

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

SECOND SECTION

CASE OF HUSSEIN v. TÜRKİYE

(Application no. 22171/22)

JUDGMENT

STRASBOURG

16 December 2025

This judgment is final but it may be subject to editorial revision.



In the case of Hussein v. Türkiye,

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

Péter Paczolay*, President*,
Gediminas Sagatys,
Stéphane Pisani*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 22171/22) 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") on 8 April 2022 by a Syrian national, Mr Rıkar Kawa Hussein ("the applicant"), who was born in 1998, lives in Mersin and was represented by Mr B. Oğuz, a lawyer practising in Gaziantep;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning the lack of sufficient reasoning of the domestic courts' judgments to the Turkish Government ("the Government"), represented by their Agent, Mr Abdullah Aydın, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye, and to declare the remainder of the application inadmissible;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 25 November 2025,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the domestic courts' alleged failure to deliver a reasoned judgment. The applicant, a Syrian national, had been convicted under Article 314 § 2 of the Criminal Code of membership of an armed terrorist organisation – namely, the PYD/YPG (Democratic Union Party/the Kurdish People's Defence Units movement), which the Turkish authorities considered to constitute the Syrian branch of the PKK (the Workers' Party of Kurdistan, an armed terrorist organisation).

2. At around 11.10 p.m. on 10 August 2016 gendarmerie officers from the Kilis Provincial Gendarmerie Command apprehended the applicant and a certain H.H. in a military zone as they were attempting to cross into Syria in an irregular manner. The officers took them into custody pursuant to a decision of the Kilis chief public prosecutor's office and seized their mobile phones.

3. On 11 August 2016 the applicant, in the presence of his lawyer and an interpreter, gave statements to the gendarmerie officers. He explained that he had fled Syria in an irregular fashion in 2015 after his father had been killed

by PYD/YPG members, with the intention of settling in Denmark and then bringing his family there. Having realised that this would not be possible, he had eventually come to Türkiye and had ultimately travelled to Mersin, where he had lived for seven months. In Mersin, he had received information that his sister had been abducted by the PYD/YPG and would be released if he joined the organisation. He admitted that he had been in contact with certain PYD/YPG members with code names, who had assisted him in his unsuccessful attempt to cross the border.

4. Following the applicant's statements, the Kilis Provincial Gendarmerie Command drew up an investigative report, which included photographs retrieved from his mobile phone. Among them were images of individuals who appeared to be associated with the PYD/YPG. In addition, there were two selfies taken indoors showing wall posters of Abdullah Öcalan and the colours associated with the Kurdistan Region of Iraq visible in the background; three photographs showing the applicant as a minor wearing a civilian shirt with camouflage trousers and holding an AK-47 assault rifle, alongside another underaged individual in civilian clothing; an image of the applicant alone holding the same rifle; another photograph of him posing with a machine gun while in civilian clothing; and a final image of him participating in a demonstration (likewise in civilian clothing).

5. On 12 August 2016 the applicant gave statements to the Kilis chief public prosecutor's office through an interpreter. He maintained that he had been working in Mersin as a farm labourer and construction worker when he had been informed that his sister had been abducted by the PYD/YPG and would be released if he joined them. He explained that the photographs of individuals associated with the PYD/YPG had been sent to him via WhatsApp, and that those showing him with automatic weapons had no connection with terrorism and had been taken when he was a minor, in circumstances where weapons had been commonplace in villages owing to the Syrian civil war. He further stressed that the PYD/YPG had not been in control of his village at the time, asserting that the machine gun with which he had posed had been linked to the Nour al-Din al-Zenki Movement (an armed group involved in the civil war and associated with the Syrian Revolutionary Command Council). The applicant denied ever having joined the PYD/YPG or having received political or military training from them, reiterating that his father had been killed by PYD/YPG members and that his sole aim in attempting to cross the border had been to rescue his sister. Later the same day he repeated those statements to the Kilis Magistrates' Court, again denying that he was a member of the PYD/YPG or had participated in any armed conflict.

6. On 22 August 2016 the Kilis chief public prosecutor's office indicted the applicant and requested that the Gaziantep Police Department issue an expert report on the data contained in his mobile phone.

