



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

SECOND SECTION

CASE OF DEMİNER v. TÜRKİYE

(Application no. 45779/18)

JUDGMENT

Art 6 § 1 (criminal) • Fair hearing • Applicant's conviction of membership of an armed terrorist organisation based on sufficiently reasoned judgments

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 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 Demirer v. Türkiye,

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

Arnfinn Bårdsen, *President*,

Saadet Yüksel,

Jovan Ilievski,

Anja Seibert-Fohr,

Davor Derenčinović,

Stéphane Pisani,

Juha Lavapuro, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 45779/18) 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, Ms Serferaz Demirer (“the applicant”), on 18 September 2018;

the decision to give notice to the Turkish Government (“the Government”) of the complaint concerning the alleged unfairness of criminal proceedings owing to the domestic courts’ failure to deliver a reasoned judgment, and to declare the remainder of the application inadmissible;

the parties’ observations;

Having deliberated in private on 25 February 2025,

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

INTRODUCTION

1. The case concerns the domestic courts’ alleged failure to indicate the grounds on which they convicted the applicant, under Article 314 § 2 of the Criminal Code, of being a member of an armed terrorist organisation or to assess her defence submissions concerning the merits of the charge against her.

THE FACTS

2. The applicant was born in 1994 and lives in Bayburt. She was represented by Mr M. Timur, a lawyer practising in Van.

3. The Government were represented by their Agent at the time, Mr Hacı Ali Açıkgül, the 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 10 January 2016 military personnel patrolling the Syrian border arrested two women who were trying to cross the Turkish border illegally from the Syrian side. The women told the officers that they were Syrians and that their names were “Eydil Ebuharun” and “Emel Abdurrahman”, but that

they did not have ID cards, adding that they had come to Türkiye for a relative's wedding. Following their failure to give any information concerning their relatives in Türkiye or in Syria, including telephone numbers, the women were taken to the gendarmerie station. According to the official reports, when the two women became aware that their real identities would be discovered from their fingerprints, they provided the officers with their real identities: Serferaz Demirer (the applicant) and Ş.A.

6. On 11 January 2016 Ş.A. gave statements to the gendarmerie in the presence of a lawyer and confessed that she had been in Syria to attend training camps organised by the PYD (Democratic Union Party) – YPG (the Kurdish People's Defence Units movement), regarded as a terrorist organisation in Syria by the Turkish authorities¹, that she had received ideological and weapons training, and that she had been given a Kalashnikov rifle and a code name. Following her training, she had been assigned to a house where guests of the organisation would stay, ten minutes away from the training camp by car, and had been responsible for looking after the kitchen. A member of the organisation with the code name "Ruken" had subsequently informed her that she needed to return to Türkiye and had handed her over to a man whom Ş.A. suspected to be a member of the organisation, at a location close to the border; the man was supposed to help her cross the Turkish border from Syria. Shortly thereafter, two other middle-aged women had joined her and the applicant. Ş.A. stated that she did not know any of those people. The group had then entered Türkiye under the barbed wire at the border and had started running towards a village nearby when they realised that some soldiers had started to chase them. The group had continued running even though the soldiers had been firing at them. The chase had ended with the arrest of Ş.A. and the applicant. When asked why she had given false information concerning her identity, Ş.A. stated that the man who had helped her cross the border had told the group that they should say that they were Syrian citizens if they were caught by soldiers.

7. On the same day, the applicant also gave a statement to the gendarmerie officers in the presence of a lawyer and denied the accusation against her, stating that she was not a member of a terrorist organisation in either Syria or Türkiye. The applicant explained that she was from the city of Hakkari, located at the south-eastern edge of Türkiye, and as such she had relatives in Syria, where her father's cousin had got married in December 2015. As her father had been working and her mother had been looking after the children at home, she had attended the wedding on behalf of her family. She had decided to cross over into Syria illegally so as not to put any financial burden on her family. To do so, she had gone to a village close to Nusaybin, a province located on the border, and had asked some villagers if they knew

¹ Considered to be the Syrian branch of the PKK (Workers' Party of Kurdistan, an armed terrorist organisation) in the Court of Cassation's judgment of 18 January 2016.

anyone who could take her into Syria illegally. She had then met a Syrian who organised such crossings and who had asked her who would pick her up once she had crossed the border. The applicant had given him the telephone number of the person who would meet her. They had crossed the border with an old man, a young woman with a child and an old woman, and the applicant had asked the Syrian man to phone her father's cousin, named "Eli Ebuabdülmecit", who had come to pick her up an hour later. The applicant had then gone to the town of Amude, where she had stayed for about ten days, attending the wedding, and had remained until the day of her arrest. She had then wished to return to Türkiye for a public examination, which had been due to take place in March 2016. The relative who had picked her up in Syria had left her in the city of Qasr-e Shirin, Iran where she had joined another smuggler and had attempted to cross the border illegally with three women, including Ş.A. The applicant further stated that two of the women had run off and disappeared, but that she had been arrested because she had stopped and looked back to help the other woman (Ş.A.).

