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

SECOND SECTION

DECISION

Application no. 3473/19
Ruken GÜNDÜZ
against Türkiye

The European Court of Human Rights (Second Section), sitting on 29 April 2025 as a Chamber composed of:

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Gediminas Sagatys,
Juha Lavapuro*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 January 2019,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

the additional observations submitted by the Government on 16 February 2021, 13 January and 28 February 2023, and the additional observations in reply submitted by the applicant on 7 January and 19 February 2021, and 17 January 2023;

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ruken Gündüz, is a Turkish national who was born in 1997 and was detained in Kayseri at the time of lodging the application. She was represented before the Court by Mr R. Demir and Mr B. Çoban, lawyers practising in Istanbul.

2. The Turkish 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.

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

A. Criminal investigation in respect of the applicant

4. On 7 December 2015 at around 10 p.m. a stun grenade exploded in Şehzadebaşı 50. Yıl Park in the Fatih district of Istanbul.

5. During the criminal investigation initiated by the Istanbul Chief Public Prosecutor's Office, police officers analysed the footage from two CCTV cameras from the area in question. According to the police report on the footage, three men and a woman – who was approximately 18 years old and wearing a striped jumper with her hair tied back – were watching the explosion area carefully and moved away from the area immediately after the explosion, which took place at 10.03 p.m.

6. A letter from the Istanbul Security Directorate, dated 9 December 2015, indicated that, according to an intelligence report, four people had carried out the attack, two of whom could have been the applicant, code-named "Ruken", and B.Ç., code-named "Barış".

7. On 10 December 2015 the applicant was arrested. Her home was searched but no evidence implicating her in the attack was found. A police report on the video footage was drawn up on the same date, which stated that: (i) at 9.50 p.m., a man aged between 30 and 35 had stood for approximately thirty-five seconds in the area where a bomb had later exploded; (ii) at 10.02 p.m. the applicant had appeared with an unidentified object in her hands which she had held before and during the explosion; and (iii) she was one of the persons who had allegedly carried out the attack.

8. On 11 December 2015 the applicant denied the accusations before the public prosecutor, stating that the woman in the video footage was not her.

9. On 11 December 2015 the Istanbul Third Magistrate's Court ordered that the applicant be placed in pre-trial detention on suspicion of having committed the offences of unauthorised storage of hazardous materials and endangering public safety.

10. On 4 July 2016 the Istanbul Security Directorate Bomb Disposal and Investigation Branch issued a report stating that a sparkler, rather than an electronic device, had probably been used as the detonator for the bomb in question.

11. On 25 April 2016 the Istanbul Chief Public Prosecutor's Office filed an indictment against the applicant on charges of being a member of an armed terrorist organisation, namely the PKK (Workers' Party of Kurdistan), endangering public safety and unauthorised storage of hazardous materials. The prosecutor argued that the applicant had been a member of the PKK, had

planted the bomb in the park, and had used an unidentified object which she had held in her hand to detonate it.

B. Criminal proceedings in the Istanbul Assize Court

12. At a hearing held on 25 October 2016, the applicant's lawyer argued that the only evidence against her had been intelligence information and that the police examination of the bomb had revealed that it had had an internal fuse and had not been detonated remotely. At a hearing held on 7 January 2016 in connection with a review of her pre-trial detention, the applicant admitted that she was the woman seen in the video footage.

13. At the same hearing, the public prosecutor submitted his final opinion on the merits of the case, arguing that the applicant should be acquitted of all charges for lack of evidence, on the grounds that according to the police criminal report, a sparkler had been used as the initiating device to detonate the bomb, whereas the indictment had originally stated that the applicant had used an unidentified object in her hand to detonate the bomb.

14. On 25 October 2016 the Istanbul Assize Court found the applicant guilty of the following offences and sentenced her as follows:

(i) three years, one month and fifteen days' imprisonment for committing an offence on behalf of an armed terrorist organisation of which she was not a member, under Article 220 § 6 taken in conjunction with Article 314 § 2 of the Criminal Code; and

(ii) six years, eleven months and ten days' imprisonment and a judicial fine for unauthorised storage of hazardous materials, under Article 174 § 1 of the Criminal Code.

15. The trial court suspended the pronouncement of the judgment against the applicant in respect of the offence of endangering public safety under Article 170 of the Criminal Code.