7. The Kilis Assize Court ("the trial court") held nine hearings between 4 October 2016 and 6 April 2017. At those hearings the applicant was heard via an interpreter but without defence counsel, and no witnesses were called. The trial court repeatedly adjourned the proceedings pending the expert report on the applicant's mobile phone data. During those hearings the applicant reiterated his earlier statements.

8. On 6 April 2017 the trial court convicted the applicant under Article 314 § 2 of the Criminal Code and sentenced him to six years and three months' imprisonment. In establishing his guilt, the trial court stated that he had been apprehended as he had been attempting to cross into Syria and concluded that he was a member of the PYD/YPG after simply recapitulating his earlier statements. After doing so, the trial court emphasised that photographs retrieved from his mobile phone had shown individuals associated with the PYD/YPG, and the applicant holding weapons, which demonstrated that he had been a PYD/YPG member prior to leaving Syria.

9. On 17 May 2017 the Gaziantep Regional Court of Appeal ("the appeal court") upheld the conviction.

10. On 24 April 2018 the Court of Cassation quashed the judgment and remitted the case to the appeal court, owing to a violation of the applicant's right to legal assistance.

11. On 21 May 2018 the Gaziantep Police Department completed its expert report on the applicant's mobile phone data.

12. On 24 October 2018 the appeal court held an oral hearing at which the applicant, assisted by defence counsel and an interpreter, reiterated his earlier statements. At the conclusion of the hearing the appeal court convicted the applicant under Article 314 § 2 of the Criminal Code (see for the text of this provision and the Court of Cassation's case-law on the interpretation of that provision *Demirer v. Türkiye*, no. 45779/18, §§ 24-25, 25 March 2025). The relevant parts of the judgment listing the evidence relied on and setting out the reasoning read as follows:

> "The case consists of the accusations [against the applicant], the defence, witness statements, incident reports, medical reports, the Institute of Forensic Medicine report, civil registry and criminal record certificates, and the entire case file."
>
> "On the basis of the defendant's statements, the testimony given in the presence of defence counsel, and the contents of the case file, it has been established that by joining the terrorist organisation known as YPG and receiving political and ideological training, the defendant became part of the hierarchical structure of that armed terrorist organisation and, by engaging in acts and activities requiring continuity, diversity, and intensity, committed the charged offence of membership of an armed terrorist organisation. Accordingly, it has been concluded and determined that the defendant must be convicted of the charged offence, and judgment has been rendered as follows."

13. On 25 February 2020 the Court of Cassation upheld, with final effect, the appeal court's judgment.

14. On 1 November 2021 the Constitutional Court declared the applicant's complaint regarding the right to a reasoned judgment inadmissible

as manifestly ill-founded, holding that it was clear that no violation had occurred.

15. The applicant complained before the Court that the domestic courts had not addressed his defence arguments which were decisive for the outcome of his case and thus failed to provide relevant and sufficient reasoning in convicting him of membership of an armed terrorist organisation.

THE COURT'S ASSESSMENT

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

A. Admissibility

16. The Government invited the Court to declare the complaint inadmissible as being manifestly ill-founded, arguing that it was of a fourth - instance nature as it concerned, in essence, the domestic courts' evaluation of the facts and evidence before them and therefore the outcome of the proceedings.

17. The applicant contested the Government's claims, arguing that the domestic courts' decisions had been arbitrary.

18. The Court observes that the applicant's complaint comprises his allegations that no sufficient reasons had been provided for his conviction, in breach of the procedural safeguard enshrined in Article 6 § 1 of the Convention. It cannot thus be regarded as a complaint of a fourth-instance nature. On that basis, the Court dismisses the Government's objection.

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

B. Merits

1. The parties' submissions

20. The applicant complained that the criminal proceedings had been unfair on account of the domestic courts' failure to indicate, with sufficient clarity, the grounds on which they had convicted him of being a member of an armed terrorist organisation. He stressed that the appeal court's reasoning had been formulaic and arbitrary – given the absence of any genuine assessment of the evidence – in the light of the established case-law of the Court of Cassation. The applicant further maintained that the domestic courts had not addressed his main defence arguments.

