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

SECOND SECTION

DECISION

Application no. 32565/23
Mahmut Onur UÇAR
against Türkiye

The European Court of Human Rights (Second Section), sitting on 26 November 2024 as a Chamber composed of:
Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Pauliine Koskelo,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Stéphane Pisani*, judges*,
and Hasan Bakırcı, *Section Registrar,*
Having regard to the above application lodged on 4 August 2023,
Having deliberated, decides as follows:

# THE FACTS

The applicant, Mr Mahmut Onur Uçar, is a Turkish national who was born in 1984 and lives in Kırıkkale. He was represented before the Court by Mr H.B. Vural, a lawyer practising in Ankara.

## A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

### *1. Background*

1. On the night of 15 July 2016 a group of members of the Turkish armed forces (also referred to as "the TAF") calling themselves the "Peace at Home

Council" attempted to carry out a military coup aimed at overthrowing the democratically elected parliament, government and President of Türkiye.

2. The criminal proceedings at issue in the present application concerned the deployment on the night of 15 July 2016 of fifteen tanks and personnel of the Tank Battalion of the Mamak Twenty-Eighth Mechanised Brigade ("the Tank Battalion"), which was assigned to the Fourth Corps Command of the Land Forces Command, to the General Staff Building (*Genelkurmay Başkanlığı Karargâh Binası*) with the aim of carrying out a military coup. The defendants were charged with various offences committed during the operation and at the main headquarters in question, namely attempting to overthrow the constitutional order, murder, attempted murder and criminal damage, which resulted in the killing of five people, the injury (including grievous bodily harm) of seventy-two others and criminal damage to public and private property, police cars and private vehicles.

3. The applicant was a first lieutenant (*üsteğmen*) of the Tank Battalion and, on the night in question, he was the commander of a tank with registration number 092662. He was arrested the following day and remained in police custody until 27 July 2016, when he was placed in pre-trial detention.

### *2. Trial against the applicant and sixty-three other defendants*

4. On 9 April 2018 the Ankara Eighteenth Assize Court ("the trial court") issued a 745-page judgment convicting the applicant, *inter alia*, of (i) attempting to overthrow the constitutional order (Article 309 § 1 of the Criminal Code) and (ii) causing criminal damage (Article 152 § 1 (a)). The trial court accordingly sentenced him to aggravated life imprisonment for the offence under (i) and to nine years' imprisonment for the offence under (ii). However, it acquitted him of murder, attempted murder and the remaining charges of criminal damage on the ground that it had not been established that he had committed those offences.

5. The evidence on which the trial court based its decision was listed as follows: (i) the tanks seized at the General Staff Building; (ii) statements made by victims; (iii) medical and forensic reports; (iv) photographs and videos taken by victims and witnesses; (v) forensic examination and autopsy reports; (vi) video surveillance footage of the entrance to the military barracks of the Mamak Twenty-Eighth Mechanised Brigade; (vii) CCTV footage; (viii) videos taken by citizens; (ix) images obtained from open sources; (x) video footage and photographs provided by the police department responsible for filming and photography; (xi) enhanced security camera footage of the General Staff building produced by the Turkish Radio and Television Corporation ("the TRT"); (xii) witness statements; (xiii) correspondence with the Mamak Twenty-Eighth Mechanised Brigade; (xiv) statements made by the defendants during the investigation and trial stages; (xv) arrest records and body search reports relating to the defendants; (xvi) civil-status and

criminal records of the defendants; (xvii) search and seizure records; (xviii) seized aerial photographs and a city map of Ankara; (xix) historical traffic search records; (xx) ByLock reports; (xxi) police reports on investigations into the defendants' links with the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü/Paralel Devlet Yapılanması* – "the FETÖ/PDY"); (xxii) a map of the tank route; (xxiii) a police investigation report; (xxiii) statements made by suspects in the course of various investigations; and (xxiv) the crime scene examination report and its annexes.

6. The applicant did not submit to the Court copies of the statements he had made during the investigation and trial. In those statements, which are reproduced in the trial court's reasoned judgment, the applicant gave a detailed account of the events of the night of 15 July 2016 and of the actions he had taken in the period leading up to his arrest the next day, stressing that he had not been carrying his pistol on that day. The applicant submitted, in essence, that he had had no connection with the coup attempt, arguing that he had received an order to ensure the security of the General Staff Building because it had been attacked by terrorists and that he had carried out the orders of his hierarchical superiors, who had been appointed by the State. Arguing that he had done so in the manner prescribed by law, the applicant admitted that he had fired at the lorries in order to disperse the crowd, but denied that he had fired at the headquarters of the Turkish Air Force, arguing that he had only fired at an empty space in accordance with the orders of his superiors. In the applicant's view, he had not received any unlawful order or any other order the subject of which constituted an offence, and none of his actions on the night of 15 July 2016 could be considered to have been carried out outside the military chain of command. He further argued that he had had no connection with the FETÖ/PDY, submitting that he had never studied in schools affiliated to the organisation, read its publications, sent money to its members, used its secret communication application or had a bank account at Bank Asya. Lastly, in his statements reproduced in the reasoned judgment, the applicant alleged, without providing any details, that he had been subjected to torture by police officers, who had kept him handcuffed with his arms behind his back from 12 noon on 16 July until 26 July 2016. In his application to the Court, the applicant did not elaborate on this, nor did he submit any other document in this regard.

### *3. The trial court's conclusions regarding the attempted coup*

7. The trial court's considerations in the part of its judgment entitled "the manner in which the incident took place" dealt with the coup attempt and may be summarised as follows. According to the trial court, members of the FETÖ/PDY had infiltrated virtually all state institutions, such as the judiciary, the military, the police, the civil service, the Ministry of Treasury and Finance and the intelligence services, and had initiated an attempted military coup with a view to establishing a dictatorial regime of the *cemaat* ("community")

by subverting the political system provided for in the Turkish Constitution. In the court's view, they had done so by using force and violence and methods of pressure, terror, intimidation, oppression or threat with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the Turkish State with its country and nation, endangering the existence of the Turkish State and Republic, weakening, destroying or seizing the authority of the State, undermining fundamental rights and freedoms or damaging the internal and external security of the State, public order or general health.

8. On 15 July 2016 Fetullahist armed military units nestled in the TAF and under the command of the organisation's "private" (*mahrem*) structure had attempted to carry out a military coup against the nation and the government using military aircraft, tanks, explosives, combat weapons and warships.

