



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

## SECOND SECTION

### CASE OF MUSTAFA AYDIN v. TÜRKİYE

*(Application no. 6696/20)*

## JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Trial court's failure to provide a reasoned judgment when convicting the applicant of membership of an armed terrorist organisation • Shortcoming not remedied by the Higher Courts

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 March 2025

**FINAL**

**15/09/2025**

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



**In the case of Mustafa Aydın v. Türkiye,**

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Péter Paczolay,

Anja Seibert-Fohr,

Davor Derenčinović,

Gediminas Sagatys,

Juha Lavapuro, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 6696/20) 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 Mustafa Aydın (“the applicant”), on 25 January 2020;

the decision to give notice to the Turkish Government (“the Government”) of the complaints concerning the domestic courts’ alleged failure to deliver a reasoned judgment and to carry out a proper examination of the applicant’s submissions and to declare inadmissible the remainder of the application;

the parties’ observations;

Having deliberated in private on 25 February 2025,

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

## INTRODUCTION

1. The application concerns the alleged unfairness of criminal proceedings against the applicant due to the domestic courts’ failure to carry out an individualised assessment in respect of him and provide sufficient reasons for their decision to convict him of being a member of an armed terrorist organisation under Article 314 § 2 of the Criminal Code. The applicant complained of a breach of his right to a fair trial as guaranteed by Article 6 § 1 of the Convention.

## THE FACTS

2. The applicant was born in 1982 and lives in Bandırma. He was represented by Mr M. Rollas, a lawyer practising in İzmir.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, former 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 12 February 2008, at the request of the public prosecutor’s office based on a police report of 12 February 2008, a judge assigned to the

İzmir Assize Court, which had special jurisdiction to hear cases relating to the aggravated crimes specified in Article 250 § 1 of the Code of Criminal Procedure, as in force at the material time, authorised (i) the interception and recording of telecommunications and (ii) the evaluation of signal information for fourteen individuals, including the applicant for a period of three months. The judge further authorised the covert surveillance of those individuals by means of monitoring their activities at their workplace and in public spaces and the making of audiovisual recordings.

6. From 18 March 2008 to 20 March 2008 R.S. gave statements to the police in the presence of his lawyer, which ran to forty-five pages and contained very detailed information on the structure and *modus operandi* of YDGH (Patriotic Democratic Youth Movement), considered as the youth wing of the PKK (Workers' Party of Kurdistan, an armed terrorist organisation), and several organigrammes explaining the entities of the organisation and roles and responsibilities of the people involved in it.

7. R.S. gave this information in exchange for a reduction in his sentence under Article 221 of the Criminal Code, entitled "active repentance", which provided for different degrees of reduction and impunity where persons suspected of being a member or a leader of an armed terrorist organisation provided useful information which could lead to the dissolution of the organisation or the arrest of its members. As the information provided by R.S. was considered useful by the authorities, R.S. was placed under a witness protection scheme and the criminal proceedings against him for membership of an armed terrorist organisation ended with a decision not to inflict punishment on him, which became final with the Court of Cassation's decision dated 13 December 2011. In his statements, R.S. explained, among other things, that K.K., D.D., M.B., A.Y., E.E. and D.S. were part of the Aegean branch of the YDGH.

8. A police report, entitled "Report on monitoring and video recording of ROJ TV", which was drafted and signed by two police officers on 8 March 2008, read as follows:

"At around 2 p.m. on 8 March 2008, Mustafa Aydın [the applicant], known as the correspondent of the Dicle News Agency in İzmir, connected by telephone from İzmir to a television programme called 'Roj Aktüel' which is broadcast abroad by Roj TV, which broadcasts in line with the aims of the PKK and disseminates its propaganda.

It has been understood from the recordings [of the television programme] that Mustafa Aydın provided information concerning the people and vehicles who would take part in the Democratic Solution march, who would travel from İzmir to Şırnak and from Şırnak to the area where military operations were conducted with a view to protesting against the military operations carried out by the Turkish armed forces against the PKK ..."

9. At around 7.20 a.m. on 20 March 2008, police forces carried out a search of a house belonging to a certain M.B. where they arrested M.B., İ.H.T. and Y.B. and seized, among other things, a two-page printout entitled

“Progress Report of the Aegean branch of the YDG (Patriotic Democratic Youth)” in the room used by İ.H.T. The author of the document indicated that the metropolitan area of İzmir was divided into five main areas and specified the names of the persons who were responsible for each area and those who were to act under them. The document further indicated that “...as regards press, friends Mustafa A., Fırat and Mesut E. will be in charge ...”.

