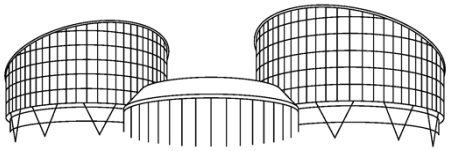

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BUDAK v. TURKEY

(Application no. 69762/12)

JUDGMENT

Art 8 • Respect for home • Unlawful search of the applicant's house • Non-compliance with domestic statutory provision for the presence of two attesting witnesses for the search • Search not conducted "in accordance with the law" as required by the Convention
Art 6 § 1 (criminal) • Fair hearing • Use of evidence found during search of the applicant's house considered "unlawful" under domestic law • Absence of appropriate response from domestic courts *vis-à-vis* a substantiated claim that evidence was obtained in breach of domestic law or the Convention, incompatible in principle with fair trial requirements • Use of main piece of evidence found during the search without applying the relevant domestic procedural safeguards rendered overall proceedings against him unfair

STRASBOURG

16 February 2021

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Budak v. Turkey,

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

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Aleš Pejchal,
Egidijus Kūris,
Branko Lubarda,
Pauliine Koskelo,
Saadet Yüksel, *judges,*
and Stanley Naismith, *Section Registrar,*

Having regard to:

the application (no. 69762/12) 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 a Turkish national, Mr İbrahim Halil Budak ("the applicant"), on 24 September 2012;

the decision to give notice of the application to the Turkish Government ("the Government");

the parties' observations;

Having deliberated in private on 19 January 2021,

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

INTRODUCTION

1. The application concerns the alleged violation of the applicant's right to respect for his home under Article 8 of the Convention on account of the search of his house, as well as the alleged unfairness of the criminal proceedings on account of the use of allegedly unlawful evidence obtained during that search to convict him. It further pertains to the applicant's purported inability to examine a certain individual, K.Ş., under Article 6 § 3 (d) of the Convention.

THE FACTS

2. The applicant was born in 1985 and is detained in İzmir. He was represented by Mr M. Rollas, a lawyer practising in İzmir.

3. The Government were represented by their Agent.

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

I. CRIMINAL PROCEEDINGS AGAINST K.Ş.

5. On 30 January 2007 a certain K.Ş. was arrested and questioned by the police in Van, a city in the east of Turkey, on suspicion of being a member

of an illegal organisation. During his interview, K.Ş. stated that he had met someone named "İbrahim" who had agreed to help him in his work relating to the illegal organisation. Although "İbrahim" had asked him to recruit new members for the illegal organisation, he had not done so.

6. On 31 January 2007 police officers showed K.Ş. a number of photographs and asked him to identify the people he knew to be connected with the illegal organisation. He identified the applicant from his photograph as "İbrahim". During the photographic identification procedure, K.Ş. was represented by his lawyer.

7. On 1 February 2007 K.Ş. made statements to the public prosecutor in the presence of his lawyer and confirmed the accuracy of his statements to the police while at the same time submitting that he regretted all his actions within the organisation. Maintaining that he would live an honourable life from then on, K.Ş asked to benefit from the provisions of the Criminal Code providing for a reduction in sentence in exchange for information concerning illegal organisations.

8. On 5 February 2008 the Van Assize Court found K.Ş. guilty of membership of an armed organisation, but reduced his sentence by half pursuant to Article 221 § 4 of the Criminal Code in the light of his repentance and the information he had given regarding the structure and activities of the organisation. The documents submitted by the parties do not indicate whether this judgment became final or not.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

9. On 7 March 2007 a public passenger bus was set on fire in İzmir by a number of unidentified persons.

10. On 13 March 2007 the İzmir Security Directorate lodged a request with the İzmir public prosecutor's office and asked for authorisation to intercept and record the telephone conversations of certain individuals, including the applicant, explaining that they had acted on behalf of an illegal organisation, the PKK/KONGRA-GEL (Workers' Party of Kurdistan/People's Congress of Kurdistan), recruited new members for it and organised unlawful demonstrations and attacks with Molotov cocktails.

11. On 14 March 2007, at the request of the public prosecutor's office based on the police report of 13 March 2007, a judge assigned to the İzmir Assize Court, which had special jurisdiction to try a number of aggravated crimes enumerated in Article 250 § 1 of the Code of Criminal Procedure in force at the material time (hereinafter referred to as "the İzmir Specially Authorised Assize Court" or "trial court"), granted authorisation to intercept and record, *inter alia*, the applicant's mobile telephone conversations for a period of three months.