9. At around 8.30 to 9 p.m. certain military units had begun unexpected activities in the General Staff Building, with certain units from the Special Forces, which had been designated to carry a military coup, storming the building and eventually taking control of it with the help of Fetullahist soldiers. At 9 p.m. fighter jets had flown at low altitude in order to intimidate the civilian population and informing them that a military coup had begun, and military helicopters had taken off and attacked public institutions. In that context, the trial court noted the following incidents:

(a) military units had arrived by helicopters at the headquarters of the National Intelligence Agency of Türkiye (*Milli İstihbarat Teşkilatı* – "the MİT") in Yenimahalle, Ankara – which had provided the authorities with valuable information in connection with investigations against FETÖ/PDY members – and besieged it, resulting in an armed conflict;

(b) armoured land forces had left the military barracks with armoured combat vehicles and besieged the buildings of public institutions;

(c) public officials had been shot dead;

(d) military helicopters had carried out air strikes on the Intelligence Department of the General Directorate of Security;

(e) fighter jets had bombed the Special Operations Department of the General Directorate of Security based in Gölbaşı, Ankara, resulting in deaths;

(f) armoured combat vehicles had besieged and attacked the Ankara Security Directorate, which had allowed them to enter the building;

(g) the Anti-Terrorism Branch and the Intelligence Branch of the Ankara Security Directorate, which had played an active role in the fight against the FETÖ/PDY, had been specifically targeted and bombed;

(h) The presidential palace had been besieged by certain members of the armed forces and the targets around the palace had been bombed by fighter jets, resulting in civilian deaths;

(j) Television stations had been besieged and their streaming services had been shut down;

(i) pro-coup forces had besieged and attempted to take control of the headquarters of the TÜRKSAT Satellite Communication Cable Television and Management Public Company ("TÜRKSAT") in Gölbaşı, and fighter jets had bombed satellite dishes;

(j) armed clashes had taken place between the pro-coup forces and the members of the TAF resisting them, resulting in deaths and injuries among the latter;

(k) Fighter jets had bombed the Turkish Grand National Assembly ("the National Assembly") at midnight when members of parliament were holding an emergency session concerning the coup attempt;

(l) Armed military officers had stormed the TRT building and forced its staff to read out the so-called coup declaration live in an attempt to show to the public that a military coup was being carried out within the entire army's chain of command and declaring that the military had seized power;

(m) military helicopters and putschist soldiers had fired on and shot dead or injured civilians attempting to regain control of the General Staff Building from the putschist soldiers who had taken control of it;

(n) armoured vehicles, including tanks, had arrived at the entrance of the General Staff Building and massacred civilians by either shooting at them or attempting to run them over;

(o) Fetullahist soldiers, with the help of helicopters, had brought armed and equipped trainee second lieutenants, students at the Turkish Military Academy, to the General Staff Building with a view to succeeding in the coup attempt;

(p) putschist soldiers had captured the military command centre based in the General Staff Building, directed the coup attempt from there, given orders, declared martial law and assigned their supporters to certain positions within the armed forces and other key public institutions.

10. Accordingly, the trial court held that a group of members of the Turkish Armed Forces calling themselves the "Peace at Home Council" had instigated an attempt to carry out a military coup to seize power in the country and overthrow the democratically elected government at around 8.30 p.m. on 15 July 2016. A press release had been published on the official website of the TAF, which had been read on the TRT national television channel announcing that the army had taken over the administration of the State and had declared martial law and a curfew all throughout Türkiye. The coup attempt had therefore been carried out by the "Peace at Home Council", which had acted outside the chain of command of the TAF and used approximately 9,000 military personnel, thirty-five fighter jets, thirty-seven military helicopters, seventy-four tanks, 162 other armoured combat vehicles and 4,000 small arms and light weapons, resulting in 249 deaths and thousands of injuries.

11. The trial court found that citizens from all over Türkiye, determined to save the country's future, had held protest demonstrations in almost every city, that political parties had taken a united stance against the coup attempt and issued statements in support of the government in power, that the national media had sided with the State and the democratically elected institutions by reporting against the coup attempt, that members of the Turkish Armed Forces and the General Directorate of Security loyal to the country and the nation had made efforts to suppress the coup attempt and that civilians had attempted to regain control of the public institutions from the putschists. Consequently, civilians, members of the TAF and the police had cleared the buildings of the public institutions from the putschists and had regained control of them, and had finally suppressed the coup attempt at around 12 noon on 16 July 2016, resulting in the surrender of the putschists.

*4. Specific incident forming the basis of the applicant's conviction*

12. According to the trial court, preparations for the military coup had already begun in the Tank Battalion at the end of May 2016. Malfunctioning tanks had been repaired, weapons installed in the tanks had been serviced, shortages and equipment needs had been addressed and the Tank Battalion had given the impression to the outside world that such preparations were being made because it was carrying out drills or preparing for a possible deployment on the Syrian border. In reality, it had been preparing to provide tanks and armoured combat vehicles for the military coup, as evidenced by the fact that tanks had been refuelled the day before the coup attempt.

13. During a search of the office and the locker of the defendant A.Ö., several items had been found, including (i) four copies of a map of Ankara, which divided the city into three sections marked red and blue and indicating the number of tanks to be placed at certain intersections; (ii) aerial photographs of Ankara on which certain major intersections, the headquarters of the Intelligence Department and the Special Operations Department of the General Directorate of Security and the former Presidential Palace (*Çankaya Köşkü*) had been marked, and (ii) six copies of a map of the Altındağ district. A search at defendant N.B.'s office had resulted in the discovery of handwritten notes such as "how many trustworthy personnel are needed?", "vehicle + driver + gunner + three crew members, 9 x 3 = 27" and certain other notes indicating the number of tanks to be placed at various intersections in Ankara. Similarly, 1,400 plastic handcuffs were found during the search of his private car.

14. On 15 July 2016, a certain A.K. and O.Ü., who had been "appointed" by the putschist soldiers as the brigade commander of the Mamak Twenty-Eighth Mechanised Brigade and the commander of the Fourth Corps respectively, had taken over the command of the Brigade and the Corps by force and with the help of other putschist soldiers. Subsequently, they had declared a false state of emergency, ordering all soldiers to return to their

barracks (as the incidents had taken place outside normal working hours). Upon the arrival of the soldiers from the Mamak Twenty-Eighth Mechanised Brigade, Lieutenant Colonel N.B., who had been the commander of the Tank Battalion, had begun leading the military coup. Captains A.B., H.N. and A.Ö., who had already been aware of the coup attempt, had under the command of N.B. taken out the tanks and other armoured combat vehicles from the military equipment storage facility, equipped them with anti-aircraft artillery shells and distributed rifles to the personnel. The accused soldiers were then loaded onto the tanks on the pretext that the National Assembly and the General Staff Building had been attacked by terrorists and that they had to ensure the security of these places. Accordingly, on 15 July 2016 at 11.45 p.m., fifteen tanks, each with its crew members, had left the military barracks on the orders of Lieutenant Colonel N.B and had eventually arrived at the entrance to the General Staff Building. The applicant had assumed the role of tank commander and had been in the tank with the registration number 092662.

