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La Corte Edu sulla violazione del principio di presunzione d'innocenza
(CEDU, sez. II, sent. 28 novembre 2023, ric. n. 39712/16)

La questione esaminata dalla Corte insiste sull'asserita violazione dell'art. 6, paragrafo secondo, della Convenzione Edu, nella misura in cui l'autorità giudiziaria avrebbe leso il principio della presunzione d'innocenza nei confronti dei ricorrenti, deputati della Grande Assemblea Nazionale Turca, nel corso di un procedimento volto ad accertare la sussistenza dell'immunità parlamentare di questi ultimi.

Da un punto di vista generale, la Corte ribadisce che la presunzione d'innocenza costituisce uno degli elementi fondamentali per assicurare un giusto processo e la sua violazione si esplica qualora una decisione giudiziaria o una dichiarazione da parte di un pubblico ufficiale nei confronti di una persona accusata di un reato rifletta l'opinione che quella persona sia colpevole prima ancora che la sua colpevolezza sia stata accertata secondo la legge.

Nel caso di specie, la Corte osserva come l'autorità giudiziaria, nei rapporti di indagine inoltrati al Ministero della Giustizia, abbia utilizzato delle espressioni che riflettevano una presunzione di colpevolezza, e non già d'innocenza, a carico dei ricorrenti, sebbene questi ultimi non fossero ancora stati dichiarati colpevoli per i reati loro ascritti. Una violazione tanto più grave se si considera il ruolo rivestito dalla magistratura nella società per cui è della massima importanza che i tribunali utilizzino un linguaggio consono al principio della presunzione di innocenza, soprattutto se vogliono ispirare la fiducia del pubblico in una società democratica.

La Corte ha così ritenuto la fondatezza dei ricorsi per violazione dell'art. 6 della Convenzione.

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

SECOND SECTION

CASE OF XXX v. TÜRKİYE
(Application no. 39712/16)

JUDGMENT
STRASBOURG
28 November 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Türkiye,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Arnfinn Bårdsen, *President*,
Jovan Ilievski,
Egidijus Kūris,
Saadet Yüksel,
Lorraine Schembri Orland,
Diana Sârcu,
Davor Derenčinović, *judges*,
and Hasan Bakırcı, *Section Registrar*,
Having regard to:
the application (no. 39712/16) 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") by six Turkish nationals, XXX ("the applicants"), on 29 June 2016;
the decision to give notice to the Turkish Government ("the Government") of the complaint concerning the presumption of innocence and to declare the remainder of the application inadmissible;
the parties' observations;
Having deliberated in private on 7 November 2023,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The applicants complained of a breach of their right to be presumed innocent under Article 6 § 2 of the Convention, arguing that in a criminal case brought against them the president of the trial court had stated in the investigatory reports drawn up for the lifting of their parliamentary immunity that they had committed the offences imputed to them.

THE FACTS

2. The applicants' details are set out in the appended table. They were represented by Mr M. Beştaş, a lawyer practising in Diyarbakır.
3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Türkiye.
4. The facts of the case may be summarised as follows.
5. In 2007 the Diyarbakır Chief Public Prosecutor's Office opened a criminal investigation into suspected links between certain individuals, including the applicants, and the activities of the KCK/TM (Koma Civakên Kurdistan – The Kurdistan Communities Union/Assembly of Türkiye), which is regarded by the Court of Cassation as an armed terrorist organisation and the "urban wing" of the PKK (Workers' Party of Kurdistan).

6. On 9 June 2010 the Diyarbakır public prosecutor's office filed a bill of indictment against a number of persons, including the applicants, with the Diyarbakır Sixth Assize Court, which had special jurisdiction to hear cases relating to the aggravated crimes specified in Article 250 § 1 of the Code of Criminal Procedure ("the CCP"), as in force at the material time. The public prosecutor charged the applicants XXX with, *inter alia*, membership of an armed terrorist organisation under Article 314 § 2 of the Criminal Code ("the CC"), the applicant XXX with commanding such an organisation under the first paragraph of the same provision, and the applicant XXX with attempting to disrupt the unity of the State and its territorial integrity under Article 302 of the CC.

7. Following a legislative change the Diyarbakır Sixth Assize Court, before which some sixty-three hearings had been held, was closed and the criminal proceedings against the applicants were transferred to the Diyarbakır Second Assize Court (hereinafter referred to as "the trial court").

8. In the parliamentary elections held on 1 November 2015 the applicants were elected as members of the Turkish Grand National Assembly ("the National Assembly") for the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party. Since the applicants thus acquired parliamentary immunity under Article 83 of the Constitution, the criminal proceedings against them could only be pursued if the National Assembly lifted that immunity.

9. On 7 March 2016 the president of the trial court drew up an investigatory report (*fezleke*) in respect of each applicant whereby he requested the General Directorate for Criminal Matters of the Ministry of Justice to lift their parliamentary immunity in accordance with Article 83 of the Constitution. In each report, the president first reproduced, *inter alia*, certain extracts from the bill of indictment, such as the contents of intercepted telephone conversations of the applicants and audio recordings of speeches they had given, which had been obtained via covert listening devices, and then drew inferences from them, stating that the applicants had carried out certain acts which laid the foundations for the charges against them. In doing so, the president largely reproduced the wording and conclusions contained in the bill of indictment. However, in the subsequent section of each report, entitled "Assessment", the president stated that "even though it [was] seen that [the applicant] [had] committed the offences imputed to [him or her], it ha[d] been understood that [he or she] was elected as a member of the National Assembly in the parliamentary elections of 1 November 2015". By the same token, the final part of each report, entitled "Conclusion and Assessment" read, in so far as relevant, as follows: "... it is understood that [the applicant] committed the offences imputed to [him or her]".

10. At a hearing held on 15 March 2016, the counsel for the applicants and the counsel for some of the other defendants asked the members of the trial court to recuse themselves and withdraw from sitting in the case on account of the language employed in the investigatory reports, where it had been stated that the applicants had committed the offences of which they had been accused. The court, with the participation of its president, dismissed the withdrawal request on the grounds that none of the conditions enumerated in Articles 22 and 23 of the CCP had been met. The court further noted that since a request to lift the immunity of the defendants who were members of the National Assembly could not be made without indicating the accusations levelled against them, the applicants' withdrawal request had to be regarded under Article 31 § 1 (c) of the CCP as having been made with the intention of prolonging the proceedings. The court indicated that its

decision was amenable to an objection before the Diyarbakır Third Assize Court within seven days.

