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

SECOND SECTION

DECISION

Application no. 52544/18
Savaş HİNDİOĞLU
against Türkiye

The European Court of Human Rights (Second Section), sitting on 20 May 2025 as a Committee composed of:

Jovan Ilievski, *President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 52544/18) 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") on 15 October 2018 by a Turkish national, Mr Savaş Hindioğlu ("the applicant"), who was born in 1991, was detained in Istanbul at the time of lodging the application and is represented by Ms F. Soylu Bozan, a lawyer practising in Mersin;

the decision to give notice of the complaint concerning the applicant's alleged inability to examine certain witnesses before the trial court to the Turkish Government ("the Government"), 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, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged unfairness of criminal proceedings against the applicant on account of his alleged inability to examine certain witnesses (three police officers), whose identities were protected, in person before the trial court.

2. On 20 December 2011 the Adana Eighth Assize Court convicted the applicant (i) of committing an offence on behalf of an armed terrorist organisation, namely the PKK (the Workers' Party of Kurdistan, an armed terrorist organisation), without being a member of it (Article 220 § 6 of the Criminal Code ("the CC") taken in conjunction with Article 314 § 2 of the CC); (ii) of obstructing a public officer in the execution of his duties by using force (Article 265 of the CC), and (iii) of disseminating propaganda in favour of the PKK (section 7(2) of the Prevention of Terrorism Act).

3. In doing so, the trial court relied on the video footage of two demonstrations (one held on 13 December 2010 and the other on 16 December 2010) as well as the police statements of one of the demonstrators, M.A., who stated that the applicant had given instructions to the participants during the 13 December demonstration and had incited them to throw stones and Molotov cocktails.

4. On 11 June 2012 the Court of Cassation quashed the above judgment and remitted the case back to the trial court, holding that the trial court had carried out an insufficient examination owing to its failure to hear oral testimony from the witness M.A. and from the three police officers who had arrested the applicant.

5. At the hearing held on 27 November 2012, the trial court heard the witness M.A. in the presence of the applicant and his lawyer. M.A. withdrew his police statements which contained incriminating remarks in respect of the applicant, stating that he had made the statements under duress.

6. On 19 December 2012 the trial court held a hearing of its own motion during which it heard the three police officers, in the presence of the public prosecutor, but in the absence of the applicant and his lawyer. The evidence provided by those officers concerned the demonstration held on 16 December 2010, during which they reiterated the incident report they had drawn up themselves. Specifically, they attested that the applicant had not only been carrying and using a camera at the demonstration, but had also been directing the group of demonstrators.

7. According to an expert report dated 12 February 2013, during both demonstrations the applicant had been in front of the demonstrators, doing nothing but photographing and video-recording them.

8. On 4 July 2013 the trial court sentenced the applicant to (i) four years and two months' imprisonment for committing an offence on behalf of an armed terrorist organisation under Article 220 § 6 of the CC taken in conjunction with Article 314 § 2 of the same Code, and (ii) ten months' imprisonment for obstructing a public officer in the execution of his duties by using force under Article 265 of the CC.

9. In its reasoning, which was almost identical to the one in its judgment dated 20 December 2011, the trial court noted that the applicant had taken part in two demonstrations held in response to general calls issued by the

PKK on 13 December 2010 and 16 December 2010. In reaching its decision, the trial court primarily based its findings on the statements of the witness M.A. to the police, observing that there was no indication that M.A. had been subjected to coercion or ill-treatment when providing them. Then, relying on M.A.'s police statements, the trial court concluded that the applicant had directed the demonstrators by inciting them to throw stones and Molotov cocktails during the demonstration held on 13 December 2010. It further noted that the applicant had been in front of the demonstrators during the demonstration held on 16 December 2010, but that there had been no concrete evidence indicating that the applicant had directed the group during that demonstration. Lastly, it suspended the criminal proceedings concerning the offence of disseminating propaganda in favour of the PKK.

10. Throughout the criminal proceedings, the applicant argued that he had taken part in the two demonstrations for journalistic purposes, stating that he had been a student at the journalism department of the Mersin University and had been working as an intern at the Dicle News Agency (*Dicle Haber Ajansı*) at the material time.

11. On 14 September 2017 the Court of Cassation upheld the judgment in question.

12. On 15 January 2018 the applicant lodged an individual application with the Constitutional Court, alleging a breach of, among other things, his right to a fair trial on account of the use made by the trial court of the statements of the police officers given in his absence as decisive evidence despite the absence of other supporting evidence.

