



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

SECOND SECTION

CASE OF KURKUT AND OTHERS v. TÜRKİYE

(Applications nos. 58901/19 and 6 others)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Administrative proceedings dismissing the applicants' requests to set aside domestic authorities' refusal to appoint them to public service, despite fulfilling all formal conditions, on account of negative background checks • Full content of background checks or concrete factual grounds on which administration's assessment was based not disclosed to applicants • Domestic courts' failure to communicate to the applicants information on impugned background checks and seek their comments on allegations against them • Failure to assess whether all or some of the information forwarded by the administration was classified and whether national security interests justified non-disclosure to the applicants • Lack of adequate safeguards to make up for non-disclosure of evidence • Failure to effectively and adequately provide a sufficient review of relevant administrative decisions

Art 15 • Failure to observe requirements of a fair trial, unjustified by the derogation in time of emergency • Emergency legislative decree placed no restrictions on judicial review following refusal to appoint individuals to civil service on basis of a negative background check • Domestic courts did not refer to state of emergency in review of the applicants' cases as preventing them from assessing the merits of the complaints

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 June 2024

FINAL

16/12/2024

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

In the case of Kurkut and Others v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Pauliine Koskelo,

Saadet Yüksel,

Frédéric Krenç,

Davor Derenčinović,

Gediminas Sagatys, *judges*,

and Dorothee von Arnim, *Deputy Section Registrar*,

Having regard to:

the applications (nos. 58901/19; 59988/19; 14944/20; 23565/20; 29101/20; 42116/20; 28956/21) 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 seven Turkish nationals (“the applicants”), on the various dates indicated in the appended table;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning Article 6 § 1 in respect of all applicants, and Article 6 § 2 in respect of application no. 29101/20 and to declare inadmissible the remainder of the applications;

the parties’ observations;

Having deliberated in private on 28 May 2024,

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

INTRODUCTION

1. The applications concern the authorities’ refusal to appoint the applicants, who fulfilled all the formal conditions, to public service on account of negative background checks and the alleged unfairness of the administrative law proceedings in which the applicants requested the courts to set aside the authorities’ refusal. The applicants all complained of a violation of Article 6 § 1 of the Convention.

The applicant in application no. 29101/20 further complained of a violation of his right to presumption of innocence enshrined in Article 6 § 2 of the Convention on account of the administrative court’s reasoning allegedly casting doubt on his established innocence.

THE FACTS

2. A list of the applicants is set out in the Appendix.

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 cases, as submitted by the parties and as they appear from the documents submitted by them, may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The *coup d'état* attempt of 15 July 2016 and the declaration of a state of emergency is summarised in *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 10-17, 26 September 2023). The state of emergency remained in force from 21 July 2016 to 18 July 2018.

6. During the state of emergency, the Council of Ministers passed several legislative decrees. One of those decrees, Legislative Decree no. 676, (see paragraph 71 below) added a provision to the Civil Servants Act, making it compulsory to obtain a positive background check for appointment into civil service. This provision entered into force on 29 October 2016 and was further approved by the Parliament on 1 February 2018, therefore becoming permanent legislation.

7. On 24 July 2019 the Constitutional Court struck down this provision as unconstitutional (see paragraph 74 below).

II. INDIVIDUAL CIRCUMSTANCES OF THE APPLICANTS

A. Application no. 58901/19 (Naci Kurkut)

8. The applicant was successful in a series of exams held by the Social Security Institution between 31 October and 4 November 2016 for the position of social security assistant officer and was placed in the list of successful candidates to be appointed to civil service.

9. On 3 August 2017 the Social Security Institution informed the applicant that he could not be appointed on account of a negative background check. No other reasons were provided.

10. On 2 October 2017 the applicant made an application to the Ankara Administrative Court, asking for the Social Security Institution's decision of 3 August 2017 to be set aside. He argued that the administrative authority had not relied on any reasons for its refusal to issue him with a positive background check nor had it based itself on any specific provision of law. He therefore reserved his right to submit further arguments against the information or documents that would be submitted by the administrative authority in the course of the proceedings.

11. On 25 April 2018 the Ankara Administrative Court dismissed the case on the basis of Article 48 § A-8 of Law no. 657 and Article 1 of Law no. 4045, noting that information revealed by the applicant's background check

justified the administration's decision to refuse his appointment into civil service given that the position of the social security assistant officer which had the function of analysing, assessing and keeping data – some of which was confidential – was a sensitive position and therefore required background clearance.

12. The applicant appealed against the decision of 25 April 2018 before the Ankara Regional Court arguing that the first-instance court failed to carry out an effective judicial review with respect to his case. He noted that the defendant administrative authority had submitted before the first-instance court that the reason he had been refused positive background check was his and his brother's alleged involvement in the activities organised by the PKK (Workers' Party of Kurdistan). The defendant had not submitted any document or evidence to support this allegation and the first-instance court had taken this statement at face value. He further complained that defendant's submissions had not been communicated to him for comment during the proceedings before the first-instance court. Lastly, he reiterated that he did not have a criminal record, and that he was not being investigated or prosecuted for any crime.

13. On 13 September 2018 the Ankara Regional Court dismissed the appeal without replying to the applicant's arguments.

14. On 29 November 2018 the applicant lodged an individual application with the Constitutional Court, complaining under Article 6 of the Convention that the courts had failed to carry out an effective judicial review because they had not investigated the veracity of the administration's allegations or at least considered whether such suspicions against him could have been based on objective grounds. He further deplored that the assessment of the administration about him had been partly based on his brother's alleged connection with the PKK, which assessment did not coincide with the principle that criminal responsibility is individual.

15. On 1 July 2019 the Constitutional Court dismissed the applicant's individual application by using a summary formula, noting, *inter alia*, that his complaints under Article 6 was of a fourth instance nature.

B. Application no. 59988/19 (Şükran Kesgin)

1. Refusal to appoint the applicant to the position of psychologist in the Şırnak State Hospital

16. On 7 November 2016 the applicant was informed that she was appointed to the Şırnak State Hospital as a psychologist as a result of her having been successful in a country-wide civil service examination.

17. On 25 September 2017 the Ministry of Health's Public Hospital Division ("Ministry of Health") informed the applicant that she could not be appointed to the position of psychologist in the Şırnak State Hospital on the basis of Article 48 § 8-A of Law no. 657. No other reasons were provided.

18. On 8 November 2017 the applicant made an application to the Ankara Administrative Court for the Ministry of Health's decision of 25 September 2017 to be set aside. She noted that she did not have a criminal record and fulfilled all the conditions to be appointed to the civil service. Therefore, the Ministry of Health's decision to refuse to confirm her appointment on the basis of a background check had been unlawful.

19. On 3 April 2018 the Ankara Administrative Court dismissed the case, having regard to the contents of the documents and information it had sought by means of an interim decision on its own initiative from the Ministry of Health as well as from the Directorate of Security with respect to the applicant's file. The court considered that the information in the applicant's file justified the administration's decision, regard being had to the specific nature of the post in question.