11. On 22 March 2016 the applicants lodged an objection against the above-mentioned interlocutory decision with the Diyarbakır Third Assize Court, arguing that the trial court had failed to comply with the procedure to examine requests for withdrawal as laid down in Article 27 § 1 of the CCP in that all the judges in respect of whom withdrawal had been requested had taken part in the assessment of that request. Furthermore, even though the trial court had assessed the request from the standpoint of Articles 22 and 23 of the CCP, it had failed to rule on it in so far as it concerned Article 24 § 1 of the CCP. That part of the withdrawal request had been based on the judges' alleged lack of impartiality and had been left unaddressed. The expression of opinion by a judge fell within the ambit of Article 24 § 1 of the CCP and since the withdrawal request had been based on the words used by the president of the court, he could no longer be regarded as impartial. On that basis, it was wholly unjustified to consider their application as having been made with the intention of prolonging the proceedings. Lastly, the expressions used by the president of the trial court had clearly infringed their right to be presumed innocent as protected by the Constitution and the Convention.

12. On 24 March 2016 the Diyarbakır Third Assize Court upheld the objection and overturned the trial court's interlocutory decision, holding that the withdrawal request could not be regarded as having been made with the intention of prolonging the proceedings; thus, it should have been examined in accordance with the procedure laid down in Article 27 § 1 of the CCP. The court's decision contained no assessment in respect of the applicants' allegations of a breach of their right to be presumed innocent, as protected under Article 6 § 2 of the Convention.

13. The president of the trial court and a member of its bench whose withdrawal was also requested composed a written opinion dated 24 March 2016 in which they submitted that previous requests for the lifting of parliamentary immunity in which they had only voiced concerns about the commission of offences by defendants who had been elected as members of the National Assembly had been rejected by the General Directorate for Criminal Matters of the Ministry of Justice. The observations made in the investigatory reports could not thus be regarded as expressions of opinion and should be understood in the context of those rejections.

14. At a hearing held on 25 March 2016 before the trial court, counsel for the applicants stated that the reason why they had lodged an application for the withdrawal of the president and two other members of the bench was that the investigatory reports had been signed by all three of them. At the end of the hearing, the trial court, with the participation of judges whose withdrawal had not been sought, dismissed the application, holding that the content of the investigatory reports, which had been written with a view to the lifting of the parliamentary immunity and in compliance with an obligation stemming from Article 83 of the Constitution, had not been such as to cast doubt on the impartiality of the judges in question. The trial court's decision contained no assessment as regards the presumption of the applicants' innocence. The court indicated that its decision was amenable to objection before the Diyarbakır Third Assize Court within seven days.

15. On different dates the counsel for the applicants lodged objections against the above-mentioned interlocutory decision with the Diyarbakır Third Assize Court, arguing, *inter alia*, that the wording employed in the investigatory reports had constituted a genuine ground for

withdrawal and that it had also given rise to a breach of the applicants' right to be presumed innocent.

16. On 6 April 2016 the Diyarbakır Third Assize Court dismissed the objection lodged on behalf of the applicants, holding that the investigatory report containing the request for the lifting of the parliamentary immunity was a procedural act of a preparatory nature, namely to overcome the obstacle to the criminal proceedings which was laid down in Article 83 of the Constitution. Accordingly, the statements contained in those reports could not be regarded as being an opinion pronounced by the trial court prior to the delivery of the judgment on the merits. The Diyarbakır Third Assize Court did not undertake an assessment concerning the alleged breach of the applicants' right to be presumed innocent.

17. On 11 April 2016 the applicants lodged an individual application with the Constitutional Court whereby they complained that the wording employed by the president of the trial court had given rise to a breach of their right to be tried by an impartial court under Article 6 § 1 of the Convention and of their right to be presumed innocent under Article 6 § 2 of the Convention, arguing that they had had no other remedy at their disposal by which to submit those complaints.

18. At a hearing held on 11 April 2016, the trial court dismissed the applicants' lawyer's request that the court should await the outcome of the individual application that they had lodged with the Constitutional Court before proceeding with the case, holding that the issue of the requested withdrawal of judges would be examined at the appellate stage.

19. On 16 May 2016 the Constitutional Court delivered its judgment, in which it only examined the applicants' complaint under Article 6 § 1 of the Convention and found it inadmissible. Noting that the criminal prosecution of the applicants could not have been pursued until a decision to lift their immunity had been given, the Constitutional Court held that the applicants could avail themselves of certain administrative and judicial remedies – without specifying what those remedies were – upon the completion of the criminal proceeding against them and found that they had failed to exhaust the domestic remedies. No mention was made in the Constitutional Court's judgment of the applicants' complaints under Article 6 § 2 of the Convention.

20. On 9 May 2017 the High Council of Judges and Prosecutors issued a decree in accordance with which the president of the trial court, whose withdrawal the applicants had sought, was re-assigned to a court located in another city.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

A. Constitution

21. Article 83 of the Constitution, which concerns parliamentary immunity, reads as follows:

"Members of the Turkish Grand National Assembly shall not be liable for their votes and statements in the course of the Assembly's work, for the views they express before the Assembly or for repeating or disseminating such views outside the Assembly, unless the Assembly decides otherwise at a sitting held on a proposal by the Bureau.

A member who is alleged to have committed an offence before or after election shall not be arrested, questioned, detained or tried unless the Assembly decides otherwise. This provision shall not apply in cases where a member is caught in the act of committing a crime punishable by a

heavy penalty and in cases falling under Article 14 of the Constitution, provided that an investigation has been initiated before the election. However, in such situations the competent authority shall notify the Turkish Grand National Assembly immediately and directly.
The execution of a criminal sentence imposed on a member of the Turkish Grand National Assembly either before or after his or her election shall be suspended until he or she ceases to be a member; the statute of limitations shall not apply during the term of office.
The investigation and prosecution of a re-elected member shall be subject to a fresh decision by the Assembly to lift immunity.
Political party groups in the Turkish Grand National Assembly shall not hold debates or take decisions regarding parliamentary immunity."