8. Like Ş.A., the applicant also said that the smuggler had told them that if they were caught by soldiers, they should tell them that they were Syrians, adding that Syrians illegally crossing the border would be handed to camps and released. According to the applicant, that was the reason why she had not provided the officials with her true identity. However, when she had understood that her true identity would be discovered following a fingerprint examination, she had given her true identity. The applicant lastly stated that she regretted having crossed the border illegally and having provided the officials with false information concerning her identity.

9. According to a report drawn up by the gendarmerie forces on 11 January 2016, the applicant told B.S., who assisted her as a Kurdish interpreter, that he was a traitor and that he was betraying his own nation.

10. On 12 January 2016 the applicant and Ş.A. made statements to the public prosecutor in the presence of their lawyers and reiterated the statements they had made to the gendarmerie officers. In their statements taken by the investigating judge in the presence of their lawyers on the same day, the applicant confirmed the statements she had previously made, but Ş.A. retracted hers, stating that she had gone to Syria because she had heard that it was a beautiful country. At the end of their questioning, the investigating judge placed them in pre-trial detention, on the basis that she had formed the opinion that they had committed the offence of being a member of an armed terrorist organisation under Article 314 § 2 of the Criminal Code.

11. By a bill of indictment dated 31 January 2016, the Mardin Chief Public Prosecutor's Office charged Ş.A. and the applicant, under Article 314 § 2 of the Criminal Code, with being a member of an armed terrorist organisation and, under Article 206 § 1 of the same Code, with making a false declaration in the drawing up of an official document.

12. At a hearing held on 10 March 2016, the interpreter B.S. gave evidence in person and confirmed the contents of the police report dated 11 January 2016 (see paragraph 9 above).

13. At a hearing held on 1 April 2016, the applicant and Ş.A. gave evidence in person in the presence of their lawyers. The applicant confirmed the statements that she had previously made and denied the accusations against her, adding that she had crossed the border illegally because of financial constraints. Ş.A. also denied the accusations, alleging that she had made the statements to the gendarmerie officers because they had shown her their guns and threatened to beat her up, rape her and send her to an ISIS camp. The officers had allegedly also advised her to state that she was a member of the YPG, adding that it was not a bad organisation, as it had been fighting against ISIS. Ş.A. further stated that she was an adventurous person and that was the reason why she had gone to Syria illegally.

14. On 24 May 2016 the Mardin Assize Court convicted the applicant and Ş.A. of membership of an armed terrorist organisation and of forgery of an official document, on the basis of, *inter alia*, the statements made by Ş.A. and the incident and arrest reports. The trial court sentenced them each to nine years' imprisonment for membership of an armed terrorist organisation and one year's imprisonment for forgery of an official document. The relevant parts of the trial court's judgment read as follows:

"In the bill of indictment drawn up by the Mardin Chief Public Prosecutor's Office in connection with docket no. 2016/206, it was noted in brief that the defendants, who were members of the PKK-KCK and PYD-YPG, the Syrian branch of that organisation, had been arrested by security forces maintaining border security, had made false statements alleging that they were Syrian, but that their true identities had later been discovered and a prosecution was brought in the relevant court with the request that the accused persons be punished under Article 314 § 2, Article 206 § 1 and Articles 53 and 63 [of the Criminal Code] and section 5 (1) of Law no. 3713.

In its opinion on the merits, the prosecution stated in brief that the two persons illegally entering Turkish territory from the Syrian border had been arrested and that after their arrest they had presented themselves as Syrian citizens, but their true identities had been discovered following a fingerprint examination; that the defendant Ş.A., in a statement taken in the presence of her lawyer in the Security Directorate's building, had said that she had joined the YPG organisation, the Syrian branch of the PKK, that she had received political and military training there, that later she had been arrested while trying to cross the Turkish border with a group of people including Serferaz Demirer [the applicant] in order to leave the organisation, and that the persons who had organised their crossing were members of that organisation. It was thus considered that the defendants were members of the terrorist organisation and that they had links with the organisation. Therefore, it was requested that the accused persons be punished under Article 314 § 2, Article 58 § 9, Article 201 § 1 and Article 53 of the Turkish Criminal Code and section 5 of Law no. 3713, that Article 221 § 4 of the Turkish Criminal Code be applied in respect of the defendant Ş.A. and that the defendants' detention be extended on account of the offences of which they were accused, the state of the evidence and the existence of the risk of their absconding.