15. The trial court further observed that while the defendants, tank crew members acting "in unity of thought and action" under the command of N.B., had been on their way to the General Staff building, civilians had started protesting against them around the Ulus neighbourhood and had tried in vain to persuade them to stop their actions. Despite knowing why the crowds had gathered in the Sıhhiye neighbourhood and in front of the Ankara Courthouse, the defendants had continued their actions, disregarding the civilians' warnings and opening fire on them. In the Kızılay neighbourhood, the defendants had broken the barricades by running over cars, firing at civilians and driving into crowds. According to the trial court, civilians had frequently stopped the defendants on their way to the General Staff building and warned them that their actions were wrong, that it was a coup attempt and not a terrorist attack as claimed, and that they should therefore return to their barracks and not kill or injure any civilians or damage property. Nevertheless, the accused had ignored these warnings and had continued with their actions in order to achieve their aim of carrying out a military coup. They had arrived at the General Staff building at 1 a.m. on 16 July 2016 and forced their way inside by breaking down the barricades, walls and barbed wire and damaging buildings. Subsequently, however, the coup attempt had been suppressed by civilians and law enforcement officers, and the accused, realising their defeat, had surrendered at 1 p.m. on 16 July 2016.

16. The trial court further found that after the coup attempt had failed, the accused had removed the hard drives from the CCTV cameras in the Chief of Staff's office, which had contained video footage of the incidents that formed the basis of the accusations. The court found that the applicant had had them destroyed with the help of a tank after placing them on the ground. With regard to the applicant, the trial court further found that between 5.30 and 6 a.m. on 16 July 2016 he had fired at the upper parts of trucks on İnönü

Avenue in order to disperse civilians resisting the coup attempt. The court also found that when civilians tried to enter the General Staff building, he had dispersed them by firing at the headquarters of the Turkish Air Forces using the machine gun mounted on the tank with the registration number 092662 and damaged the building.

17. In assessing the situation of each of the defendants who were in the same tank as the applicant, the trial court found that the messages on defendant S.K.'s mobile telephone showed that he had been aware of the coup attempt and that he had been in contact with a director of the FETÖ/PDY. As regards the applicant, the trial court took note of the fact that he had spoken against the government and the State before the coup attempt and that there were witness statements according to which he had a strong dislike for the President of the Republic of Türkiye.

18. Accordingly, the trial court held that the defendants' (i) deployment of the tanks to the General Staff building with a view to carrying out a military coup and (ii) actions on their way there, such as disregarding the warnings of civilians and firing at them, and damaging public and private vehicles, showed their determination to commit offences and achieve their unlawful goals. In the trial court's view, items (i) and (ii) had constituted the offence of attempting to overthrow the constitutional order under Article 309 § 1 of the Criminal Code. Moreover, the actions in question had also given rise to the offence of murder (five counts), as they had resulted in the killing of five people, attempted murder, as they had resulted in seventy-two people being injured, and damage to public and private property, police cars and private vehicles. As regards the injuries, the trial court held that if the injuries sustained by the victims could be treated with basic medical intervention, the defendants would not be criminally liable as those acts would be subsumed under the use of "force and violence" element of the offence of attempting to overthrow the constitutional order. However, if the injuries in question had not been of that nature, they would be regarded as grievous bodily harm and constitute the offence of attempted murder in respect of each victim. That assessment took into account the nature of the injuries, the means used to inflict them, the defendants' intent and the fact that those offences had been committed either simultaneously with the offence under Article 309 § 1 of the Criminal Code or to facilitate its commission.

19. In the trial court's view, the preparatory acts carried out by the defendants at the initial stage of their actions and the fact that they had proceeded to the acts of execution showed that they had acted with unity of thought and action from the outset and had carried out the material elements (*actus reus*) of the offences in complicity with each other. It held that each defendant should be held criminally liable as a principal offender for the offence of attempting to overthrow the constitutional order, in accordance with the domestic legal provisions on complicity.

*5. Assessment of the defendants' submissions that they had acted in the belief that a terrorist attack had taken place at the General Staff Building*

20. The trial court observed that at the initial stages of the proceedings, some of the defendants alleged that they had acted in the belief that a terrorist attack had taken place at the General Staff building, some of them claiming that "Daesh" (the so-called "Islamic State in Iraq and the Levant" or "ISIL", also known as "ISIS") had been responsible. However, they had changed those statements after being placed in pre-trial detention and had categorically stated that the FETÖ/PDY had carried out an attack on the General Staff building and that they had gone there to provide security. According to the trial court, those allegations did not reflect the truth for the following reasons. Taking into consideration the developments that took place on the night of the incident, the trial court found that members of the FETÖ/PDY armed terrorist organisation had initiated the coup attempt at 9 p.m. by taking control of the General Staff Building, taking the Chief of Staff and other commanders who had opposed the coup as hostages and transferring them to the Akıncı Air Base. At about the same time, fighter jets were flying at low altitude in Ankara and the sound of gunfire, similar to that of an armed conflict, had been heard coming from the General Staff building. At 11 p.m. the Prime Minister had appeared on a nationwide television programme and declared the incident to be an attempted coup, and the Ankara Chief Public Prosecutor's Office had issued arrest warrants for those taking part. At 11.45 p.m. certain putschist soldiers had stormed the TRT building and read out the so-called coup declaration. At 12.25 a.m. the President of the Republic had appeared on a nationwide television channel and denounced the move as a coup attempt conducted by a small group in the TAF incited by the "parallel structure". Subsequently, many important public institutions, such as the General Assembly, the MİT, the General Directorate of Security, the Special Operations Department of the General Directorate of Security, TÜRKSAT and the Presidential Palace had been bombed and shelled. Against the above background, and bearing in mind that it was undisputed that the tanks had left the military barracks at 11.45 p.m. on 15 July 2016, at a time when even the entire civilian population had been aware of an ongoing coup attempt, the trial court found it unlikely that the defendants, who had also had their mobile phones in their possession, had not been aware of it.

21. In the trial court's view, even assuming that the defendants had acted in the belief that there had been a terrorist attack, they had been repeatedly stopped on their way to the General Staff Building by civilians, who had consistently tried to convince them to stop their actions or had physically resisted them. Nevertheless, the defendants had continued their actions, driven tanks over them and fired at them, as could be seen from the video footage in the case file. In any event, no military order could justify killing or injuring civilians in the middle of Ankara and destroying or damaging private

and public vehicles. Consequently, the defendants had known that there had been no terrorist attack; on the contrary, they had acted in order to protect the putschist soldiers who had taken control of the General Staff Building, as demonstrated by the fact that, upon their arrival, they had positioned the tanks in such a way that their barrels had been pointed at civilians, and that they had seen that (i) the Special Forces units stationed around the building in question had been supporting the coup and had fired at civilians and the police, and (ii) helicopters had consistently landed there in order to provide the putschists with ammunition and reinforcements and had fired at civilians. The trial court stated that the defendants, as commissioned officers, had been aware that the use of tanks against unarmed civilians, even of a hostile state, constituted an offence even in peacetime, but had continued their actions and either killed or injured them, which showed that they had had the necessary intent to commit the offence under Article 309 § 1 of the Criminal Code. The defendants had failed to comply with any of those conditions and had hastily taken out the tanks from the barracks, which could only be done in exceptional situations, such as during a coup attempt. It was also clear that if they had not provided security for the putschist soldiers who had taken control of the General Staff Building, the coup attempt would have been brought to an end much more swiftly. According to the trial court, all the mechanised military units had been trained in the procedure and modalities for the dispatch and deployment of tanks into traffic and had been aware, in particular, of the need to obtain permission from the Governor, to be accompanied by the police and to stop traffic in order to use the tanks in traffic at night. In view of the foregoing considerations, the trial court found it unlikely that the defendants had been unaware of the coup attempt, at a time when the entire civilian population had even been aware of the coup attempt taking place and had taken to the streets.