22. Provisional Article 20 of the Constitution, as adopted by the National Assembly on 20 May 2016 (by way of Law no. 6718), reads as follows:
"On the date when this Article is adopted by the Grand National Assembly of Turkey, the provision of the first sentence of the second paragraph of Article 83 of the Constitution shall not be applied to members who are the subject of requests for the lifting of immunity which have been submitted by the authorities with the power to investigate or grant leave for an investigation or prosecution, the public prosecutor's office or the courts to the Ministry of Justice, to the Prime Minister's Office, to the Office of the President of the Grand National Assembly of Turkey and to the chair of the Joint Committee comprising the members of the Constitutional Committee and the Justice Committee.
Within fifteen days of the entry into force of this Article, any files with the chair of the Joint Committee comprising the members of the Constitutional Committee and the Justice Committee, the Office of the President of the Grand National Assembly of Turkey, the Prime Minister's Office and the Ministry of Justice concerning the lifting of parliamentary immunity shall be returned to the competent authority so that it can take the necessary action."

B. Code of Criminal Procedure

23. The relevant provisions of the Code of Criminal Procedure, as they were in force at the material time, read as follows:
Circumstances disqualifying a judge [from] hearing a case

Article 22
"1. [In the event that] the judge
(a) sustained damage as a result of the offence;
(b) ever had a relationship in the form of marriage, guardianship or administratorship with the suspect, defendant or victim, even if [such relationship] subsequently ended;
(c) is a first-degree relative, by consanguinity or marriage, of the suspect, defendant or the victim;
(d) is related by adoption to the suspect, defendant or the victim;
(e) is related up to the third degree (inclusive) to the suspect, defendant or victim;
(f) is a relative by marriage of up to the second degree (inclusive) with the suspect, defendant or victim, even if the marriage has ended;
(g) has been involved in the same case as public prosecutor, judicial police, counsel for the suspect or the defendant or legal representative of the victim;

(h) has been heard in the same case in the capacity of a witness or expert;
[he or she] shall not sit as a judge."
Judge[s] disqualified from proceedings

Article 23
"(1) A judge who has taken part in the decision or the judgment cannot take part in the decision or the judgment to be given by a higher court in respect of the [previous] judgment.
(2) A judge who has played a role at the investigation stage of the [same] case cannot play any role at the trial stage.
(3) When criminal proceedings are reopened, a judge who has played a role in the previous proceedings cannot play a role in the same [reopened] case."
Grounds for withdrawal of judge[s] and parties able to make such applications

Article 24
"(1) the withdrawal [of a judge] may be requested not only in the circumstances disqualifying a judge [from] trying a case but also on the basis of any other grounds which cast doubt on his or her impartiality.
(2) The public prosecutor, suspect or defendant or their counsel, the intervening party (*katılan*) or his or her legal representative may lodge an application for the withdrawal of the judge.
(3) Where any of the persons [indicated in subparagraph 2] so request, the names of judges who will take part in the decision or the judgment shall be notified to them."
Time-limit for applications for the withdrawal of a judge on [any] grounds casting doubt on his or her impartiality

Article 25
"(1) Applications for the withdrawal of a judge on [any] grounds casting doubt on his/her impartiality may be lodged until the commencement of the defendant's questioning in the first-instance courts, and in matters requiring a hearing, until the presentation to the other members [of the bench] of the assessment report at regional courts of appeal or the report drawn up by the judge rapporteur or the member of the Court of Cassation assigned [for that purpose] [at the Court of Cassation]. In other cases, an application for the withdrawal of a judge may be lodged until the commencement of the examination.
(2) An application for the withdrawal of a judge may also be lodged until the completion of the hearing or the examination on [any] grounds which emerged or became known thereafter. However, such an application shall be lodged within seven days of the ground for withdrawal becoming known."
Procedure for the application for withdrawal

Article 26
"(1) The application is lodged with the court to which [the judge whose withdrawal is being requested] belongs, or by submitting it to a clerk of the court who shall make a written record of it."

(2) The person who lodges an application for withdrawal is under an obligation to provide, in a single submission, all the grounds for withdrawal which he or she has come to know and to put them forward together with the facts within the time-limit.
(3) The judge whose withdrawal is requested shall submit his or her views concerning the grounds provided for the withdrawal in writing."
The court ruling on the application for withdrawal

Article 27
"(1) An application for withdrawal shall be decided by the court of which [the contested judge] is a member. However, the judge whose withdrawal was requested cannot take part in the deliberation [on the application]. If the court cannot be composed for that reason, [the competence] to make a decision on this subject belongs to:
a) if the application for withdrawal is in respect of a judge of a criminal court of general jurisdiction (*asliye ceza mahkemesi*), the assize court of the same judicial district;
b) if the application for withdrawal is in respect of a judge of an assize court and if the assize court is comprised of several chambers within a given judicial district, the chamber that follows it in numerical terms, and for the last chamber, the first chamber [of the assize court], and if there is only one chamber of the assize court within a given judicial district, the closest assize court [thereto].
(2) If the application for withdrawal is in respect of a judge of a criminal magistrate's court (*sulh ceza hakimi*), the criminal court of general jurisdiction [shall decide on the application], and [if it is] in respect of a single judge, the assize court within the same judicial district shall decide [on the application].
(3) Applications for withdrawal in respect of the president or members of the criminal chambers of the regional courts of appeal shall be examined and decided by the chamber where [the contested president or the member] sits without the participation of the president or member whose withdrawal was requested.
(4) If the application for withdrawal is accepted, another judge or court shall be appointed to hear the case."
Decisions to be given upon an application for withdrawal and the legal remedies to be pursued

Article 28
"(1) Decisions accepting withdrawal requests are final; an objection may be filed against decisions dismissing [such requests]. A dismissal decision resulting from an objection [against the withdrawal request] shall be examined in the context of the judgment [on the merits]."
Withdrawal of a judge and the adjudicating authority

Article 30
"(1) In the event that the judge withdraws on the basis of reasons which entail his or her disqualification, the authority shall assign another judge or a court to try the case.