12. On 18 March 2007 the İzmir Security Directorate lodged a request with the public prosecutor's office to carry out searches of the houses of

certain individuals, including the applicant, in the light of intelligence received revealing that those individuals had been planning an attack on 21 March 2007 during the *Nevruz* celebrations upon the instructions of the PKK/KONGRA-GEL.

13. On 19 March 2007, following a request from the public prosecutor's office, another judge from the İzmir Specially Authorised Assize Court issued a search warrant in respect of the houses of thirteen individuals, including the house where the applicant was living with his parents. Reproducing the reasons provided in the public prosecutor's request, the judge stated that the individuals concerned had been acting within the structure of the so-called KKK/TM (Kurdistan Democratic Confederalism) in line with instructions they had received from the senior leadership of the terrorist organisation PKK/KONGRA-GEL and that, according to the intelligence received, they had been aiming to recruit new members from İzmir for the terrorist organisation, carry out unlawful demonstrations and use Molotov cocktails. Searches pursuant to Articles 116 and 117 of the Code of Criminal Procedure were therefore necessary to arrest the suspects with the relevant evidence.

14. At 6.30 a.m. on 20 March 2007 police officers carried out a search of the applicant's house in the presence of only the applicant's father. The applicant was not present. The officers found and seized the following documents: (i) a piece of paper (printout) in the living room with the heading "*Sürece Ait Rapordur*" ("Progress Report"), which had been drafted by the "*Apocu Gençlik İnsiyatifi*" ("Youth Initiative of Apo[1]"), and (ii) forty-three leaflets entitled "*Bucadaki Yurtsever Esnafımıza*" ("To our Patriotic Tradesmen in Buca"), also drafted by that initiative, hidden in carpets in the cellar. The documents were neither handwritten nor signed by the applicant. In the first document, the author admitted to having thrown Molotov cocktails at the public passenger bus on 7 March 2007. According to a report drawn up at 7 a.m., the police officers finished the search at 6.50 a.m. At 1.30 p.m. the same day the applicant was taken into custody on suspicion of aiding an illegal organisation.

15. On 21 March 2007, when interviewed by the police, the applicant exercised his right to remain silent in the presence of his lawyer.

16. On 22 March 2007 the applicant gave statements before the judge of the İzmir Specially Authorised Assize Court in the presence of his lawyer and denied the accusations against him, maintaining, in particular, that the documents found at his house did not belong to him. After his questioning, the judge remanded him in custody.

17. On 10 April 2007 the İzmir public prosecutor's office lodged a bill of indictment against the applicant and twelve other individuals with the

[1] Apo is the shortened name of Abdullah Öcalan, the leader of the PKK, a terrorist organisation.

İzmir Specially Authorised Assize Court, in which the applicant was accused of membership of an illegal organisation and unauthorised possession and use of explosives. He subsequently stood trial before that court.

18. At the first hearing held on 6 August 2007 the applicant gave evidence and denied the accusations. When asked about the search of his house on 20 March 2007, the applicant stated that he had not been present and that the documents found were not his. In his opinion, they had been planted in his house by the police. He further submitted that the police had made his father sign the search report despite the fact that he did not understand Turkish. The documents seized from his house had not been handwritten and had not contained his name, so they could have been drawn up by anybody. When asked about the statements K.Ş. had made about him, the applicant stated that he did not know anyone of that name and denied that he had a code name or that people called him "Tahir". In his defence submissions, the applicant's lawyer submitted that the search was null and void as it had been conducted in a manner that was clearly contrary to the law. He further argued that the photographic identification of the applicant by K.Ş. had not been carried out properly.

19. During the same hearing, three other co-defendants, M.H.A., A.A. and K.R., contested the lawfulness of the searches of their houses and argued that the items found and seized either did not belong to them or had been planted by the police officers. They asked the trial court to hear the individuals who had signed the search-and-seizure reports. At the end of the hearing, the trial court decided to summon three police officers from each search who had drafted the search reports for examination as witnesses and further ordered the collection of the relevant documents from the criminal proceedings against K.Ş.

20. At the second hearing held on 21 November 2007 another co-defendant, İ.K., gave evidence, denied the accusations against him and argued that neither the neighbours nor the district chief (*muhtar*) had been present during the search of his house. The trial court then heard evidence from six police officers who had taken part in the searches of the defendants' houses. Among the officers were C.A., L.G. and M.Y., who had carried out the search of the applicant's house. Police officer C.A. stated that they had carried out the search too early in the morning and that for this reason they had been unable to ensure the presence of two attesting witnesses. They had likewise been unable to reach the district chief (*muhtar*). Lastly, C.A. submitted that they had only taken notes during the search and had drawn up the actual report at the police station.