20. On 7 September 2018 the Ankara Regional Administrative Court dismissed an appeal lodged by the applicant against the first-instance court's decision, holding that it had been in line with the law and procedure.

21. On 28 January 2019 the applicant lodged an individual application with the Constitutional Court complaining, *inter alia*, of the domestic courts' failure to carry out an effective examination of her case and of the lack of reasoning of their decisions.

22. On 30 September 2019 the Constitutional Court dismissed the applicant's individual application by using a summary formula, noting, *inter alia*, that her complaints under Article 6 was of a fourth-instance nature.

2. Developments after the lodging of the application and applicant's subsequent appointment to the Kocaeli State Hospital

23. In their observations, the Government informed the Court that the applicant had participated in another country-wide civil service examination in 2018 and that she had been informed that she would be appointed to the Kocaeli State Hospital for the position of a psychologist.

24. On 16 January 2019 the Ministry of Health refused the applicant's appointment on account of a negative background check.

25. As a result of successful proceedings lodged by the applicant before the Ankara Administrative Court concerning the Ministry of Health's refusal of 16 January 2019, the applicant was appointed to the said position in the Kocaeli State Hospital. The Government further informed the Court that the Ankara Administrative Court's decision had become final on 23 December 2021.

C. Application no. 14944/20 (Zeycan Doğan Özdemir)

26. The applicant was successful in a series of exams held by the Directorate of Higher Education Credit and Residences within the Ministry of Youth and Sports ("Higher Education Directorate") between 8 May and

18 May 2017. She was therefore placed in the list of successful candidates to be appointed to civil service for an administrative position.

27. On 2 November 2017 the Higher Education Directorate informed the applicant that she could not be appointed to the said position on account of a negative background check. No other reasons were provided.

28. On 15 December 2017 the applicant applied to the Ankara Administrative Court for the Higher Education Directorate's decision of 2 November 2017 to be set aside. She submitted in that connection that the impugned decision was manifestly unlawful given that it was not supported by any evidence or concrete information and that she had no criminal record.

29. In a decision of 25 October 2018 the Ankara Administrative Court dismissed the case on the basis of Article 48 § 8-A of Law no. 657 and by holding that the administration had a wide margin of appreciation in appointments into civil service. In that connection the trial court gave weight to a note issued by the Adıyaman Governor's Security Office addressed to the Higher Education Directorate, which had stated that the applicant was involved with KCK/TY – a sub-group engaging in organisational activities and meetings within the female wing of the PKK/KCK – and her brother, who was currently detained, was a member of this organisation. Noting the sensitive and important nature of the public entity in question, the court concluded that the refusal to appoint the applicant on the basis of a negative background check had not been unlawful.

30. The applicant lodged an appeal against this decision before the Ankara Regional Administrative Court, complaining of the trial court's failure to respect the principle of equality of arms and adversarial proceedings in so far as she had not been given the opportunity to examine and comment on the documents submitted by the defendant, including the note issued by the Adıyaman Governor's Security Office. She further complained that the note prepared by the latter, which had not been based on any concrete facts or supporting evidence, had been taken at face value by the first-instance court and had not been judicially scrutinised. In this respect, she submitted that there were no ongoing proceedings against her regarding those allegations and that she had a clean criminal record.

31. On 24 January 2019 the Ankara Regional Court dismissed the appeal without replying to the applicant's arguments.

32. On 28 February 2019 the applicant lodged an individual application with the Constitutional Court, complaining of an infringement with her right to an effective judicial review under Article 6 of the Convention. She noted that the manner in which the administrative courts conducted the trial and the reasonings furnished by them had not been compatible with rule of law since they had solely relied on a note prepared by the Adıyaman Governor's Security Office. Moreover, the courts had prevented her from defending herself effectively since they had failed to communicate to her the documents submitted to them by the administration regarding her background check.

33. On 10 October 2019 the Constitutional Court dismissed the applicant's individual application by using a summary-formula, noting that there appeared to be no violation of Article 6 in as much as the trial courts' decisions had not been arbitrary or manifestly unreasonable.

D. Application no. 23565/20 (Bahar Dolgun Kılıç)

34. The applicant was a temporary worker at the Manisa Celal Bayar University ("the University"). On 26 February 2018 she participated in a written and oral recruitment examination with a view to obtaining a permanent position in that university.

35. On 20 March 2018 the University informed her that she had been successful in the examination. That being so, on 30 March 2018, the University informed the applicant she could not be appointed to the permanent post on account of a background security check.

36. On 29 May 2018 the applicant applied to the Manisa Administrative Court for the University's decision of 30 March 2018 to be set aside. She submitted that the decision not to employ her as a permanent worker on the basis of a negative background check had been arbitrary since she was already working for the University; that she was not affiliated or linked to any terrorist organisation nor was there any investigation or prosecution against her.

37. On 13 December 2018 the Manisa Administrative Court dismissed the case on the basis of Article 48 § 8-A of Law no. 657 and related legislation, by noting that the security and archive investigation on the applicant had revealed that she had participated in activities organised by the FETÖ/PYD terrorist organisation; that her father participated in activities organised by persons who supported the FETÖ/PYD terrorist organisation; that her husband had been dismissed from civil service in the context of the emergency legislative decrees pursuant to the 15 July 2016 *coup* attempt and that for a period of six months in 2011 she had worked in a company which had been shut down on account of its links with the said organisation. The Manisa Administrative Court, collecting information on its own motion from the Manisa Prosecutor's Office, further found that the applicant had been identified as a person who had frequent telephone conversations between 2013 and 2016 with persons who were currently detained with respect to charges related to the FETÖ/PYD terrorist organisation and that she had been identified by confessors although the administrative court did not give details as to the content of these telephone conversations or the content of the statements given by confessors.

38. The applicant appealed against this decision before the İzmir Regional Administrative Court, stating, *inter alia*, that the accusation that she was linked to the FETÖ/PYD terrorist organisation had been groundless and untrue. On 7 March 2019 the İzmir Regional Administrative Court dismissed

her appeal, noting that its decision was amenable to appeal within 30 days before the Supreme Administrative Court.

39. On 3 July 2019 the Supreme Administrative Court rejected the applicant's appeal referring to the Section 46 § 6 of the Administrative Procedure Act and by noting that the decision of 7 March 2019 had been final and therefore could not be appealed.

40. On 4 July 2019 the Manisa public prosecutor issued a decision of non-prosecution in respect of the applicant. He explained that an investigation had started against the applicant on the basis of statements given by confessors and witnesses in the context of ongoing FETÖ/PYD investigations. In those statements the applicant was mentioned as a person, working in the University and as having links with the said organisation. That being so, the prosecutor noted that the applicant's name was not featured in any ByLock user list, that she had not had a bank account with Bank Asya; that she had not been a member to any association or trade-union affiliated with the said organisation and that there existed no other evidence or information demonstrating her having a link with the said organisation.