The defendant Serferaz Demirer stated the following in her defence submissions, made with the assistance of an interpreter: ‘Approximately one month before the incident, I entered Syria illegally. I stayed in Amude, a town in Syria. I stayed at the home of my father’s aunt’s son. My purpose was to go to the wedding of my father’s aunt’s son. As my father was a civil servant, he could not come with me. I went there on my family’s behalf.’

[When asked] why she had crossed the border illegally even though she had said that she had been going to the wedding, [the applicant stated the following]: ‘I am a student. I have a passport, but as my financial situation was in a bad state I went there illegally. I stayed for approximately one month. I stayed with my relatives for between ten and fifteen days. I hadn’t met the other defendant before. I first met her on the day of the incident while trying to cross the border. We were crossing the border as a group of four people. Soldiers saw us while we were running and we were arrested. I have no connection with the terrorist organisation. I am not a member [of it], and I request my acquittal and release.’

In her defence submissions, made through an interpreter, the defendant Ş.A. stated: ‘I am a person who likes adventure. Approximately one week prior to the incident I had crossed the Syrian border illegally and alone. I am not sure of the exact location where I crossed. I then stayed in the town of Amude for a week. A smuggler named Ali from Syria helped me. I stayed at his house. I don’t know the other defendant. We met around the fences while entering Turkey. We entered together. Then the soldiers arrested us. I request my acquittal and release.’

The defendant Ş.A. confessed that she was a member of the terrorist organisation in her statements taken in the presence of her lawyer during the pre-trial stage.

Witness B.S. was heard.

The incident and arrest report, other reports, and the letters of Mardin Provincial Police Department and Mardin Provincial Gendarmerie Command are included in the case file.

...

It has been established that the defendant Ş.A. was a university student in Gaziantep province, that she decided to join the PKK-KCK terrorist organisation, according to her statement, following incitement by a person called ‘Ekin’, that in October 2014 she went to Kobani, in Syria, illegally through the Suruç District together with a person named Ali, that together they went to Derik City in Syria and received weapons, ideological and political training in the camps of the PYD-YPG terrorist organisation, which is the Syrian branch of the PKK-KCK terrorist organisation, that she was given the code name ‘Arvin’ and a Kalashnikov rifle during that training and that after completing her training she worked in the kitchen of the organisation’s camp, that after having worked until the date of her arrest she was sent to Turkey by the executives of the organisation, that a person whose identity was unknown took her to the Turkish border, that on 10 January 2016 the defendant Ş.A. entered Turkish territory together with the defendant Serferaz Demirer [the applicant], that soldiers from the Yeniköy Border Infantry Company identified and arrested the accused persons, that the defendant Ş.A. presented herself as a Syrian citizen, Emel Abdurrahman, and the defendant Serferaz Demirer presented herself as a Syrian citizen, Eydil Ebuharun, that Serferaz Demirer used the expression ‘You are a traitor. You are betraying your nation’ in Kurdish to B.S., who had been assigned the duty of translating the accused’s statements at the Security Directorate’s building, that B.S., who was heard as a witness, confirmed this, that the defendant Ş.A. confessed, in her defence submissions of

11 January 2016, that she had joined the terrorist organisation in October 2014, and that the other defendant Serferaz Demirer stated in her defence submissions that she had gone to Syria illegally in order to attend the wedding of her relative who lived in Syria, and that she had been arrested while returning to Turkey. In view of the statements of Ş.A. taken in the presence of a lawyer, which were confirmed by the incident and arrest report, as well as the duration of her membership of the organisation, the fact that the defendant had been given a code name, that she had fulfilled the orders and instructions of executives of the organisation and that she had tried to enter Turkey illegally, it was held that that the defendant Ş.A. had to be considered to be a member of the terrorist organisation within its hierarchy and that the fictitious statements regarding alleged torture that had been given by the defendant Ş.A. during the trial stage were not convincing on any grounds. Even though the defendant Serferaz Demirer argued insistently that she was not a member of the terrorist organisation, that she had been arrested together with Ş.A. while crossing the border illegally, that she had also presented herself to the security forces as a Syrian citizen, as the defendant Ş.A. had done, that she had accused the interpreter B.S. of treason after her real identity had been revealed, and that the statements of B.S. showed that the defendant Serferaz Demirer [the applicant] had acted together with the co-defendant Ş.A., whose membership of the organisation was clearly proven, the defence submission of the defendant Serferaz Demirer [the applicant] stating that she had gone to her relative's wedding alone and had been arrested while coming back was not convincing on any grounds. Accordingly, it must be found that Serferaz Demirer was also a member of the terrorist organisation, that both defendants acted together, that as regards certainty, there was no evidence that could possibly be interpreted in favour of Serferaz Demirer. The fact that Ş.A. did not mention the defendant Serferaz Demirer in her statements made at the pre-trial stage, which have been preferred by our court, would not have changed the outcome of the court's decision that the defendant Serferaz Demirer acted within the hierarchy of the organisation as the developments leading to the incident suggest; it has therefore been decided that the court should depart from the lower limit of the sentence in order to deliver a lawful decision on account of the way in which the incident took place and the intensity of the defendants' intentions, and that they should be sentenced separately ..."