16. The relevant part of the trial court's reasoning reads as follows:

> "... According to the information on file, there was a stun grenade explosion in Şehzadebaşı 50. Yıl Park on 7 December 2015. The CCTV footage which captured the incident shows a female and three males approaching the area where the explosion took place, acting and moving together at the same time as the explosion. The explosion happened at the same time as the action of the female in the recording. The individuals did not show any sign of nervousness or panic as would have been expected had they been going about their daily life; on the contrary, they had an easy manner and left together after the explosion; it is understood from the case file that the woman in the recordings is the accused. In her defence, she accepted that she was the person in the recordings but stated that she did not know the people next to her. Having regard to the fact that it is clear from the footage that the people came and acted together, the accused's statement must be untruthful. Further to the information, obtained within the scope of the investigations to determine who might have been responsible for detonating the bomb, that persons with the code names Ruken and Barış, who had been involved in activities of the YDG-H [Patriotic Revolutionary Youth Movement], might have carried out the explosion, it has been identified that the person with the code name

Ruken (K) is the accused, and the intelligence information also points in that direction; in her defence submissions given at various stages, she made contradictory statements.

Having regard to the totality of the information contained in the case file, the court has come to the conclusion that the accused carried out the explosion. However, despite the fact that criminal proceedings have been opened against her in relation to the offence of being a member of a terrorist organisation, it is not possible to prove the accused's membership of that terrorist organisation on account of a lack of information and documentation proving the existence of the accused's various, continuous and intensive actions and activities. It should be accepted, however, that the accused, who has conducted activities in connection with the YDG-H, as can be gleaned from investigations and intelligence information, carried out this action on behalf of the terrorist organisation, because the idea that the accused, in respect of whom there is intelligence information pointing in that direction, carried out such an action as exploding a stun grenade individually would not be credible in terms of the nature of the event or the general notion. The CCTV footage clearly shows that the applicant did not act on her own and acted with the other unidentified person. Therefore, the court finds that the accused committed the offences of committing an offence on behalf of a terrorist organisation without being a member of it, intentionally endangering public security and unauthorised storage of hazardous materials. Accordingly, the following judgment is rendered for the punishment of the accused ..."

C. Proceedings in the Istanbul Regional Court of Appeal

17. On 9 March 2017 the Istanbul Regional Court of Appeal ("the Court of Appeal") dismissed, by a majority and with final effect, the applicant's appeal against her conviction under Article 220 § 6 of the Criminal Code (taken in conjunction with Article 314 § 2). It also dismissed her appeal against her conviction under Article 174 § 1 of the Criminal Code, a decision which was amenable to an appeal on points of law to the Court of Cassation.

18. On 30 March 2017 the applicant lodged an appeal on points of law against her conviction for the offence of unauthorised storage of hazardous materials under Article 174 § 1 of the Criminal Code.

D. First individual application to the Constitutional Court and lodging of the present application

19. On 20 April 2017 the applicant lodged an individual application with the Constitutional Court, complaining of a violation of her right to a reasoned judgment in relation to her conviction for committing an offence on behalf of an armed terrorist organisation of which she was not a member.

20. On 28 June 2018 her application was found inadmissible as being manifestly ill-founded. As regards the complaint concerning the right to a fair trial, the Constitutional Court held that there had clearly been no violation of that right.

21. On 3 January 2019 the applicant lodged the present application with the Court, concerning her above-mentioned conviction under Article 220 § 6

of the Criminal Code (taken in conjunction with Article 314 § 2), and notice of the application was given to the Government on 31 May 2019.

E. Proceedings resulting in the second individual application to the Constitutional Court

22. On 1 March 2018 the Court of Cassation upheld, by a majority, the trial court's judgment in respect of the applicant's conviction under Article 174 § 1 of the Criminal Code for unauthorised storage of hazardous materials.

23. On 9 August 2018 the applicant lodged an individual application with the Constitutional Court against the above-mentioned decision.

F. Subsequent developments resulting in the third individual application to the Constitutional Court

24. On 24 October 2019 Law no. 7188 amending certain provisions of the Code of Criminal Procedure entered into force. Section 29 of that Law introduced the right to lodge an appeal on points of law with the Court of Cassation in respect of several offences carrying sentences of up to five years' imprisonment, including the one defined in Article 314 § 2 of the Criminal Code (see, for further information on Law no. 7188, *Öztırak v. Türkiye* (dec.), no. 46472/19, 26 March 2024).

25. On 31 October 2019, further to a request by the applicant's lawyer, the Istanbul Assize Court suspended the execution of the applicant's sentence under Article 220 § 6 of the Criminal Code taken in conjunction with Article 314 § 2 of the Criminal Code in accordance with Law no. 7188, and ordered her release.