41. On 6 September 2019 the applicant lodged an individual application with the Constitutional Court, indicating the Supreme Administrative Court decision of 3 July 2019 – notified to her on 9 August 2019 –, as the final decision in the course of exhaustion of remedies, with respect to her grievances about not being appointed to civil service on the basis of the background check regulations.

42. On 31 December 2019 the Constitutional Court rejected her individual application as belated, noting that it had not been lodged within 30 days of the final domestic decision.

43. A further objection by the applicant to the effect that she had lodged her application within 30 days of the notification of the Supreme Administrative Court's decision was rejected by the Constitutional Court on 5 February 2020.

E. Application no. 29101/20 (Agit Tetik)

1. Refusal to appoint the applicant to the position of a technician in the Şırnak State Hospital

44. On 23 June 2017 the applicant was notified that he would be appointed to the Şırnak State Hospital as a technician in anaesthesiology as a result of him having been successful in a country-wide civil service examination.

45. On 11 January 2018 the Ministry of Health informed the applicant that he could not be appointed to the said position on account of a negative background check. No other reasons were provided.

46. On an unspecified date the applicant applied to the Ankara Administrative Court for the Ministry of Health's decision of 11 January 2018 to be set aside.

47. In a decision of 24 October 2018 the Ankara Administrative Court dismissed the case on the basis of Article 48 § A - 8 of Law no. 657 after requesting information from the defendant Ministry as to the reasons for providing the applicant with a negative background check. The Court found the impugned decision lawful on the basis of the information submitted by the defendant Ministry, which had been that the applicant had participated in activities organised by YDG-H – the youth wing of the PKK/KCK terrorist organisation, that his brother had surrendered himself to the authorities after cutting his ties with the said organisation, that his father and sister were among persons identified as having participated in activities of the PKK/KCK and that the applicant himself had been tried for membership of the said organisation but had been acquitted for lack of evidence on 9 January 2018.

48. The applicant appealed against this decision before the Ankara Regional Administrative Court, submitting that the Ankara Administrative Court's decision violated the principle of presumption of innocence since that court had accepted the justification of the administration's refusal to furnish him with a positive background check on the basis of his acquittal which had become final on 17 January 2018 in previous criminal proceedings. Moreover, the administrative court had disregarded the principle of individual criminal responsibility by accepting that the alleged actions of the applicant's relatives could be a basis for the self-same refusal. The applicant argued that there had been no concrete reasons that related to himself for the negative background check in question.

49. In a decision of 23 May 2019, the Ankara Regional Administrative Court dismissed the applicant's appeal without replying to his arguments.

50. On 16 August 2019 the applicant lodged an individual application with the Constitutional Court, complaining of an infringement with his right to fair trial under Article 6 of the Convention. He submitted that first the administrative authority then the courts had refused his case on account of an offence he had not committed.

51. On 10 October 2019 the Constitutional Court dismissed the applicant's individual application by using a summary-formula, noting that there appeared to be no violation of Article 6 in as much as the trial courts' decisions had not been arbitrary or manifestly unreasonable and that there had been no breach of the principles of equality of arms and adversarial proceedings.

2. Developments after the lodging of the application and applicant's subsequent appointment to the Şırnak State Hospital

52. On an unspecified date in 2021 the applicant successfully participated anew in a country-wide civil service examination and he was informed that he would be appointed as a technician in anaesthesiology department of the Şırnak State Hospital.

53. On 1 March 2021 the Ministry of Health appointed the applicant to that position after granting him with a positive background check and the applicant took up his duties on 21 March 2022.

F. Application no. 42116/20 (Baran Tekin)

54. On 19 July 2017 the applicant was notified that he would be appointed to a public school as a gym teacher as a result of him having been successful in a country-wide civil service examination.

55. On 14 November 2017 the Ministry of Education informed the applicant that he could not be appointed to the said position on the basis of Article 48 § A-5 of Law no. 657. No other reasons were provided.

56. On 29 May 2017 the applicant applied to the Ankara Administrative Court for the decision of 14 November 2017 to be set aside, submitting that the Ministry had unlawfully applied that provision of the law since Article 48 § A-5 of Law no. 657 required a person to be convicted of the crimes listed therein to be refused employment in the public service. He noted that he had had no convictions of the kind mentioned in the letter of the law. He went on to add that if the Ministry had refused to confirm him into employment on the basis of an ongoing prosecution against him, this would be in breach of the principle of presumption of innocence.

57. In a decision of 26 December 2018 the Ankara Administrative Court, dismissed the case, finding the defendant Ministry's decision lawful. The court noted in that connection that the applicant was standing trial on charges of membership of the PKK/KCK terrorist organisation and despite those proceedings not having been concluded, the nature and sensitivity of the post in question justified the administration's decision not to confirm his employment. It referred in this connection to Article 48 § A-8 of Law no. 657 and noted that the information it had sought from the Ministry regarding the applicant's file demonstrated that the authorities did not consider him as having passed the background assessment.

58. The applicant lodged an appeal against that decision, submitting that the first-instance court had erred in examining the case on the basis of Article 48 § A-8 of Law no. 657 whereas the decision of the Ministry had been based explicitly on Article 48 § A-5. Moreover, the first-instance court had sought information on its own motion from the Security Directorate and had not given him a chance to examine and comment on that information before ruling on the case.

59. In a decision of 29 May 2018 the Ankara Regional Administrative Court dismissed the applicant's appeal without responding to his arguments.

60. On 20 December 2020 the Constitutional Court dismissed as manifestly ill-founded an individual application by the applicant regarding his right to presumption of innocence and to a fair trial.

61. In their observations the Government informed the Court that the applicant was convicted of membership of a terrorist organisation by a first-instance criminal court on 8 January 2021 and that those proceedings were ongoing before a regional appeal court.

G. Application no. 28956/21 (Mehmet Tanrıkulu)

62. On 25 July 2017 the Ministry of Health informed the applicant, who had just graduated from the faculty of medicine, that he would be assigned to a State hospital in Diyarbakır in order to complete his compulsory medical service.

63. On 19 January 2018 the Ministry of Health informed the applicant that he could not be appointed to the said position on the basis of him not fulfilling the conditions as set out in Article 48 § A-8 of Law no. 687. No other reasons were provided.

64. On 26 February 2018 the applicant applied to the Ankara Administrative Court for the decision of 19 January 2018 to be set aside, submitting that the decision to refuse his appointment did not contain any justification and therefore rendered any judicial review of the compatibility of administration's actions with the rule of law impossible.

65. In a decision of 13 December 2018 the Ankara Administrative Court dismissed the case on the basis of Article 48 § 8-A of Law no. 657 and other relevant legislation and by holding that the administration had a wide margin in making appointments into civil service. In that connection, the trial court gave weight to a note issued by the Ministry of Interior where the latter had identified the applicant and his brother as having participated in the activities of YDG-H, a youth branch of the PKK/KCK terrorist organisation, between 2007 and 2009. The note also indicated that the applicant had been arrested in connection with his involvement with that organisation, that during 2016 while he was pursuing studies in the university he had petitioned the university administration along with other students for Kurdish language to be offered as an elective course under the leadership of the organisation Aydın-Der, another youth organisation having connections with the PKK/KCK. Noting the sensitive and important nature of the public entity in question, the court concluded that the refusal to appoint the applicant on the basis of a negative background check had not been unlawful.