15. One of the judges of the three-judge bench dissented, taking the view that the applicant should have been acquitted and released owing to a lack of sufficient evidence to justify her conviction. This was because the scope of the case was not sufficient to establish a connection between the two defendants and that, according to their statements, neither of them had known the other, nor did the case file contain any information or evidence showing that they had known each other. The judge went on to say that in her statements to the gendarmerie, which the court had preferred to her subsequent statements, Ş.A. had stated that she had seen the applicant for the first time at the border, and there was no other evidence in the case file which showed that the applicant was a member of the organisation or within its hierarchical structure.

16. Following the pronouncement of the judgment, the applicant chanted slogans such as "Long live President Apo" ("*Biji Serok Apo*") and "Kurdistan will be the grave for fascism" ("*Kürdistan faşizme mezar olacak*").

17. On 5 June 2016 the applicant's lawyer lodged an appeal against the trial court's judgment, arguing that Ş.A. had not stated that she had known

the applicant and that there was no legal basis for considering the witness B.S.'s statement to be absolutely true.

18. In its opinion dated 9 September 2016, the Principal Public Prosecutor's Office at the Court of Cassation expressed the view that the applicant's conviction should be upheld, in particular in view of the slogans she had chanted in favour of the PKK following the delivery of the judgment.

19. On 1 February 2017 the Court of Cassation upheld the decision of the trial court, finding that the evidence had been properly discussed and the facts established. The acts in question had been characterised in view of the nature of the incident and the defence submissions had been dismissed on credible grounds. No specific reference was made, nor any weight attached to the applicant's chanting slogans.

20. On an unspecified date, the applicant lodged an individual application with the Constitutional Court and complained of a breach of Articles 36 and 38 of the Constitution (provisions corresponding to Articles 6 and 7 of the Convention), arguing that the judgments of the trial court and the Court of Cassation were arbitrary, contained a manifest error and had resulted in her being convicted on the basis of deficient and insufficient evidence. In her view, the fact that the opinion of the Chief Public Prosecutor at the Court of Cassation had referred to her having chanted slogans after the pronouncement of the judgment meant that she had been convicted of an act which had not formed part of the bill of indictment and in respect of which she had been acquitted in a separate set of criminal proceedings. The applicant further complained that the Court of Cassation had failed to comply with its duty to provide reasons for its decision, since it had upheld her conviction without giving any reasons.

21. On 7 May 2018 the Constitutional Court declared the applicant's individual application inadmissible. In doing so, it examined the applicant's complaints under two headings: (i) the contention that the outcome of the trial was unfair and (ii) the alleged breach of the right to a reasoned judgment. The Constitutional Court declared item (i) inadmissible as being manifestly ill-founded, holding that the applicant's complaints concerned the assessment of the evidence and the interpretation of legal rules, and that there had been no obvious error of discretion or explicit arbitrariness in the domestic court's decision.

22. As regards the complaint concerning the right to a reasoned judgment, the Constitutional Court found that the trial court's decision to convict the applicant had contained sufficient reasoning and had been delivered after a discussion of all the accusations and defence submissions that could have had an impact on the outcome of the case. Since the trial court's judgment and its reasons had been upheld on appeal, there had clearly been no violation of the right to a reasoned judgment. On that basis, the Constitutional Court declared that complaint inadmissible as being manifestly ill-founded.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

23. Article 220 of the Criminal Code (Law no. 5237 of 26 September 2004), which concerns the offence of forming an organisation with the aim of committing a criminal offence, provides as follows, in so far as relevant:

“(1) Anyone who forms or leads an organisation established to carry out acts defined by law as criminal offences shall be sentenced to a term of imprisonment of four to eight years, provided that the structure of the organisation, the number of its members, and its tools and equipment are found to be appropriate for the commission of the intended offences. However, for an organisation to exist there must be at least three members.

(2) Anyone who becomes a member of an organisation established for the purpose of committing a criminal offence shall be sentenced to a term of imprisonment of two to four years.

(3) If the organisation is armed, the sentence to be imposed in accordance with the above paragraphs shall be increased by between one quarter and one half.”