26. On 7 November 2019 the applicant lodged an appeal on points of law against the final decision of the Court of Appeal dated 9 March 2017.

27. On 23 September 2020 the Court of Cassation upheld the applicant's conviction.

28. On 7 January 2021 the applicant lodged a new application with the Constitutional Court, complaining, under Article 36 of the Constitution, which corresponds to Article 6 of the Convention, that her defence arguments, which could have changed the outcome of the criminal proceedings, had not been addressed in the trial court's judgment convicting her of an offence committed on behalf of an armed terrorist organisation of which she was not a member.

G. The Constitutional Court's second judgment

29. On 5 April 2022, having regard to their similar subject matter, the Constitutional Court decided to examine the two applications lodged by the

applicant jointly and deliver a single judgment (see paragraphs 23 and 28 above).

30. On 13 September 2022 the Constitutional Court examined both convictions and found a violation of Article 36 of the Constitution on the grounds that the trial court had failed to provide sufficient reasons for convicting the applicant of both offences. It found, without referring in its judgment to its earlier inadmissibility decision, that the trial court had failed to address in its reasoning the applicant's defence arguments that: (i) the expert reports showed that she was not the person who had detonated the bomb; and (ii) intelligence information could not be used as a basis for her conviction without any supporting concrete evidence. The Constitutional Court ordered that the criminal proceedings be reopened in their entirety by the trial court and rejected the applicant's claim for compensation in respect of non-pecuniary damage on the grounds that the reopening of the criminal proceedings would in itself constitute sufficient just satisfaction.

31. The relevant parts of the Constitutional Court's judgment read as follows:

> "49. In the present case, having regard to the security camera footage, the [trial] court convicted the applicant on the grounds that she had arrived at the scene of the incident with three men whose identities could not be determined and had left with those other suspects after detonating the bomb in question. The reasoned judgment also referred to intelligence information suggesting that the action might have been carried out by four people, including Ruken (K) and Barış (K), who were active in the YDG-H, and that Ruken (K) was the applicant.
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> 50. At the investigation stage, the applicant denied that the woman in the CCTV footage was her; at the prosecution stage, she stated that the woman in the footage was her, but that she had had nothing to do with the act of detonating the bomb. The applicant argued that the object reflected in the CCTV footage and associated with the detonation of the bomb was a mobile phone and that she had not had any device in her hand with which to detonate the bomb. The applicant also claimed that the expert report dated 4 July 2016, which had been filed with the court, revealed that the bomb in question had an internal fuse and could not have been detonated remotely. She argued that the report supported her defence that she had not detonated the bomb.
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> 51. It is understood from the content of the reasoned decision that the [trial] court reached the conclusion that the applicant had detonated the bomb in question by lighting it with an unidentified object in her hand. However, the applicant pointed out that the reports dated 20 February 2016 and 4 July 2016 received from the Istanbul Security Directorate's Bomb Disposal and Investigation Branch during the investigation and prosecution phases did not find any indication that the bomb had been detonated remotely. The applicant also drew attention to the fact that the additional investigation report dated 4 July 2016 indicated that a sparkler fuse had probably been used as a detonator in the incident in question. The court did not provide any explanation regarding those allegations by the applicant, which could have influenced the outcome of the case. In addition, although the report prepared by the law-enforcement officers on the basis of the footage from the security cameras relating to the incident mentioned the applicant's claim that she had detonated the bomb by pressing 'an unidentified object in her hand', no investigation was carried out into whether that object, which the applicant claimed to be a mobile phone, had in fact been an explosive ignition device,

and the reasoned decision did not include an explanation as to why that object had been accepted as being an explosive ignition device.

52. The court concluded that the applicant had carried out the bomb attack on behalf of the YDG-H, a youth branch of the PKK/KCK terrorist organisation. It is understood from the reasoned decision that the evidence leading the court to that conclusion was the intelligence report dated 9 December 2015, which was included in the file during the investigation phase. The court also accepted that the idea that an action such as detonating a sound bomb could be carried out individually was not credible considering both the nature of the event in question and as a general notion, and that such an action carried out together with other people whose identities could not be determined could not be of an individual nature. The applicant, on the other hand, argued that the above-mentioned intelligence report did not reflect the truth. She argued that the report could not be referred to in the judgment unless it was supported by specific evidence, and that the fact that her real name 'Ruken' was indicated as her code name, as well as the decision not to prosecute B.Ç., code-named Barış, who had been accused of having participated in the action, showed that the report was not credible.