66. The applicant's appeal against that decision was dismissed by the Ankara Regional Administrative Court on 8 May 2019.

67. On 20 December 2020 the Constitutional Court dismissed an individual application by the applicant regarding, *inter alia*, his right to presumption of innocence and to a fair trial.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. THE CONSTITUTION

68. The right of equal access to the civil service is a constitutional right set out in Article 70 of the Constitution, where it is also stated that no criteria other than the qualifications for the office concerned are to be taken into consideration for such recruitment.

69. Article 125 of the Constitution provides that all acts and decisions of administrative authorities are amenable to judicial review.

II. LAW ON CIVIL SERVANTS (LAW NO. 657), LAW ON BACKGROUND AND ARCHIVE CHECKS (LAW NO. 4045) AND SECONDARY LEGISLATION

70. Section 48 (A) of Law no. 657 setting out the general admission conditions for civil service at the relevant time, required candidates for civil service to satisfy, in so far as relevant:

“...

4. Not to have been prohibited from [exercising] public functions or rights,

5. Even if the periods specified in Article 53 of the Criminal Code have lapsed ... not to have been convicted of ... offences against State security ...”

71. The requirement to go through background and archive search as a general condition to be employed in civil service was introduced during the state of emergency (see paragraph 6 above) and was added to Section 48 (A)-8 on 1 February 2018, published in the Official Gazette on 8 March 2018. This provision was later struck down as unconstitutional by the Constitutional Court (see paragraph 74 below).

72. Moreover, law no. 4045 which was, in force from 3 November 1994 until 17 April 2021 required persons who would be employed in any State department that processed or held classified documents, which if obtained by unauthorised persons, could potentially endanger or undermine the security, national existence, integrity or interest of the State to go through security and archive search assessments. This requirement applied automatically to all personnel who would work in the military, police and intelligence services.

73. Regulation no. 24018 issued by the Cabinet of Ministers on Security Clearance published in the Official Gazette on 12 April 2000 set out the procedure on conducting background checks pursuant to law no. 4045. Accordingly, an archive check would consist of checking whether a person was being searched by the police and whether there was any record of him in police or intelligence files and whether the person had any criminal record or a restriction (section 4 (f)). A background check, in addition to the

verification procedure related to the archive check, would consist of assessing that person's moral character, his ability to keep secrets, his relations with foreigners and whether he has carried out any destructive and separatist action against the state (section 4(g)). The authorities allowed to conduct an archive and background check were the National Intelligence Services, Directorate General of Security of the Police Department and relevant local governor's offices.

III. CONSTITUTIONAL COURT'S JUDGMENT OF 24 JULY 2019, PUBLISHED IN THE OFFICIAL GAZETTE ON 29 NOVEMBER 2019

74. Following a request for constitutional review of section 48 (A)-8 of Law no. 657, the Constitutional Court struck down that provision as being unconstitutional on 24 July 2019. It noted that information regarding a person obtained through a security check consisted of personal data within the meaning of the Data Protection Act, falling under the protection of Article 8 of the Convention and as such, the collection, processing and use of such data would have to be accompanied by clear principles and safeguards set out by law. The court acknowledged that legislature had a margin of appreciation to require persons to be employed in civil service to undergo background checks, however it noted that the provision did not contain any guidelines or principles as to scope of the verification, the processing and use of personal data obtained after the security check, and which authorities would be competent to carry out the security check. It concluded that the provision did not meet the "quality of law" principle, and therefore repealed it.

Pursuant to the Constitution, repealing effects of a constitutional court's judgment comes into existence *ex nunc* – that is, only as of the day on which the judgment is published in the Official Gazette, unless that judgment expressly provides otherwise.

75. In their observations, the Government noted that the Parliament had passed a new law on Security Investigation and Archive Search (law no. 7315) on 17 April 2021 in accordance with the principles laid down by the Constitutional Court in its above-mentioned ruling of 24 July 2019.

IV. ADMINISTRATIVE PROCEDURE ACT (LAW NO. 2577)

76. In administrative court proceedings, the principle of party presentation is not applied as administrative courts are empowered to examine issues not raised by the parties and to collect additional information on their own motion (Article 20 of law no. 2577).

77. According to Article 46 of law no. 2577, only certain decisions of the regional administrative courts may be appealed before the Supreme Administrative Court. Contrary to decisions reviewing dismissals from civil service, an administration's decision not to appoint a person into civil service

is not listed among such decisions that are reviewed by the regional appeal courts that may be subject to a further appeal before the Supreme Administrative Court.

THE LAW

I. JOINDER OF THE APPLICATIONS

78. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly.

II. NOTICE OF DEROGATION

79. The Government first of all pointed out that the applicants' complaints should be examined in the light of the Notice of Derogation transmitted to the Secretary General of the Council of Europe on 21 July 2016 under Article 15 of the Convention, which provides:

“1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”

80. The Government considered that having availed itself of its right of derogation to the Convention pursuant to Article 15, Turkey had not infringed the provisions of that instrument. In that connection it stated that there had been a public emergency threatening the life of the nation on account of the risks arising out of the attempted military coup and that the measures adopted by the national authorities in reaction to that emergency had been rendered strictly necessary by the situation.

81. The Court notes that in its judgment in the case of *Mehmet Hasan Altan v. Turkey* (no. 13237/17, § 93, 20 March 2018), it noted that the attempted military coup had revealed the existence of a “public emergency threatening the life of the nation” within the meaning of the Convention. As to whether the measures taken in the present cases were strictly required by the exigencies of the situation and consistent with the other obligations under

international law, the Court considers it necessary to examine the applicants' complaints on the merits, and will do so below (see for a similar approach, *Pişkin v. Turkey*, no. 33399/18, § 59, 15 December 2020).

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

82. The applicants complained that the administrative proceedings had not complied with the guarantees of a fair trial, including the principles of equality of arms, adversarial proceedings and the right to a reasoned judgment. They submitted that the information and the accusations contained in their background checks had not been disclosed to them, with the result that they were unable to contest their veracity in the course of the administrative proceedings. The applicants in applications nos. 58901/19, 14944/20, 29101/20 and 28956/21 further complained of the arbitrary nature of assessments in their background checks in so far as the conclusions therein had been based on the alleged connections or activities of their close relatives with terrorist organisations and contained no objective assessment in respect of the applicants themselves.

Article 6 § 1 of the Convention reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

1. *Compatibility ratione personae in applications nos. 59988/19 and 29101/20*

83. The Government submitted that the applicants, Ms Keskin and Mr Tetik, had lost their victim status as they had eventually been appointed to the civil service.