*6. Assessment of the plea of obedience to superior orders*

22. The trial court further noted that most of the defendants, in their defence against the charges against them, had argued that they had acted lawfully by following orders in accordance with the strict obedience prevailing in the military. According to the court, several criteria had to be met in order to accept the defence of obedience to superior orders, which was set forth in the Criminal Code as a circumstance that extinguished or reduced the criminal responsibility of an accused. In that regard, no lawful order had been given to the defendants requiring them to save the General Staff Building from a terrorist attack on the night of 15 July 2016. In the absence of such an order, the defendants had not been in a position to assess its formal requirements. Moreover, a binding order could only be lawfully issued by a competent body or superior authorised by law, and an order to deploy armoured fighting vehicles with live weapons in the capital at night could only have been issued by the Committee of Ministers and not by a brigade

commander. Assuming that there had been a lawful order, its object and the reasons for it had not been lawful. In any event, even in a system requiring absolute obedience to superior orders, such as in the military and the police, no officer had been under an obligation to carry out an order the subject of which constituted an offence. In such cases, both the subordinate who carried out the order and the superior who issued it would be criminally liable and a plea of obedience to superior orders would not relieve the former of such liability. In view of the foregoing, the trial court observed that the defendants had known that they had not been authorised to carry out a night operation at the General Staff Building on 15 July 2016.

23. Even assuming that the building in question had been attacked by terrorists, the question of how to intervene in such an attack would have had to be decided by the civilian authorities, which were empowered by law in the fight against terrorism, and not by the military forces, as the law clearly regulated the circumstances and the manner in which the military could intervene in terror attacks. Therefore, it was not legally possible for the Mamak Twenty-Eighth Mechanised Brigade to intervene in a so-called terrorist attack by assuming itself authorised to do so in the absence of a written order to that effect. In fact, none of the competent authorities had authorised the Brigade to use armoured combat vehicles, including tanks. Even though there had recently been other terrorist attacks in Ankara, the military had not been asked to intervene in them, and it was against logic in the circumstances prevailing in Türkiye for the military to have been abruptly authorised to do so at midnight at the capital. Accordingly, the deployment of armoured vehicles, including tanks, into traffic at night without the presence of police officers and without informing or receiving instructions from the civilian authorities showed that there had been a coup attempt. On that basis, the trial court found it impossible to accept the defendants' plea of obedience to superior orders.

### *7. Proceedings before the Ankara Regional Court of Appeal*

24. According to the documents provided by the applicant, his lawyer filed a short notice of appeal (*süre tutum dilekçesi*) dated 14 April 2018 (one-page submission) against the trial court's judgment, submitting that it was contrary to the facts and law, without however substantiating this argument. The lawyer further specified that he would submit detailed appeal submissions following the service of the trial court's reasoned judgment. In the top right-hand corner of the first page of the appeal, the words "Hearing requested" were written. The case file submitted by the applicant to the Court does not include any other, more detailed appeal filed by or on behalf of the applicant to the Ankara Regional Court of Appeal.

25. On 19 June 2020 the Nineteenth Criminal Division of the Ankara Regional Court of Appeal gave its fifty-four-page judgment, upholding the first-instance court's judgment as far as the applicant was concerned. In the

court's view, the first-instance court's judgment did not contain any inaccuracies, as evidenced by (i) its legal, adequate and lawful reasoning contained therein, (ii) the court's acceptance of the commission of the offences and their nature, (iii) its assessment and application of the nature and degree of the aggravating and mitigating factors in imposing the sentences, (iv) its dismissal of the defence submissions on credible grounds, and (v) its consideration of the lawful and sufficient evidence presented and discussed in the presence of the parties.

26. Furthermore, the court decided not to hold a hearing in view of the fact that (i) the evidence in the case file, assessed as a whole, was sufficient to warrant the conclusion that the defendants had committed the offences attributed to them, (ii) the first-instance court's assessment of the facts and its interpretation and application of the law did not contain any inaccuracies and (iii) the reading of the documents added to the case at the appellate stage at a public hearing would have no impact on the outcome.

*8. Proceedings before the Court of Cassation*

27. According to the documents provided by the applicant, his lawyer filed a short notice of appeal (*süre tutum dilekçesi*) dated 20 July 2020 (one-page submission) against the judgment of the Ankara Regional Court of Appeal. The lawyer argued that the applicant had had no intention of taking part in the coup attempt, and had merely been following orders as military personnel and that, in any event, none of his actions had caused any physical harm to anyone. He also stated that he would submit more detailed appeal submissions, arguing that the statutory time-limit of fifteen days to do so was insufficient given the scope of the case and the level of detail involved. In the top right-hand corner of the first page of the appeal, the words "Hearing requested" were written. The application as submitted by the applicant did not contain any other submissions made to the Court of Cassation by the applicant or his lawyer.

28. On 14 June 2022 the Sixteenth Criminal Division of the Court of Cassation delivered its judgment, which, *inter alia*, upheld the applicant's conviction. In dismissing the requests for a hearing, the Court of Cassation held that, in the proceedings before the trial court and the Regional Court of Appeal, the defendants had been provided with sufficient means to effectively exercise their defence rights in accordance with the principles of equality of arms and adversarial proceedings. Moreover, the Court of Cassation also found that the defendants had been entitled to submit an unlimited number of written submissions in the proceedings before it.

*9. Proceedings before the Constitutional Court*

29. On 19 September 2022 the applicant lodged an application with the Constitutional Court alleging violations of Articles 2, 3, 5, 6, and 13 of the

Convention. He raised almost identical complaints before the Court, which were also worded identically to those before the Constitutional Court.