24. Article 314 §§ 1 and 2 of the Criminal Code defines the offence of membership of an armed organisation and reads, in so far as relevant, as follows:

“(1) Anyone who forms or leads an armed organisation with the purpose of committing the offences listed in the fourth and fifth parts of this chapter shall be sentenced to a term of imprisonment of ten to fifteen years.

(2) Any member of an organisation referred to in the first paragraph shall be sentenced to a term of imprisonment of five to ten years ...”

25. In its well-established case-law on the offence of being a member of an armed terrorist organisation under Article 314 § 2 of the Criminal Code, the Court of Cassation uses the following principles and criteria to establish whether the offence in question has been committed. Relevant passages, taken from the Court of Cassation’s judgments (notably, judgment no. 2023/16-243 (docket number) - 2023/611 (judgment number) of the plenary Criminal Divisions of the Court of Cassation dated 22 November 2023, and judgment no. 2015/3-2017/3 of the Sixteenth Criminal Division of the Court of Cassation dated 24 April 2017, which was upheld by the plenary Criminal Divisions of the Court of Cassation in judgment no. 2017/956-370 dated 26 September 2017) read, in so far as relevant, as follows:

“... A member of an organisation is a person who adopts its goals, is part of its hierarchical structure, thereby submitting his or her will to that of the organisation, and is ready to carry out the duties imposed. Membership signifies joining, adhering to and subordinating oneself to the hierarchical authority prevailing in the organisation. An organisation member forms an organic link with the organisation and takes part in its activities. An organic link is a link which is live, fluid and active and keeps the offender open to receiving orders and instructions, and that link determines his or her hierarchical position, thereby being the most important element of membership. Orders and instructions given by the organisation’s leaders or other members are also at stake in [the offences of] aiding and abetting an organisation or committing an offence on its

behalf. However, the distinguishing feature enabling the determination of membership of an organisation is that a member of an organisation is ready to carry out any kind of orders or instructions given within the scope of the organisation's hierarchy without questioning or resisting, and actually does carry them out in such a manner.

In order for the offence of being a member of an armed organisation to be made out, there must be an organic link with the organisation and, as a rule, there must exist acts and activities of a continuous, diverse and intense character. However, perpetrators of certain offences which, while not having any continuous, diverse and intense features in terms of their contribution to the organisation's goal and interests owing to their nature, the manner of their commission and the gravity of the harm and risk caused, may only be committed by organisation members should also be regarded as a member of the organisation. Acts such as merely sympathising with the organisation or adopting its goals, values and ideology, reading or possessing publications thereon, or respecting the leader of the organisation are not sufficient to establish membership of the organisation [citations omitted].

A member of the organisation should willingly and knowingly join the organisation, know its nature and goals and wish to become a part of it, and his or her wish to join should be continuous in nature [citations omitted].

A person who is a member of the organisation should know, when joining the organisation, that the organisation has been formed in order to carry out acts which are regarded as offences and should act with the intention and will to become a member [of it]. The motive required for the offence of being a member of an organisation which has been formed with the purpose of committing offences is also the purpose of committing crimes ...”

THE LAW

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

26. The applicant complained that she had not had a fair trial in that the domestic courts had breached her right to have a reasoned judgment and to have her submissions properly examined. In her view, there had also been a breach of the principle of equality of arms and of the right to an adversarial trial, as the domestic courts had accepted the prosecution's allegations without inquiring into whether they were true. She had thus been left with the onus of proving her innocence, which had placed her in a disadvantageous position *vis-à-vis* the prosecution. For the same reasons, the domestic courts' decision to convict her had also been arbitrary and manifestly unreasonable.

27. The Court considers that the essence of the applicant's complaints concerned, under Article 6 § 1 of the Convention, the question whether the domestic courts had discharged their duty to deliver a reasoned judgment and whether their judgments could be regarded as arbitrary or otherwise manifestly unreasonable. Article 6 § 1 of the Convention reads as follows, in so far as relevant:

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

A. Admissibility

28. The Government argued that the applicant had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, by not airing the substance of her complaint concerning the right to a reasoned judgment before the Constitutional Court, as her complaint before that court had solely concerned the Court of Cassation's decision to uphold her conviction. Thus, the present application should be declared inadmissible owing to the applicant's failure to complain about the trial court's judgment before the Constitutional Court.

29. Secondly, the Government submitted that the application was manifestly ill-founded, given that the Court of Cassation had upheld the trial court's decision, holding, among other things, that it did not contain any inaccuracies and that the defence submissions had been rejected on convincing grounds. Moreover, the Constitutional Court had also examined the applicant's complaint concerning the alleged lack of reasons in the Court of Cassation's decision and had declared it inadmissible in accordance with the case-law of the Court. Accordingly, there was no reason requiring the Court to depart from those conclusions.