84. The applicants contested the Government's argument, noting that they had been appointed subsequently to the civil service not as a result of an acknowledgment of their rights being breached in the impugned proceedings but because they had participated in subsequent recruitment procedures. Moreover, they maintained that they had received no compensation for the loss of time.

85. The Court reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. In this regard, the question whether an applicant can claim to be the victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, *inter alia*, *Gäfgen v. Germany* [GC], no. 22978/05, § 115, ECHR 2010, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 179, ECHR 2006-V). A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a “victim” for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance,

and then afforded redress for the breach of the Convention. Only where both these conditions have been satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of the application (see, *inter alia*, *Rooman v. Belgium* [GC], no. 18052/11, §§ 128-133, 31 January 2019).

86. The Court observes that in the present cases the applicants, Ms Keskin and Mr Tetik, were ultimately appointed as civil servants only because of the subsequent developments which were unrelated to the impugned proceedings. Furthermore, there has been no acknowledgement of a breach of Article 6 § 1 of the Convention in relation to the impugned proceedings by the domestic authorities. In the absence of any such acknowledgement, the Court considers that the applicants can still claim to be victims of the alleged violation.

2. *The Court's jurisdiction ratione materiae*

87. While the Government have not raised an objection as regards the applicability *ratione materiae* of Article 6 § 1, the Court considers that it has to address this issue of its own motion (see *Grosam v. the Czech Republic* [GC], no. 19750/13, § 107, 1 June 2023).

88. The Court reiterates that for Article 6 § 1 in its civil limb to be applicable, there must be a “dispute” (“*contestation*” in French) regarding a “right” which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, as a recent authority, *Grzęda v. Poland* [GC], no. 43572/18, § 257, 15 March 2022). Lastly, the right must be a “civil” right (*ibid.*).

89. The Court notes that while neither Article 6 nor any other provision of the Convention or its Protocols guarantee, as such, a right to be appointed to a post or to be promoted within the civil service (see *Bara and Kola v. Albania*, nos. 43391/18 and 17766/19, § 55, 12 October 2021 and *Lorenzo Bragado and Others v. Spain*, nos. 53193/21 and 5 others, § 82, 22 June 2023), such a right may exist at the domestic level. In *Regner v. the Czech Republic* ([GC], no. 35289/11, § 99, ECHR 2017), the Court reiterated that there can be no doubt about the fact that there is a right within the meaning of Article 6 § 1 where a substantive right recognised in domestic law is accompanied by a procedural right to have that right enforced through the courts. The mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Indeed, Article 6 applies where the judicial proceedings concern a discretionary decision resulting in interference in an applicant's rights (*ibid.*, § 102). In

some cases, national law, while not necessarily recognising that an individual has a subjective right, confers the right to a lawful procedure for examination of his or her claim, involving matters such as ruling whether a decision was arbitrary or *ultra vires* or whether there were procedural irregularities. This is the case regarding certain decisions where the authorities have a purely discretionary power to grant or refuse an advantage or privilege, with the law conferring on the person concerned the right to apply to the courts, which, where they find that the decision was unlawful, may set it aside. In such a case Article 6 § 1 of the Convention is applicable, on condition that the advantage or privilege, once granted, gives rise to a civil right (*ibid.*, § 105).

90. Applying these principles to the present cases, the Court notes that there was a “dispute” concerning the respective administrations’ decision not to confirm the applicants’ appointment to the posts for which they had initially been accepted. The Court further notes that the right to equal access to public service under national law is a constitutional right and that no considerations other than the requirements of the post may be taken into consideration in recruitment to public service (see *Oktay Alkan v. Türkiye*, no. 24492/21, § 41, 20 June 2023). Moreover, the applicants had the right to seek judicial review before administrative courts to determine whether the respective administrations’ decisions to refuse to appoint them to civil service on the basis of negative background checks were lawful (see *Regner*, cited above, § 105 and also *Emel Boyraz v. Turkey*, no. 61960/08, § 62, 2 December 2014). Linked to this, the Court observes, and it is not in dispute between the parties, that the applicants were not denied the right of access to a court. Accordingly, as the first condition of the two-tier test established in the case of *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II) has not been met, Article 6 applies under its civil head to the proceedings before the administrative courts (see also *Majski v. Croatia* (no. 2), no. 16924/08, § 54, 19 July 2011).

3. *Non-exhaustion of domestic remedies in the case of application no. 23565/20*

91. The Government argued that the applicant, Ms Dolgun Kılıç, had failed to lodge her individual application before the Constitutional Court within thirty days of the Regional Administrative Court’s decision, which had resulted in the Constitutional Court dismissing her appeal as belated (see paragraphs 38 and 42 above). That being the case, the Government considered that her application should be declared inadmissible for non-exhaustion of domestic remedies.

92. The applicant replied that she had exhausted the remedies in accordance with the ruling of the administrative court which had indicated that its decision was amenable to appeal before the Supreme Administrative Court. She followed that avenue, and when her appeal was rejected, she

lodged her application with the Constitutional Court within thirty days' time-limit.

93. The Court notes that according to the legislation in force at the time of events, only certain decisions of the regional administrative courts could be subject to appeal before the Supreme Administrative Court and that disputes regarding entry into public service was not listed among such decisions (see paragraph 77 above). The Court further notes that in other applicants' cases, concerning identical disputes, the decisions of the regional administrative courts were final. It therefore appears, and the Government have not suggested otherwise, that by indicating that its decision could be appealed before the Supreme Administrative Court, the relevant regional administrative court in Ms Dolgun Kılıç's case clearly made a procedural error.

94. The Court considers, in light of the nature of the error made and the fact that no other conflicting private interest is at stake, that the applicant cannot in the current case be reproached for having exhausted a remedy pointed out by the regional administrative court itself (see, *mutatis mutandis*, *Majski*, cited above, §§ 66-72). It also considers that the Constitutional Court's approach in rejecting the applicant's individual application as belated by counting the thirty-day time limit from the decision of the regional administrative court and not from the Supreme Administrative Court was excessively formalistic in the particular circumstances of the applicant's case.

95. Based on the foregoing, the Court rejects the Government's objection on non-exhaustion of domestic remedies.

4. Other grounds of inadmissibility

96. The Government submitted that further developments in the applicant Baran Tekin's criminal trial following the lodging of the application no. 42116/20 were a testament to the necessity of requiring background clearance for entry into civil service. The Government argued, without calling into question the possibility that the applicant might be acquitted on appeal in the future, that it was legitimate for any State to refuse to recruit anyone against whom there was sufficient suspicion to bring him to trial for membership of a terrorist organisation, as had been the case with the applicant. For this reason, they considered the application to be manifestly ill-founded. The Government further argued that all applications were of a fourth-instance nature in as much as the domestic courts' findings had neither been arbitrary nor manifestly unreasonable.