21. The Government submitted that the domestic courts had addressed all of the applicant's principal defence arguments and had based his conviction on two main elements: his statements and the photographs retrieved from his

mobile phone. Referring to the expert report, the Government noted that the applicant's mobile phone had contained photographs showing members of the organisation in question and also other photographs showing the applicant himself wearing camouflage clothing and holding firearms. Moreover, in his initial statements the applicant had admitted that he had been in contact with certain PYD members whose code names he had known; moreover, the circumstances of his apprehension had likewise been recorded in the incident reports.

22. The Government further pointed out that H.H., the other person apprehended alongside the applicant, had not been indicted, since no suspicion had arisen in his case; in their view, that fact demonstrated that no differential treatment had been applied. According to the Government, by examining the expert report on the photographs retrieved from his mobile phone, the appeal court had sufficiently established that the applicant had undergone training. In doing so, it had essentially upheld the trial court's earlier reasoning, while also referring to the corroborating findings of the report.

2. The Court's assessment

(a) General principles

23. The general principles concerning the right to a reasoned judgment have been summarised in *Moreira Ferreira v. Portugal (no. 2)* ([GC], no. 19867/12, § 84, 11 July 2017) and *Demirer v. Türkiye* (no. 45779/18, §§ 37-39, 25 March 2025). The Court reiterates that according to its established case-law, while Article 6 § 1 cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288), judgments of courts and tribunals should adequately state the reasons on which they are based (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A), reflecting a principle linked to the proper administration of justice. However, 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). 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); 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 (*Moreira Ferreira*, ibid.).

(b) Application of those principles to the present case

24. The Court observes that the trial court, in convicting the applicant, emphasised that he had been apprehended while attempting to cross into Syria, recapitulated the statements made by him during the investigation

phase, and noted that his mobile phone had contained images related to the PYD/YPG and photographs of himself holding weapons. Since the applicant had attempted to cross into Syria and the photographs predated his initial departure from his country of origin, the court concluded that he had been a member of the PYD/YPG. That judgment, however, did not become final, as the Court of Cassation ultimately quashed the appeal court's decision upholding the trial court's findings.

25. Be that as it may, the Court finds it regrettable that, while the trial court referred to the applicant's statements in reaching its conclusion, it did not subject those statements to a test of relevance or clarify why they were considered sufficient for that purpose, especially considering that at no stage of the criminal proceedings did the applicant admit to being a member of the PYD/YPG; on the quite contrary, he consistently maintained that he had been persecuted by them, referring to the killing of his father and the abduction of his sister, who, he alleged, would only have been released if he renounced his non-affiliation. Furthermore, with regard to the photographs retrieved from his mobile phone, the trial court did not address the applicant's main defence submission that the times and locations at which they had been taken rendered it impossible to construe them as evidence of his membership of the PYD/YPG.

26. The Court further notes that the appeal court's judgment, which was different from that of the trial court, was based on the finding that the applicant had joined the PYD/YPG, had received political and ideological training from them and was within its hierarchical structure, and had engaged in acts and activities requiring continuity, diversity and intensity, and had thus become a member of an armed terrorist organisation. The reasoning as to how that conclusion had been reached was based on (i) the applicant's own statements and (ii) "the contents of the case file".

27. As for the former, the Court notes that none of the applicant's statements – whether during the trial or at the investigation stage – contained either direct or indirect admissions that he had joined and received any form of training from any organisation, let alone the PYD/YPG. As to the latter, the succinct and formulaic reference to the "contents of the case file" falls short of identifying any specific material capable of supporting the appeal court's conclusion. In any event, neither the prosecution's submissions, nor the incident reports, nor any other element listed as evidence (including the claims against the applicant), notably contained any indication that he had received training from the PYD/YPG.