10. At around 9.00 p.m. on 20 March 2008, the applicant was arrested on suspicion of carrying out activities within the YDGH. According to his arrest report, at the time of his arrest the applicant was video-recording a group of 150-200 people who gathered on the pretext of Nowruz celebrations and who were chanting slogans, such as “Strike guerillas strike and found Kurdistan” (“*Vur gerilla vur kürdistanı kur*”), “Long live the brotherhood of people” (“*Yaşasın halkların kardeşliği*”) and “Long live President Apo” (“*Biji serok Apo*”).

11. At 2.10 p.m. on 21 March 2008, the applicant gave statements to the police in the presence of his lawyer and denied having been a member of an armed terrorist organisation. When asked about a telephone conversation he had had with a woman whose name was unknown, the applicant stated that he worked at the Dicle News Agency as a correspondent on a contract and explained to the police that the name “Devrim” mentioned in the call could be the editor-in-chief (*sorumlu yazı işleri müdürü*) of the Agency. The police then asked him about two telephone calls he had had with E.Y., which they interpreted as related to hanging illegal banners (*afişleme*) and requested him to provide details about that illegal activity. The applicant stated that E.Y. was a friend of his whom he had known from the Ege University and that the call could have related to an instance in which he had invited E.Y. to a café called “Afiş café”, and that it had nothing to do with hanging any illegal banners. In fact, in the second call, E.Y. had invited the applicant to Küçük Park (a neighbourhood in İzmir), telling him that he had been at “Afiş”. The police further asked the applicant about the document discovered at the search of M.B.’s house, in which the names “Mustafa A.”, F.E. and Mesut E. were indicated as the persons responsible for the organisation’s press affairs. The applicant stated that he had not known F.E. or Mesut E. and that he was not part of an illegal organisation. Lastly, when the police alleged that he had been a correspondent for Roj TV and asked who else had worked for that media outlet, the applicant denied it, arguing that he was working as a correspondent for the Dicle News Agency.

12. On 23 March 2008 the applicant gave statements to the public prosecutor in the presence of his lawyer and denied the accusations. When asked about his intercepted telephone conversations, the applicant reiterated the essence of his police statements concerning the use of the word “*afiş*”, stressed that he was a correspondent working for the Dicle News Agency and submitted his contract as a proof of his submission and a photograph of “Afiş Café”.

13. On 23 March 2008 the applicant was brought, along with thirteen other suspects, before a judge assigned to the Tenth Division of the İzmir Specially Authorised Court and gave evidence in the presence of his lawyer. The applicant reiterated the statements he had made to the police and the public prosecutor and submitted that he had no connection with the PKK or any of the incidents (which later formed part of the bill of indictment), arguing that he was a student at the School of Journalism at Ege University. At the end of the hearing, the judge ordered the pre-trial detention of thirteen suspects, but released the applicant and two others.

14. On 22 May 2008 the İzmir Chief Public Prosecutor's Office, authorised under Article 250 § 1 of the Code of Criminal Procedure as then in force, filed a bill of indictment against twenty individuals, including the applicant, charging him with membership of an armed organisation under Article 314 § 2 of the Criminal Code. The prosecutor argued that, as a result of a large-scale police operation initiated on 23 December 2007 against the youth wing of the PKK ("YDGH"), an investigation had been carried out against S.Y., who was considered to be the head of the Aegean branch of the organisation, and twenty-six other persons, who had been acting within the organisation's structure, which was present in universities and cities. The indictment first referred to the structure of the YDGH and identified the suspects as being the executives within the organisation. The relations between the suspects, phone conversation records, the documents and other evidence seized during the searches, and details of the incidents of damage to property and arson were touched upon. The applicant's phone conversations with the other suspect E.Y. and the phone conversations of other suspects were indicated. The indictment particularly referred to the statements of R.S., who had played a key role in the organisation, but who had later shown effective remorse and had disclosed information about the organisation, as well as about the document which had been found at M.B.'s house and had contained the names of the people forming part of the organisation's Aegean Region.

15. The public prosecutor then listed the publications and documents found and seized during the searches of some of the suspects, which were regarded by the police as praising the PKK/People's Congress of Kurdistan ("PKK/KONGRA-GEL"). The applicant's house was not indicated in this part. The prosecutor then alleged that the two-page print-out found at the search of M.B.'s house had been written by D.D., without explaining what had led him to that conclusion. Although he reproduced the content of that document, the prosecutor indicated "Mustafa Aydın" instead of "Mustafa A." alleging that the applicant was responsible for the press, but without explaining the basis for his conclusion. Accordingly, the prosecutor listed seventeen incidents of arson in which vehicles had been set on fire and the names of the defendants considered to be criminally liable. Lastly, noting that the author of the two-page printout indicated in its second page that he had,

with his “patriotic compatriots”, set fire to a public passenger bus in Karşıyaka district and vehicles in the Limontepe district, the public prosecutor took the view that all the persons, including the applicant, whose names were indicated in that document should also be held criminally liable for these incidents. Nevertheless, in the last part of the bill of indictment, the applicant was solely accused of being a member of an armed terrorist organisation, whereas some other suspects were also accused of criminal damage.