97. The applicants maintained their applications. The applicant, Mr Tekin (application no. 42116/20), further contested the Government's position, arguing that the constitutional guarantee of presumption of innocence obliged all state authorities to refrain from treating persons as guilty when they have not been pronounced guilty by a final court decision. When the administrative courts dismissed his case there had not been any court decision deeming him

guilty of a criminal offence and for that reason he argued that the Government's *ex post facto* arguments were irrelevant.

98. In the Court's view, the Government's objections regarding the allegedly manifestly ill-founded nature of applications essentially relate to the merits of the cases. The Court also finds that the complaint 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

99. The applicants submitted that the courts failed to carry out an effective examination of their case and the principles of fairness, adversarial trial and equality of arms had not been observed in their case. In that connection they maintained their argument to the effect that the domestic courts failed to subject the relevant administration authorities' allegations that they were involved in illegal activities to any meaningful judicial scrutiny.

100. The Government argued that domestic authorities had a wider margin of appreciation in appointments to civil service than they did in dismissals. In that respect they considered that the present cases must be distinguished from the situation of persons who had been dismissed from civil service on the basis of alleged links with an illegal organisation such as the applicant in the case of *Pişkin* (cited above). While the Government contended that an in-depth and thorough investigation would be needed when dismissing a civil servant from office, a much more cursory review might be regarded as sufficient to refuse recruitment in civil service on the basis of security considerations. Furthermore, the Government noted that an unfavourable background assessment did not amount to a criminal charge and it did not prevent persons who have been refused recruitment in civil service to seek employment in the private sector. The Government lastly argued that the domestic authorities' decisions in the present cases should be assessed in the context of the failed coup attempt of 15 July 2016 and the State's desire to employ persons who posed no security risk for the democratic constitutional order.

101. The Court notes that it cannot, in the context of Article 6 § 1 of the Convention, determine whether the refusal of the administrative authorities to appoint the applicants into civil service were lawful or justified, or whether the administrative courts' rulings in relation to those decisions were correct in terms of Turkish law. The Court's task is confined to examining whether the domestic proceedings were fair and otherwise in compliance with the requirements of Article 6 § 1 of the Convention (see, for instance, *Letinčić v. Croatia*, no. 7183/11, § 47, 3 May 2016).

102. The Court refers to the principles flowing from its case-law on the extent of judicial review required from courts and the latter's obligation to

give reasons for its decision (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§176-186, 6 November 2018 and *Pişkin* cited above, §§ 130-135). In addition, the Court recalls that under the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent (see, among other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 96, ECHR 2009).

103. Moreover, the concept of a fair hearing implies the right to adversarial proceedings, according to which the parties must have the opportunity not only to make known any evidence needed for their claims to succeed, but also to have cognisance of, and comment on, all evidence adduced or observations filed, with a view to influencing the court's decision (see *Letinčić*, cited above, § 49, with further references).

104. However, the rights deriving from these principles are not absolute. The Court has already ruled, in a number of judgments, on the particular case in which precedence is given to superior national interests when denying a party fully adversarial proceedings. In cases where evidence has been withheld from the applicant party on public interest grounds, the Court must scrutinise the decision-making procedure to ensure that, as far as possible, it complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the interests of the person concerned (see *Regner*, cited above, §§ 146-49).

105. Turning to the present cases, the Court firstly notes that the full content of the background checks or the concrete factual grounds on which the relevant administration based its assessment were not disclosed to the applicants by the administration when the latter informed them that they would not be appointed to civil service on the basis of a negative background check. Secondly, while it appears that during the administrative court proceedings, the trial courts obtained on their own motion information with respect to the impugned background checks from the relevant administration, they did not communicate this information to the applicants and seek their comments about the specific allegations against them. More importantly, it transpires from the decisions of the administrative courts that they did not assess whether all or some of the information forwarded by the administration was in the first place classified and if so, whether national security interests would justify them not to being disclosed to the applicants (see, *mutatis mutandis*, *Thanza v. Albania*, no. 41047/19, §§ 116-117, 4 July 2023). The Court reiterates in this connection that for non-disclosure of evidence to a party in the proceedings to be acceptable, courts must not only have the power to examine the evidence themselves but be able to carry out a detailed examination of the reasons relied on by the authority for not disclosing the classified documents and order disclosure of those that they consider do not warrant that classification (see *Regner*, §§ 151-52). Having regard to the

absence of such an assessment made by the administrative courts in the proceedings, it cannot be said that the courts provided the applicants with adequate safeguards to make up for the non-disclosure of evidence.

106. It remains for the Court to assess whether the administrative courts nevertheless provided a sufficient review of the administrative decisions in question by verifying the veracity and credibility of the facts submitted to them by the administrative authorities. The applicants were not provided during the first-instance administrative court proceedings information about the concrete factual grounds for their negative background assessment, rendering their defence ineffective in practice. Some of them apprised the factual grounds for their negative assessment after those courts gave judgment in their cases. In the Court's view, faced with a situation such as this, the extent of scrutiny applied by the administrative courts as to the well-foundedness of the impugned decisions should be all the more comprehensive (see for a similar approach, *Corneschi v. Romania*, no. 21609/16, § 110, 11 January 2022).

107. That being said, the Court notes that there were considerable differences between the applicants' cases regarding the specific posts that they had applied for. Moreover, for some applicants the allegations appeared vague and indirect, whilst for others there occurred more specific accusations of criminal activity. It can neither be excluded that some of the applicants already at the outset reasonably could have expected that they could face difficulties with having a positive background check, and the reasons therefore. However, within the scope of the current complaints, it is not for the Court to assess whether a negative result of the background checks was called for in each of the applicants' individual cases, but to ascertain the fairness of the proceedings before the administrative courts, including whether these courts carried out a sufficient review, as just described (see paragraph 106 above). The Court observes in this respect that there is little in the administrative courts' decisions demonstrating which degree of scrutiny those courts applied in verifying the veracity and credibility of the facts received from the relevant administrative authorities. Neither does it transpire from the decisions that the administrative courts assessed the applicants' submissions to the effect that they had no criminal record or ongoing investigation, or, as in the case of the sixth applicant, Mr Baran Tekin (application no. 42116/20), that the administrative authorities had not relied on Section 48 (A) - 8 in refusing him employment but on Section 48 (A) - 5 which required the persons entering into civil service not to have a conviction (see paragraphs 55 and 57-59 above).

108. The above-mentioned findings cumulatively lead the Court to conclude that the domestic courts failed to effectively and adequately exercise the powers vested in them for that purpose (see *Corneschi*, cited above, 112). In this connection, the Court notes that the legal provision forming the basis of the relevant administrative decisions and upon which the courts performed

their judicial review, was eventually declared unconstitutional by the Constitutional Court (see paragraph 74 above). However, the Constitutional Court's decision had no impact on the proceedings in the applicants' cases because it only came into force after those proceedings had ended and did not have a retroactive effect.