13. On 20 July 2018 the Constitutional Court found his individual application inadmissible for being manifestly ill-founded.

THE COURT'S ASSESSMENT

A. Scope of the case before the Court

14. The applicant's complaint before the Court is related to his convictions for committing an offence on behalf of an armed terrorist organisation and obstructing a public officer in the execution of his duties, rather than the criminal proceedings regarding the offence of disseminating propaganda in favour of an armed terrorist organisation. The present case therefore encompasses the applicant's complaint, notice of which was given to the Government, concerning the alleged breach of his rights under Article 6 §§ 1 and 3 (d) of the Convention due to his inability to examine in his presence the three police officers who had arrested him.

B. Alleged violation of Article 6 §§ 1 and 3 (d) of the Convention

15. The Government raised several preliminary objections based on (i) non-exhaustion of domestic remedies, (ii) lack of victim status, and (iii) the manifestly ill-founded nature of the application.

16. The Court considers that it is not necessary to address the Government's preliminary objections, as the application is in any event inadmissible, for the following reasons.

17. The general principles with regard to complaints relating to absent prosecution witnesses and the use by the courts of the evidence given by those witnesses may be found in *Schatschaschwili v. Germany* ([GC], no. 9154/10, §§ 100-31, ECHR 2015), and *Al-Khawaja and Tahery v. the United Kingdom* ([GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; see also *Faysal Pamuk v. Turkey*, no. 430/13, §§ 44-50, 18 January 2022 for a summary of those principles). While developed for scenarios in which a prosecution witness does not appear at the trial, the *Al-Khawaja* and *Schatschaschwili* principles are also applicable where the witnesses do appear before the trial court but procedural irregularities prevent the applicant from examining them (see *Ürek and Ürek v. Turkey*, no. 74845/12, § 49, 30 July 2019 where the witnesses were heard by the trial court in the presence of the public prosecutor but in the absence of the applicants and their lawyers, and *Chernika v. Ukraine*, no. 53791/11, § 46, 12 March 2020). They can also serve as guidance where the relevant issue is not the non-appearance of witnesses at the trial but rather the modalities of their cross-examination which may limit the rights of the defence (see *Cherpion v. Belgium* (dec.). no. 47158/11, §§ 35-41, 9 May 2017).

18. The Court finds it more appropriate to first examine whether the evidence provided by the three police officers was the sole, decisive or significant basis for the applicant's conviction, since, in the specific circumstances of the present case, this question seems to be conclusive as to the fairness of the proceedings (see *Schatschaschwili*, cited above, §§ 116 and 118).

19. In that connection, the Court observes that the applicant was convicted of committing an offence on behalf of an armed terrorist organisation and for obstructing the police officers in the execution of their duties on the grounds that he had directed a group of protesters in the demonstrations held on 13 December 2010 and had incited them to throw stones and Molotov cocktails. In doing so, the trial court relied mainly on the police statements of the witness M.A., noting that there was no evidence suggesting that M.A had been coerced or mistreated while making these statements. Nor does the applicant have any complaints about not having had the opportunity to question M.A, who was heard at the trial in his presence.

20. It is true that in its reasoned judgment, the trial court also examined the applicant's actions during the demonstration of 16 December 2010, concluding that he had been part of the group which had chanted slogans and stood in front of the demonstrators. However, the trial court found that, contrary to the incident report, which stated that the applicant had directed the group during the demonstration that took place on 16 December 2010 there was no evidence supporting that finding. While the trial court's reasoned judgment is somewhat ambiguous regarding the specific offences arising from the applicant's actions on 16 December 2010, the operative part of the judgment clarifies that those actions did not specifically form part of his conviction for committing an offence on behalf of an armed terrorist organisation without being a member and for obstructing a public officer in the execution of his duties.

21. In light of the above, the Court concludes that the applicant was not convicted solely or to a decisive or significant degree based on the evidence of the witnesses examined in his absence, namely the three police officers, whose testimony related to the incident that took place on 16 December 2010. Nor did their evidence carry significant weight in his conviction. The primary evidence supporting his conviction was the testimony of M.A. which the applicant had had the opportunity of challenging in person at the trial.

22. Accordingly, the applicant's inability to examine the witnesses in question did not have any irremediable impact on the overall fairness of the criminal proceedings against him (compare and contrast *Schatschaschwili*, cited above, §§ 143-44 and 151, and *Nechto v. Russia*, no. 24893/05, § 118-28, 24 January 2012).

23. It follows that his complaint must be rejected as being manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 12 June 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President