16. The applicant was committed to stand trial before the Tenth Division of the İzmir Specially Authorised Court.

17. At a hearing held on 8 September 2008 the applicant gave evidence in person and denied the accusations against him. He submitted that he had not been responsible for the press in any formation or organisation, arguing that he had been the correspondent of the Dicle News Agency and studied at the School of Journalism of Ege University. The applicant added that among the co-defendants he had only known E.Y. who had done a translation for him. When asked about the statements he had made to the police, the public prosecutor and the judge at the investigation stage, the applicant stated that he accepted them. When asked about the police report dated 8 March 2008 concerning his appearance on Roj TV, the applicant stated that he had not worked for Roj TV, but that once he had connected to a television programme broadcast by Roj TV and had answered the questions they had asked, adding that his speech contained no criminal element. When asked about the judicial warrant authorising the interception and recording of his telephone communications, the applicant stated that he had done nothing illegal. His lawyer agreed with the applicant’s defence submissions and stated that there was nothing to add. At the end of the hearing, the trial court ordered the release of eleven of the twelve defendants.

18. By her written submissions dated 12 October 2010 the applicant’s lawyer filed observations with the trial court, in which she argued that the applicant had been a student and was working as a correspondent at the Dicle News Agency at the time the investigation had started and that the intercepted telephone communications showed that he had had normal everyday conversations with his friends. The lawyer contended that the reason why a criminal case had been brought against the applicant was the interpretation given to the word “*afiş*” by the police, which, in their view, had meant the act of illegally hanging a banner. In any event, even assuming the interpretation of the police to be accurate, the police had failed in their duty to collect evidence and verify whether the applicant had indeed hung illegal banners, and if so, where and when. In short, the applicant’s lawyer asserted that none of the accusations against the applicant were valid, given the public prosecutor’s failure to advance any evidence to establish a connection between the applicant and the offence allegedly committed.

19. On 22 May 2013 the applicant's lawyer lodged another defence submission on behalf of the applicant in which she essentially reiterated the content of her submission dated 12 October 2010.

20. On 24 January 2014 the İzmir Tenth Specially Authorised Assize Court found the applicant guilty of being a member of an armed terrorist organisation and sentenced him to six years and three months' imprisonment. In its judgment, which ran to eighty-two pages, the trial court first reproduced the bill of indictment and the public prosecutor's opinion on the merits of the case, the statements that the defendants had made during the investigation stage and at the trial, the statements of the complainants and witnesses Y.B. and R.S. and listed the evidence as: (i) statements made by the defendants, (ii) civil-status and criminal records of the defendants, (iii) search and seizure records, (iv) reports listing the goods which have been seized on the grounds that they had been used in the commission of an offence, and (v) minutes concerning the interception of telecommunications. In the part of the judgment, headed "Assessment of evidence and reasons", the trial court grouped the defendants into four categories: (i) defendant D.D., (ii) defendants E.E., M.B., F.Y., E.Y. and A.A., (iii) A.Y., D.S., B.Ö., F.A., S.S. and T.Y. and (iv) A.G., M.E., Mustafa Aydın (the applicant), A.As. Y.A., İ.H.T. and M.E. With respect to group (iv), the trial court's judgment read as follows:

"Following the pre-trial detention of fourteen members of the organisation who were arrested at the end of the investigation against S.Y., the head of the Aegean region of the YDGH and his friends, as a result of the operation carried out by the security forces on 23 December 2007 in İzmir against the Patriotic Democratic Youth Movement, which constitutes the youth wing of PKK/KONGRA-GEL, [witness] R.S. was appointed as the head of its Aegean branch, replacing S.Y. who had been released. Given that R.S. is of Turkish origin and that his activities within the organisation had been found to be insufficient, defendant D.D. had been appointed [as the head of the YDGH's Aegean branch] ...

It transpired from the transcripts of the intercepted telephone conversations that the defendants A.G., M.E., Mustafa Aydın (the applicant), A.As. Y.A., İ.H.T. and M.E., who were part of the youth structure of the terrorist organisation, had arranged with S.Y., R.S. and D.D., who were the heads of the Aegean region of the organisation, that those defendants [including the applicant] had been in contact with the heads of the Aegean branch of the Patriotic Democratic Youth, which was the youth wing of PKK/KONGRA-GEL and its other members, and had held meetings with them. As a result of this communication, and the organisation's decisions that the youth wing should be more active and dynamic in line with the '*Edi bese*' campaign and the decision to set fire to vehicles in İzmir, given that the same type of acts perpetrated in Istanbul caught the public's attention, it has been understood that activities, such as holding unauthorised demonstrations and marches, throwing Molotov cocktails, setting vehicles to fire have been carried out in İzmir.