(2) In the event that the judge seeks to withdraw by advancing grounds which cast doubt on his or her impartiality, the authority shall rule whether the withdrawal is appropriate or not. If withdrawal is found appropriate, another judge or court shall be assigned to try the case.
(3) Article 29 shall be applied in respect of acts which have been carried out in cases where delay is prejudicial."
Dismissal of application for withdrawal

Article 31
"(1) The court shall dismiss an application for withdrawal lodged during a trial in the following circumstances:
(a) the application for withdrawal has not been lodged on time;
(b) the ground or evidence [therefor] has not been put forward;
(c) it is clearly inferable that the application for withdrawal has been lodged to prolong the proceedings.
(2) In such circumstances, the application for withdrawal shall be dismissed by the judicial panel [of the court] with the participation of the judge in question in the deliberations [or] by the judge in question in the single judge courts.
(3) An objection may be filed against decisions on this subject."
Compensation claim

Article 141
"(1) All kinds of pecuniary and non-pecuniary damage [sustained] in the course of [a] criminal investigation or prosecution may be claimed from the State by anyone:
(a) who has been arrested or taken into or kept in detention under conditions or in circumstances not complying with the law;
(b) who has not been brought before a judge within the statutory permissible duration of police custody;
(c) who has been detained without having been reminded of his or her statutory rights or who has been deprived of the opportunity to benefit from those rights;
(d) who, even if he or she was detained lawfully during the investigation or trial, has not been brought before a judicial authority within a reasonable time and has not obtained a judgment on the merits within a reasonable time;
(e) who, after being arrested or detained in accordance with the law, was not subsequently committed for trial or was acquitted;
(f) who was sentenced to a term [of imprisonment] the duration of which was less than the time spent under arrest or in pre-trial detention or [who] was necessarily subjected to a [judicial] fine because that was the only penalty provided by law for the offence committed [by that person];
(g) who has not been informed in writing or, where that has not been possible, verbally, of the reasons for his or her arrest or pre-trial detention;
(h) whose next of kin has not been informed of his or her arrest or pre-trial detention;
(i) in respect of whom a search warrant has been executed in a disproportionate manner;

(j) whose property or other assets have been confiscated without the conditions [provided for by law] having been fulfilled, or without the necessary precautions for the safekeeping [of confiscated property or assets] having been taken, or whose property or other assets have been used for an unauthorised purpose or not returned in time;
(k) who has not been allowed to have recourse to the legal remedies indicated in the Code concerning the act of arrest or pre-trial detention.
(2) Authorities taking the decisions laid down in subparagraphs (e) and (f) of the first paragraph shall inform the interested party of his or her right to compensation, and that right shall be recorded in the decision given.
(3) Except for the cases enumerated in the first paragraph, a compensation claim arising from the acts or decisions of judges and public prosecutors during a criminal investigation and prosecution, including personal fault, tortious acts, or other types of liability, may only be lodged against the State."
Conditions for a compensation claim

Article 142
"A claim for compensation may be lodged within three months of the person concerned being informed that the decision or judgment has become final, or, in any event, within one year of the decision or judgment becoming final."
End of the hearing and the judgment [to be given]

Article 223 § 8
"Where it becomes apparent that [any of] the grounds for the discontinuance of a criminal proceedings set out in the Criminal Code are present or that the prerequisites for [pursuing] a particular criminal investigation or prosecution are not met, a decision to discontinue the case shall be taken. However, if the commencement of a criminal investigation or prosecution has been contingent upon a condition and it is understood that the condition has not been met, a decision to halt [the proceedings] shall be given with a view to awaiting the materialisation of the condition. Such a decision may be objected against."
Appeal of decisions given prior to the judgment [on the merits]

Article 287
"Court decisions taken prior to the judgment on the merits [and] which form the basis thereof or in respect of which no remedy lies may appealed against together with the judgment [on the merits]."

II. RELEVANT PRACTICE

24. The Government submitted two judgments handed down, respectively, by the First and Eighth Chambers of the Court of Cassation in support of their contention that the Court of Cassation was in a position to review and, if need be, to quash interlocutory decisions concerning dismissals of requests for disqualification of judges which formed the basis of first-instance courts' judgments on the merits. In the first judgment (2011/304 E., 2011/6142 K.), which was delivered on 19 October 2011, the Court of Cassation quashed a first-instance court's judgment on the merits,

holding that the indication that the accused had jointly committed the offence with another person in respect of whom the proceedings had been disjoined had cast doubt on the impartiality of its bench. In the second judgment (2014/33889 E., 2016/1153 K.), which was delivered on 8 February 2016, the Eighth Criminal Chamber of the Court of Cassation held that the lower court's decision of lack of jurisdiction, in so far as it contained the opinion that the elements of the offence of torture had not been made out, was such that it had amounted to an expression of legal opinion, thereby casting doubt on its impartiality. Accordingly, the Court of Cassation quashed the lower court's judgment on the merits, holding that the members of the bench should have abstained from taking part in the case.

25. Furthermore, in support of their contention that the Constitutional Court was empowered to examine and remedy the applicants' complaints relating to their right to the presumption of innocence, the Government cited the judgment in *E.A. (no. 2)* (application no. 2017/34336, 15 September 2021) in which the Constitutional Court examined whether statements made by public officials during the claimant's trial for being a member of an armed terrorist organisation had infringed the latter's right to be presumed innocent and concluded that they had not. The Court notes that the Constitutional Court further found that Turkish law did not offer any effective legal remedy in respect of such complaints, given the absence of any precedent showing that a claim for compensation before the civil courts or the lodging of an application for the initiation of disciplinary proceedings against a public official who had made prejudicial statements had been successful.

26. The Government also submitted domestic court decisions and judgments, which, in their view, showed the effectiveness of the remedy set out in Article 141 § 3 of the Code of Criminal Procedure ("the CCP") in respect of complaints of a breach of the right to be presumed innocent under Article 6 § 2 of the Convention. One of them was the judgment of the Twelfth Criminal Chamber of the Court of Cassation dated 11 November 2015 (2015/13049 E., 2015/17584 K.) whereby that court quashed a first-instance court's decision to dismiss a claim under Article 141 § 3 of the CCP in respect of damage sustained as a result of a decision by the public prosecutor to include in the bill of indictment certain "profiling records" (*fişleme kayıtları*) containing highly sensitive personal information. The Court of Cassation took the view that in order to lodge a claim for compensation under the said provision, an action or decision must occur during the investigation or prosecution stages and be carried out or handed down by a judge or a public prosecutor. Even though no positive legal provision prevented the inclusion of personal information in a bill of indictment, the Court of Cassation held that the inclusion of the information had been uncalled for in that case and ruled that the complainant should be awarded a reasonable sum in compensation for damage so sustained. Subsequently, on 12 April 2016 the first-instance court awarded the complainant 5,000 Turkish liras (approximately 1,553 euros at the material time), which was upheld with final effect by the Court of Cassation on 11 March 2019. The Government cited another judgment of the Twelfth Criminal Chamber of the Court of Cassation which concerned an almost identical compensation claim based on the inclusion of personal information in a bill of indictment, which also resulted in compensation being paid to the complainant under Article 141 § 3 of the CCP.

27. The Court notes that the above-mentioned judgments in paragraph 26 all concerned claims for compensation which were lodged by individuals who had been involved in the so-called "İzmir military espionage trial" (*İzmir askeri casusluk davası*).