30. Under Articles 2 and 3 of the Convention, the applicant submitted that he had been subjected to torture and ill-treatment while in police custody and in prison, as detailed in his defence submissions. In the same vein, he contended that complaints of ill-treatment made by other accused had gone unheeded due to the lack of an effective legal remedy and the impunity provisions in the legislative decrees. The applicant also complained of various breaches of Article 5 of the Convention, arguing, *inter alia*, that his pre-trial detention had been unlawful, arbitrary and disproportionate and that the decisions relating to it had lacked reasons. He further complained, under Article 6 of the Convention (i) about the outcome of the criminal proceedings against him; (ii) that the domestic courts had refused to grant his requests for the collection of evidence and the examination of digital material and witnesses who had been present at the scene; (iii) that they had failed to deliver reasoned judgments, to take into account or assess any points, arguments and statements favourable to him and the defence submissions made by him, and to upload the entirety of documents in the case file to UYAP (the National Judiciary Informatics System); (iv) that their judgments contained manifest errors of assessment; (iv) of several breaches of the presumption of innocence; (v) that the Ankara Regional Court of Appeal and the Court of Cassation had refused his requests for a hearing without giving reasons; (vi) about the audiovisual recording of lawyer-client meetings in prison and the imposition of time-limits on such meetings; and (vii) that he had not been allowed to examine the case file in prison conditions. Lastly, the applicant submitted, under Article 13 of the Convention, that no effective remedy had been available to him against the judgment of the Ankara Eighteenth Assize Court, and that the judgments of the Ankara Regional Court of Appeal and the Court of Cassation also demonstrated the absence of such a remedy.

31. On 6 April 2023 the Constitutional Court declared the application inadmissible by way of a summary decision. It found that the applicant's complaints concerning the fairness of his trial concerned the assessment of evidence and the application of domestic law; the application was thus in the nature of a further appeal and had to be declared inadmissible given that the domestic courts' decisions did not contain any manifest errors of assessment or arbitrariness. As regards his allegation of a breach of his right to have adequate time and facilities for the preparation of his defence, the Constitutional Court found that the proceedings, taken as a whole, did not disclose a violation of the right in question. The court also declared the applicant's complaints under Article 5 inadmissible, either because they had been lodged outside the statutory thirty-day time-limit or because they were manifestly ill-founded. As regards the remainder of the applicant's

complaints, the Constitutional Court found that they did not satisfy the admissibility criteria.

32. The applicant was deemed to have been notified of the above-mentioned decision on 11 April 2023, five days after its service on the applicant's lawyer via the electronic notification system.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

33. The domestic courts' detailed assessment of the FETÖ/PDY has been summarised in *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 161-63 and 172, 26 September 2023).

34. Article 309 § 1 of the Criminal Code provides as follows:

> "Anyone who attempts, by force and violence, to overthrow the constitutional order provided for in the Constitution of the Republic of Turkey, to establish a different order in its place or to prevent its actual implementation, whether fully or in part, shall be sentenced to aggravated life imprisonment."

35. Article 6 § 1 (d) of Legislative Decree no. 667 introduced some restrictions, applicable during the course of the state of emergency, on the right to legal assistance of persons detained in connection with certain offences against the nation and the State provided for in Chapter Four of Book Two of the Criminal Code (including the offence of membership of an armed organisation provided for in Article 314 thereof), the offences covered by the Prevention of Terrorism Act and collective offences. Article 6 § 1 (d) provided, *inter alia*, that meetings of persons in detention with their lawyers could be recorded, that they could be attended by an officer to monitor the exchanges, or that the documents and files exchanged and the records kept by the detainees or their lawyers could be seized by decision of the public prosecutor, if deemed necessary for the reasons listed therein. This provision was incorporated into Article 6 § 1 (d) of Law no. 6749, adopted on 18 October 2016 and published in the Official Gazette on 29 October 2016.

36. Article 37 of Law no. 6755 on the adoption of the amendments of the Decree Law on measures to be taken as part of the state of emergency and arrangements made on certain institutions and organizations, as amended by Article 121 of Legislative Decree no. 696, provided that persons who acted with the aim of suppressing the coup attempt of 15 July 2016 and the terrorist activities carried out on that day, as well as actions which could be considered as a continuation of them, would not bear any legal, criminal, administrative or financial responsibility, regardless of whether they held an official title or carried out an official duty.

# THE LAW

## A. Alleged violation of Articles 2 and 3 of the Convention

37. The applicant alleged that he had been ill-treated and subjected to torture while in police custody and prison, "as mentioned in his defence submissions", in breach of Articles 2 and 3 of the Convention. As master of the characterisation to be given in law to the facts of the case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 124, 20 March 2018), the Court considers that these complaints fall to be examined solely under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

38. The Court recalls that allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015). In this connection, it notes that the applicant did not provide copies of the statements he had made at the investigation or trial stages. From the documents submitted by him, namely the trial court's reasoned judgment, in which his defence submissions made during those stages were reproduced, it appears that he did claim to have been subjected to torture from 16 July to 26 July 2016 (during his police custody), but did not give any details of the ill-treatment to which he had allegedly been subjected. Neither his submissions to the Ankara Regional Court of Appeal and the Court of Cassation, which were annexed to the present application, nor the application form he lodged with the Constitutional Court contained any information, let alone detailed information, in that regard. Nor did he submit any other documents, such as a medical report or anything else which would have enabled the Court to examine his allegations of ill-treatment. Similarly, in his application to the Court, the applicant did not provide any explanation, let alone a detailed explanation, of his alleged ill-treatment, other than to state that he had been ill-treated and subjected to torture. On that basis, it cannot but conclude that the applicant failed to lay the basis of an arguable ill-treatment complaint.

39. In view of the foregoing considerations, the Court finds that the applicant failed to provide the Court with the information necessary to lay the basis of an arguable ill-treatment complaint. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

## B. Alleged violations of Article 5 of the Convention

40. The applicant complained that his pre-trial detention had been unlawful, arbitrary and disproportionate, as there had been no reason or evidence for such a measure and none of the statutory conditions had been met. In his view, he had been placed in pre-trial detention and convicted despite the fact that the requirements for a case of discovery *in flagrante delicto* had not been met. Accordingly, there had been a breach of his right to liberty and security of person as a result of his pre-trial detention, which had been ordered without any justification and despite the fact that the legal requirements had not been met. In the same vein, the decisions ordering and extending his pre-trial detention had been based on automatic and stereotyped wording and had lacked reasons. Lastly, the national courts had not assessed his objections to the decisions on his pre-trial detention in an objective and impartial manner, with the result that he had been deprived of his liberty arbitrarily.