21. Police officer L.G. was then heard. He essentially reiterated the same points as C.A. When the applicant's lawyer asked him about his role during the search and where the documents had been seized from, L.G. stated that he was unwilling to answer those questions and asked the lawyer to refer to

the search report for further information. Reminding him that attesting witnesses had not been present during the search, the applicant's lawyer asked him whether the applicant's father had been present during the search of each room. The trial court refused to allow that question to be put to L.G., holding that it was an unnecessary question which could not help shed light on the incident given that he had confirmed that the search report was accurate.

22. Lastly, the trial court heard evidence from M.Y. who, after largely reiterating the same points as C.A. and L.G., submitted that they had found a document inside a notebook in the living room and certain other documents under a carpet in the cellar.

23. On a number of occasions (that is, during the hearings between 21 November 2007 and 2 September 2009) the applicant and his defence lawyers argued that the search of the applicant's house without the presence of two attesting witnesses as required by Article 119 § 4 of the Code of Criminal Procedure had been unlawful and that the evidence obtained from it had to be considered as such and thus excluded from the case file. At the same time, they also challenged the admission into evidence of the documents found during the search, arguing that they had neither been handwritten by the applicant nor signed by him; they were therefore simple printouts which could have been drawn up by anyone. Furthermore, at a hearing held on 10 March 2008 the applicant's lawyer asserted that the photograph on the basis of which K.Ş. had identified the applicant had not been of the latter. The trial court did not provide an answer to any of these defence submissions.

24. At a hearing held on 26 April 2010 the public prosecutor submitted his opinion on the merits of the case, in which he asked the trial court to convict the applicant of membership of a terrorist organisation while at the same time requesting that he be acquitted of causing damage to property in connection with the incident involving the passenger bus.

25. On 10 November 2010 the applicant was found guilty of membership of an illegal organisation and damage to public property by setting fire to a passenger bus on 7 March 2007. He was sentenced to a total of twenty-five years and four months' imprisonment (twelve years and thirteen years and four months respectively).

26. In its judgment the İzmir Specially Authorised Assize Court noted that during the trial the applicant had challenged the admission into evidence of the documents found in his house and maintained that he did not know K.Ş. In reaching its conclusion, the trial court relied on the documents found in the applicant's house and the photographic identification during which K.Ş. had identified the applicant from a photograph. The trial court considered that the search carried out at the applicant's house had been "authorised by a judge" and had therefore been "in accordance with the procedure". No mention was made by the court in

its judgment about the applicant's arguments concerning the lawfulness of the photographic identification procedure.

27. On 11 November 2010 the applicant lodged an appeal against the judgment.

28. On 14 December 2010 the İzmir public prosecutor also lodged an appeal against the judgment of the trial court, seeking its annulment as regards, *inter alia*, the applicant's conviction for damage to public property, arguing that the evidence available had not been capable of proving beyond reasonable doubt that he had either committed that offence or participated in its commission.

29. On 26 December 2011 the public prosecutor of the Court of Cassation submitted his opinion to the Court of Cassation and asked for the trial court's judgment to be upheld.

30. On 5 March 2012 the applicant's lawyer responded to the public prosecutor's opinion. He maintained that the judgment had been rendered without K.Ş. having been heard as a witness or having identified the applicant before the first-instance court. He further maintained that the identification carried out by the police had been contrary to supplementary section 6 of the Powers and Duties of the Police Act (Law no. 2559). He argued that the identification should have been carried out by showing photographs of different people together to the identifier and reminding him that the photograph of the accused might not be among the photographs shown. The lawyer also maintained that the search carried out at the applicant's house had been unlawful because neither two members of the community council nor any neighbours had been present during the search, contrary to the requirements of the Code of Criminal Procedure.

31. The applicant's lawyer also maintained that the documents found at the house had not belonged to the applicant; according to his client, they had been planted there by the police. The lawyer further submitted that the documents found had not contained the applicant's fingerprints and had been nameless. He also maintained that there was no evidence that the applicant had set a public passenger bus on fire and that the judgment of the first-instance court had not been adequately reasoned to explain why the applicant had been found guilty of that offence.

32. On 17 April 2012 the Court of Cassation upheld the trial court's judgment without mentioning any of the arguments raised by the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTION

33. Article 38 § 6 of the Constitution provides, in so far as relevant, as follows:

"...

(6) Unlawfully obtained things or items (*bulgu*) [which have not yet been classed as evidence] shall not be admitted as evidence.

..."