It has been understood from the accusations [against the defendants], defence submissions, the trial conducted by our court, the transcripts of the intercepted telephone conversations, the photo identification report, statements made by witness R.S. and the other defendants, the seized documents of an 'organisational nature' and

the rest of the documents and reports available in the case file, the conversations of the defendants indicated in the transcripts, statements of R.S. which were in harmony with the flow of events, the conversations that the defendants made with leaders of the terrorist organisation and the activities they had carried out as a result of those conversations, that many unauthorised demonstrations and marches were held, acts such as throwing Molotov cocktails, setting fire to vehicles ... and that [the court] reached the conscious decision to convict the defendants, which were understood to be members of an armed terrorist organisation, under Article 314 § 2 of the Criminal Code ...”

21. In the part of the judgment concerning the trial court’s assessment of evidence and reasons, no mention was made of any specific telephone calls or their content.

22. On 27 January 2014 the applicant’s lawyer lodged a short notice of appeal, by which she appealed against the applicant’s conviction without raising any grounds of appeal.

23. On 25 May 2015 the applicant lodged his supplementary grounds of appeal, submitting, among other things, that he had been studying at the School of Journalism and working as a correspondent at the Dicle News Agency. The applicant further submitted that he had no connection whatsoever with the youth structure of an armed terrorist organisation, as could be seen by the fact that he had not known any of the defendants, save for E.Y. who was a friend of his from university. Nor had R.S. made any statements in respect of him or identified him from the photos. Similarly, he had made no telephone calls to the defendants, nor had he held meetings with them. As regards E.Y., the applicant stated that he had got to know him because he had been a student at the Faculty of American language and literature and had done translations in his English classes in exchange for a fee. He had thus met E.Y. a couple of times. The applicant also reiterated his explanations concerning the telephone calls with E.Y., arguing that the word “*afiş*” had nothing to do with any illegal activity, as could be seen from the photos of a café with the same name, which he had submitted for the case file. Lastly, the applicant argued that he had no connection with M.B. at whose house a two-page printout had been found. In any event, the trial court had failed to explain how it had associated the person indicated as “Mustafa A.” in that document with him. The fact that he and M.B. had no phone records of communication with him was proof that they had not known each other. Referring to a leading judgment of the Court of Cassation, the applicant asserted that his conviction for being a member of a terrorist organisation, with whom he had no contact or organisational link, was unlawful.

24. On 7 November 2016 the Court of Cassation upheld the applicant’s conviction, holding that the offence of which he had been accused had been given the correct legal characterisation and had been proven in keeping with the nature of the incident and the results of the prosecution, and that the applicant’s defence submissions had been dismissed on credible grounds.

25. On 12 April 2017 the applicant lodged an individual application to the Constitutional Court and complained, among other things, of a breach of his right to a fair trial, arguing that the domestic courts (i) had not delivered a reasoned judgment and (ii) had committed an obvious error of appreciation in dealing with his case. In doing so, the applicant reiterated, in essence, the arguments he had raised in his earlier defence submissions, adding that it was noteworthy that he had neither known nor ever contacted the persons regarded as responsible for the YDGH's press affairs. In his view, the trial court's judgment had lacked any individualised reasons in respect of his conviction.

26. On 2 September 2019 the Constitutional Court, in a two-page decision, summarily declared the application inadmissible. In doing so, the Constitutional Court examined the applicant's complaint concerning an alleged violation of his right to a reasoned judgment under a separate heading and took the view that, when assessing the proceedings as a whole, it was obvious that no violation of that right had occurred. Under a separate heading, "Allegation of unfairness of the proceedings within the scope of the right to a fair trial", the Constitutional Court held that this complaint sought to challenge the outcome of those proceedings and declared it inadmissible, taking the view that there was no manifest arbitrariness in the way in which the domestic courts had established the facts and applied the relevant legal provisions in his case.

## RELEVANT LEGAL FRAMEWORK

27. Article 141 § 3 of the Constitution reads as follows:

"... All kinds of decisions of all courts shall contain reasons."

28. Article 34 of the Code of Criminal Procedure, entitled "Reasons for decisions" provides as follows:

"(1) All kinds of decisions of judges and courts, including dissenting opinions, shall contain reasons. Article 230 shall be taken into account in drafting the reasons. ...

(2) Decisions shall indicate the legal remedies to which recourse could be made, [including] the [relevant] time-limit, avenue[s] and formalities."