41. Article 5 of the Convention reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> ..."

42. The Court notes that the Constitutional Court declared inadmissible the applicant's complaints under Article 5 of the Convention (with the exception of those relating to his detention following his conviction by the trial court), which were identical in wording to those submitted to the Court, on the ground that they had been lodged outside the statutory thirty-day time-limit. The Court further notes that the applicant's pre-trial detention on the basis of a reasonable suspicion that he had committed an offence ended on 9 April 2018 with the trial court's decision to convict him, and that he

lodged an individual application with the Constitutional Court on 19 September 2022. Given his failure to put forward any argument capable of calling into question the decision of the Constitutional Court in respect of the complaints under consideration, he must be deemed not to have exhausted domestic remedies in respect of those complaints (see *Gäfgen v. Germany* [GC], no. 22978/05, § 143, ECHR 2010). It follows that these complaints must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

43. In so far as his complaints may be regarded as falling within the scope of Article 5 § 1 (a) and 4 of the Convention, since they concern the lack of objectivity and impartiality in the domestic courts' assessment of his objections to the decisions on his pre-trial detention (see *Yılmaz Aydemir v. Türkiye*, no. 61808/19, 23 May 2023 for the applicability of Article 5 § 4 of the Convention to detention governed by Article 5 § 1 (a) of the Convention), the Court considers that the applicant failed to substantiate them, as he did not indicate any reason which would lead him to that conclusion. It follows that these complaints are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

### C. Alleged violations of Article 6 § 1 of the Convention

44. The applicant complained, under Article 6 of the Convention, that he had been denied a fair hearing for the following reasons. In particular, none of the defence submissions, statements and requests which had been favourable to him or other defendants had been examined at any stage of the proceedings. Even though those submissions and the whole body of evidence had made it clear that he had not committed the offences with which he was charged, the domestic courts had found him guilty on the basis of an assessment which had lacked reasons and had been vitiated by manifest and unforeseeable errors. Relying on Article 13 of the Convention, the applicant further submitted that the decisions of the Ankara Regional Court of Appeal, the Court of Cassation and the Constitutional Court showed that there had been no effective remedy against the judgment of the trial court.

45. The applicant further alleged that even though the principles of equality of arms and adversarial proceedings dictated that a hearing be held in criminal cases, neither the Ankara Regional Court of Appeal nor the Court of Cassation had considered his requests to that effect.

46. Being the master of the legal characterisation to be given in law to the facts of the case (see *Radomilja and Others*, cited above, § 126), the Court considers that these complaints fall to be examined under Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

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

*1. Allegedly erroneous outcome of the criminal proceedings against the applicant and the domestic courts' failure to deliver a reasoned judgment*

**(a) General principles**

47. The right to a fair trial under Article 6 § 1 is an unqualified right. However, what constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (see *O'Halloran and Francis v. the United Kingdom* [GC], nos. 15809/02 and 25624/02, § 53, ECHR 2007-III). The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the criminal proceedings (see, among many other authorities, *Taxquet v. Belgium* [GC], no. 926/05, § 84, ECHR 2010; *Schatschaschwili v. Germany* [GC], no. 9154/10, § 101, ECHR 2015; and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 250, 13 September 2016).

48. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Beuze v. Belgium* [GC], no. 71409/10, § 121, 9 November 2018). In evaluating the overall fairness of the proceedings, the Court will take into account, if appropriate, the minimum rights listed in Article 6 § 3, which exemplify the requirements of a fair trial in respect of typical procedural situations which arise in criminal cases. They can be viewed, therefore, as specific aspects of the concept of a fair trial in criminal proceedings in Article 6 § 1 (see, for example, *Salduz v. Turkey* [GC], no. 36391/02, § 50, ECHR 2008; *Gäfgen v. Germany* [GC], cited above, § 169; *Dvorski v. Croatia*, no. 25703/11, § 76, ECHR 2015; and *Schatschaschwili*, cited above, § 100). However, those minimum rights are not aims in themselves: their intrinsic aim is always to contribute to ensuring the fairness of the criminal proceedings as a whole (see *Beuze*, cited above, § 122; see also *Mayzit v. Russia*, no. 63378/00, § 77, 20 January 2005, and *Seleznev v. Russia*, no. 15591/03, § 67, 26 June 2008).

49. The general requirements of fairness contained in Article 6 apply to all criminal proceedings, irrespective of the type of offence in issue. Nevertheless, when determining whether the proceedings as a whole have been fair the weight of the public interest in the investigation and punishment of the particular offence in issue may be taken into consideration (see *Jalloh v. Germany* [GC], no. 54810/00, § 97, ECHR 2006-IX). Moreover, Article 6 should not be applied in such a manner as to put disproportionate difficulties in the way of the police authorities in taking effective measures to counter terrorism or other serious crimes in discharge of their duty under Articles 2, 3 and 5 § 1 of the Convention to protect the right to life and the right to bodily

security of members of the public (see *Ibrahim and Others*, cited above, § 252). However, public interest concerns cannot justify measures which extinguish the very essence of an applicant's defence rights (ibid.; *Jalloh*, cited above, § 97; *Bykov v. Russia* [GC], no. 4378/02, § 93, 10 March 2009; and *Aleksandr Zaichenko v. Russia*, no. 39660/02, § 39, 18 February 2010).

50. It is not for the Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention. For instance, an error of law or fact by the national court which is so evident as to be characterised as a "manifest error" – that is to say, an error that no reasonable court could ever have made – may be such as to disturb the fairness of the proceedings (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 62, ECHR 2015).

51. While this provision guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. Normally, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. Nor can the Court itself assess facts which have led a national court to adopt one decision rather than another; otherwise, it would be acting as a court of fourth instance and would be disregarding the limits imposed on its action (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012). Accordingly, the Court will not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Yüksel Yalçınkaya*, cited above, § 304, with further references, and *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 76, 22 June 2021). 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".

52. The Court further 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*, cited above, § 91). 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*, cited above, § 305 *in fine*, 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).

53. 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**

54. The Court notes that the applicant's complaints under Article 6 § 1 can be divided into two parts. The first part concerns the outcome of the criminal proceedings, as demonstrated by his disagreement with the domestic courts' assessment of the evidence, which, in his view, should have led to his acquittal. This was because the evidence had been, in his view, insufficient to justify his conviction. In the same vein, he contended that the domestic courts' assessment had also been vitiated by manifest errors of facts and law. The second part of his complaint under Article 6 § 1 concerns the domestic courts' alleged failure to state the reasons for their conviction.

55. As regards the first part of the complaint, the Court notes that the applicant, a first lieutenant assigned to the Mamak Twenty-Eighth Mechanised Brigade at the material time, was convicted of attempting to overthrow the constitutional order (Article 309 § 1 of the Criminal Code) and sentenced to aggravated life imprisonment. He was also found guilty of causing criminal damage (Article 152 § 1 (a) of the same Code) and sentenced to nine years' imprisonment. In this regard, the trial court found that he had been the commander of one of the several tanks (a tank with registration number 092662) which had left the military barracks of the Mamak Twenty-Eighth Mechanised Brigade at around 11.45 p.m. on the night of 15 July 2016 on the unlawful and illegitimate orders of a certain N.B., who had been the commander of the Tank Battalion.

56. The trial court found that the tanks had gone to the General Staff building in order to protect certain putschist soldiers who had seized control of the building and taken as hostages the Chief of General Staff and other

high-ranking commanders resisting the coup attempt. Accordingly, it found that the defendants' ultimate aim had been to protect those putschist soldiers with a view to achieving their common goal, namely seizing power in the country and overthrowing the democratically elected government.

