government's plea of non-exhaustion (which was based on the applicant's failure to lodge a claim for compensation, in accordance with the provisions of the CCP) was raised for the first time in their "Further observations and comments on the applicant's claims for just satisfaction concerning the application" dated 13 September 2021. This was so despite the fact that the legal grounds forming the basis of this plea reflected almost identically the Government's submissions concerning the applicant's alleged loss of victim status, which were duly raised in their observations on the admissibility and merits of the case. That being the case,

and discerning no other exceptional circumstance that might justify the belated submission of the impugned plea of non-exhaustion of domestic remedies, the Court concludes that the Government are estopped at this stage of the proceedings from raising those grounds.

63. It follows that the Government's preliminary objection must be dismissed in so far as it concerns the failure to lodge a claim for compensation.

(d) Conclusion

64. The Court concludes 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

65. The applicant reiterated his submissions, adding that he found it astonishing that the Government were still attempting to argue that the criminal proceedings leading up to his conviction had been fair, particularly in view of the fact that he had later been definitively acquitted by the domestic courts. In his view, it was impossible to explain why the plenary – the highest judicial body in respect of criminal matters – had found that he would have been acquitted had the proceedings in question (as contended by the Government) been fair. This clear contradiction was yet another reason for the Court to find a violation of Article 6 of the Convention in respect of his conviction.

66. The Government submitted that the trial court's first judgment dated 2 December 2008 (whereby the applicant had been convicted) contained that court's assessment of all the relevant issues. While the Government conceded that that judgment had later been quashed, they argued that the applicant's resulting acquittal with final effect meant that he had been "returned" to the situation that had existed before he had become a victim: that is to say the *status quo ante* had thus been restored.

67. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A; *Higgins and Others v. France*, 19 February 1998, §§ 42-

43, *Reports of Judgments and Decisions* 1998-I). Moreover, in cases relating to interference with rights secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 84, 11 July 2017, with further references). The Court further reiterates that inadequately reasoned judgments may also raise an issue in terms of the right to the presumption of innocence under Article 6 § 2 of the Convention in that (i) they may fall short of meeting the basic requirement of criminal justice that the prosecution has to prove its case beyond any reasonable doubt and (ii) such judgments may thus not be in conformity with one of the fundamental principles of criminal law, namely, *in dubio pro reo* (see *Ajdarić v. Croatia*, no. 20883/09, § 51, 13 December 2011).

68. In the present case, the applicant's conviction was quashed for lack of conclusive and sufficient evidence of his guilt showing beyond any reasonable doubt that he had incited someone to shoot the targeted person. Moreover (and more importantly for the Court's assessment of whether the applicant's right to a reasoned judgment under Article 6 § 1 of the Convention was respected), the Court cannot but note that the plenary found that the Sakarya Assize Court's judgment dated 2 December 2008 (which found the applicant guilty of incitement to attempted murder) did not include any substantiation or details in respect of its crucial findings as to how the applicant had incited H.B. to kill the targeted person (see paragraph 14 above). This pertained, factually and legally, to the very core of the criminal charges brought against the applicant and it could not, in the Court's view, have been left unanswered by the Sakarya Assize Court when convicting the applicant.

69. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention, given that the domestic courts acted contrary to their duty to deliver a reasoned judgment in view of their failure to state the grounds on which they had convicted the applicant in the previous set of criminal proceedings ending with the Court of Cassation's judgment of 15 February 2010.

70. In view of the above-mentioned finding, the Court does not consider it necessary to also examine whether the fairness of the previous criminal proceedings culminating with the applicant's conviction were also prejudiced on account of the other complaints under Article 6 of the Convention of which the Government were given notice (see items (ii), (iii), and (iv) in paragraph 1).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained in his observations dated 12 August 2021 on the admissibility and merits of the case that the fact that he had been

incarcerated for approximately eight years and seven months of the eighteen-year sentence that had been imposed on him had breached Article 3 of the Convention and the presumption of his innocence, as protected under Article 6 § 2 of the Convention. However, the Court has already (at the time when the Government were given notice of the application) examined these complaints and declared them inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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. Pecuniary damage

73. The applicant claimed 387,000 euros (EUR) in respect of pecuniary damage, explaining that prior to his conviction he had been a businessman leading a quiet life, but that his imprisonment had caused him to lose the great majority of his earnings and had deprived him of the possibility to earn a livelihood and to look after his family.

74. The applicant further stated that he did not have in his possession any elements concerning the instant case (since it was a very old one) that would enable an exact calculation to be made of the damage that he had sustained. Asserting that the domestic courts had based the amount of compensation awarded on the minimum monthly wage, the applicant asked the Court to take a higher amount as its basis for calculating the amount to be awarded to him by way of just satisfaction on the grounds that the practice of basing compensation awards on the minimum wage lacked any legal basis and that his monthly income had been much higher than the monthly minimum wage. Citing the method laid down by Article 52 of the Criminal Code, under which the setting of the amount of judicial fines are determined by multiplying the number of days of imprisonment by the sum of between 20 Turkish liras (TRY) and TRY 100, the applicant asked the Court to take TRY 100 as the daily amount and to multiply it by 3,218 days (the number of days that he had spent in prison) in order to determine the amount of compensation due to him – that is, TRY 321,800 (approximately EUR 32,000). However, the default interest rate of the National Bank of Türkiye had to be applied to that amount in order to take due account of inflation and the time that had passed since his first arrest, which would increase the amount of compensation to TRY 1,293,139.50 (approximately EUR 129,000). However, as that amount

still fell short of reflecting the real damage that he had suffered, the amount to be awarded by way of just satisfaction should be set at EUR 387,000.

75. The Government contested the amount claimed by the applicant, arguing that it was unsubstantiated and excessive. In fact, the applicant had also acknowledged that he could not provide any documentary proof in support of his claims. In the Government's view, the applicant had failed to prove not only the existence but also the amount of the damage caused to him. In any event, there was no causal link between the purported violation and the pecuniary damage that he had allegedly sustained.

76. It is undisputed by the parties that the applicant was deprived of his liberty owing to the execution of the sentence imposed by the conviction judgment, which was subsequently quashed with final effect owing to a lack of sufficient evidence (see paragraphs 24–25 above). The finding of a violation of Article 6 § 1 of the Convention in the present case is centred on the domestic court's failure to deliver a reasoned judgment in accordance with that provision. In the light of the particular circumstances of the case (namely, the fact that a lack of reasoning had in fact also given rise to a conviction not based on sufficient evidence), it is possible to conclude that, in the present case, there is a sufficient causal link between the finding of a violation and the deprivation of liberty that followed from the subsequently quashed conviction. In this regard, the Court finds that awarding just satisfaction is justified because of the absence of a compensatory remedy in Turkish law (see paragraphs 51–57 above) and because of the substantial time that the applicant served in prison on account of his conviction (compare *Piersack v. Belgium* (Article 50), 26 October 1984, § 11, Series A no. 85). In fact, the Court has already held that circumstances pertaining to the instant case require that the applicant be awarded compensation (see paragraph 51 above; see also *Hammerton v. the United Kingdom*, no. 6287/10, § 158, 17 March 2016), but that the domestic legal system does not provide for a remedy allowing for complete reparation to be made. In view of the above, while taking into account in particular (i) the lack of legal avenues in domestic law suitable for the purposes of obtaining compensation and (ii) the substantial duration of the applicant's imprisonment on the basis of a conviction that was later quashed, and basing its calculations essentially on the amount of the minimum monthly wage during the period in which the applicant served his sentence, the Court awards the applicant EUR 26,500 in respect of pecuniary damage, plus any tax that may be chargeable on this amount.

B. Non-pecuniary damage

77. The applicant further sought EUR 50,000 in respect of non-pecuniary damage.

78. The Government contested that amount, averring that it was excessive, unsubstantiated and in contravention of the Court's case-law.

79. The Court reiterates that in cases where an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded (see *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 262, 26 July 2011).

80. Nevertheless, the Court reiterates that the applicant's conviction was already subjected to an extraordinary remedy (namely, a judicial review), and that it was thereby quashed, resulting in his release, followed by his acquittal with final effect. It cannot therefore accept that the reopening of criminal proceedings would serve as an appropriate tool to ensure *restitutio in integrum* in the present case. Furthermore, the applicant served a substantial amount of time in prison as a result of his conviction, which had a sufficient causal link with the violation of his rights under Article 6 of the Convention (see paragraph 76). It follows that he must have suffered a significant amount of distress stemming from that violation, which cannot be compensated for solely by the finding of a violation or his subsequent release and acquittal (see *Barberà, Messegué and Jabardo v. Spain* (Article 50), 13 June 1994, § 16 *in fine*, Series A no. 285-C). The applicant is therefore entitled to reparation in respect of non-pecuniary damage. Accordingly, and having regard to the nature of the violation found in the present case and deciding on an equitable basis, the Court awards the applicant EUR 12,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

C. Costs and expenses

81. The applicant also claimed EUR 37,500 for the costs and expenses incurred before the domestic courts and for those incurred before the Court. This sum corresponded to amounts arising from two prison visits that the applicant's lawyer had made (EUR 1,000); a visit made by the lawyer to the Court in order to submit certain documents and present oral arguments; 105 hours of legal work at an hourly rate of EUR 200, which was undertaken by the applicant's lawyer within the context of the (i) extraordinary domestic remedies of which the applicant had availed himself (twenty hours); (ii) analysing the Government's observations, conducting case-law research and drafting his observations (eighty hours); and (iii) correspondence with the Court (five hours).

82. In support of his claims, the applicant submitted a fee agreement dated 3 August 2010, which had been signed by his sister (who had acted on his behalf when he had been in prison) and his lawyer, indicating that TRY 25,000 (approximately EUR 12,755 on the basis of the exchange rate at

the time in question) was to be paid in exchange for the preparation of an application to the Court and the applicant's legal representation before it.

83. The Government submitted that the amounts claimed were groundless and excessive and that the applicant had failed to submit any valid documents in support thereof.

84. 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 were actually and necessarily incurred and are reasonable as to quantum (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 223, ECHR 2012). 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 12,755 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the remaining complaints under Article 6 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 26,500 (twenty-six thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 12,755 (twelve thousand seven hundred and fifty-five euros), 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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

KERİMOĞLU v. TÜRKİYE JUDGMENT

Done in English, and notified in writing on 6 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President