28. In the same vein as the above, the Government lastly referred to the Constitutional Court's *M.Y.* judgment (application no. 2014/7149, 22 November 2017), in which that court had dealt with an alleged breach of the right to respect for private life of another defendant from "the İzmir military espionage trial" on the basis of the same legal issue, namely inclusion of personal information in a bill of indictment. The Constitutional Court had declared the application inadmissible on the ground of non-exhaustion of available remedies, holding that the applicant ought to have availed himself of the remedy under Article 141 § 3 of the CCP, even though that remedy had become available and effective after he had lodged his application with that court.

THE LAW

I. PRELIMINARY REMARKS

29. The Government argued that neither written authority to act nor a valid power of attorney had been submitted to the Court on behalf of the applicant XXX at the time the application had been lodged with the Court. On that account, the Government invited the Court to dismiss her application for failing to comply with the requirements set out in Rules 45 § 3 and 47 of the Rules of the Court.

30. The Government further argued that the lawyer who had signed the applicants' observations on the admissibility and merits of the case and their just satisfaction claims, namely Mr M. Özdemir, had lacked authority to act on behalf of the applicants, save for XXX. Accordingly, the Government invited the Court to disregard the submissions in question.

31. The applicants did not comment on those points.

32. The Court notes that according to a power of attorney attached to the application form lodged with the Court, the applicant XXX had authorised Mr M. Beştaş to lodge an application with the Court on her behalf. Accordingly, this applicant is duly represented before the Court. Furthermore, Mr Beştaş informed the Court by a letter dated 13 October 2022 that he and Mr Özdemir had been working on the application together and that he had approved all the submissions made by Mr Özdemir. Accordingly, the Court dismisses the Government's above-mentioned objections.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

33. The applicants complained that the wording employed in the investigatory reports drawn up by the then president of the bench sitting in the criminal proceedings against them had breached their right to be presumed innocent, as guaranteed in Article 6 § 2 of the Convention, which reads as follows:

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

A. Admissibility

34. The Government raised three preliminary objections alleging a loss of victim status, a premature application and non-exhaustion of domestic remedies.

1. Objection as to the loss of victim status

(a) The parties' observations

35. The Government submitted that the applicants could no longer be regarded as victims within the meaning of Article 35 of the Convention because the president of the trial court who had drafted the investigatory reports forming the basis of their complaints under Article 6 § 2 of the Convention had not participated in the trial after 5 September 2016. Furthermore, it was not possible for that judge to have played any further role in the trial, given his re-assignment to another province on 9 May 2017.

36. The applicants did not comment on this objection.

(b) The Court's assessment

37. The Court reiterates that acquiring and losing victim status are two different concepts which have been the subject of different lines of case-law (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 66, 2 November 2010). An applicant may lose his or her victim status if two conditions are met: firstly, the authorities must have acknowledged, either expressly or in substance, a breach of the Convention, and secondly, they must have afforded redress for it (see, among many other authorities, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 218, 22 December 2020). That exercise involves an examination of the nature of the right in issue, the reasons advanced by the national authorities in their decision and the persistence of adverse consequences for the applicant after the decision (see *Freimanis and Līdums v. Latvia*, nos. 73443/01 and 74860/01, § 68, 9 February 2006). Only when the two above-mentioned conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude an examination of an application (see *Arat v. Turkey*, no. 10309/03, § 46, 10 November 2009, and *Kerimoğlu v. Türkiye*, no. 58829/10, § 45, 6 December 2022).

38. The Court notes that neither the fact that the president of the trial court did not participate in the applicants' trial after 5 September 2016 (which was after the present application had been lodged), nor his re-assignment to another province constituted an acknowledgement of a breach of the applicants' right to be presumed innocent. Furthermore, the authorities did not offer any redress for the alleged violation suffered by the applicants. That being the case, the Court dismisses the Government's objection that the applicants had lost their victim status.

2. Objection as to premature application and failure to exhaust domestic remedies

(a) The parties' observations

39. The Government submitted that the criminal proceedings against the applicants were still pending before the Diyarbakır Second Assize Court, and that they should have awaited the conclusion of the case before lodging their application with the Court, given that 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. By the same token, and given that the proceedings had not yet concluded, the applicants could not be said to have exhausted the domestic remedies available to them, including an appeal to a court of appeal (*istinaf*), an appeal to the Court of Cassation and an individual application to the Constitutional Court.

40. Moreover, even though the Diyarbakır Third Assize Court had stated that its decision of 6 April 2016 dismissing the applicants' requests for the disqualification and withdrawal of judges

was final, the Government asserted that, for the following reasons, that was not the case. In the Government's view, the interlocutory decision in question had been made in the course of the trial against the applicants and it had thus formed part of the basis of the judgment on the merits, which had yet been to be handed down by the trial court. That being the case, the appellate court could review interlocutory decisions, including that of 6 April 2016, together with the judgment on the merits in accordance with Article 287 of the CCP, which stipulated that decisions rendered prior to the judgment on the merits and forming the basis thereof could be appealed against at the same time as that judgment. In any event, the decision in question would be reviewed in the context of the judgment on the merits, which meant that, as the trial court had held at the hearing on 11 April 2016, it would be amenable to appeal.

41. In the Government's view, it was against this background that the trial court had stated at the hearing on 11 April 2016 that the withdrawal request would be examined at the appeal stage. To support their argument, the Government submitted two judgments handed down by different chambers of the Court of Cassation in which they had quashed judgments on the merits handed down by lower courts, holding that the impartiality of those courts was in doubt (see paragraph 24 above). Accordingly, the applicant's allegations in the present case could also be reviewed by the Court of Cassation in the context of the appellate review that it would carry out in respect of the trial court's judgment on the merits – which had not yet been handed down. Such a possibility was also in conformity with the Court's case-law whereby it was accepted that alleged infringements of the right to be presumed innocent could be rectified by higher courts.

42. In any event, and depending on the outcome of the criminal proceedings against the applicants, they could also lodge a further individual application with the Constitutional Court as another possibility of obtaining redress for their grievance. In fact, in its judgment in the case of *E.A. (no. 2)*, the Constitutional Court had considered a similar issue and after a careful analysis had found no breach of the right to be presumed innocent arising from statements made by a public official (see paragraph 25 above). In view of the above, the Government asserted that the present application had to be rejected as being premature.

43. The applicants submitted that they had displayed the utmost diligence in their efforts to put an end to the violation of their right to the presumption of innocence before the national courts, in accordance with the provisions of the domestic law and those of the Convention.