53. Bearing in mind the content of the reasoned decision, the law-enforcement officers' reports containing intelligence information and the expert reports, it is considered that the applicant's defence argument based on the expert reports' finding that she had not detonated the bomb herself, and her objections that the intelligence data which had been included in the file during the investigation phase should not be taken as the basis for the verdict as it had not been supported by specific evidence, would have an effect on the outcome of the trial; in other words, those arguments are of a nature that could have changed the result of the decision.

54. The power to evaluate the evidence in a particular case and to decide whether that evidence is relevant to the case lies, as a rule, with the court conducting the proceedings. Moreover, it is not the duty of the Constitutional Court in this context or at this stage of the proceedings to determine the question of guilt or innocence or to assess whether a lighter or heavier sentence is appropriate. Nor does the conclusion reached here by the Constitutional Court mean that the applicant must be acquitted or convicted. It is natural that a decision should be taken by the court of first instance based on the result of an examination and evaluation after eliminating the shortcomings identified here.

55. However, the applicant's claims that her defence that she was not the person who had detonated the bomb – which required a separate analysis and a clear response – was supported by an expert report, and that intelligence information that is not supported by any specific evidence should not be taken as a basis for conviction, were not discussed and addressed separately and clearly in the reasons given for the conviction. Although those issues, which might have had an impact on the outcome of the trial, were raised by both the applicant and the public prosecutor in their applications for appeal and were referred to in the reasons for dissent in the Chamber and Court of Cassation decisions, it is considered that that shortcoming was not remedied during the examinations of the appeals. Therefore, when the judicial process is considered as a whole, it is concluded that the applicant's right to a reasoned decision has been violated."

H. Reopening of criminal proceedings against the applicant

32. On 27 December 2022 the Istanbul Assize Court reopened the criminal proceedings against the applicant in accordance with the Constitutional Court's judgment and released the applicant on bail.

33. According to information obtained by the Court *proprio motu*, on 9 January 2024 the Istanbul Assize Court acquitted the applicant in respect of the two offences in a judgment which became final 17 January 2024 without an appeal having been lodged against it.

RELEVANT LEGAL FRAMEWORK

34. Article 174 § 1 of the Criminal Code (Law no. 5237 of 26 September 2004) read as follows at the material time:

> "Any person who manufactures, imports or exports, transports from one place to another within the country, keeps, sells, buys or processes explosive, caustic, corrosive, injurious, asphyxiating, suffocating, poisonous, nuclear, radioactive, chemical or biological substances that cause permanent illness, without obtaining the necessary permission from the competent authorities, shall be sentenced to imprisonment from between three to eight years and a judicial fine of up to five thousand days. Any person who, without the authorisation of the competent authorities, exports the materials and equipment necessary for the manufacture, processing or use of the substances falling within the scope of this paragraph shall be punished with the same penalty."

35. Article 220 §§ 1 and 6 of the Criminal Code read as follows at the material time:

> "(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.
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> ...
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> (6) Anyone who commits a crime on behalf of the (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation. ..."

36. Article 314 §§ 1 and 2 of the Criminal Code provides for the offence of membership of an armed organisation:

> "(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.
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> (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."

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

> "Compensation for damage ... may be claimed from the State by anyone ...
>
> (a) who has been arrested or taken into or kept in detention under conditions or in circumstances not complying with the law;

...

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

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

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

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

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

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

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

COMPLAINT

40. The applicant complained under Article 6 of the Convention that the criminal proceedings against her had been unfair on account of the domestic courts' failure to provide sufficient reasons for their decision to convict her for having committed an offence on behalf of an armed terrorist organisation of which she was not a member, namely the PKK (Workers' Party of Kurdistan), under Article 314 § 2 taken in conjunction with Article 220 § 6 of the Criminal Code.

THE LAW

41. The applicant complained that her right to a reasoned judgment had been violated, in breach of her right to a fair trial. Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

A. Parties' submissions regarding the admissibility of the application

42. The Government argued that the applicant had lost her victim status, because the Constitutional Court had found a breach of her right to a fair trial

owing to the trial court's failure to address her defence arguments which could have changed the outcome of the criminal proceedings, and therefore its failure to deliver a reasoned judgment. The Government further argued that the applicant had received adequate redress, noting that the Constitutional Court had referred the case back to the trial court for the reopening of proceedings.

43. The Government raised further preliminary objections based on non-exhaustion of domestic remedies and the application being manifestly ill-founded.