29. Article 230 of the Code of Criminal Procedure, headed "Compulsory points to be indicated in the reasoning of [the] judgment[s]", provides, in so far as relevant, as follows:

"(1) The following points shall be included in the reasoning of the judgment:

(a) Opinions put forward by way of accusation and defence;

(b) A discussion and assessment of the evidence; an indication of the evidence relied on for the conviction and that which has been rejected; and in that connection, a separate and explicit indication of any evidence in the case file obtained unlawfully.

(c) The conclusion reached, the acts of the defendant found to have constituted an offence and its [legal] characterisation ...”

30. Article 232 entitled “Reasoning of [the] judgment and the compulsory points to be indicated in the operative provisions”

“(2) At the beginning of the judgment ... shall be indicated [the following]:

...

(c) Save for judgments of acquittal, the place, date and time of the offence committed ...”

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicant complained of a breach of his right to a fair trial, as provided for in Article 6 § 1 of the Convention, which reads as follows:

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

#### A. Admissibility

##### 1. *Objection alleging failure to exhaust domestic remedies*

###### (a) *The parties’ submissions*

32. The Government made an objection alleging non-exhaustion of domestic remedies, arguing that the applicant had failed to raise his complaint concerning the violation of his right to a fair trial before the domestic courts. In that connection, the Government referred to the content of the two written submissions made by the applicant’s lawyer during the trial and the lawyer’s appeal dated 27 January 2014 and argued that the applicant had not raised any objection which would have reflected the essence of his complaint before the Court. In the Government’s view, the main pieces of evidence against the applicant were the statements made by R.S. and the two-page printout. Yet, by failing to raise any objection against those statements and the printout, the applicant had prevented the trial court and the Court of Cassation from reviewing or putting a stop to any alleged violations. On that basis, the present application should, in the Government’s view, be declared inadmissible for failure to exhaust domestic remedies.

33. The applicant contested the Government’s plea, stressing that he had objected to the accusations levelled against him at every stage of the proceedings and had even filed an appeal himself, which contained detailed grounds as to why he should be regarded as innocent. In any event, the applicant underlined that he had raised all the complaints which he had submitted before the Court in his individual application to the Constitutional Court.

34. The applicant further submitted that he had failed to see the point in the Government's argument concerning his alleged failure to object to the statements of R.S., arguing that at no time during the criminal proceedings had any questions concerning R.S. been put to him, nor had he been accused based on those statements. In his view, the same held true as regards the two-page printout found at M.B.'s house, as he had already submitted before the domestic courts that the "Mustafa A." in that document had not been him and that he had had no contact whatsoever with M.B. Moreover, the trial court had not made any reference to this specific printout in the part of its judgment concerning him, which had been presented by the Government as the "main piece of evidence".

**(b) The Court's assessment**

35. The Court observes that the applicant's appeal submissions to the Court of Cassation on 25 May 2015 (see paragraph 23 above) contained detailed explanations directed at challenging the grounds on which the trial court had based its decision to convict him. In that connection, the applicant specifically contested the statements made by R.S. and the two-page printout found at M.B.'s house and indicated that he had had no contact with the other defendants, save for E.Y. It is significant that the Government's plea did not contain any mention of the applicant's appeal dated 25 May 2015, in which he seemed to raise the essence of the complaints which he later submitted to the Constitutional Court and the Court.

36. Even assuming this not to be the case, the Court observes that the Constitutional Court examined, under a separate heading, the applicant's complaint concerning an alleged breach of the right to a reasoned judgment and held that the assessment of the case as a whole had made it clear that no violation had occurred with regard to that right, thus finding that complaint inadmissible as being manifestly ill-founded. Accordingly, even assuming that the applicant had failed to raise the complaint under consideration before the trial court or the Court of Cassation, the Constitutional Court examined the substance of this complaint and dismissed it. In such circumstances, the Court finds no ground to declare the application inadmissible for non-exhaustion of domestic remedies and dismisses the Government's plea (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 142-43, ECHR 2010).

*2. Objection that the application was manifestly ill-founded*

**(a) The parties' submissions**

37. The Government further argued that the application should be declared inadmissible as being manifestly ill-founded in the light of the comprehensive assessment carried out by the Constitutional Court of the applicant's complaints. In their view, the complaints in the present case were aimed at challenging the outcome of the proceedings.

38. The applicant disagreed that his complaint had been of a fourth-instance nature as alleged by the Government, because it did not concern the domestic courts' assessment of the evidence, but rather their failure to explain the concrete evidence and grounds leading to his conviction. Similarly, no assessment had been made in respect of his defence submissions throughout the different stages of the criminal proceedings, and he asked the Court to dismiss the Government's objection.

**(b) The Court's assessment**

39. The Court notes that, in determining whether the proceedings were fair, it is not called upon to review either the domestic courts' assessment of the evidence or the outcome of the trial against an applicant, as those issues fall to the domestic courts, in line with the principle of subsidiarity, and it is generally not appropriate for the Court to rule on them. Instead, the Court's task in the present case is to determine whether the domestic courts discharged their duty to deliver a reasoned judgment, which is a procedural right inherent in the right to a fair trial under Article 6 § 1 of the Convention; this task is rather different from that described by the Government. Accordingly, the Court rejects the Government's objection.

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

**B. Merits**

*1. The parties' submissions*

**(a) The applicant**

41. The applicant submitted that it was impossible to characterise the trial court's judgment, as the Government had done, as "reasoned", as it had not contained an appropriate assessment of the evidence or a sufficient explanation as to which evidence had formed the basis of his conviction. In his view, the trial court's judgment had fallen short of explaining his relationship or connection with the organisation of which he had allegedly been a member, because the reasons contained in the judgment had been written for all the defendants and were thus formulaic and abstract.

42. According to the applicant, even though the Government had argued that the principal grounds for his conviction had been the statements made by R.S. and the two-page printout found at M.B.'s house, R.S. had neither made any statements about him nor identified him from his photographs. Similarly, the trial court had not specifically cited the print-out found at M.B.'s house when convicting him. It was noteworthy that the trial court had provided no reasoning whatsoever as to how it had concluded that "Mustafa A." had been him, even though he had not known or had had any phone calls or contact

with M.B. or any other persons whose names had been indicated on the printout in question.

43. Moreover, while the judgment indicated that he had made phone calls to the leaders of the YDGH, namely S.Y., D.D. and R.S., that was simply not true, as he had had no telephone calls with those individuals. The applicant had had phone calls only with defendant E.Y., who was a friend of his from university and his name had not been indicated in the printout either. Similarly, the Government's view that his participation in a television programme on Roj TV had been regarded as a supporting evidence by the trial court had not been substantiated by the content of the judgment, where no reference had been made to that element.

44. In view of the above, the applicant argued that the trial court's judgment had lacked any reasons or individualised assessment and had been based on an opinion which was the result of a manifestly illogical, unreasonable and arbitrary assessment. Accordingly, the applicant submitted that there had been a violation of Article 6 § 1 of the Convention.

**(b) The Government**

45. The Government submitted that the applicant's conviction had been substantiated in the trial court's judgment, which had been presented in such an open manner as to allow scrutiny of the applicant's case in every respect. The trial court had also provided sufficient reasoning by individualising it specifically for the applicant. In the Government's view, the two-page printout discovered at M.B.'s house, phone conversations between the defendants, and concrete evidence pertaining to destroying property and other demonstrations, had been indicated as evidence for the applicant's conviction and the trial court had discussed the evidence in question in its judgment. According to the Government, the trial court had also assessed, as supporting evidence, the fact that the applicant had participated in a programme on Roj TV. Lastly, in its judgment the trial court had classified the defendants according to the offences they had committed and indicated its reasoning accordingly.

46. The Government further argued that R.S. had given detailed information about the organisation's Aegean structure, naming D.D. as the head of that structure and M.B. as one of its executives. M.B. had had telephone conversations with the other members of the terrorist organisation, opened a placard and chanted slogans in favour of the organisation at a demonstration on 7 November 2007. Consequently, a search had been carried out at M.B.'s house and a two-page printout had been discovered in which the applicant was named as one of the persons in charge of the press, and the arson attacks previously carried out by the organisation had been indicated, with a mention that they would be intensified. In the Government's view, that printout could "be classified as one of the most important pieces of evidence of the case in respect of the applicant", and its authenticity and reliability had

been confirmed by R.S.’s statements, the arson attacks, other documents seized during the searches, the unlawful demonstrations and D.D.’s telephone conversations.

47. Moreover, the Government took the view that the applicant’s defence submissions before the trial court had not had an impact on the merits of the case, as they almost exclusively dealt with his intercepted phone calls and the meaning of the word “*afiş*”. In the Government’s view, that issue had been put to the applicant only at the investigation stage and had not formed part of the subject matter of the case. The Government further argued that neither the applicant nor his lawyer had objected to the statements made by R.S. or the printout found at M.B.’s house. Referring to the applicant’s lawyer’s short notice of appeal, the Government asserted that the applicant had likewise failed to submit any evidence or filed an objection before the Court of Cassation. Accordingly, having regard to the proceedings as a whole, the Government considered that there had not been a violation of Article 6 § 1 of the Convention.

## 2. *The Court’s assessment*

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

48. 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, 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). It must be clear from the decision that the essential issues of the case have been addressed (see *Taxquet v. Belgium* [GC], no. 926/05, § 91, ECHR 2010). In view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly “heard”, that is to say, properly examined by the tribunal (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 305 *in fine*, 26 September 2023, with further references). 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 formulaic (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017, with further references).

49. According to the Court’s case-law, a domestic judicial decision cannot be regarded as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a “denial of justice” (ibid., § 85, and see also *Yüksel Yalçınkaya*, cited above, § 304 *in fine*).

50. Moreover, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court’s decision (see *García Ruiz*, cited above, § 26; *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001; and *Stepanyan v. Armenia*, no. 45081/04, § 35, 27 October 2009).

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

51. The Court notes at the outset that the Government failed to produce a translation of the relevant pages of the trial court’s judgment dated 24 January 2014, although they were expressly requested to do so at the time when notice of the present application was given.

52. Next, in assessing whether the right to a reasoned judgment under Article 6 § 1 of the Convention has been respected in a given case, the Court must base its examination on the evidence which formed part of the domestic courts’ assessment, as reflected in their judgments. Assessment in this sense does not mean a mere listing of the evidence, but requires an undertaking by the domestic courts to establish the facts on which an accusation against an individual is based and to engage in the logical and intellectual exercise of applying the law to the facts of the case as established in the light of the evidence with a view to determining the criminal liability of an individual. The duty of domestic courts to carry out a proper examination of any specific, pertinent and important point made by the accused also forms an inherent part of this exercise.

53. While Article 6 § 1 of the Convention does not prevent domestic courts from using the same line of reasoning in respect of a group of individuals who are in a factually and legally identical position, in cases where domestic courts are called upon to determine a criminal charge, their duty to give reasons under Article 6 § 1 of the Convention for their decisions on the merits of a case necessarily implies that such reasons should be tailored to particular circumstances of each defendant. In that connection, it is not the role of the Court, under Article 6 § 1 of the Convention, to determine whether the evidence – when not individually assessed by a trial court – was sufficient and relevant to warrant conviction. If the Court were to make such an assessment itself, it would risk acting as a court of fourth instance by calling into question the outcome of a trial or engaging in an assessment of facts and evidence or determining whether the evidence was sufficient to justify a conviction.

54. Turning to the circumstances of the present case, the Court notes that, in its eighty-two-page judgment, the trial court first summarised the bill of indictment, the public prosecutor's opinion on the merits of the case, the statements made by the defendants at each stage of the proceedings, and statements of the complainants and witnesses Y.B. and R.S. It listed the evidence under five headings. It then classified the defendants into four categories, and this was not, as the Government argued, based on the offences they were alleged to have committed, as can be seen from the fact that the trial court's assessments for the defendants in groups (iii) and (iv) both concerned the question whether they had committed the offence of being a member of an armed terrorist organisation.

55. In respect of group (iv), to which the applicant belonged, the trial court adopted the same line of reasoning as for the seven defendants whose criminal responsibility had been established with reference to (a) the conversations that the defendants had had with leaders of the terrorist organisation and the activities they had carried out as a result of those conversations; (b) the conversations of the defendants recorded in the transcripts; (c) the statements given by the witness R.S. and the report containing his photo identification; (d) the seized documents of an organisational nature; and (e) the other documents and reports available in the case file.

56. In that connection, the Court further observes that the applicant's submissions that R.S. had not made any statements about him or identified him from the photographs and that he had not had any telephone conversations with the leaders of the organisation were not challenged by the Government. Nor did the Government claim that any such telephone calls by the applicant had been mentioned in the judgment. In the Court's view, the trial court's failure to indicate the telephone call(s) that the applicant had allegedly had with the leaders of the organisation was of crucial importance in the present case. This is because the conviction of the defendants in group (iv), including the applicant, for membership of an armed terrorist organisation depended to a significant extent on their having made those telephone calls, which, according to the trial court, led to certain activities being carried out in İzmir, resulting in arson attacks on numerous vehicles. Put simply, if the applicant had not made such calls, he would not have been included in the trial court's assessment which led to his conviction. The Court therefore considers that, although the trial court was under an obligation to show the utmost rigour in stating the factual grounds which lead it to convict the applicant of a serious offence, it failed to discharge that duty on account of failing to indicate the applicant's phone calls with the leaders of the YDGH.

57. Moreover, the only part of the judgment which contained parts of the transcripts of the intercepted calls was the part where the police statements of each defendant were reproduced and the fact remains that the only defendant with whom the applicant had spoken on the telephone was E.Y., who was

accused of being a member of the YDGH, and not a leader of that organisation. In any event, the Court notes that the trial court did not address the applicant's claim that the two telephone conversations with E.Y. had concerned a meeting at a place called "afiş café" and not the act of illegally hanging a banner (*afiş*), in respect of which he also submitted a photograph of the café in question.