(b) The Court's assessment

44. The principles with regard to the rule on exhaustion of domestic remedies as stipulated under Article 35 of the Convention may be found in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014).

45. In the instant case, the Court notes that any appellate review that might be carried out by the regional courts of appeal and the Court of Cassation would in principle concern the lower courts' judgments on the merits as well as the interlocutory decisions made in the course of the criminal proceedings which form the basis of those judgments. Accordingly, it does not appear that the provisions of the CCP referred to by the Government cover the wording employed in an investigatory report drawn up for the purpose of the lifting of the parliamentary immunity of a member of the National Assembly. However, the examples supplied by the Government do demonstrate that the Court of Cassation may examine and quash a lower court's judgment on the

merits if it detects an issue as regards impartiality. Accordingly, the Court is prepared to assume that regional courts of appeal and the Court of Cassation may examine in the course of appellate reviews a complaint of lack of impartiality stemming from an investigatory report. However, the fact remains that the present case concerns the applicants' complaints under Article 6 § 2 of the Convention and none of the examples furnished by the Government demonstrate that an alleged infringement of the right to be presumed innocent stemming from the language used in an investigatory report which was drawn up and sent to the Ministry of Justice for the purpose of lifting the immunity of defendants who were members of the National Assembly has ever been examined and overturned.

46. Nevertheless, and even assuming that the Court of Cassation would be capable of or, at the very least, not be prevented from examining a complaint of a breach of Article 6 § 2 of the Convention in the context of its appellate review, such a possibility will only materialise and become available once the judgment on the merits has been handed down by the first-instance court. At this juncture, the Court reiterates that the speed of the procedure for remedial action may also be relevant to whether it is practically effective in the particular circumstances of a given case for the purposes of Article 35 § 1 of the Convention, it not being excluded that an otherwise adequate remedy could be undermined by its excessive duration (see, *mutatis mutandis*, *McFarlane v. Ireland* [GC], no. 31333/06, § 123, 10 September 2010, and *Story and Others v. Malta*, nos. 56854/13 and 2 others, § 80, 29 October 2015). The Court considers that similar considerations also hold true in respect of the time required to have access to a given remedy alleged to have been an effective one.

47. Given the fact that the criminal proceedings against the applicants have been pending since at least 2010 and that a substantial amount of time has elapsed since the impugned investigatory reports – which were written in 2016 – the Court cannot conclude that either an appellate review by the regional court of appeal or the Court of Cassation, or the possibility of lodging another individual application with the Constitutional Court, which may come into play if the appellate reviews fail to yield a positive outcome, can be regarded as an effective one in practice in the specific circumstances of the present case.

48. In view of those considerations, the Court cannot uphold the Government's preliminary objection as to the premature nature of the application and the related argument that the applicants failed to exhaust the domestic remedies in respect of their complaint under Article 6 § 2 of the Convention.

3. Objection based on the failure to lodge a claim for compensation under Article 141 § 3 of the CCP

(a) The parties' observations

49. The Government submitted that the present application should also be declared inadmissible owing to non-exhaustion of domestic remedies because of the applicants' failure to avail themselves of the remedy under Article 141 § 3 of the CCP which provided for a right to claim compensation in respect of damage flowing from the acts or decisions of judges and public prosecutors during a criminal investigation and prosecution, including personal fault, tortious acts, or other types of liability.

50. In support of their contention that the remedy in question was accessible, capable of providing redress in respect of the applicants' complaints and offered a reasonable prospect of success, the

Government submitted examples of the case-law of the Court of Cassation and other domestic courts. In that regard, particular emphasis was put on the judgment of the Twelfth Chamber of the Court of Cassation dated 11 November 2015, which, in their view, had established the general principles to be applied in the assessment of a compensation claim under Article 141 § 3 of the CCP (see paragraph 26 above). In that case, the Court of Cassation had quashed a first-instance court judgment dismissing a compensation claim under that provision based on a decision by the public prosecutor to indicate certain highly sensitive personal information in the bill of indictment and ordered that a reasonable sum should have been awarded. The first-instance court had accordingly awarded the applicant 5,000 Turkish liras ("TRY"), an award which had later been upheld by the Court of Cassation in 2019. The Government relied on another case which also concerned a decision to grant a compensation claim under Article 141 § 3 of the CCP stemming from damage sustained as a result of the same type of breach.

51. The Government further referred to the Constitutional Court's judgment in the case of *M.Y.* where the remedy under Article 141 § 3 of the CCP had been considered effective in respect of a complaint of the same nature, namely an allegedly unlawful decision by the public prosecutor to indicate certain sensitive data in the bill of indictment (see paragraph 26).

52. Accordingly, the Government argued that the finding of a violation of the right to the presumption of innocence in a decision awarding the applicants compensation should be regarded as a sufficient remedy. Alternatively, the acknowledgement of a breach of the presumption of innocence could be made by the appellate courts or the Constitutional Court. Together with such a finding, a claim for compensation under Article 141 § 3 of the CCP would constitute a remedy for the alleged violations.

53. Lastly, the Government contended that the alleged violation of a breach of Article 6 § 2 of the Convention had come to an end for the following reasons. Firstly, the impugned statements contained in the investigation reports had been made when the criminal proceedings against the applicants had been stayed owing to the constitutional obligation to suspend criminal proceedings against the members of the National Assembly by virtue of the immunity conferred on them under Article 83 of the Constitution and they could not therefore have had any impact on the applicants' trial. Secondly, the requests for the lifting of the applicants' immunity had not been processed, since provisional Article 20 of the Constitution, which had lifted the immunity of members of the National Assembly, had entered into force in the meantime. Lastly, the president of the trial court had not taken part in the criminal proceedings since 5 September 2016. In the Government's view, those circumstances, together with the possibility of lodging a claim for compensation in accordance with Article 141 § 3 of the CCP, afforded an effective remedy in the present case. Accordingly, the Government invited the Court to dismiss the application on account of the applicants' failure to exhaust the domestic remedies.

54. The applicants reiterated their submissions (see paragraph 43).

(b) The Court's assessment

55. The Court reiterates that it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact used, or was for some reason inadequate and ineffective

in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others v. Turkey*, 16 September 1996, § 68, Reports of Judgments and Decisions 1996-IV; *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 69, ECHR 2010; and *Vučković and Others*, cited above, § 77).

56. In several cases the Court has examined remedies under the civil law which offered the possibility of obtaining monetary compensation together with various other procedures for the acknowledgment or ending of an infringement of the right to be presumed innocent, and has found them to be effective within the meaning of the Convention (see *Babjak and Others v. Slovakia* (dec.), no. 73693/01, 30 March 2004; *Marchiani v. France* (dec.), no. 30392/03, 27 May 2008; and *Ringwald v. Croatia* (dec.) [Committee], nos. 14590/15 and 25405/15, §§ 54-56, 22 January 2019).

57. In the instant case, the Constitutional Court did not dismiss the applicants' complaints under Article 6 § 2 of the Convention owing to their failure to exhaust domestic remedies or an alleged failure to have recourse to the remedy under Article 141 § 3 of the CCP. In fact, it did not touch upon the applicants' Article 6 § 2 complaints at all.

58. The Court further recalls that if domestic law provides for several parallel remedies in different fields of law, an applicant who has sought to obtain redress for an alleged breach of the Convention through one of these remedies is normally not required to use others which have essentially the same objective, and it is, moreover, for the applicant to select the remedy that is most appropriate in his or her case (see, among other authorities, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 176-7, 25 June 2019). For this reason, the Court is not called upon to assess whether the remedy laid down in Article 141 § 3 of the CCP regarding the right to seek compensation for "all acts or decisions of judges and public prosecutors during a criminal investigation and prosecution" was also an available and effective remedy in the applicant's case. The Court cannot but note, however, that the Government has not been able to show any examples of case-law whereby an alleged infringement of Article 6 § 2 of the Convention on account of an act by a judge in the course of criminal proceedings had been examined in the context of that remedy (compare *Gherghina v. Romania* (dec.) [GC], §§ 88, 100, 101 and 106, 9 July 2015). Accordingly, the Government's preliminary objection as to non-exhaustion of domestic remedies must be dismissed.

4. Overall conclusion on the admissibility of the application

59. In view of the above, the Court is not persuaded by the Government's objections as to the applicants' alleged lack of victim status, the proceedings still pending before the trial court and the alleged non-exhaustion of domestic remedies. Accordingly, the Court dismisses the Government's objections based on those arguments.

60. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

61. The applicants claimed that they had been declared guilty by the president of the trial court while the proceedings against them had still been pending, as could be seen from the unambiguous language used by the president in the investigatory reports he had drafted with a

view to bring about the lifting of their parliamentary immunity. The fact that the president of the trial court which had tried them had expressed the opinion that the applicants were guilty amounted to a breach of their right to be presumed innocent as protected under Article 6 § 2 of the Convention, even in the absence of a formal determination of guilt.

(b) The Government

62. The Government submitted that the resumption of the criminal proceedings against members of the National Assembly was contingent on the lifting of their parliamentary immunity and that the procedure foreseen for that purpose did not in itself imply a determination of guilt. In the present case, investigatory reports had been prepared in respect of the applicants with the sole purpose of having their parliamentary immunity lifted because it had acted as a bar to their criminal prosecution. The drawing up of such reports was simply an act whereby files to request the lifting of parliamentary immunity had been transmitted to the Ministry of Justice so that they would be sent to the National Assembly, which was empowered to decide on this issue. It had, therefore, merely been a non-public and non-binding procedural act initiating the procedure for requesting the lifting of the parliamentary immunity of defendants who were on trial. Accordingly, the investigation reports were not decisions leading to the determination of the merits of a criminal charge on which the applicants were being tried; such decisions could only result from the assessment of evidence by the bench in the course of the trial.

63. In that connection, the president of the trial court had been required to indicate in the investigation reports the grounds for the lifting of the parliamentary immunity by expressing the suspicion that the applicants might have committed the offences and establishing the existence of sufficient evidence to justify the resumption of the criminal proceedings. In fact, the statements in the investigation report had mainly concerned statements and allegations as contained in the bill of indictment. As a result, the president of the trial court had not been referring to the question whether the applicants' guilt had been established by evidence, but whether the case file disclosed elements justifying the request for the lifting of the parliamentary immunity.

64. Furthermore, the investigatory reports in question had produced a limited external effect and had, in any event, not been processed due to the entry into force of provisional Article 20 of the Constitution, which enabled a criminal court to resume a criminal trial without the need to obtain a decision on the lifting of the parliamentary immunity of the defendants who were members of the National Assembly. Similarly, the investigatory reports had been issued at a time when the criminal proceedings against the applicant had already been stayed. Lastly, the judge who had issued those reports would not take part in the applicants' trial.

65. Having regard to the above-mentioned particularities of the present case, and notably the circumstances concerning the nature and context of the statements as well as the conditions under which they had been made and their limited external impact, the Government took the view that there had been no breach of Article 6 § 2 of the Convention in the present case.

2. The Court's assessment

(a) General principles

66. The Court reiterates that the presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair trial that is required by paragraph 1. The right to the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a

person charged with a criminal offence reflects an opinion that he or she is guilty before he or she has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A premature expression of such an opinion by the court itself will inevitably fall foul of the said presumption (see, among other authorities, *Deweer v. Belgium*, 27 February 1980, § 56, Series A no. 35; *Minelli v. Switzerland*, 25 March 1983, §§ 27, 30 and 37, Series A no. 62; *Allenet de Ribemont v. France*, 10 February 1995, §§ 35-36, Series A no. 308; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-44, ECHR 2000-X; and *Matijašević v. Serbia*, no. 23037/04, § 45, ECHR 2006).

67. Furthermore, a distinction should be made between statements which reflect the opinion that the person concerned is guilty and statements which merely describe "a state of suspicion". The former infringe the presumption of innocence, whereas the latter have been regarded as unobjectionable in various situations examined by the Court (see, *inter alia*, *Lutz v. Germany*, 25 August 1987, § 62, Series A no. 123, and *Leutscher v. the Netherlands*, 26 March 1996, § 31, *Reports* 1996-II).

68. Article 6 § 2 governs criminal proceedings in their entirety, "irrespective of the outcome of the prosecution" (see *Minelli*, cited above, § 30). However, once an accused has been found guilty, in principle, it ceases to apply in respect of any allegations made during the subsequent sentencing procedure (see *Phillips v. the United Kingdom*, no. 41087/98, § 35, ECHR 2001-VII).

69. The freedom of expression, guaranteed by Article 10 of the Convention, includes the freedom to receive and impart information. Article 6 § 2 cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38).