30. The applicant contested the Government's submissions.

31. As regards the plea of non-exhaustion, the Court agrees with the Government that, in her application to the Constitutional Court, the applicant did not specifically complain of the lack of sufficient reasons contained in the trial court's judgment. However, the Constitutional Court examined her complaints under two headings: (i) the alleged unfairness of the outcome of the trial and (ii) an alleged breach of the right to a reasoned judgment, and its assessment under item (ii) not only encompassed the decision given by the Court of Cassation, of which she had complained, but also the trial stage and the trial court's decision to convict her. Accordingly, the Constitutional Court examined that complaint of its own motion 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).

32. The Court observes that, having concluded that the present application encompassed the trial court's alleged failure to give reasons for convicting the applicant, it cannot uphold the Government's second objection, which was based on the Court of Cassation's decision and the Constitutional Court's ruling in respect of that decision. It therefore dismisses the Government's objection.

33. 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*

34. Relying on Article 6 of the Convention, the applicant complained that the domestic courts had failed to adequately investigate the truth of the allegations against her or to address her defence submissions clearly. The applicant further complained that there had been an obvious error of discretion and explicit arbitrariness in the domestic courts' decisions, which ran counter to her right to a fair trial.

35. The Government submitted that the criteria that must be satisfied in decisions with respect to the offence of being a member of an armed terrorist organisation were set out in the Court of Cassation's case-law. In determining whether a person had formed an organic link with such an organisation and had taken part in its hierarchical structure, the Court of Cassation took account of the continuity, variety and intensity of his or her actions. In the case-law of the Court of Cassation, acts such as using a code name to hide one's real identity, keeping explosives provided by the organisation at home, giving lessons to members of an organisation about its purpose and structure, collecting money for it, and trying to recruit new members were listed among acts which constituted proof of membership of an armed terrorist organisation.

36. In the present case, the Government submitted that the Court of Cassation's above-mentioned criteria had been met. In that regard, the trial court had firstly assessed the situation of the applicant's accomplice Ş.A. and had taken the view that the applicant had acted together with Ş.A., as they had been arrested together while illegally crossing the Syrian border. Similarly, the trial court had attached weight to the fact that the applicant had falsely presented herself as a Syrian national, as had Ş.A., and that she had accused the court interpreter of treason following the discovery of her true identity. Moreover, the trial court had also found the applicant's submission that she had been returning from her relative's wedding alone to be unconvincing, and that was a matter falling entirely within the remit of that court. Lastly, the Government argued that, on appeal, the Court of Cassation had reviewed the applicant's conviction and had endorsed it by simply referring to the trial court's judgment, which did not pose a problem in the Court's case-law, since it had been of the same opinion as the lower-instance court. Additionally, the applicant's complaint that the Court of Cassation's judgment had lacked reasons had also been reviewed by the Constitutional Court in the light of the Court's case-law, and had been declared inadmissible. Accordingly, it could not reasonably be argued that there had been a breach of Article 6 § 1 of the Convention on any of the grounds relied on by the applicant.

2. *The Court's assessment*

(a) General principles

37. The Court reiterates that according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A). 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 stereotypical (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017, with further references).

38. It transpires from the Court's case-law that a domestic judicial decision cannot be qualified 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” (see *Moreira Ferreira*, cited above, § 85, and *Yüksel Yalçınkaya*, cited above, § 304 *in fine*).

39. Although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument. Thus, 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 instant case

40. The Court observes that while membership of an armed terrorist organisation is proscribed under Article 314 § 2 of the Criminal Code, that provision neither defines the offence nor specifies its elements. For that

reason, domestic courts are required to assess and establish certain criteria developed by the Court of Cassation in order to make out the material and mental elements of the offence in question. First and foremost, the domestic courts must seek to ascertain whether a person accused of being a member of an armed terrorist organisation has become a part of its hierarchical structure by forming an organic link with that organisation and whether he or she has carried out acts or activities requiring continuity, diversity and intensity (see paragraph 25 above). Moreover, and more importantly, the Court of Cassation further stresses that certain one-off acts which do not have any continuous, diverse and intense features in terms of their contribution to the organisation's goals and interests may only be committed by organisation members owing to their nature, the manner of their commission and the gravity of the harm and risk caused. In those cases, too, the perpetrator of such acts and activities would be held criminally liable as a member of an armed terrorist organisation (*ibid.*).