109. As regards Article 15 of the Convention, the Court acknowledges that following the coup attempt, it might have been necessary to introduce background checks as an additional criterion to enter into the civil service, regardless of the importance of position the prospective civil servant is to hold. That being so, the Court notes that the legislative decree in question placed no restrictions on the judicial review to be exercised by the domestic courts following the refusal of the individuals concerned to be appointed to civil service on the basis of a negative background check (see also, *Pişkin*, § 152). What is more, none of the domestic courts in the present cases, including the Constitutional Court, referred to the state of emergency in their review of the applicants' cases as preventing them from fully assessing the merits of the complaints.

In those circumstances, the failure to observe the requirements of a fair trial cannot be justified by the Turkish derogation.

There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION IN RESPECT OF APPLICANT IN APPLICATION NO. 29101/20

110. In his application form, the applicant, Agit Tetik, complained that the domestic authorities had disregarded his right to the presumption of innocence in respect of ongoing criminal proceedings when they issued him with a negative background check. Moreover, even though the criminal proceedings became final by the time the case was before the administrative courts, those courts casted doubt on his established innocence by stating that he had been acquitted of a terror-related offence solely on the basis of a lack of evidence. By mentioning that his acquittal was due to lack of evidence they implied that he was in fact guilty. In his application form before the Court, he relied specifically on Article 6 § 2 which provides as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. The parties' submissions

111. The Government submitted that the applicant had failed to exhaust the domestic remedies as he had not raised this complaint specifically before the Constitutional Court. The Government contended that the applicant had merely stated in his individual application before the Constitutional Court that the administrative authorities had refused to employ him and the domestic

courts had dismissed his case on the basis of an offence he did not commit. The Government further argued that the applicant had formulated his complaints under the heading Article 6 and had not in any place mentioned Article 6 § 2 of the Convention.

112. In reply the applicant maintained that he had exhausted all the domestic remedies, including the Constitutional Court. The statement he used in his individual application to the effect that domestic authorities refused his case on the basis of an offence he had not committed should have been considered by the Constitutional Court under Article 6 § 2. He asserted in this respect that he had raised the complaint in substance and that just like the Court, the Constitutional Court had the power to decide on the characterisation to be given in law to the facts of the case.

B. The Court's analysis

113. The Court reiterates that the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. It is true that under the Court's case-law it is not always necessary for the Convention to be expressly invoked in domestic proceedings, provided that the complaint is raised "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach. However, as the Court's case-law bears out, to genuinely afford a Contracting State the opportunity of preventing or redressing the alleged violation requires taking into account not only the facts but also the applicant's legal arguments for the purposes of determining whether the complaint submitted to the Court has indeed been raised beforehand, in substance, before the domestic authorities. That is because "it would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument" (see *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 151, 14 December 2023 with further references). That being so, the Court reiterates that applicants are not expected to present their complaints, either before domestic instances or before the Court, using a particular terminology or particular line of legal reasoning that reflects the Court's approach to the relevant Convention issues, and that it is sufficient that a complaint is raised in substance (see *Yüksel Yalçınkaya*, cited above, § 280).

114. In the instant case, the Court observes at the outset that there are considerable differences between the manner in which the applicant framed his complaint before the Constitutional Court and before this Court. In his

constitutional appeal he complained, by relying on the right to a fair trial, that the authorities had dismissed his case on account of an offence he did not commit whereas in his application form before the Court, referring specifically to Article 6 § 2, he submitted that the authorities had treated him as being guilty of a terror-related offence despite the fact that he had been acquitted in the meantime and that by mentioning the grounds of that acquittal being related to lack of evidence they had casted doubt on his established innocence. The Court further reiterates that the complaints the applicant proposes to make under Article 6 of the Convention must contain all the parameters necessary for the Court to define the issue it will be called upon to examine. It must be stressed that the scope of application of Article 6 of the Convention is very broad and that the Court's examination is necessarily delimited by the specific complaints submitted to it (see *Grosam*, cited above, § 89). Even though there is no requirement for the applicants to reproduce word for word the arguments they intend to make before the Court in the domestic proceedings, the complaints they make before the Court must have been sufficiently raised in form or in substance before domestic authorities. In this connection, the Court agrees with the Government that the applicant's aforementioned statement in his constitutional appeal cannot be considered as sufficiently substantiated in respect of an alleged violation of Article 6 § 2 (compare and contrast with *Mehmet Zeki Doğan (no. 2) v. Türkiye*, no. 3324/19, § 71, 13 February 2024, not yet final).

115. Accordingly, the complaint under Article 6 § 2 must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

116. 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.”

117. The applicants claimed various amounts in respect of pecuniary and non-pecuniary damage suffered as well as for costs and expenses set out in the appendix.

118. The Government contested these claims and submitted in respect of application no. 59988/19 that that applicant's submissions were in any event belated and should not have been allowed by the Court.

119. The Court notes that the President of the Section had decided on 28 March 2023, pursuant to Rule 38 § 1 of the Rules of Court, to admit the Ms. Şükran Kesgin's observations and claims for just satisfaction, submitted outside the time-limit, to the case file. That being the case, the Court

dismisses the Government's objection. In any event, the Court does not discern any causal link between the violation found and the pecuniary damage alleged by the applicants; it therefore rejects their claims.

120. However, the Court considers that the applicants must have sustained non-pecuniary damage which the finding of violations of the Convention in this judgment does not suffice to remedy. The Court, ruling on an equitable basis, awards 2,000 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable, to each of the applicants.

121. As to costs and expenses, the Court reiterates that an applicant is entitled to their reimbursement only in so far as it has been shown that they have been actually and necessarily incurred and are reasonable as to quantum (see, among many other authorities, *L.B. v. Hungary* [GC], no. 36345/16, § 149, 9 March 2023). In the present cases, regard being had to the documents in its possession and the above criteria, the Court awards the sums indicated in the appended table for costs and expenses, plus any tax that may be chargeable to the applicants. It dismisses the remainder of the applicants' claims for just satisfaction.

122. The Court further 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

1. *Decides*, unanimously, to join the applications;
2. *Declares*, unanimously, the complaints concerning Article 6 § 1 of the Convention admissible;
3. *Declares*, by a majority, the remainder of the applications inadmissible;
4. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;
5. *Holds*, unanimously,
 - (a) that the respondent State is to pay the applicants, 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 2,000 (two thousand euros), plus any tax that may be chargeable, to each of the applicants, in respect of non-pecuniary damage;

- (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to Ms Bahar Dolgun Kılıç (application no. 23565/20), in respect of costs and expenses;
 - (iii) EUR 500 (five hundred euros), plus any tax that may be chargeable to Mr Agit Tetik (application no. 29101/20) and Mr Mehmet Tanrikulu (application no. 28956/21), each, 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*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 25 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim
Deputy Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Krenc is annexed to this judgment.

PARTLY DISSENTING OPINION OF JUDGE KRENC

1. I subscribe to the present judgment except on one point concerning the applicant in application no. 29101/20 and the inadmissibility of his complaint under Article 6 § 2 of the Convention. I respectfully disagree with the decision to declare this complaint inadmissible for non-exhaustion of domestic remedies.