II. CODE OF CRIMINAL PROCEDURE

34. The relevant provisions of the Code of Criminal Procedure provide as follows:

Article 119 – Search warrant

"(4) In order to be able to carry out searches of [private] residences, business premise[s] or enclosed spaces without the public prosecutor being present, two persons from neighbouring dwellings or the community council (*ihtiyar heyetinden veya komşulardan iki kişi*) of the place [where the search is to be carried out] shall be present."

Article 120 – Persons who may be present at the search

"(1) The owner of the premises or possessor of the items to be searched may be present at the search; if [he or she] is not present, [his or her] representative, a relative who is *compos mentis*, a person living in his household or a neighbour shall be present."

Article 141 – Compensation claim

"1. Compensation for damage ... may be claimed from the State by anyone ...

(i) in respect of whom the search warrant has been executed in a disproportionate manner ..."

Article 206- Production and rejection of evidence

"(2) A request to produce evidence shall be denied in the cases mentioned below:

(a) If the evidence was obtained unlawfully ..."

Article 217 – Discretion to evaluate evidence

"(2) The imputed offence may be proven by using all kinds of lawfully obtained evidence ..."

Article 230 – Compulsory points to be indicated in the reasoning of [the] judgment[s]

"(1) The following points shall be included in the reasoning of the judgment:

(b) A discussion and assessment of the evidence; an indication of the evidence relied on for the conviction and that which has been rejected; and in that connection, a separate and explicit indication of the evidence in the case file obtained unlawfully."

III. POWERS AND DUTIES OF THE POLICE ACT (LAW NO. 2559)

35. Supplementary section 6 of the Powers and Duties of the Police Act reads, in so far as relevant, as follows:

> "...
>
> Persons who are subjected to the identification procedure shall be photographed together or a video of them recorded and put into the investigation file.
>
> The suspect may also be identified from a photograph [of him or her]. However, identification cannot be done by only showing a single photograph of the suspect or different photographs of him or her. The photographs of the different persons must also be the same size."

IV. CASE-LAW OF THE CONSTITUTIONAL COURT

36. On 19 November 2014, in the case of Yaşar Yılmaz (application no. 2013/6183), the Constitutional Court was called upon to examine whether the applicant's right to a fair trial had been breached on account of an unlawful house search due to the absence of two attesting witnesses as required by Article 97 of the former Code of Criminal Procedure and the use by the domestic courts of evidence obtained from it in the context of compensation proceedings initiated against him as a result of his unauthorised possession of pelt, trophies and animal horns. The Constitutional Court found a violation of the applicant's right to a fair trial, holding that the domestic courts' decisions against him had been based to a decisive extent on the evidence that had been obtained from a house search carried out in an unlawful manner owing to the absence of two attesting witnesses.

37. In its judgment dated 1 February 2018 in the case of Orhan Kılıç (application no. 2014/4704), the plenary Constitutional Court examined whether the applicant's right to a fair trial had been breached on account of the search carried out by police officers in the absence of a judicial warrant or a written order by the public prosecutor at the house of two individuals connected with the applicant. In answering this question in the positive, the Constitutional Court first held that the illicit drugs and the precision scales obtained from the search had been decisive evidence in respect of the applicant's conviction for drug trafficking. It then emphasised that the trial court had not carried out any assessment as regards the applicant's allegations and objections concerning the manner in which the search had been conducted. Accordingly, the Constitutional Court concluded that the "unlawfulness" in the manner the search had been conducted was such as to undermine the overall fairness of the criminal proceedings against the applicant.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

38. The applicant complained that the search of his house had lacked a legal basis owing to the absence of two attesting witnesses, as required by Article 119 § 4 of the Code of Criminal Procedure. He relied on Article8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, 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."

A. Admissibility

39. The Government raised a preliminary objection of non-exhaustion of domestic remedies, arguing that the applicant had failed to avail himself of the remedy laid down in Article 141 § 1 (i) of the Code of Criminal Procedure, which provides for the possibility of bringing a claim for compensation if the search has been carried out in a disproportionate manner (*ölçüsüz bir şekilde*).

40. The applicant argued that in order for a claim for compensation to be brought under Article 141 § 1 (i) of the Code of Criminal Procedure, a court decision was required finding the search illegal or declaring that it had been carried out in a disproportionate manner. As there had been no such decision in his case, the remedy suggested by the Government could not be used by him.

41. The Court reiterates that the purpose of the rule on the exhaustion of domestic remedies is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to it (see *G.I.E.M. S.R.L. and Others v. Italy* [GC], nos. 1828/06 and 2 others, § 176, 28 June 2018).

42. The obligation under Article 35 requires only that an applicant should have normal recourse to the remedies likely to be effective, adequate and accessible (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II). In particular, the only remedies which the Convention requires an applicant to make normal use of are those that relate to the breaches alleged and are at the same time available and sufficient (see *Sérvulo & Associados - Sociedade de Advogados, RL and Others v. Portugal*, no. 27013/10, § 68, 3 September 2015). The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Vučković and Others*

v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, § 77, 25 March 2014, and *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

43. Moreover, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was available in theory and in practice at the relevant time, that is to say, that it was accessible, capable of providing redress in respect of the applicant's complaint and offered reasonable prospects of success (see *Vučković*, cited above, § 77, and *Sher and Others v. the United Kingdom*, no. 5201/11, § 132, ECHR 2015 (extracts)). Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, 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.

44. Turning back to the circumstances of the case, the Court notes that Article 141 § 1 (i) of the Code of Criminal Procedure is capable of providing monetary compensation in respect of complaints regarding the disproportionate manner in which searches of premises have been conducted, a fact also demonstrated by the wording of that provision. In that connection, the Court reiterates that it has already examined a similar issue in *Aksoy v. Turkey* ((dec.) [Committee], no. 47585/16, 5 March 2019) and found, in line with the Constitutional Court's judgment in that case, that the applicant (a lawyer) should have availed himself of the remedy provided for under Article 141 § 1 (i) of the Code of Criminal Procedure in respect of his complaints relating, *inter alia*, to the improper seizure of documents belonging to his clients during the search of his office (compare *Maslák and Michálková v. the Czech Republic*, no. 52028/13, § 45 *in fine*, 14 January 2016).

45. That being the case, the Court is called upon to assess whether the applicant's complaints under Article 8 of the Convention concern the allegedly disproportionate manner in which the search of his house was carried out and hence may fall within the ambit of Article 141 § 1 (i) of the Code of Criminal Procedure.

46. In that connection, the Court observes that unlike the applicant in the above-mentioned case of *Aksoy*, the applicant in the present case did not raise any complaints which may arguably be interpreted as relating to the disproportionate or excessive nature of the search of his house. On the contrary, his complaint was that the search had lacked a legal basis and had thus been unlawful owing to the absence of two attesting witnesses, whose presence was a statutory requirement under Article 119 § 4 of the Code of Criminal Procedure (see *Avanesyan v. Russia*, no. 41152/06, § 31, 18 September 2014, and compare *Xavier Da Silveira v. France*, no. 43757/05, § 46, 21 January 2010). Significantly, the Government did not provide the Court with any examples of domestic case-law where the

domestic courts had examined a claim relating to the lawfulness of a search under Article 141 § 1 (i) of the Code of Criminal Procedure and awarded the claimants compensation in the event that they found the search unlawful (see *Brazzi v. Italy*, no. 57278/11, § 49, 27 September 2018, and *Gutsanovi v. Bulgaria*, no. 34529/10, §§ 210-211, ECHR 2013 (extracts)).

47. Having regard to the nature of the applicant's complaints and the Government's failure to demonstrate that a compensation claim under Article 141 § 1 (i) of the Code of Criminal Procedure is capable of providing redress in respect of complaints regarding the legality of searches, the Court is unable to conclude that the Government discharged the burden of proving that this remedy was effective for the applicant's complaint concerning the unlawfulness of the search of his house. It therefore follows that the applicant was not required to avail himself of the remedy provided for under Article 141 § 1 (i) of the Code of Criminal Procedure. Accordingly, the Government's preliminary objection must be dismissed.

48. 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

(a) The applicant

49. The applicant asserted that the police had blatantly disregarded the statutory requirement to have two witnesses present during the search of his house. In that connection, he argued that although the police officers had submitted before the trial court that they could not find anyone, including the district chief, to take part in the search given that it had taken place at dawn, the search report had not indicated any such information. It was therefore clear that the police officers had not made any effort to comply with the requirement. In support of his contention, the applicant submitted four different search-and-seizure reports where searches had been performed early in the morning and in the presence of two witnesses pursuant to Article 119 § 4 of the Code of Criminal Procedure.

(b) The Government

50. The Government maintained that the search of the applicant's house had been conducted with a view to obtaining evidence concerning his activities in a terrorist organisation, namely the PKK. Moreover, the search warrant had been issued by the İzmir Specially Authorised Assize Court, which had clearly defined the location and date of the search without using any vague wording. The Government stressed the importance of this last

point, as the warrant had not given a broad scope of authority to the police officers. