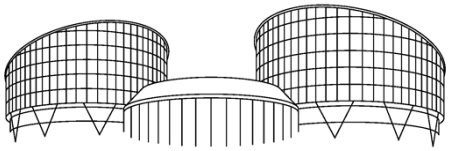

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF EKREM CAN AND OTHERS v. TURKEY

(Application no. 10613/10)

JUDGMENT

Art 11 read in light of Art 10 • Freedom of peaceful assembly • Disproportionately lengthy pre-trial detention and prison sentences for involvement in non-violent courthouse protest disturbing the orderly administration of justice • Margin of appreciation wide but not unlimited
Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Domestic courts' failure to examine conditions surrounding alleged waiver of applicants' right to a lawyer while in police custody • Use of evidence given in the absence of a lawyer to convict the applicants • Failure to observe necessary procedural safeguards • Trial rendered unfair as a whole

STRASBOURG

8 March 2022

FINAL

05/09/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ekrem Can and Others v. Turkey,

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

Jon Fridrik Kjølbro, *President,*
Carlo Ranzoni,
Branko Lubarda,
Pauliine Koskelo,
Jovan Ilievski,
Gilberto Felici,
Saadet Yüksel, *judges,*
and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application (no. 10613/10) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by fifteen Turkish nationals, listed in the appendix ("the applicants"), on 3 February 2010;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning the alleged unfairness of the criminal proceedings against the applicants under Article 6 of the Convention and the alleged breach of their right to freedom of assembly under Article 11 of the Convention, and to declare inadmissible the remainder of the complaints;

the parties' observations;

Having deliberated in private on 14 February 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the alleged breach of the applicants' right to freedom of assembly under Article 11 of the Convention on account of their conviction for having staged a protest in a courthouse, during which they chanted slogans, displayed a banner, threw leaflets around, and locked themselves in one of its corridors, thereby impeding hearings that were taking place. It further concerns the fairness of criminal proceedings against the applicants under Article 6 of the Convention owing to the alleged invalidity of their waiver of their right to a lawyer when making statements to the police during the preliminary investigation stage.

THE FACTS

2. The applicants' personal details are set out in the appendix. The applicants were represented by Mr M. Erbil and Mrs N. Selçuk, lawyers practising in Istanbul.

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 Turkey.

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

5. On 18 November 2003 at around 10.50 a.m. a group of twenty-three individuals, including the applicants, entered the corridor of the third floor of the Sultanahmet Courthouse in Istanbul, where the registries and hearing rooms of several courts were located, while some civilians and court officials were present in the same corridor . The group began chanting slogans such as "End the Isolation" ("*Tecride Son*"), "No to invasion" ("*İşgale Hayır*"), "Close İmralı Prison" ("*İmralı Cezaevi Kapatılsın*"), "We have not surrendered and we will not surrender" ("*Teslim olmadık olmayacağız*"), "Salute, salute a thousand salutes to İmralı" ("*Selam, Selam, İmralıya Bin Selam*"), "Freedom to Öcalan" ("*Öcalan'a Özgürlük*") and "The messenger of peace is in İmralı" ("*Barış elçisi İmralı'da*").

6. Subsequently, some members of the group closed the door to the corridor and locked themselves in the corridor by toppling metal cupboards behind the door. They then hung a large banner from one of the windows of the corridor and threw leaflets outside. The banner read: "A democratic solution to the Kurdish problem; İmralı Prison must be shut down" ("*Kürt sorununa demokratik çözüm, İmralı Cezaevi kapatılsın*"), and "Youth Initiative for Social Peace" ("*Toplumsal Barış için Gençlik Girişimi*"). The leaflets contained critical remarks concerning the policies of the governing Justice and Development Party. The applicants later submitted to the trial court that they had locked themselves in and that they had originally planned to make a press statement in front of the courthouse, but that they had entered the building owing to the rain. The applicants furthermore submitted to the trial court that they had attempted to go outside again to make the press statement, but that certain civilians had attacked them with a view to lynching them, forcing them to seek shelter in the closest corridor. The door of the corridor had then been shut behind them and as the door had only had one handle, they had not been able to open it from the corridor.

7. According to witness statements, the protesters warned other individuals present in the corridor and inside the offices that they were going to stage a protest but that there was no need to be afraid. It appears that some of the witnesses locked themselves in the hearing rooms and some in the registries during the protest by blocking the entrances to those rooms. The witnesses mainly reported hearing repetitive slogans being chanted outside in the corridor, but they reported that they had come to no harm. Similarly, the incident report of 18 November 2003 drawn up by the Deputy Public Prosecutor of Istanbul indicated that no material damage had been caused in the corridor or to its furniture.

8. The protesters, including the applicants, continued their actions for about an hour until the police broke in and arrested them. According to the Government's version of events the protestors resisted the officers during their arrest by locking arms, prompting the police to use tear gas to disperse them. The applicants contested that version of events, arguing that they had surrendered to the police but that they had nevertheless been beaten at the time of their arrest.

9. Following their arrest, the applicants were first taken to Haseki Hospital and then examined by the Forensic Medicine Institute. According to the medical reports added to the case file, all of the applicants, except for Mehmet Şahin, Özgür Tan and Mahmut Cengiz, presented signs of physical trauma, either at the beginning or at the end of their custody. In particular, even though the medical reports drawn up in respect of the applicants Ekrem Can and Fikret Avras at the beginning of their time in police custody did not note any signs of ill-treatment, the reports compiled at the end of that time concluded that they had been unfit – for a period of one day – for work.

10. Between 18 and 22 November 2003, the applicants were held in police custody on terrorism-related charges and were interviewed by the Anti-Terrorism branch of the Istanbul Security Directorate. According to some documents in the case file, most of the applicants met their lawyer before and after giving statements to the police. According to other forms bearing the signature of each applicant (save for the applicant Mehmet Şahin), the applicants chose to give their statements without the presence of a lawyer. Those forms also indicated that each applicant had been informed of his rights under Article 135 of the former Code of Criminal Procedure and that a copy of a form explaining their rights had been handed to each of them. The forms did not bear the time at which they had been signed, but the dates were recorded by hand.

11. The applicant Mehmet Şahin was the only applicant who requested the assistance of a lawyer during the taking of his statement by the police. A certain A.P., who is not one of the applicants, also appears to have requested the assistance of a lawyer. Both the applicant Mehmet Şahin and A.P. were interviewed in the presence of a lawyer and remained silent before the police. The officers involved in the questioning of Mehmet Şahin and A.P. were not the same as those involved in the questioning of the other applicants. The applicant Kerim Taştan also exercised his right to remain silent, without requesting the assistance of a lawyer.

12. The rest of the applicants gave statements to the police between 19 and 21 November 2003, in the absence of a lawyer. Their statements were transcribed on printed forms, the first page of which was filled in to indicate *inter alia* that they were suspected of, *inter alia*, acting on behalf of the PKK (the Workers' Party of Kurdistan), an illegal organisation. The same page also included a printed message that stated, *inter alia*, that the person being questioned had the right to remain silent and the right to choose a lawyer. It

appears from the forms that all the applicants refused legal assistance, as on each of their forms the box entitled "No lawyer sought" was marked with a printed "X". Moreover, according to these records, all the applicants, except for one, also stated that they did not wish to have a lawyer or to remain silent.

13. The applicant Fikret Avras met a different lawyer respectively on 19 November 2003 at 10.35 a.m. and on 21 November 2003 at 9.30 p.m., and the applicant Ekrem Can met a lawyer on 19 November 2003 at 11.20 a.m.

14. The applicants, except for Kerim Taştan and Mehmet Şahin (who did not give statements to the police), acknowledged having wilfully participated in the protest, pursuant to decisions made by the council of the PKK. Many of the applicants also acknowledged having taken part in other protests organised in support of the PKK.

15. On 21 November 2003 the applicants Ekrem Can and Fikret Avras additionally participated in an "identity parade" conducted with photographs (*fotoğraftan teşhis*) and the applicants Ekrem Can, Fikret Avras and Mahmut Cengiz were also taken to certain locations for a reconstruction of the events in question (*yer gösterme*), during which they were not assisted by a lawyer and acknowledged having been involved in throwing Molotov cocktails at police vehicles, throwing stones at public buses, and attacking a bank on different occasions.

16. The case file contains the copies of two separate handwritten records (*tutanak*). The first record read as follows:

> "On 18 November 2003 I was assigned to represent the defendant, Ekrem Can, by the [Istanbul] Bar Association.
>
> The defendant, Ekrem Can, stated during our meeting, which was held on 19 November 2003 at 11.34 a.m. at the Anti-Terrorism branch of the Istanbul Security Directorate, that he would not give statements to the police, he would not attend any investigative acts without a lawyer and that he would exercise his right to remain silent; this record was prepared and signed together. 19 November 2003 (time: 11.40 a.m.)
>
> Suat Eren (Lawyer) Ekrem Can (arrestee)
>
> Despite this record, there exists a statement record showing that statements were taken [from Ekrem Can]."

17. The second record read as follows:

> "On 18 November 2003 I was assigned by the Bar Association to represent the defendant, Ekrem Can. On 20 November 2003 at 9 p.m. I attempted to hold a meeting with the defendant on the premises of the [Anti-Terrorism] branch of the Istanbul police headquarters. I was prevented from meeting my client on the basis of the usual pretext that 'he was not present on the premises [because] he had been taken outside for the reconstruction of events'.
>
> I have previously been ["fobbed off"] from holding meetings with similar excuses.
>
> The drawing up of this report has been deemed necessary. 20 November 2003, 9 p.m.
>
> Suat Eren (Lawyer) Sami Almaz (Lawyer) "

18. At the end of their period in police custody on 22 November 2003, the applicants were taken to the Forensic Medicine Institute for medical examination. It was found that the applicants Ekrem Can, Fikret Avras, Şenol Akyaz, Ahmet Işık, Güven Öztürk, Kerim Taştan, Muhlis Doğan, Yavuz Oğur, Esat Gezer and Abdulkerim Doğan bore marks of physical trauma on different parts of their bodies that were not life-threatening. Medical reports drawn up in respect of the applicants Ekrem Can and Fikret Avras indicated that they were unfit for work for one day, even though the medical reports compiled at the beginning of their custody indicated no such finding.

19. On 22 November 2003 the applicants gave statements to the public prosecutor in the presence of their lawyers. All the applicants, except for the applicant Muhlis Doğan, contested the version of events and the additional offences to which they had confessed when being interviewed by the police. In that connection, the applicants Fikret Avras and Mahmut Cengiz denied the accuracy of the records concerning the reconstruction of events. The applicants mainly stated that they had agreed to take part in a peaceful protest concerning the "Kurdish problem" and that they had locked themselves in the corridor of the third floor of the courthouse for fear of being forcibly dispersed by the police. The respective lawyers of the applicants Ekrem Can, Fikret Avras, Yavuz Oğur and Osman Taşdemir informed the public prosecutor that they had not been allowed to be present at the police interviews of their clients or the reconstruction of events.

20. Subsequently, on the same day, the applicants were questioned by a judge of the Istanbul State Security Court. The applicants gave similar accounts of the event as those that they had given to the public prosecutor, affirming that they had had the intention of taking part in the making of a press statement in front of or inside the Sultanahmet Courthouse. As in his statements to the public prosecutor, the applicant Ekrem Can denied his affiliation with the group. The lawyer of Fikret Avras requested the judge to bear in mind the fact that he had not been allowed to be present during the taking of statements by the police from his client or during the reconstruction of events. At the end of the questioning, the judge placed all the applicants in pre-trial detention.

21. On 10 December 2003 the Istanbul public prosecutor filed a bill of indictment against the applicants and charged the applicants Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz, with, *inter alia*, membership of a terrorist organisation (Article 168 of the former Criminal Code) and possessing and using explosive materials (Article 264 § 6 *in fine* of the former Criminal Code) and the rest of the applicants with aiding and abetting a terrorist organisation (Article 169 of the former Criminal Code). Furthermore, the public prosecutor charged all the applicants with "interrupting public services through coercion, distortion or the commission of unlawful acts" (Article 188 § 5 *in fine* of the former Criminal Code).

22. At a hearing held on 19 April 2004, the applicants gave evidence to the Istanbul Assize Court ("the trial court"). The applicant Ekrem Can reiterated the statements that he had given to the public prosecutor, asserting that he had become caught up in the protest by mere accident. He further denied any affiliation with the PKK and denied the charges.

23. The applicant Mahmut Cengiz acknowledged that the applicants had planned to make a press statement in front of the Sultanahmet Courthouse regarding the fact that Abdullah Öcalan was being held in isolation in İmralı Prison, adding that they had gone inside the building owing to the rain. He maintained that the police had kept him awake over the course of the three days that he had been held in custody and had forced him into signing certain documents; he did, owing to the refusal of the police to allow him to see his lawyer, despite his repeated requests.

24. The applicant Fikret Avras gave a similar version of events. He also submitted that he had been deprived of sleep during his time in police custody and that officers had slapped him every time that he had replied to their questions with a "no". He further noted that he, Ekrem Can and Mahmut Cengiz had been taken to certain locations by car, and that one of the police officers had forcibly ejected him from the police vehicle and had then forced him – squeezing his arm – to admit while being recorded on video to committing crimes.

25. The rest of the applicants also stated that they had planned to peacefully make a press statement in front of the courthouse. All the applicants, except for the applicants Mehmet Şahin and Kerim Taştan (who had not given statements to the police), retracted the statements that they had given to the police. The rest of the applicants further stated to the trial court that they had been subjected to pressure or ill-treated while in police custody.

26. At the same hearing, the applicants' lawyers submitted that the incident had in fact comprised no more than the making of a simple press statement, and that the applicants should not have been charged with terrorism-related offences. They also submitted that even though they had been present at the police station during the time that the applicants had been held in custody, they had never been called by the police to take part in the interviews of their clients.

27. At a hearing held on 1 November 2004 a number of witnesses gave evidence. M.A.İ. stated that he had been waiting his turn to attend a hearing before a court when a noisy quarrel had broken out in the corridor. According to his statement, after the clamour in the corridor had escalated, the judge had discontinued the hearing, and the people in the hearing room had moved some cabinets behind the hearing room's door in order to securely block the entrance. M.A.İ. further stated that he and others had been confined in the hearing room for a further forty-five minutes. He also stated that the tear gas used to disperse the group had affected the people in the hearing room and that the judge had postponed the rest of the proceedings scheduled for that

day. Another witness, G.İ., a clerk working for a court, attested that at around 10 a.m. two individuals had come into the registry of that court, stating that they would give a statement (in the corridor) and would not harm anyone. G.İ. stated that the group had first chanted PKK-related slogans and the name of Abdullah Öcalan. She and the other people who had barricaded themselves into the hearing room had then unblocked the door and left the office after about an hour; she had not identified any damage in the corridor.

28. At the hearing held on 1 August 2005, the trial court ordered the release of the applicants, except for the applicants Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz.

29. On 26 December 2006 the Istanbul Assize Court delivered its judgment in the case and found that the applicants had chanted certain slogans (see paragraph 5), waved a banner from the windows (see paragraph 6) and closed the door to the corridor, preventing officials from entering by placing metal cupboards behind the door to form a barricade, thereby trapping the lawyers and the court personnel and hampering them in the performance of their duties. On this basis, the trial court found all the applicants guilty under Article 113 § 1 of the Criminal Code of "interrupting public services through coercion, distortion or the commission of unlawful acts", and sentenced each of them to one year and eight months' imprisonment. On the basis of the same acts, all the applicants, except for Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz, were also found guilty under Article 169 of the former Criminal Code of aiding and abetting an armed gang, and were each sentenced to three years and nine months' imprisonment.

30. The trial court further found the applicants Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz guilty of membership of an armed terrorist organisation under Article 314 § 2 of the Criminal Code, and sentenced each of them to six years and three months' imprisonment on the basis of their actions within the courthouse and on the basis of certain other activities, such as procuring new members for the PKK (Şenol Akyaz) and throwing Molotov cocktails (Ekrem Can, Fikret Avras, Mahmut Cengiz), which had been proved by the statements they had made during the police interviews and the reconstruction of events. On the basis of those acts, the trial court furthermore convicted Ekrem Can on two counts of possessing (Article 174 of the Criminal Code) and using explosive materials (Article 170 § 1 (c) of the Criminal Code) and sentenced him to an additional term of eight years and four months' imprisonment and a judicial fine. Lastly, Mahmut Cengiz and Fikret Avras were also convicted of possessing and using explosive materials, and were each sentenced to four years and two months' imprisonment and a judicial fine under the above-mentioned Articles.

31. On 18 March 2009, following an appeal by the applicants, the Court of Cassation partially upheld and partially quashed the trial court's judgment. The Court of Cassation upheld the convictions of the applicants Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz under Article 314 § 2 of the

Criminal Code, those of the applicants Ekrem Can, Fikret Avras and Mahmut Cengiz under Article 174 § 1 and those of the rest of the applicants under Article 169 of the former Criminal Code. However, the Court of Cassation quashed the convictions of all the applicants under Article 113 § 1 of the Criminal Code and those of Ekrem Can, Fikret Avras and Mahmut Cengiz for using explosive materials under Article 170 § 1 (c) of the Criminal Code. Accordingly, the case file was remitted to the trial court in respect of the convictions that were quashed.

32. On 3 February 2010 the applicants lodged their application with the Court while the proceedings were still pending before the trial court.

33. On 30 June 2010 the Istanbul Assize Court once again convicted all the applicants under Article 113 § 1 of the Criminal Code, and sentenced them each to one year and eight months' imprisonment. The trial court went on to convict the applicant Ekrem Can on two counts of using explosive materials, and sentenced him to ten months' imprisonment under Article 170 § 1 (c) of the Criminal Code. The applicants Fikret Avras and Mahmut Cengiz were also convicted under the same Article and were each sentenced to five months for throwing Molotov cocktails.

34. On 2 April 2012 the Court of Cassation upheld the first-instance court's judgment in so far as it concerned the applicants.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

35. The relevant domestic law (as in force at the material time), as well as the case-law of the Constitutional Court regarding the issue of waiver of the right to a lawyer, may be found in *Ruşen Bayar v. Turkey*, (no. 25253/08, §§ 41-46, 19 February 2019).

36. The relevant provisions of the Criminal Code provided as follows at the material time:

Article 113

"1. Where the activities of a public institution are prevented by the use of violence or threats or by any other unlawful act, a penalty of imprisonment for a term of two to five years shall be imposed."

Article 170

"1. Any person who acts in such a way that is capable of creating panic, fear or anxiety among the public or of endangering the life, health, property of the public by:

....

c) firing weapons or using explosives,

...

shall be sentenced to a penalty of imprisonment for a term of six months to three years."

THE LAW

PRELIMINARY ISSUES

A. The Government's preliminary objection and request for the case to be struck out of the Court's list of cases

37. The Government submitted that the applicants, except for Mahmut Cengiz, who had duly authorised Mr Erbil as his representative when the application had been lodged, had failed to appoint a representative or to submit a letter of authority. Accordingly, the Government invited the Court to strike the application out of its list of cases, pursuant to Article 37 § 1 (a) of the Convention, contending that it was clear that the applicants, other than Mahmut Cengiz, had chosen not to pursue their application. Furthermore, the Government invited the Court to disregard the applicants' observations regarding (i) the admissibility and merits of the case and (ii) the just satisfaction claims submitted on behalf of the same fourteen applicants, as they had only been signed by Mr Erbil, who had not been authorised to act on their behalf.

38. The applicants did not comment on this point.

39. The Court notes that when the application was lodged with the Court in 2010, all the applicants were duly represented in accordance with the practice then in force, since both Mr Erbil and Mrs Selçuk had signed the application form, to which were attached, *inter alia*, the two following annexes: (i) an authority form signed by the applicant Mahmut Cengiz and Mr Erbil, and (ii) a power of attorney authorising Ms Selçuk to act as the lawyer of the remaining fourteen applicants. Accordingly, the Government argue, in essence, that the applicants should be required to comply with Rule 47 of the Rules of Court, as amended in 2014 – even though the application was lodged prior to that amendment. As it is not possible to apply that provision retroactively, the Court dismisses the Government's request (see *Beg S.p.a. v. Italy*, no. 5312/11, § 60, 20 May 2021).

40. Moreover, while it is true that the Court corresponded only with Mr Erbil after the Government were given notice of the application on 8 June 2017, Mrs Selçuk informed the Court by a letter dated 6 October 2020 that all such correspondence had been undertaken with her knowledge and approval. That being the case, the Court dismisses the Government's request under Article 37 § 1 (a) of the Convention.

B. Six-month rule and the scope of the case

41. Even though the Government did not raise a preliminary objection as regards the applicants' compliance with the six-month rule, this question calls

for consideration by the Court of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012).

42. On 18 March 2009 the Court of Cassation upheld the convictions of of the applicants Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz under Article 314 § 2 of the Criminal Code, those of the applicants Ekrem Can, Fikret Avras and Mahmut Cengiz under Article 174 § 1 and those of the rest of the applicants under Article 169 of the former Criminal Code. As a result, those convictions became final.

43. The Court does not have in its possession any document showing that the Court of Cassation's decision was duly served on the applicants or on their lawyers. Neither did the application form contain the date on which the applicants or their lawyers had been apprised of the Court of Cassation's decision. Similarly, the information available in the case file is not such as to enable the Court to discern the exact date on which the decision of the Court of Cassation was deposited with the registry of the trial court. Nevertheless, on 18 June 2009 the trial court drew up a preparatory report (*tensip tutanağı*) whereby it set the date of the first hearing after the Court of Cassation had delivered its decision.

44. In view of the above, the Court of Cassation's decision should be presumed to have been available at the trial court's registry, at the latest, by 18 June 2009. The time-limit started to run on the following day and expired on 18 January 2010. However, the application was lodged with the Court on 3 February 2010 – that is, after the expiry of the six-month time-limit in respect of the above-mentioned convictions.

45. Accordingly, the scope of the Court's examination will be confined to (i) all the applicants' convictions under Article 113 of the Criminal Code and (ii) the convictions of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras under Article 170 § 1 (c) of the Criminal Code (see *Keskin v. Turkey* (dec.), no. 12923/12, 8 July 2014). The Court will carry out a separate analysis of the admissibility of each complaint below, having regard to the preliminary objections raised by the Government.

46. As regards the remainder of the application, the Court finds that it was introduced out of time and must be rejected, pursuant to Article 35 §§ 1 and 4 of the Convention.

ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

47. The applicants complained that they had not been allowed to benefit from legal assistance when they had given statements to the police, in breach of Article 6 §§ 1 and 3 (c) of the Convention, which, in so far as relevant, provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(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;"

A. Admissibility

48. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

49. The applicants claimed that the police officers had forced them into signing certain documents which allegedly showed that they had waived their right to a lawyer. However, the fact that all the applicants had asked for a lawyer when giving statements to the public prosecutor and to the above-mentioned judge of the Istanbul State Security Court constituted proof that the documents they had signed during police custody had not reflected the truth. In fact, the applicants had asked for a lawyer during their time in custody, as was shown by the reports drawn up by the lawyers.

50. The Government argued that the contents of the documents that the applicants had signed while in police custody showed that they had waived their right to a lawyer after being duly informed of their fundamental rights. More importantly, the applicants Ekrem Can and Fikret Avras had met their lawyers while in police custody – on 19 November 2003 (both applicants) and on 21 November 2003 (the latter). The validity of the documents signed by the applicants was further supported by the fact that a lawyer had been appointed to represent the applicant Mehmet Şahin at his own request; that lawyer had, moreover, been present at his interview. Lastly, the applicants' convictions had not been solely based on the statements that they had made in the absence of a lawyer. Accordingly, the Government invited the Court to declare the applicants' complaints under Article 6 §§ 1 and 3 (c) of the Convention inadmissible as being manifestly ill-founded.

2. The Court's assessment

(a) General principles

51. The general principles regarding access to a lawyer, the right to remain silent, the privilege against self-incrimination, waiver of the right to legal assistance and the relationship of those rights to the overall fairness of proceedings under the criminal limb of Article 6 of the Convention can be

found in the judgment in the case of *Simeonovi v. Bulgaria* ([GC], no. 21980/04, §§ 112-120, 12 May 2017). The Court reiterates that it examines complaints concerning the restriction of access to a lawyer in the light of a three-pronged test which consists of the following steps: (i) whether the applicant waived his right to legal assistance in an unequivocal manner and whether the waiver was attended by minimum safeguards commensurate with its importance; (ii) whether there were "compelling reasons" to restrict access to a lawyer; and (iii) whether, despite the temporary absence of a lawyer, the overall fairness of the proceedings was ensured.

(b) Application of the principles to the instant case

52. In view of the differences in the facts of their respective cases, the Court deems it appropriate to divide the applicants into two groups for the purposes of its examination under Article 6 §§ 1 and 3 (c) of the Convention.

(i) In respect of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras

(α) Whether the applicants waived their right to legal assistance

53. The Court is called upon to examine whether the applicants validly waived their right of access to a lawyer during their police interviews and the reconstruction of events that took place during the time they spent in police custody from 18 until 21 November 2003, as it is not disputed between the parties that the applicants were represented by a lawyer when giving statements to the public prosecutor and to the judge of the Istanbul State Security Court on 22 November 2003. Referring to the documents that the applicants had signed while in police custody, the Government asserted that they had validly waived their right to a lawyer. The Government further argued that the fact that the applicants Ekrem Can and Fikret Avras had met their lawyers during the time that they had been in police custody constituted proof that the waivers had been genuine.

54. The Court has already found in cases against Turkey that the validity of a waiver of the right to legal assistance during police custody cannot be shown by mere reference to the documents that an applicant signed while in police custody where that applicant (i) after being granted access to a lawyer neither admitted his or her guilt nor maintained statements that he or she had made to the police before being granted access to that lawyer, and (ii) consistently repudiated the self-incriminatory police statements throughout the ensuing proceedings, in which he or she was represented by a lawyer (see *Akdağ v. Turkey*, no. 75460/10, §§ 48-61, 17 September 2019, and *Ruşen Bayar v. Turkey*, no. 25253/08, §§ 113-123, 19 February 2019 with further references). The Court has also had regard to any indications that an applicant told the domestic courts that he had made a request for legal assistance (contrast *Kaytan v. Turkey*, no. 27422/05, § 31, 15 September 2015, and *Gür v. Turkey* (dec.), no. 39182/08, 14 January 2014).

55. As regards the first limb of the Government's argument, the Court reiterates that it has already examined an identical argument in *Ruşen Bayar* (cited above, §§ 115-123) and dismissed it. As the Government did not put forward any reason capable of requiring it to depart from the conclusion reached therein, the Court rejects the first limb of the Government's argument.

56. As regards the second limb of the Government's argument, the Court notes that the case file contains two records drawn up in handwriting (*Tutanak*) by the lawyer of the applicant Ekrem Can on 19 and 20 November 2003, which were signed by that applicant, his lawyer and another lawyer (see paragraphs 16 and 17). Those records attested that the applicant Ekrem Can had told his lawyer that he would neither make statements to the police, nor take part in any other investigative acts. The second record stated that Ekrem Can's lawyer had been prevented from meeting his client and that the recording of the incident had been deemed necessary (see *Öcalan v. Turkey* [GC], no. 46221/99, § 131, ECHR 2005-IV). In the Court's view, those records seriously undermine the Government's contention that the applicants' waivers were genuine.

57. Furthermore, the applicants retracted the statements that they had made to the police as soon as they were brought before the public prosecutor on 22 November 2003, submitting that they had not been involved in any acts of violence (including the incidents involving Molotov cocktails referred to above), and the applicants Mahmut Cengiz and Fikret Avras specifically denied having taken part, while they had been in police custody, in any reconstruction of events. The applicants also told the public prosecutor and the trial court that they had indeed asked, while they had been in police custody, for a lawyer (see paragraphs 19 and 23).

58. As regards the Government's argument that the applicant Mehmet Şahin had in fact been able to exercise his right to a lawyer and that the applicant Kerim Taştan had been able to exercise his right to remain silent, the Court notes that the police officers involved in those two applicants' interviews and those involved in the interviews of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras were entirely different (see paragraph 11). Therefore, the mere fact that other applicants could exercise their rights under Article 6 does not suffice to demonstrate that the applicants Ekrem Can, Fikret Avras and Mahmut Cengiz were able to exercise these rights in the same way.

59. In view of the above, the Court considers that it is unable to find that it has been established beyond any reasonable doubt that the three above-mentioned applicants unequivocally, knowingly and intelligently waived their rights under Article 6 of the Convention (see *Ruşen Bayar*, cited above, § 123), notably their right to a lawyer when giving statements during the police interviews and the reconstruction of events that took place while they were in police custody.

(β) Whether there were compelling reasons to restrict access to a lawyer

60. The Court notes that the Government have not offered any compelling reasons for restricting the applicants' access to a lawyer during their police interviews. Furthermore, the domestic legislation in force at the material time did not provide for any reasons for such a restriction, let alone a compelling one (see *Ruşen Bayar*, cited above, § 125). Accordingly, there was no compelling reason to restrict the applicants' access to a lawyer during their time in police custody.

(γ) Whether the overall fairness of the proceedings was ensured

61. The lack of "compelling reasons" for restricting the applicants' access to a lawyer in the present case requires the Court to conduct a very strict scrutiny of the fairness of the proceedings. The absence of such reasons weighs heavily in the balance when assessing the overall fairness of the criminal proceedings and may tip the balance towards finding a violation. It is incumbent on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction of the applicants' access to a lawyer (see *Beuze v. Belgium* [GC], no. 71409/10, § 145, 9 November 2018; *Ibrahim and Others v. the United Kingdom*, [GC], nos. 50541/08 and 3 others, § 265, 13 September 2016; and the above-cited cases of *Simeonovi*, §§ 118 and 132; and *Ruşen Bayar*, § 126).

62. Having weighed the procedural shortcoming (namely the invalidity of the applicants' waiver of their right to legal assistance) against the overall fairness of the criminal proceedings, the Court notes that the trial court neither attempted to examine the circumstances surrounding those waivers nor subjected to scrutiny their self-incriminatory police statements and the evidence that they had given during the reconstruction of events; nor did it examine the admissibility of those before convicting the applicants (see *Yunus Aktaş and Others v. Turkey*, no. 24744/03, § 51, 20 October 2009). Similarly, the Court of Cassation did not remedy the shortcomings either.

63. The absence of the aforesaid procedural safeguards has already been found by the Court to have violated the overall fairness of criminal proceedings in respect of the same legal question and in a situation where the applicants' statements were used by the national courts to convict them (see *Akdağ*, cited above, §§ 64-71; *Ruşen Bayar*, cited above, §§ 126-136; *Bozkaya v. Turkey*, no. 46661/09, §§ 49-54, 5 September 2017; and *Türk v. Turkey*, no. 22744/07, §§ 53-59, 5 September 2017). The same is also true in respect of the present case, particularly in respect of the fact that the accusations against Ekrem Can, Fikret Avras and Mahmut Cengiz regarding the throwing of Molotov cocktails were made after those applicants had already given confessions in respect thereof to the police and provided

information during the course of the reconstruction of events, which subsequently formed the sole basis of their conviction on those charges.

64. Accordingly, the Court concludes that the domestic courts' failure to examine the conditions surrounding the applicants' alleged waiver of their right to a lawyer between 18 and 21 November 2003 (during the time that they spent in police custody) and the use that they made of evidence given in the absence of a lawyer to convict them, without observing the necessary procedural safeguards, rendered the trial as a whole unfair (see the above-cited cases of *Ruşen Bayar*, § 135; *Bozkaya*, § 53; and *Türk*, § 58).

65. There has therefore been a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras.

(ii) In respect of the remaining applicants

66. Having regard to the conclusions reached in paragraph 96 below, the Court does not find it necessary to separately examine the complaint lodged by the remaining applicants under Article 6 §§ 1 and 3 (c) of the Convention in view of the fact that the only conviction relevant to the examination of those applicants' complaint is that under Article 113 of the Criminal Code, which the Court considers is more appropriately examined under only Article 11 of the Convention.

ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

67. The applicants complained that they had been intimidated for exercising their right to freedom of peaceful assembly and to make a press statement (containing no incitement to violence), in breach of Articles 10 and 11 of the Convention, which read as follows:

Article 10

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

68. The Court notes that even though the applicants relied on both Articles 10 and 11 of the Convention in relation to the same set of facts, their complaints stem not only from their being prevented from making a press statement, but also (and predominantly) from the intervention staged by the police in respect of their protest action, resulting in their forcible removal from the courthouse, where they had opened a banner, chanted slogans and thrown leaflets (see *Tuskia and Others v. Georgia*, no. 14237/07, § 73, 11 October 2018; also compare *Açık and Others v. Turkey*, no. 31451/03, § 40, 13 January 2009; and *Karademirci and Others v. Turkey*, nos. 37096/97 and 37101/97, § 26, ECHR 2005-I), which appears to constitute the thrust of their complaints. That being the case, the Court considers that the applicants' complaints should be examined under Article 11 alone which, however, must be considered in the light of Article 10. In that connection, the Court reiterates that the protection of personal opinions under Article 10 of the Convention is one of the objectives of freedom of peaceful assembly, as enshrined in Article 11 (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, §§ 85-86, ECHR 2015).

A. Admissibility

69. The Government invited the Court to declare this complaint inadmissible as being incompatible *ratione materiae* with the provisions of the Convention, arguing that the acts and activities of the applicants fell within the ambit of Article 17 of the Convention in view of the fact that they had (i) chanted slogans praising and glorifying the PKK and its leader, and (ii) occupied the courthouse during the demonstration and set up a barricade, thereby preventing the orderly administration of justice, depriving some of the court personnel of their liberty, and putting at risk the safety of judges. Moreover, prior to the impugned incident, some of the applicants had thrown Molotov cocktails or participated in demonstrations during which acts of violence had been committed.

70. The applicants did not comment on this submission.

71. Article 17 of the Convention reads as follows:

> "Nothing in [the] Convention may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

72. Article 17 is only applicable on an exceptional basis and in extreme cases (see *Paksas v. Lithuania* [GC], no. 34932/04, § 87, ECHR 2011 (extracts)). In cases concerning Article 10 of the Convention, it should only be resorted to if it is immediately clear that the impugned statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 114, ECHR 2015 (extracts)).

73. While it is true that some of the slogans chanted by the applicants referred to the leader of the PKK and the conditions of his detention (see paragraph 5 above), the Court notes that it has already examined almost identical slogans within the context of other applications lodged against Turkey under Article 10 of the Convention. It concluded in respect of those cases that such slogans did not constitute an incitement to violence (see, among others, *Belge v. Turkey*, no. 50171/09, §§ 34-35, 6 December 2016 and the cases cited therein, and *Belek and Velioğlu v. Turkey*, no. 44227/04, §§ 24-25, 6 October 2015), and it does not discern any reason in the present case to depart from those findings. Accordingly, the Court dismisses the first limb of the Government's preliminary objection on the basis of Article 17 of the Convention.

74. As regards the second limb of the Government's objection, which focused on the applicants' actions during the protest, the Court finds it more appropriate to join it to the merits of the complaint under Article 11 of the Convention, given that the question of whether the applicants had violent intentions, incited others to violence or committed any violent acts themselves during the protest is inherently linked to and overlaps with the Court's examination of the question of whether there has been an interference with the applicant's rights under that provision (see, *mutatis mutandis*, *Kilin v. Russia*, no. 10271/12, § 49, 11 May 2021).

75. The Court notes that this complaint 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

76. The Government reiterated that the applicants' complaint must be rejected as falling outside of the scope of Article 11 of the Convention. In the alternative, the Government argued that the interference with the applicants' rights under Article 11 had been prescribed by law (namely Article 113 of the Criminal Code) and that it had pursued the legitimate aims of protecting

national security, health, morals, and the rights and freedom of others and of preventing disorder and crime. The Government further maintained that the applicants had not put an end to their conduct, despite warnings issued by the law enforcement officials, and that the interference by the police had been necessary and proportionate, having regard to the fact that the applicants had chanted slogans in support of a terrorist organisation, deprived civilians and court officials of their liberty and placed those people's security at risk, while disrupting judicial services for a period of at least an hour. The Government did not submit any comments in respect of the criminal sanctions imposed on the applicants.

77. The applicants submitted that the police had used excessive force and prevented them from making a press statement in order to bring certain aspects of the Kurdish problem to the public's attention. They further maintained that during the protest, they had not committed any acts of violence, and nor had their press statement contained any remarks inciting the public to violence. The fact that their protest had neither harmed anyone nor resulted in any damage was important. According to the applicants, the police had blockaded the courthouse, and had portrayed what in fact had been a peaceful protest as an act of terrorism and the forcible occupation of the courthouse.

2. The Court's assessment

(a) General principles

78. The general principles with regard to the right to freedom of assembly can be found in *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, §§ 98-103, 114-115, 120-122, and 128, 15 November 2018).

79. The right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society (see *Taranenko v. Russia*, no. 19554/05, § 65, 15 May 2014). Thus, it should not be interpreted restrictively (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Barraco v. France*, no. 31684/05, § 41, 5 March 2009). A balance must be always struck between the legitimate aims listed in Article 11 § 2 and the right to free expression of opinions by word, gesture or even silence by persons assembled on the streets or in other public places (see *Ezelin v. France*, 26 April 1991, § 52, Series A no. 202).

80. Article 11 of the Convention only protects the right to "peaceful assembly" (see, among many others, *Gün and Others v. Turkey*, no. 8029/07, § 49, 18 June 2013) and that notion does not cover a demonstration where the organisers and participants have violent intentions (see *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, nos. 29221/95 and 29225/95, § 77, ECHR 2001-IX, and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 285,

19 November 2019, and the cases cited therein). The guarantees of Article 11 therefore apply to all gatherings except those where the organisers and participants have such intentions, incite violence or otherwise reject the foundations of a democratic society (see *Kudrevičius and Others*, cited above, § 92). An assembly tarnished with isolated acts of violence is not automatically considered non-peaceful so as to forfeit the protection of Article 11. In a number of cases where demonstrators had engaged in acts of violence, the Court has held that the demonstrations in question fell within the scope of Article 11 of the Convention but that the interferences with the right guaranteed by that Article were justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others (see *Knežević v. Montenegro* (dec.), no. 54228/18, § 70, 2 February 2021).

81. The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly in question, within the limits established in paragraph 2 of Article 11 (see *Sáska v. Hungary*, no. 58050/08, § 21, 27 November 2012). In particular, that provision does not require the automatic creation of rights of entry to private property, or even, necessarily, to all publicly owned property, such as, for instance, government offices and ministries (see *Appleby and Others v. the United Kingdom*, no. 44306/98, § 47, ECHR 2003-VI).

(b) Application to the present case

(i) Whether there has been an interference with the exercise of the applicants' freedom of assembly

82. The Court notes that the applicants were arrested, placed in pre-trial detention, prosecuted and convicted on the basis of their actions during their protest on 18 November 2003 at the Sultanahmet Courthouse, which led to the cancellation of some of the hearings scheduled for that day. Nevertheless, none of the witnesses who were present during that protest and who made statements during the ensuing criminal proceedings complained of having suffered any particular bodily harm or of any other kind of damage being inflicted, and nor did they allege that the applicants had engaged in any other kind of violent act (see *Razvozzhayev and Udaltsov*, cited above, § 285). Similarly, the deputy public prosecutor's incident report dated 18 November 2003 (see paragraph 7 above) did not note any damage caused by the applicants' conduct. Even though the Government argued before the Court that the applicants had deprived of their liberties those who had been in the corridor at the time of the protest, the Court notes that the applicants were neither indicted for nor convicted of false imprisonment. It further appears that the court officials and certain other individuals present in the corridor entered the courtrooms or the registries of those courts and locked themselves in; however, they did not complain of the applicants' conduct when they testified as witnesses during the trial.

83. Furthermore, while the alleged prior involvement of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras in certain other violent acts (which were also examined in the course of the criminal proceedings forming the basis of the present application) may be a relevant consideration when ascertaining whether they had violent intentions when staging their protest at the Sultanahmet Courthouse, it is not in and of itself sufficient to warrant the conclusion that they did in fact have such intentions – particularly when viewed in the light of the fact that certain witnesses attested that the applicants had told them that they should have no fear, assuring them that they would not harm anybody (compare *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 103, ECHR 2011 (extracts) and the cases cited therein). Furthermore, the trial court based its conclusion that certain applicants had participated in the impugned acts on the evidence that they had given in the absence of a lawyer while they had been in police custody, in respect of which the Court has already found a violation of Article 6 §§ 1 and 3 (c) of the Convention (see paragraphs 53 to 65 above). It is also important that no weapons or any other dangerous material were found on the applicants at the time of their arrest.

84. Be that as it may, the Court does not lose sight of the fact that a number of civilians and court officials were confined for approximately one hour inside the offices and hearing rooms as a result of the protest held by the applicants. Those persons were affected by the tear gas that the police administered when dealing with the incident. These elements are sufficient to conclude that the impugned protest negatively impacted the orderly provision of an essential public service (namely judicial services) and disturbed public order for a period of an hour and may have caused fear and discomfort in those who were in the vicinity of the corridor on the third floor of the Sultanahmet Courthouse. That said, in the absence of any violent intention or violent conduct on the part of the applicants, those factors alone do not suffice for the impugned protest to fall outside the scope of Article 11 of the Convention (see *Kudrevičius and Others*, cited above, § 98).

85. In view of the above, and despite the disturbance caused to public order by the applicants' conduct for a period of one hour, their actions were not such as to warrant the conclusion that they relied on the Convention to engage in activity or in acts aimed at the destruction of any of the rights and freedoms set forth in it. On those grounds, the Court dismisses the Government's preliminary objection based on Article 17 of the Convention (see paragraph 69 above).

86. Accordingly, there has been an interference with the applicants' exercise of their right to freedom of assembly on account of their arrest, detention, prosecution and conviction on the basis of their participation in a protest within the premises of the Sultanahmet Courthouse.

(ii) Whether the interference was prescribed by law and pursued a legitimate aim

87. It is not disputed between the parties that the interference with the applicants' right to freedom of expression had a legal basis under the domestic law – in particular under Article 113 § 1 of the Criminal Code and that the relevant law satisfied the quality-of-law requirements under the Convention.

88. The Court further considers that the interference in question pursued the legitimate aims of protecting public safety and the rights and freedoms of others, and of preventing disorder.

(iii) Necessity in a democratic society of the interference with the applicants' rights under Article 11 of the Convention, read in the light of Article 10

89. The test of necessity in a democratic society requires the Court to determine whether the interference complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (see *Taranenko*, cited above, § 74).

90. The Court notes that even though the applicants' protest concerned an issue of public interest, the manner in which they opted to convey their message and exercised their rights under Article 11 of the Convention not only disturbed public safety and constituted a risk in respect of the protection of the rights and freedoms of "others" present at the Sultanahmet Courthouse, but also disrupted an essential public service – namely the orderly administration of justice (see *Öğrü v. Turkey*, no. 19631/12, § 25, 17 October 2017). That being the case, the Court concludes that the interference in the instant case corresponded to a pressing social need.

91. The Court notes that in cases where the exercise of freedom of expression or association is combined with illegal conduct which is disrupting ordinary life and other activities to a degree exceeding that which is inevitable in the circumstances, the Contracting States enjoy a wide margin of appreciation in their assessment of the necessity of taking measures to restrict such conduct, which cannot enjoy the same privileged protection under the Convention as political speech or debate on questions of public interest or the peaceful manifestation of opinions on such matters (see *Kudrevičius and Others*, cited above, § 156, and *Taranenko*, cited above, § 87). These considerations are equally valid in the context of the present case where the applicants staged their protest in a courthouse in combination with other acts that were, albeit non-violent, capable of seriously disturbing the orderly administration of justice.

92. That being said, the Contracting States do not enjoy unlimited discretion to take any measure they consider appropriate, and it is for the Court to assess the nature and severity of the penalties imposed for conduct involving some degree of disturbance of public order (see *Taranenko*, cited

above, §§ 80-87), with a view to examining the proportionality of an interference in relation to the aim pursued (see the above-cited cases of *Kudrevičius and Others*, § 146, and *Razvozzhayev and Udaltsov*, § 295 and the cases cited therein). At this point, the Court reiterates that a peaceful demonstration should not, in principle, be rendered subject to the threat of a criminal sanction (see *Akgöl and Göl v. Turkey*, nos. 28495/06 and 28516/06, § 43, 17 May 2011), and notably to deprivation of liberty (see *Gün and Others*, cited above, § 83). Thus, the Court must examine with particular scrutiny the cases where sanctions imposed by the national authorities for non-violent conduct involve a prison sentence (see *Taranenko*, cited above, § 87).

93. The Court has already established that the applicants' conduct, albeit involving a certain degree of disturbance, was not violent and caused no damage (see paragraphs 82 to 84 above). The Court cannot therefore discern, including from the domestic courts' decisions, any justification for sentencing each of the applicants – on account solely of their behaviour at the courthouse – to one year and eight months' imprisonment, which is a particularly severe prison sentence. Although sanctions for the applicants' actions might have been warranted by the demands of public order, such lengthy prison sentences were not proportionate to the legitimate aims of protecting public safety and the rights and freedoms of others, or of preventing disorder.

94. In addition, all the applicants were also held in pre-trial detention for a period of at least one year, eight months and fourteen days – again very long periods – on the basis, notably, of acts that fell within the purview of Article 11 of the Convention, notwithstanding the disturbance caused by their protest in the courthouse (see *Taranenko*, cited above, § 94; also compare the above-cited cases of *Knežević*, § 88, with further references, and *Tuskia and Others*, cited above,§ 86).

95. Accordingly, the Court concludes that the interference with the applicants' right to freedom of assembly under Article 11 of the Convention, considered in the light of Article 10, was not "necessary in a democratic society".

96. There has therefore been a violation of Article 11 of the Convention.

OTHER ALLEGED VIOLATIONS OF THE CONVENTION

97. In their submissions dated 14 December 2017, the applicants reiterated that they maintained their complaint that the Istanbul State Security Court, which had tried them, had been neither independent nor impartial. The Court examined this complaint, as specified in the application forms, and declared it inadmissible (pursuant to Rule 54 § 3 of the Rules of Court) on 8 June 2017, when notice of the application was given to the Government. It follows that this complaint concerns substantially the same matter as that

which has already been examined by the Court and must be rejected, in accordance with Article 35 §§ 2 (b) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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

99. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

100. The Government contested the claims, submitting that they were excessive.

101. The Court considers that the finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the applicants Fikret Avras, Mahmut Cengiz and Ekrem Can constitutes sufficient just satisfaction in respect of the complaints under that provision. The Court further notes, in respect of all the applicants, that Article 311 of the current Code of Criminal Procedure allows for the reopening of domestic proceedings in the event that the Court finds a violation of the Convention (see *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 80, 28 January 2020).

102. As regards the complaint under Article 11 of the Convention, the Court considers that the applicants must have sustained non-pecuniary damage which the finding of a violation of the Convention does not suffice to remedy. Therefore, and making its assessment on an equitable basis, the Court finds it appropriate to award each applicant EUR 7,500 plus any tax that may be chargeable on that amount.

B. Costs and expenses

103. The applicants also claimed EUR 4,400 for the costs and expenses incurred before the Court, corresponding to the work undertaken by their lawyer and his assistants and to expenses relating to translation services, stationery and postage costs. In support of those claims, the applicants submitted a timesheet drawn up by their lawyer, together with the Turkish Bar Association's 2017 fee scales.

104. The Government invited the Court not to award any sum under this head, arguing that the documents submitted in support of the claims were of a purely "declaratory" nature, given the applicants' failure to substantiate them with any official document capable of showing that the above-noted costs and expenses had actually been incurred.

105. 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 jointly covering costs under all heads for costs and expenses, plus any tax that may be chargeable to the applicants (see *Soytemiz v. Turkey*, no. 57837/09, § 67, 27 November 2018 with further references).

C. Default interest

106. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Dismisses* the Government's preliminary objection under Article 37 § 1 (a) of the Convention;

2. *Decides to join* to the merits of the complaint under Article 11 of the Convention the second limb of the Government's preliminary objection under Article 17 of the Convention, and rejects it;

3. *Declares* the application inadmissible in so far as it concerns the convictions of the applicants Ekrem Can, Fikret Avras, Mahmut Cengiz and Şenol Akyaz under Article 314 § 2 of the Criminal Code, those of the applicants Ekrem Can, Fikret Avras and Mahmut Cengiz under Article 174 § 1 and those of the rest of the applicants under Article 169 of the former Criminal Code, as having been introduced outside of the six-month time-limit set by Article 35 § 1 of the Convention;

4. *Declares* the application admissible in so far as it concerns (i) all the applicants' convictions under Article 113 of the Criminal Code and (ii) the convictions of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras under Article 170 § 1 (c) of the Criminal Code;

5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras;

6. *Holds* that there is no need to examine the remaining applicants' complaints under Article 6 §§ 1 and 3 (c) of the Convention;

7. *Holds* that there has been a violation of Article 11 of the Convention;

8. *Holds* that the finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention constitutes in itself sufficient just satisfaction for the non-pecuniary damage that may have been sustained by the applicants Ekrem Can, Mahmut Cengiz and Fikret Avras in that connection;

9. *Holds*
   (a) that the respondent State is to pay each applicant, 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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that the respondent State is to pay the applicants jointly, within the same three months, EUR 2,000 (two thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
   (c) 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;

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

Done in English, and notified in writing on 8 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Deputy Registrar	Jon Fridrik Kjølbro President

APPENDIX

List of applicants

Application no. 10613/10

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Ekrem CAN	1982	Turkish	Tekirdağ
2.	Servet AKDENİZ	1985	Turkish	Edirne
3.	Şenol AKYAZ	1981	Turkish	Istanbul
4.	Fikret ARVAS	1985	Turkish	Tekirdağ
5.	Mahmut CENGİZ	1983	Turkish	Tekirdağ
6.	Abdulkerim DOĞAN	1979	Turkish	Istanbul
7.	Muhlis DOĞAN	1979	Turkish	Istanbul
8.	Esat GEZER	1982	Turkish	Istanbul
9.	Ahmet IŞIK	1978	Turkish	Istanbul
10.	Yavuz OĞUR	1981	Turkish	Istanbul
11.	Güven ÖZTÜRK	1984	Turkish	Istanbul
12.	Mehmet ŞAHİN	1983	Turkish	Istanbul
13.	Özgür TAN	1978	Turkish	Istanbul
14.	Osman TAŞDEMİR	1983	Turkish	Istanbul
15.	Kerim TAŞTAN	1983	Turkish	Kocaeli