57. Moreover, and more importantly, the trial court also found that the tanks in question, on their way to the General Staff building, had not only destroyed police cars and private vehicles, but had also opened fire on civilians and police officers who had either tried to persuade them to stop their actions or physically resisted them. Those acts resulted in the killing of five individuals (including one police officer) and the injury of seventy-two others, as well as criminal damage to public and private property, police cars and private vehicles. In the trial court's view, the use of tanks and the acts carried out with their help constituted the material element of the offence set out in Article 309 § 1 of the Criminal Code.

58. With regard to the applicant, the trial court found it established that he had fired at the headquarters of the Turkish Air Forces and at the upper parts of trucks on İnönü Avenue sometime between 5.30 and 6 a.m. on 16 July 2016 in order to disperse the civilians resisting the coup attempt. The trial court also found that once it had become clear that the coup attempt had failed, the applicant had had the hard disks of the security cameras of the General Staff building destroyed by tanks.

59. The Court further notes that the above-mentioned findings of the trial court were based on evidence, including, *inter alia*, independent witness testimony of civilians and camera footage from various sources showing the actions of the tanks and some of the defendants, including the applicant (see paragraph 5 for the list of evidence).

60. The Court reiterates that, in deciding whether applicants have received a fair hearing, it does not take the place of the domestic courts, which are in the best position to assess the evidence before them, establish facts and interpret domestic law (see *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, § 123, 27 October 2020, with further references). Furthermore, it is not the Court's task to rule on whether the available evidence was sufficient for an applicant's conviction or whether or not he or she was in fact guilty. These matters, in line with the principle of subsidiarity, are the province of the domestic courts (see *Karpenko v. Russia*, no. 5605/04, § 80, 13 March 2012, and *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 51, 28 January 2020).

61. In view of the foregoing considerations, the trial court's establishment of the facts, assessment of the evidence and interpretation and application of domestic law in the criminal proceedings against the applicant cannot be regarded as arbitrary or manifestly unreasonable. Similarly, the applicant's contention that the trial court committed a manifest error in its assessment of the facts and law remains wholly unsubstantiated.

62. It follows that the first part of the applicant's complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

63. As regards the second part of his complaint, the Court reiterates that the trial court provided a sufficiently detailed analysis of the accusations. It established the facts underlying the charges, considered the applicant's personal circumstances, and assessed the acts attributed to him based on the evidence and the parties' submissions. Consequently, the Court concludes that the trial court fulfilled its obligation to deliver a reasoned judgment in compliance with Article 6 § 1 of the Convention (see paragraph 5).

64. In so far as this complaint is based on the argument that the trial court failed to take into account important arguments which could have had a bearing on his conviction, the Court makes the following observations. In his application to the Court, the applicant contended that the trial court had not examined his plea of obedience to superior orders and had failed to take into account the fact that he had acted in the belief that there had been a terrorist attack on the General Staff Building.

65. As regards his first argument, the Court notes that the trial court duly assessed it in detail and dismissed it in view of the sequence of events as they had unfolded on the night of 15 July 2016 (see paragraph 20 above). In the trial court's view, these events meant that even the civilian population had been aware that there had been a coup attempt by the time the tanks had left the military barracks to provide security for the putschist soldiers who had taken hold of the General Staff building. In this regard, the trial court stressed that at 11 p.m. on the night in question the Prime Minister had declared on a nationwide television channel that a coup attempt was in progress and that the tanks had left the barracks at 11.45 p.m. Moreover, the defendants, including the applicant, had not only disregarded all the repeated warnings and resistance of civilians, but had also opened fire on them, attempted to run them over and broken down barricades in order to reach the General Staff Building. Once there, the barrels of the tanks had been directed at civilians, and the defendants had witnessed members of the Special Forces, who had been among the putschist soldiers, shooting at civilians and the police. They had also observed helicopters supplying the putschist soldiers with materials and firing at civilians. Finally, the trial court considered that the defendants had used the tanks in the middle of the capital in complete disregard of the relevant procedures and modalities for which they had been trained.

66. As regards the applicant's second argument, namely that he had been merely following the orders of his superiors, the Court observes that that plea was also duly assessed by the trial court in compliance with its duty under Article 6 § 1 of the Convention to properly examine the defence submissions. In that regard, the trial court took the view that the defendants had not been given a legitimate order because the subject and reasons underpinning it had been unlawful, and that they had been under no obligation to carry out an

order the subject of which constituted an offence. The trial court further pointed out that the defendants, including the applicant, had known that they had been carrying out an unlawful order, and that no one could pray in aid the military hierarchy and discipline after being involved in unjustified acts of murder and other acts resulting in bodily harm. Lastly, it was stated that the defendants, as commissioned officers, knew that an order for the deployment of tanks with live weapons in the middle of Ankara at night could only have been given by the Committee of Ministers and not by a brigade commander.

67. The above-mentioned line of reasoning of the trial court in respect of the two arguments was also upheld by the Ankara Regional Court of Appeal and the Court of Cassation. Subsequently, when the applicant submitted the complaint now under consideration to the Constitutional Court, using the same wording as in his application to the Court, it was declared inadmissible. In view of the level of detail contained in the trial court's in-depth analysis of the two arguments, and the fact that the applicant's submissions before the higher courts, as submitted to the Court, did not show that he had raised any new or additional points which were not considered by the trial court, the Court concludes that the simple endorsement of those reasons by the higher courts would not give rise to a problem under Article 6 § 1 of the Convention.

68. In view of the foregoing considerations, the Court considers untenable the applicant's allegation that the domestic courts failed to examine the arguments or any other points in his favour.

69. It follows that this complaint is also inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

### *2. Alleged failure to hold a hearing before the Regional Court of Appeal and the Court of Cassation*

#### (a) General principles

70. General principles regarding the right to a public hearing in criminal courts and, in particular, in appellate courts have recently been summarised in *Deliktaş v. Türkiye* (no. 25852/18, §§ 40-44, 12 December 2023).

71. The Court reiterates that Article 6 § 1 of the Convention does not entail an automatic obligation to hold a public hearing each and every time a case is brought before a court of appeal or a court of second-instance which has jurisdiction to examine both questions of fact and law arising from judgments of lower courts. The question whether a hearing is necessary before those courts depends essentially on the nature of the dispute which they are called upon to resolve (ibid., § 48). In this respect, the Court held in *Deliktaş* (cited above) that in cases where the facts forming the basis of charges against the accused consisted of evidence of a subjective and intangible nature, such as statements made by the accused or witnesses whose credibility could have an important bearing on the findings of the

first-instance court, a second-instance court, which was competent to review a case as regards questions of fact and law, could not leave a request for a hearing unanswered. Accordingly, the Court found a violation of Article 6 § 1 of the Convention, holding that, although the issues which the Regional Court of Appeal had been called upon to examine had not been such as to preclude from the outset the need to hold a hearing, that court had failed to consider the applicant's request for a hearing.

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

72. In the present case, the Court observes at the outset that, contrary to the applicant's allegations, both the Ankara Regional Court of Appeal and the Court of Cassation provided reasons for dismissing his requests for a hearing. The present case is therefore distinguishable from *Deliktaş* (cited above). Moreover, it is clear from the documents submitted by the applicant that he did not argue in his submissions dated 14 April 2018 and 20 July 2020 that his conviction had been based mainly on evidence of a subjective and intangible nature. Nor did he do so in his application to the Court. In that connection, the Court cannot but note that, according to the documents submitted by the applicant, his one-page submission to the Ankara Regional Court of Appeal did not contain any reasons for the need to hold a hearing before that court. In view of the above, the Court is led to conclude that the applicant's appeal did not raise any questions of fact or law which could not be adequately resolved on the basis of the case file and the written submissions (see *Mtchedlishvili v. Georgia*, no. 894/12, § 37, 25 February 2021).

73. As regards the proceedings before the Court of Cassation, the Court observes that in his cassation appeal dated 20 July 2020 the applicant submitted that he had not intended to take part in the coup attempt and had merely followed the orders of his superiors. However, the Court cannot but note that the same arguments had already been examined twice: first by the trial court and then by the Ankara Regional Court of Appeal. In the absence of any other arguments justifying the need for a hearing before the Court of Cassation, and in view of the fact that the Court of Cassation duly considered the applicant's request for a hearing, the Court sees no reason to depart from its conclusions as set out in the previous paragraph.

74. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

## D. Alleged violations of Article 6 § 2 of the Convention

75. The applicant further complained of several breaches of his right to be presumed innocent from the very beginning of the criminal investigation. Firstly, although the criminal investigation was supposed to be covered by

the principle of secrecy, the press had been informed of the case and images from the case file had been disclosed, including on social media, which had the effect of declaring him guilty in the public eye from the outset. Secondly, while the proceedings had been pending, senior public officials had made statements, ranging from the type of clothes they should wear to what judgment the courts should give in their case. Lastly, the applicant complained that the members of the trial court had expressed their personal opinion in the reasoned judgment by stating that he strongly disliked the President of the Republic.

76. Article 6 § 2 of the Convention reads as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

**(a) The general principles**

77. The object and purpose of the Convention, as an instrument for the protection of human beings, requires that its provisions be interpreted and applied so as to make its safeguards practical and effective (see, *inter alia*, *Soering v. the United Kingdom*, 7 July 1989, § 87, Series A no. 161, and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 162, ECHR 2011). The Court has expressly stated that this applies to the right enshrined in Article 6 § 2 (see, for example, *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Allen v. the United Kingdom* [GC], no. 25424/09, § 92, ECHR 2013).

78. Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law". In the context of a criminal trial, it acts as a procedural guarantee, imposing requirements in respect of, *inter alia*, the burden of proof; legal presumptions of fact and law; the privilege against self-incrimination; pre-trial publicity; and premature expressions, by the trial court or by other public officials, of a defendant's guilt (see *Allen*, cited above, § 93, with references therein, and *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, § 101, 11 June 2024).

79. A summary of general principles under Article 6 § 2 of the Convention concerning premature expressions by the trial court or other public officials may be found in *Nadir Yıldırım and Others v. Türkiye* (no. 39712/16, §§ 66-70, 28 November 2023).

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

80. The Court notes at the outset that the applicant has not submitted a single press article, social media post or any other written material in support of his claim that the press had disseminated leaked material from the criminal investigation against him. The same also holds true for his complaint regarding the prejudicial statements allegedly made by public officials (see *Karakaş and Yeşilırmak v. Turkey*, no. 43925/98, § 53, 28 June 2005, and

compare *Ürfi Çetinkaya v. Turkey*, no. 19866/04, §§ 144-45, 23 July 2013). That being the case, the Court considers that the applicant has failed to lay the basis of an arguable complaint of a violation of his right to be presumed innocent.

81. It follows that these complaints are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

82. As regards the third part of the applicant's complaint, the Court finds nothing to suggest that the trial court adopted as its own view the testimony according to which the applicant strongly disliked the President of the Republic. Given that the subject matter of the acts on which the accusations against the applicant inevitably had a political dimension (since they were aimed at an attempt to overthrow the constitutional order), the Court cannot from the outset dismiss as completely irrelevant the trial court's reference to the witness statement in question in its judgment when dealing with the merits of the case. Nor could that reference be regarded as implying a premature expression of guilt, as there was nothing to that effect in the statement in question. Finally, the Court could not find that this reference implied that the members of the trial court had started the trial with the preconceived idea that the applicant had committed the offence with which he had been charged, as they seemed to have taken note of the matter in question by referring to the impugned witness statement.

83. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

### E. Alleged violation of Article 6 § 3 (b) and (c) of the Convention

84. The applicant alleged that his rights of defence had been violated as a result of the domestic courts' failure to upload all the documents contained in the physical file into the UYAP system and of his inability to examine the file in prison conditions. He also complained that the audiovisual recording of his meetings with his lawyer at prison and the time restrictions imposed on such meetings constituted a further breach of his rights of defence. The Court, being the master of the legal characterisation to be given in law to the facts of the case (see *Radomilja and Others*, cited above, § 126), considers that these complaints fall to be examined under Article 6 § 3 (b) and (c) of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

..."

85. The Court notes that the applicant has failed to specify in any way which documents from the case file had not been uploaded to the UYAP, and how this failure had affected his ability to effectively challenge the charges against him in a manner consistent with the requirements of a fair trial under Article 6 of the Convention. He also failed to specify what attempts he had made to access the case file while in prison, whether such attempts had been rejected, and if so, on what grounds.

86. The Court further notes that the applicant complained in general terms about the recording of his meetings with his lawyer in the prison setting and the restrictions placed on the duration of those meetings. However, he failed to indicate in any way the time, place, duration, frequency and extent of any such restrictions, and whether he had raised this matter with the domestic authorities and, if so, why such a course of action had not produced a positive result.

87. In view of the above, the Court holds that the applicant failed to substantiate the above-mentioned complaints. It follows that they are inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore be rejected pursuant to Article 35 § 4 thereof.

### F. Remaining complaints under Article 6 of the Convention

88. The applicant further alleged that the trial court had unjustifiably dismissed his requests for the collection of evidence, for an on-site inspection and the examination of witnesses who had been present at the scene of the crime and for digital material, which had prejudiced his right of defence and thus breached his right to a fair trial.

89. However, the applicant has not specified in any way the evidence that had not been collected, the investigative acts that had not been carried out, the digital material that had not been examined, the identities of the witnesses who had been present at the incident scene and why their examination was relevant to the subject matter of the charges, and the resulting prejudice to his right to a fair trial.

90. Accordingly, the Court finds that this part of the application is wholly unsubstantiated and must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, by a majority,

*Declares* the application inadmissible.

Done in English and notified in writing on 12 December 2024.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President