2. To be clear, I am not calling into question the necessity for the applicant to raise expressly or in substance his complaints based on the Convention before the domestic courts. This is of course required by the principle of subsidiarity which underpins the Convention system and is of utmost importance. Indeed, it would run counter to this principle if the Court ruled on complaints that had not been raised before the domestic courts (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 75, 25 March 2014, and *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, §151, 14 December 2023).

3. In the present case, I note that the applicant relied on Article 6 of the Convention before the Constitutional Court and asserted his innocence in so far as he pleaded that he had not committed an offence (see paragraph 50 of the judgment). I also note that the applicant expressly argued before the Administrative Court that his right to the presumption of innocence had been violated (see paragraph 48 of the judgment). In those circumstances, I find it very difficult to support the finding that the applicant did not raise the substance of his complaint under Article 6 § 2 of the Convention before the domestic courts.

4. In other cases, the Court was not as strict as it has been in the present one.

For instance, in *Vassilios Stavropoulos v. Greece*, the applicant did not expressly rely on the principle of the presumption of innocence nor invoke Article 6 § 2 of the Convention. Nevertheless, the Court considered that he had raised, in substance, a complaint under Article 6 § 2 and given the Supreme Administrative Court the opportunity to prevent or provide redress for the alleged violation (see *Vassilios Stavropoulos v. Greece*, no. 35522/04, § 25, 27 September 2007).

More recently, in *Farzaliyev v. Azerbaijan*, the applicant argued in his appeals before the higher courts that, in the absence of any final judgment resulting in a criminal conviction, the civil court had erred in finding him liable for committing a criminal offence and ordering him to pay compensation. He did not expressly refer to a breach of his right to the presumption of innocence or expressly rely on Article 6 § 2 of the Convention or any specific domestic provisions protecting the presumption of innocence. However, the Court found that the applicant had raised the complaint in substance before the domestic courts and exhausted domestic remedies as

regards the right to the presumption of innocence (see *Farzaliyev v. Azerbaijan*, no. 29620/07, §§ 53-57, 28 May 2020).

5. In support of its finding, the present judgment refers to *Grosam v. the Czech Republic* ([GC], no. 19750/13, 1 June 2023). However, that case concerned a different situation, namely whether the applicant's complaint under Article 2 of Protocol No. 7, as formulated in his application form to the Court, could be examined under Article 6 § 1 of the Convention as a complaint concerning the lack of an independent and impartial tribunal.

In the present case, the issue does not relate to the complaint raised by the applicant before our Court. It is not disputed that the application contained "all the parameters necessary to enable the Court to delimit the question which it [was] called upon to examine" (see paragraph 114 of the judgment). It concerns whether the applicant had submitted his complaint relating to the presumption of innocence to the domestic courts.

6. On this matter, and in the light of the arguments put forward by the applicant to the domestic courts (see paragraph 3 above), it seems to me somewhat formalistic to completely disconnect in the present case the applicant's complaint raised under Article 6 from the principle of the presumption of innocence, which is enshrined in paragraph 2 of the same provision.

7. In fact, I was open to considering that the Court had examined under Article 6 § 1 of the Convention the main issue raised by the joined applications and that there was no need to go any further on the additional complaint made by the applicant in application no. 29101/20 under Article 6 § 2. However, this was not the approach followed by my esteemed colleagues.

KURKUT AND OTHERS v. TÜRKİYE JUDGMENT

APPENDIX

No.	Application no. and date of introduction	Case name	Applicant Year of Birth Nationality	Represented by	Just satisfaction claims	Award for costs and expenses
1.	58901/19 30/10/2019	Kurkut v. Türkiye	Naci KURKUT 1985 Turkish	Sedat İLEŞMEK	Pecuniary damage: EUR 75,000 (seventy-five thousand euros); Non-pecuniary damage: EUR 200,000 (two hundred thousand euros); Legal costs and expenses: EUR 2,132 (two thousand one hundred thirty-two euros).	No award
2.	59988/19 06/11/2019	Kesgin v. Türkiye	Şükran KESGİN 1990 Turkish	Emine KESGİN	Pecuniary damage: EUR 29,514 (twenty nine thousand five hundred fourteen euros); Non-pecuniary damage: EUR 100,000 (one hundred thousand euros)	No award
3.	14944/20 17/03/2020	Doğan Özdemir v. Türkiye	Zeycan DOĞAN ÖZDEMİR 1986 Turkish	Mehmet KISAYOL	Pecuniary damage: EUR 187,846 (one hundred eighty seven thousand eight hundred forty six euros); Non-pecuniary damage: EUR 25,419 (twenty five thousand four hundred nineteen euros); Legal costs and expenses: EUR 15,000 (fifteen thousand euros).	No award

KURKUT AND OTHERS v. TÜRKİYE JUDGMENT

No.	Application no. and date of introduction	Case name	Applicant Year of Birth Nationality	Represented by	Just satisfaction claims	Award for costs and expenses
4.	23565/20 03/06/2020	Dolgun Kılıç v. Türkiye	Bahar DOLGUN KILIÇ 1989 Turkish	Hanife GÖKMEN KANAR	Pecuniary damage: EUR 21,000 (twenty one thousand euros); Non-pecuniary damage: EUR 64,000 (sixty four thousand euros); Legal costs and expenses: EUR 10,075 (ten thousand seventy five euros).	1,000 EUR
5.	29101/20 29/06/2020	Tetik v. Türkiye	Agit TETİK 1992 Turkish	Rezdar ÇOBAN	Pecuniary damage: TRY 529,000 Turkish liras (~ EUR 29,600 (twenty nine thousand six hundred euros)); Non-pecuniary damage TRY 5,000,000 (~ EUR 250,000 (two hundred fifty thousand euros)); Legal costs and expenses: 25% of the just satisfaction awarded by the Court	500 EUR
6.	42116/20 07/09/2020	Tekin v. Türkiye	Baran TEKİN 1991 Turkish	Nergiz Tuba ASLAN	Pecuniary damage: EUR 33,374 (thirty three thousand three hundred seventy four euros); Non-pecuniary damage: EUR 35,000 (thirty five thousand euros); Legal costs and expenses: TRY 10,000 (~ EUR 500 (five hundred five euros).	No award

KURKUT AND OTHERS v. TÜRKİYE JUDGMENT

No.	Application no. and date of introduction	Case name	Applicant Year of Birth Nationality	Represented by	Just satisfaction claims	Award for costs and expenses
7.	28956/21 20/05/2021	Tanrikulu v. Türkiye	Mehmet TANRIKULU 1987 Turkish	Halise DAKALI	Pecuniary damage: EUR 47,400 (forty seven thousand four hundred euros); Non-pecuniary damage: EUR 25,000 (twenty five thousand euros); Legal costs and expenses: TRY 40,000 (~EUR 10,075 (ten thousand seventy five euros)) and 15% of the just satisfaction awarded by the Court.	500 EUR