58. Moreover and more importantly, while the trial court made passing reference to the "seized documents of an organisational nature", no specific reference or weight was given to the two-page printout, found during the search of M.B.'s house, in which a certain "Mustafa A.", F.E. and M.E. were identified as the persons responsible for press affairs of the Aegean branch of the YDGH. This view seems to be further supported by the fact that the judgment contains no indication showing that the trial court found the applicant guilty of membership of an armed terrorist organisation on the basis that it considered him to be one of the persons responsible for the organisation's press affairs. Nor could it be discerned from the judgment whether any steps were taken in order to scrutinise the authenticity, veracity or quality of the two-page printout – which did not contain any handwriting or signature – or the information contained in it, in so far as it concerned the applicant.

59. Lastly, the Court cannot accept the Government's contention that the applicant's participation in a television programme on Roj TV had been used as supporting evidence for his conviction, given that the trial court had neither listed the police report concerning this incident as an item of evidence, nor seemed to have mentioned it in its assessment concerning the merits of the case. The Court therefore dismisses the Government's argument based on this piece of evidence, which did not form part of the domestic courts' assessment, as reflected in their judgments.

60. In view of the foregoing considerations, the Court considers that, in its judgment, the trial court failed to provide adequate reasons on the facts which formed the basis of the applicant's conviction for membership of an armed terrorist organisation, to provide an individualised assessment of the applicant's criminal liability commensurate with the serious nature of the offence and with the impending punishment and its consequences, and to address the applicant's claims which went to the heart of the case. Moreover, neither the Court of Cassation nor the Constitutional Court remedied the trial court's failure to discharge its duty to render a reasoned judgment under Article 6 § 1 of the Convention, which was a crucial shortcoming that went to the merits of the case (see *Zhang v. Ukraine*, no. 6970/15, § 73, 13 November 2018, and *Kikabidze v. Georgia*, no. 57642/12, § 65, 16 November 2021, on the duty of the domestic courts to provide adequate reasons for their decisions, inherent in Article 6 § 1).

61. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. Article 41 of the Convention provides:

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

### A. Damage

63. The applicant claimed 49,360 euros (EUR) in respect of pecuniary damage, for the financial losses he had sustained as a result of his conviction. This amount consisted of the salaries he could have received during the time of his deprivation of liberty had he not been convicted arbitrarily (amounting to approximately EUR 46,560 for 1,358 days in prison) and the expenses he had incurred while in prison (amounting to EUR 2,800). The applicant further stressed that his conviction had resulted in his dismissal from his job at the university and from the PhD programme and his losing the possibility to work ever again in public institutions due to the nature of his offence. In support of his pecuniary damage claim, the applicant submitted the payroll document issued to him prior to his deprivation of liberty.

64. The applicant further claimed EUR 200,000 for non-pecuniary damage, arguing that as a result of his conviction, he had been labelled as a “terrorist”, and had been held in a prison cell for forty-four months, which had housed double its capacity of inmates, thereby experiencing grave and irreparable harm.

65. The Government contested those claims, arguing that there was no causal link between the alleged violation and the applicant’s pecuniary damage claims. In the Government’s view, the claim for non-pecuniary damage was also unsubstantiated, excessive and at odds with the Court’s case-law.

66. As regards pecuniary damage, the Court dismisses the applicant’s claim relating to the expenses incurred during his imprisonment, since he has not submitted any supporting documents. In any event, the applicant’s failure to provide details of his prison expenses makes it impossible for the Court to assess whether they were incurred solely as a result of his imprisonment (see *Yeğen v. Turkey*, no. 4099/12, § 53, 7 June 2022). As regards the rest of his pecuniary damage claim, the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

67. On the other hand, as the applicant must have suffered distress and anxiety owing to the violation found in the present case, the Court awards him EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

## **B. Costs and expenses**

68. The applicant also claimed EUR 390,90 for the costs and expenses incurred before the domestic courts and the Court. In support of his claims, the applicant submitted a postal invoice dated 15 August 2020 for the amount of TRY 55,40, the Union of Turkish Bar Associations' scale of fees for 2008, 2017 and 2020 and a receipt dated 12 April 2017 for the payment of TRY 257,50 in court fees for lodging an application with the Constitutional Court.

69. The Government contested that claim owing to the applicant's failure to submit documentary proof which showed that the costs and expenses had actually been incurred. In any event, the applicant had neither submitted a legal fee agreement nor presented any details on the nature of the work undertaken by his lawyer.

70. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim for costs and expenses in so far as it was based on the Union of Turkish Bar Associations' scale of fees (see *Hülya Ebru Demirel v. Turkey*, no. 30733/08, § 61, 19 June 2018). However, it considers it reasonable to award the applicant EUR 75, plus any tax that may be chargeable to him, under this head.

**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*
  - (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 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (ii) EUR 75 (seventy-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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Registrar

Arnfinn Bårdsen  
President