41. Turning back to the circumstances of the present case, the Court notes that in its reasoned judgment, the trial court held that Ş.A. had acted within the organisational hierarchy of the terrorist organisation, having regard to (i) the duration of her membership of the organisation, (ii) the fact that she had been given a code name, and (iii) the fact that she had followed the orders and instructions of the executives of the organisation with a view to entering Türkiye illegally. In the trial court's view, all those elements were part of the statements Ş.A. had made to the gendarmerie officers in the presence of her lawyer.

42. As regards the applicant, the trial court went on to hold that she had acted with Ş.A. on the grounds that (i) they had been arrested together while using the same method in their attempts to enter Türkiye illegally, (ii) they had both falsely identified themselves as Syrian citizens, and (iii) after her identity had been discovered, the applicant had accused the interpreter B.S. of "treason". Having regard to those factors, the trial court dismissed the applicant's defence submission as unconvincing and found that there were no circumstances which could warrant adopting an interpretation in the applicant's favour. In the same vein, the trial court took the view that the fact that Ş.A. had not made any directly incriminating statements in respect of the applicant could not, by and of itself, be regarded as favourable to the applicant. Accordingly, the trial court concluded that the manner in which the incident had taken place required it to regard the applicant as having been within the hierarchical structure of the organisation, and it convicted her under Article 314 § 2 of the Criminal Code of being a member of an armed terrorist organisation.

43. In the Court's view, in the light of the case-law of the Court of Cassation to the effect that, in certain, albeit limited circumstances, a single act may suffice to establish the material and mental elements of the offence of being a member of an armed terrorist organisation under Article 314 § 2

of the Criminal Code, which was inferred by the trial court from the manner in which the incident had taken place and the circumstances surrounding it, the trial court duly stated the grounds on which it based its conviction of the applicant. Similarly, the trial court's decision to convict the applicant could not be regarded as arbitrary or manifestly unreasonable, being based as it was on various items of evidence, the quality of which could be effectively challenged by the applicant (compare and contrast *Selahattin Demirtaş v. Turkey* (no. 2) [GC], no. 14305/17, §§ 271-280, 22 December 2020).

44. Moreover, in the Court's view, the trial court duly addressed, examined and dismissed the applicant's defence submission that she had gone to Syria to attend a wedding and not to join an armed terrorist organisation by considering the above-mentioned items (i), (ii) and (iii) indicated in paragraph 42. In that connection, the Court refers to the trial court's reasoned judgment where it held that "the defence submission of the defendant Serferaz Demirer [the applicant] stating that she had gone to her relative's wedding alone and had been arrested while coming back was not convincing on any grounds" (see paragraph 14).

45. As the applicant failed to raise any specific point in her appeal which went unaddressed by the trial court or which called for a specific response, the Court of Cassation's decision to uphold her convictions using standard wording does not give rise to a problem under Article 6 § 1 of the Convention in the circumstances of the present case. In doing so, the Court further emphasises that the Court of Cassation did not specifically refer to and thus attach any weight to the applicant's having chanted slogans following the pronouncement of the trial court's judgment (see paragraph 19 above).

46. Lastly, the Court acknowledges that a conviction for a terrorist offence would, by its very nature, entail very serious consequences for the applicant, who was, at the time of the events giving rise to the application, approximately 22 years of age. That being said, and having regard to the findings contained in the reasoned judgment in the applicant's case, the Court takes the view that the domestic courts duly discharged their duty to indicate with sufficient clarity the grounds on which they based their decisions. Indeed, the trial court assessed the individual pieces of evidence, as well as the arguments and submissions of the defence, in order to draw the conclusions it deemed appropriate, and reflected them in an individualised manner in respect of each defendant and dealt with the applicant's defence submissions in a manner which did not fall short of the requirements of the right to deliver a reasoned judgment under Article 6 § 1 of the Convention.

47. There has accordingly been no violation of Article 6 § 1 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, by five votes to two, the application admissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 25 March 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint separate opinion of Judges Seibert-Fohr and Lavapuro is annexed to this judgment.

JOINT DISSENTING OPINION
OF JUDGES SEIBERT-FOHR AND LAVAPURO

1. To our regret, we are unable to agree with the majority's finding of no violation in this case, because the Mardin Assize Court failed to provide adequate reasons for the applicant's conviction for membership of an armed terrorist group in its judgment of 24 May 2016. This shortcoming was not remedied on appeal (see paragraph 19 of the judgment, concerning the judgment of the Court of Cassation of 1 February 2017).

2. Whereas it is not the role of the Court, under Article 6 § 1 of the Convention, to determine whether the evidence was sufficient and relevant to warrant conviction, the Court must consider whether the right to a reasoned judgment has been respected. According to the Court's established case-law, judgments of courts and tribunals should adequately state the reasons on which they are based (see *Moreira Ferreira v. Portugal* (no. 2) [GC], no. 19867/12, § 84, 11 July 2017, and *Papon v. France* (dec.), no. 344/04, ECHR 2005-XI (extracts); see also paragraph 37 of the judgment). Reasoned decisions oblige judges to base their reasoning on objective arguments, preserve the rights of the defence and allow an applicant to usefully exercise any available right of appeal (see *Hadjianastassiou v. Greece*, 16 December 1992, Series A no. 252). National courts should therefore indicate with sufficient clarity the grounds on which they base their decisions. This also involves applying the law to the facts of the case. The extent of the duty to give reasons varies according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A). 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 requires that such reasons should be tailored to the particular circumstances of each defendant (see *Mustafa Aydın v. Türkiye*, no. 6696/20, § 53, 18 March 2025 (not yet final)).

3. 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. Though courts are not obliged to give a detailed answer to every argument raised (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288), it must be clear from the decision that the essential issues of the case have been addressed (see *Boldea v. Romania*, no. 19997/02, § 30, 15 February 2007, and *Lobzhanidze and Peradze v. Georgia*, nos. 21447/11 and 35839/11, § 66, 27 February 2020) and that a specific and explicit reply has been given to the arguments which are decisive for the outcome of the case (see *Moreira*

Ferreira, cited above, § 84, and *S.C. IMH Suceava S.R.L. v. Romania*, no. 24935/04, § 40, 29 October 2013, concerning contradictions in the assessment of evidence).

4. The duty to provide adequate reasons for a conviction is distinct from the issue whether a decision can be characterised as arbitrary. The latter is the case only if no reasons are provided for a decision 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” (see *Moreira Ferreira*, cited above § 85; *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 304, 26 September 2023, with further references; *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 119, 23 February 2016, concerning a politically motivated prosecution and conviction; *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 83, 15 November 2018; and *Paixão Moreira Sá Fernandes v. Portugal*, no. 78108/14, § 72, 25 February 2020; see also paragraph 38 of the judgment). However, even if the decision is not arbitrary *per se*, a conviction may be in violation of the right to a fair trial if it is not adequately reasoned.

5. In the present case, the Mardin Assize Court in its judgment of 24 May 2016 relied on the co-defendant Ş.A.’s confession and the fact that the applicant had acted together with Ş.A. by crossing the border illegally and presenting a false identity and had accused B.S. of “treason” (see paragraph 14 of the judgment). However, it did not refer to the principles and criteria set out by the Court of Cassation to establish whether the offence of being a member of an armed terrorist organisation under Article 314 § 2 of the Criminal Code had been committed. This is relevant because the Court in *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, § 280, 22 December 2020) criticised the broad wording of that provision as a matter of concern and the lack of concrete evidence of a link to a terrorist group. The Court referred to the opinion of the European Commission for Democracy through Law (Venice Commission) on Articles 216, 299, 301 and 314 of the Turkish Criminal Code (no. 831/2015, 15 March 2016, § 106), in which the Venice Commission recommended that the established criteria in the case-law of the Court of Cassation should be applied strictly in order to comply with the Convention.

6. According to the Court of Cassation’s well-established case-law, for the offence of being a member of an armed terrorist organisation under Article 314 § 2 of the Criminal Code to be made out, an organic link with that organisation is required (see paragraph 25 of the judgment). Moreover, as a rule, there must exist acts and activities of a continuous, diverse and intense character. As a member of the organisation the individual must have willingly and knowingly joined it, being aware of its nature and goals and wishing to become a part of it (*ibid.*).

7. In the present case, however, the Mardin Assize Court referred neither to acts and activities of a continuous, diverse and intense character, nor to any

contribution to the organisation's goals that caused harm or a risk of a certain gravity. That court did not explain how the applicant had acted willingly and knowingly within the "hierarchical structure" of the organisation. It merely held that the applicant had "acted within the hierarchy of the organisation as the developments leading to the incident suggest[ed]", without specifying any acts justifying that finding (see paragraph 14 of the judgment).

8. The trial court thus failed to apply the above-mentioned criteria to the facts of the applicant's case, as would have been necessary for the reasoning to be adequate under Article 6 § 1 of the Convention (see paragraph 2 of this opinion above). As a result, it was unclear from the decision that the essential issues of the case had been addressed (for this requirement, see paragraph 3 of this opinion above).

9. Without taking any stance as to whether the applicant was guilty or whether the evidence presented was persuasive, we therefore conclude that the Mardin Assize Court, by failing to apply the well-established legal criteria in examining the offence for which the applicant was subsequently convicted, violated her right to a reasoned judgment. We would accordingly have found a violation of Article 6 § 1 of the Convention.