70. The Court has considered that in a democratic society it is inevitable that information is imparted when a serious charge of misconduct in office is brought (see *Arrigo and Vella v. Malta* (dec.), no. 6569/04, 10 May 2005). It has acknowledged that in cases where an applicant was an important political figure at the time of the alleged offence the highest State officials, including the Prosecutor General, were required to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, this circumstance could not justify a given use of words by the officials in their interviews with the press (see *Butkevičius v. Lithuania*, no. 48297/99, § 50, ECHR 2002-II (extracts)). The Court has emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence. Nevertheless, whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see, among other authorities, *Adolf v. Austria*, 26 March 1982, §§ 36-41, Series A no. 49, and *Daktaras*, cited above, § 41). In any event, the opinions expressed cannot amount to declarations by a public official of the applicant's guilt which would encourage the public to believe him or her guilty and prejudge the assessment of the facts by the competent judicial authority (see *Butkevičius*, cited above, § 53, and *Garycki v. Poland*, no. 14348/02, § 70, 6 February 2007).

(b) Application of these principles to the instant case

71. The Court notes that while the applicants were being tried in criminal proceedings that commenced in 2007, they were elected as members of the National Assembly in the parliamentary elections held on 1 November 2015. They ran for the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party. The applicants thus obtained parliamentary immunity under Article 83 of the Constitution, which provides for the pursuance of any pending criminal proceedings and investigations against members of the National Assembly only if the immunity is lifted.

72. For that purpose and in accordance both with the Constitution and Article 223 § 8 of the CCP, the president of the trial court at the material time drew up investigatory reports in respect of each applicant and submitted them to the Ministry of Justice. It is true that in those reports, as was submitted by the Government, the president mainly reproduced extracts from the bill of indictment and briefly summarised and interpreted what those extracts had meant by using the public prosecutor's words to the effect that the applicants had carried out certain acts which formed the basis of the accusations levelled against them. Crucially, however, in the part of those reports entitled "Assessment", the president indicated as follows "... even though it is understood that [the applicant] committed the offences imputed to [him or her], it has been understood that [he or she] was elected as a member of the National Assembly in the parliamentary elections of 1 November 2015". Similarly, the last part of the reports entitled "Conclusion and Assessment" also contained the following statement "... it is understood that [the applicant] committed the offences imputed to [him or her]" (see paragraph 9 above).

73. The Court takes due note, as submitted by the Government, of the particularities as well as the modalities of the procedure for submitting a request for the lifting of the parliamentary immunity of members of the National Assembly who are being tried before criminal courts. In that regard, the Court further takes note of the Government's argument that the president of the trial court had been required to confirm the existence of suspicion against the applicants to justify the request for the lifting of their parliamentary immunity and that the words he had used to that end could not be interpreted as implying the applicants' guilt. Be that as it may, the Court has already found violations of Article 6 § 2 of the Convention on account of the wording used in decisions ordering or extending the pre-trial detention of applicants (see *Vardan Martirosyan v. Armenia*, no. 13610/12, § 83, 15 June 2021, with further references), despite the fact that the legal question therein – as in the present case – did not concern the determination of an applicant's guilt; that fact cannot therefore have a decisive bearing on the assessment of whether there has been a breach of Article 6 § 2 of the Convention.

74. Moreover, and more importantly, the Government have made no reference to any legal provision whereby judges of a criminal court who must draw up an investigatory report for the lifting of the parliamentary immunity of the members of the National Assembly whom they are trying are required to explicitly and unambiguously state that the person in question committed the offence imputed to him or her in the bill of indictment. In that regard, the Court notes that the Government did not advance any argument, let alone a convincing one, to support the view expressed by the two judges of the trial court that the Ministry of Justice had previously denied requests for the lifting of parliamentary immunity in cases where the investigatory reports had merely voiced suspicions about the guilt of members of the National Assembly (see paragraph 13

above). Accordingly, the Government failed to demonstrate that an explicit and unqualified statement that the applicants had committed the offences imputed to them was specifically called for by the nature, context or the circumstances of the proceedings in question in the present case.

75. The Court has, on many occasions, emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if they are to be successful in carrying out their duties (see, *mutatis mutandis*, *Baka v. Hungary* [GC], no. 20261/12, § 164, 23 June 2016). Bearing in mind that statements by judges are subject to stricter scrutiny than those by investigative authorities (see *Pandy v. Belgium*, no. 13583/02, § 43, 21 September 2006, with further references), it is of the utmost importance that courts employ careful language which should not in any way reflect the opinion that the suspect or defendant is guilty, if they are to inspire public confidence in a democratic society. Since the investigatory reports drawn up in respect of the applicants in the present case fell foul of that requirement, the wording employed therein breached their right to be presumed innocent. Moreover, the Constitutional Court failed to remedy the prejudice stemming from the wording used in the investigatory reports.

76. There has accordingly been a violation of Article 6 § 2 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

78. Each applicant claimed 400,000 Turkish liras (TRY) (approximately 23,289 euros (EUR) according to the exchange rate applicable at the material time) in respect of non-pecuniary damage. They also claimed an award in respect of pecuniary damage but left the sum to the discretion of the Court.

79. The Government argued that the applicants had failed to submit any documents which showed the actual existence of any pecuniary damage. Similarly, the claim for non-pecuniary damage was unsubstantiated, excessive and inconsistent with the amounts awarded in similar cases by the Court. Accordingly, the applicants' claims under the two heads should be dismissed.

80. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, it awards each applicant EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

81. The applicants also claimed TRY 134,000 (approximately EUR 7,782 at the material time) in respect of costs and expenses, corresponding to (i) twenty-seven hours of legal work undertaken by their lawyers at an hourly rate of TRY 2,000; (ii) TRY 20,000 incurred in pursuing the case before the domestic courts; (iii) TRY 40,000 for drawing up a letter on behalf of the third applicant; and (iv) TRY 20,000 for postal and other expenses. In support of their claims, the applicants provided the Court with a breakdown of the hours spent by their lawyer on the case and

submitted that they had determined the hourly rate based on the recommended sum contained in the minimum scale of fees of the Diyarbakır Bar Association.

82. The Government contested those claims, arguing that the applicants had failed to submit any "valid" documents demonstrating that the costs and expenses outlined in the previous paragraph had indeed been incurred.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 to the applicants jointly, covering costs under all heads, plus any tax that may be chargeable to them on that amount (see *Semir Güzel v. Turkey*, no. 29483/09, §§ 47 and 50, 13 September 2016).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
3. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 7,800 (seven thousand eight hundred euros) each, plus any tax that may be chargeable on those amounts, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros) jointly to all the applicants, plus any tax that may be chargeable to them on that amount, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 28 November 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar
Arnfinn Bårdsen President