



Further violations of the Convention in follow-up cases concerning convictions for terrorism offences based on use of Bylock messaging application

In today's **Committee judgments**¹ in the cases of [Bozyokuş and Others v. Türkiye](#) (application no. 39586/20 and 131 other applications), [Karslı and Others v. Türkiye](#) (no. 18693/20 and 1,435 other applications) and [Seyhan and Others v. Türkiye](#) (no. 57837/19 and 851 other applications) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 7 (no punishment without law) and/or a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The cases concerned the applicants' convictions for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, referred to as "the FETÖ/PDY"). The authorities consider FETÖ/PDY to be behind the coup attempt that took place in Türkiye on 15 July 2016.

The 2,420 applications making up these cases are part of the [thousands of applications](#) on the Court's docket that concern issues similar to those ruled on in the Court's Grand Chamber case of [Yüksel Yalçınkaya v. Türkiye](#) (application no. 15669/20) and Chamber case of [Demirhan and Others v. Türkiye](#) (applications nos. 1595/20 and 238 others).

As in those judgments, the Court found that the Turkish courts' categorical approach to the use of the encrypted messaging application called "ByLock" – notably that anyone who had used the application could, in principle, be convicted on that basis alone of membership of an armed terrorist organisation – had breached the applicants' right to effective protection against arbitrary prosecution, conviction and punishment and/or their fair trial rights.

The judgments are final.

Principal facts

The applicants are 2,420 Turkish nationals.

After the 15 July 2016 coup attempt the applicants in these three cases were charged with membership of an armed terrorist organisation under Article 314 § 2 of the Turkish Criminal Code in view of their suspected membership of the FETÖ/PDY.

They were subsequently convicted as charged based decisively on their alleged use of ByLock, which the Turkish courts held had been designed for the exclusive use of FETÖ/PDY members under the guise of a global application.

The Turkish Constitutional Court summarily dismissed the individual applications lodged against their convictions.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

The applicants complained of a violation of Article 7 (no punishment without law) and/or Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The applicants who relied on Article 7 complained that their convictions had not been foreseeable as required under that provision and had been based on an extensive and arbitrary interpretation of the relevant laws.

The applicants who relied on Article 6 § 1 complained of shortcomings in the criminal proceedings against them with regard to the decisive evidence in question and their inability to effectively challenge it.

The applications were lodged with the European Court of Human Rights on various dates between 2019 and 2023.

Judgment was given in all three cases by a Committee of three judges, composed as follows:

Jovan Ilievski (North Macedonia), *President*,
Péter Paczolay (Hungary),
Juha Lavapuro (Finland),

and also Dorothee von Arnim, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the context to the present cases had been set out by the Court in its Grand Chamber judgment [Yüksel Yalçinkaya v. Türkiye](#).

In that judgment the Court had found violations of Articles 7 and 6 § 1 because of the Turkish courts' ruling that anyone who had used ByLock could, in principle, be convicted on that basis alone of membership of an armed terrorist organisation. The domestic courts' characterisation of the use of ByLock, and the uniform and global approach adopted by the Turkish judiciary *vis-à-vis* the ByLock evidence, had in practice the effect of equating the mere use of ByLock with knowingly and willingly being a member of an armed terrorist organisation. The situation that led to a finding of a violation of Articles 7 and 6 § 1 of the Convention set out in that judgment, and subsequently reiterated in *Demirhan and Others v. Türkiye*, had therefore not been prompted by an isolated incident specific to that applicant's case, but had stemmed from a systemic problem affecting a large number of persons.

The Court saw no reason in these three cases to depart from the findings of violations made in *Yüksel Yalçinkaya* and *Demirhan and Others*. The Court did not rule out that there might be other evidence in the applicants' case files – that is, evidence other than the applicants' mere use of ByLock – that might demonstrate, alone or cumulatively, their membership of the FETÖ/PDY. However, the fact remained that the establishment of the applicants' use of ByLock had served, on its own, as conclusive proof of the presence of all the constituent elements of the crime of membership of an armed terrorist organisation as defined in domestic law. Such an approach had been contrary to the object and purpose of Article 7 which is to provide effective safeguards against arbitrary prosecution, conviction and punishment and/or had unduly restricted the rights of the defence protected by Article 6 § 1.

The Court therefore concluded, in all three cases, that there had been a violation of Article 7 and/or Article 6 § 1 of the Convention on the basis of the principles established in *Yüksel Yalçinkaya*, and subsequently adopted in *Demirhan and Others*.

Other articles

The Court considered that it had dealt with the main legal questions raised by the case and that there was no need to address any of the applicants' remaining complaints.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any damage sustained by the applicants. It noted that the applicants had the possibility under Turkish law to have the domestic proceedings reopened following the delivery of the present judgments, which would in principle constitute the most appropriate form of redress.

Lastly, as in *Demirhan and Others*, it considered that it was not justified to make any awards for costs and expenses in respect of follow-up applications of this type.

The judgment is available only in English.

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