28. The Court notes with concern that, although no witnesses were heard and no forensic report was obtained, the appeal court nonetheless referred, in a separate part of its judgment enumerating the evidence, to witness statements, a report from the Institute of Forensic Medicine and "the entire case file". Moreover, the expert report prepared by the Gaziantep Police Department on the data contained in the applicant's mobile phone, which was

commissioned by the trial court and completed only after the Court of Cassation's first decision, was neither included in the list of evidence nor even referred to. Given those circumstances, the Court cannot but conclude that the appeal court failed to indicate with sufficient clarity the grounds which had led to the conclusion that the applicant had joined and received training from the PYD/YPG and engaged in acts and activities requiring continuity, diversity and intensity so as to find him guilty of membership of that organisation.

29. The Court further notes that the domestic courts failed to address the applicant's main defence arguments – namely, that the photographs retrieved from his mobile phone did not demonstrate his association with the PYD/YPG, as (i) that organisation had not been in control of his village at the material time and his posing with weapons could not be construed as proof of such an association, (ii) the photographs had been taken at a time when a civil war had already been ongoing in his country for several years and weapons had been commonplace, (iii) he had been a minor seeking to protect his family, and (iv) he was not wearing the military uniform associated with the PYD/YPG in any of the photographs.

30. Furthermore, in response to the Government's contention that the evidence on which the applicant's conviction had been based had been sufficient, the Court reiterates that the scope of its examination is confined to the applicant's complaint that the domestic courts had not adequately stated the reasons underlying his conviction and had failed to address his main defence arguments. The Court cannot therefore substitute its own assessment of the facts for that of the domestic courts, as otherwise it would be acting as a court of fourth instance and disregarding the limits on its jurisdiction (see, among many other authorities, *García Ruiz*, cited above, § 28). Accordingly, it is not for the Court to determine whether the evidence relied upon by the national courts was sufficient to justify the applicant's conviction. While the Government argued that the appeal court had sufficiently established the applicant's guilt by examining the expert report on the photographs retrieved from his mobile phone, the Court observes that the appeal court's judgment contains no reasoning supporting that interpretation, given that it neither referred to any expert report nor listed one among the evidence (compare also *Mustafa Aydın v. Türkiye*, no. 6696/20, § 59, 18 March 2025).

31. The Government further submitted that the decision not to indict H.H. showed the absence of differential treatment, but the Court finds no link between that circumstance and the applicant's complaint that the domestic courts' judgments had been inadequately reasoned.

32. The Court is finally not convinced by the Government's submission that the appeal court had built on the trial court's earlier reasoning. It observes that the judgment endorsing the trial court's reasoning was ultimately quashed, and that in its re-examination of the case the appeal court directly heard the applicant at an additional oral hearing and reassessed the evidence.

Moreover, the appeal court adopted an entirely new line of reasoning by referring to the finding that the applicant had received training from the PYD/YPG, without making any reference to the trial court's judgment.

33. In the light of the foregoing considerations, the Court finds that the domestic courts failed to sufficiently state the grounds forming the basis of the applicant's conviction for membership of an armed terrorist organisation, notwithstanding the serious nature of the offence, the severity of the sentence imposed and its consequences.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage and 1,000 Turkish liras (TRY – approximately EUR 23) for the costs and expenses incurred before the Court. He further claimed EUR 5,000 in respect of lawyer's fees. In support of his claim, he submitted a contract concluded between him and his legal representative.

36. The Government contested these claims and submitted that they were excessive and unsupported by any documentary evidence, such as proof of payment.

37. The Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. It further reiterates that the most appropriate form of redress would be a retrial in accordance with the requirements of Article 6 of the Convention, should the applicant so request (see *Süleyman v. Turkey*, no. 59453/10, § 110, 17 November 2020).

38. Having regard to the documents in its possession, the Court considers it reasonable to award the sum of EUR 2,000 in respect of costs and expenses, plus any tax that may be chargeable to the applicant (see, for the relevant principles, *Ataykaya v. Turkey*, no. 50275/08, § 81, 22 July 2014).

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 on account of the domestic courts' failure to deliver a sufficiently reasoned judgment in respect of the applicant's conviction under Article 314 § 2 of the Criminal Code;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, 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 2,000 (two thousand 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 16 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Dorothee von Arnim Deputy Registrar	Péter Paczolay President