44. The applicant contested the Government's submissions, arguing that no compensation had been awarded by the Constitutional Court.

45. The Government submitted, in response, that the Constitutional Court's decision had afforded sufficient redress and that a compensatory remedy for all damage arising from the execution of her sentence would be available to her under Articles 141-44 of the Code of Criminal Procedure in conjunction with Article 323 § 3 of the Code of Criminal Procedure in the event of an acquittal or a decision not to impose a sentence following the reopened proceedings.

B. The Court's assessment

1. General principles

46. The Convention leaves to each Contracting State, in the first place, the task of securing the enjoyment of the rights and freedoms it enshrines (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51). Therefore, it falls, firstly, to the national authorities to redress any alleged violation of the Convention (see *J.B. and Others v. Hungary* (dec.), no. 45434/12 and 2 others, § 58, 27 November 2018). The question whether an applicant has victim status is relevant at all stages of the proceedings under the Convention (see *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 259, ECHR 2012 (extracts)) and falls to be determined at the time of the Court's examination of the case where such an approach is justified in the circumstances. In assessing whether an applicant can claim to be a genuine victim of an alleged violation, account should be taken not only of the formal position at the time when the application was lodged with the Court but of all the circumstances of the case in question, including any developments prior to the date of the examination of the case by the Court (see *Tănase v. Moldova* [GC], no. 7/08, §§ 105-06, ECHR 2010).

47. Furthermore, a decision or measure favourable to an applicant is not in principle sufficient to deprive that person of his or her status as a "victim", within the meaning of Article 34 of the Convention, unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 193, ECHR 2006-V, and see also *Selahattin*

Demirtaş v. Turkey (no. 2) [GC], no. 14305/17, § 218, 22 December 2020). Moreover, an applicant may lose his or her victim status if two conditions are met: firstly, the authorities must have acknowledged, either expressly or in substance, a breach of the Convention, and secondly, they must have afforded redress for it. That exercise involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision. Only when the two above-mentioned conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude an examination of an application (see *Scordino*, cited above, § 193; see also *Selahattin Demirtaş (no. 2)*, cited above, § 218, and *Kerimoğlu v. Türkiye*, no. 58829/10, § 45, 6 December 2022).

48. The Court further reiterates that a person may not claim to be a victim of a breach of his or her right to a fair trial under Article 6 which allegedly took place in the course of proceedings in which he or she was acquitted or which were discontinued (see *Webster v. the United Kingdom* (dec.), no. 32479/16, 24 March 2020). The Court has already held that a full acquittal or the discontinuation of the proceedings against an applicant may constitute appropriate redress in respect of the criminal-limb guarantees of Article 6 of the Convention (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 70, 2 November 2010, with further references), provided that an applicant is no longer affected and has been relieved of any effects to his or her disadvantage (see *Kerimoğlu,* cited above, § 46, with further references).

49. Moreover, an applicant's "victim" status may also depend on the level of compensation awarded at domestic level, where appropriate, or at least on the possibility of seeking and obtaining compensation for the damage sustained, having regard to the facts about which he or she complains before the Court and the effectiveness (including the promptness) of the remedy affording the award (see *Scordino*, cited above, § 202; *Kurić*, cited above, § 262, with further references; *Normann v. Denmark* (dec.), no. 44704/98, 14 June 2001; see also *Jensen and Rasmussen v. Denmark* (dec.), no. 52620/99, 20 March 2003; and *J.B. and Others*, cited above, § 59).

2. Application of the above principles to the present case

(a) Whether the domestic courts acknowledged any alleged breach of Article 6 § 1 of the Convention

50. In the present case, the Court observes that the Constitutional Court dismissed as being manifestly ill-founded the applicant's first individual application in which she complained of a breach of her right to a fair trial owing to the domestic courts' failure to deliver a reasoned judgment in respect of her conviction for committing an offence on behalf of an armed terrorist organisation without being a member of it.

51. Subsequently, Law no. 7188 introduced the right to lodge a cassation appeal with the Court of Cassation against convictions for certain offences in cases where sentences were lower than the statutory threshold for such appeals, namely five years' imprisonment. Exercising that right, the applicant lodged a cassation appeal on points of law against her conviction for committing an offence on behalf of an armed terrorist organisation without being a member of it, and her appeal was dismissed by the Court of Cassation. The applicant then lodged a second application to the Constitutional Court in which she once again complained of a breach of her right to a reasoned judgment in respect of the conviction in question. This time, the Constitutional Court found a violation of the applicant's right to a reasoned judgment under Article 36 of the Constitution (the provision equivalent to Article 6 of the Convention), holding, in essence, that her pertinent arguments, which went to the heart of the case, had not been addressed adequately (see paragraph 30).

52. In view of the above, the Court concludes that the Constitutional Court, albeit in its second assessment, expressly acknowledged a breach of the applicant's right to a reasoned judgment in respect of her convictions under (i) Article 220 § 6 taken in conjunction with Article 314 § 2 of the Criminal Code (this conviction forms the basis of the present application), and (ii) Article 174 § 1 of the Criminal Code (compare *Hasanov and others v. Azerbaijan* (dec.), no. 2059/16 and 3 others, §§ 35-38, 12 September 2023). On that basis, the present case is distinguishable from *Kerimoğlu* (cited above), where the domestic courts did not acknowledge any of the breaches of the applicant's rights under Article 6 of the Convention in their decisions leading to his acquittal and release in that case.

(b) Whether the applicant was afforded sufficient redress in respect of the purported breach of her rights under Article 6 of the Convention

53. However, despite finding a violation of the applicant's right to a reasoned judgment, the Constitutional Court did not award any compensation by way of just satisfaction, holding that in cases where a retrial was considered to offer sufficient redress, claims for non-pecuniary damage should be rejected. The question therefore arises as to whether the Constitutional Court's above-mentioned judgment could be regarded as affording the applicant sufficient redress in respect of her complaint of a breach of her right to a reasoned judgment under Article 6 § 1 of the Convention concerning her conviction under Article 220 § 6 taken in conjunction with Article 314 § 2 of the Criminal Code.

54. In that connection, the Court notes that a finding of a violation of Article 6 § 1 of the Convention, due to the failure of the domestic courts to give a reasoned judgment, does not automatically necessitate an award of compensation in order to provide the applicant with adequate redress for the breach of that provision (see, among other authorities, *Ayetullah Ay v. Turkey*,

nos. 29084/07 and 1191/08, § 203, 27 October 2020, and *Rusishvili v. Georgia*, no. 15269/13, § 84, 30 June 2022, where the findings of a violation of Article 6 § 1 of the Convention on the basis of the domestic courts' failure to deliver a reasoned judgment constituted in themselves sufficient just satisfaction, and compare, among other authorities, *Cupiał v. Poland*, no. 67414/11, § 72, 9 March 2023, and *Loucaides v. Cyprus*, no. 60277/19, § 55, 18 October 2022, where awards of non-pecuniary damage were made for breaches of Article 6 § 1 of the Convention stemming from the domestic courts' failure to deliver reasoned judgments).

55. Moreover, in the context of the current case, it is central that the Constitutional Court ordered a complete retrial of the applicant's conviction, considering this the most appropriate remedy for the violation of her right to a reasoned judgment (see paragraph 30 above). The Court also notes that following the Constitutional Court's ruling, the Assize Court reopened the criminal proceedings against the applicant, ordered her release and ultimately acquitted her with final effect.

56. The Court also notes that as a consequence of the Assize Court's acquittal, the applicant could lodge a claim for compensation under Article 323 § 3 of the Code of Criminal Procedure in respect of her wrongful conviction (see, *mutatis mutandis*, *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 47, 24 October 2002, and *Al Husin v. Bosnia and Herzegovina (no. 2)*, no. 10112/16, § 90, 25 June 2019).

57. In view of the foregoing, although the applicant argued that, in the absence of an award of compensation by the Constitutional Court, she retained her victim status within the meaning of Article 34 of the Convention, the Court considers that the mere absence of compensation does not, in itself, justify the conclusion that the measures taken in her case - namely (i) the Constitutional Court's judgment (ii) the reopening of the criminal proceedings, (iii) her release on the basis of that judgment and (iv) her acquittal with final effect – fail to provide sufficient redress in respect of her complaints to the Court under Article 6 § 1 of the Convention.

(c) Conclusion as to the applicant's victim status

58. Accordingly, having regard to the particular circumstances of the present case and to the principle of subsidiarity which is embedded into the Preamble to the Convention, the Court concludes that the applicant can no longer claim to be a "victim" within the meaning of Article 34 of the Convention of the alleged violation of her right to a reasoned judgment.

59. It follows that the present application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4.

60. That being the case, the Court is not required to assess separately the other preliminary objections raised by the Government.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 May 2025.

Dorothee von Arnim Deputy Registrar	Arnfinn Bårdsen President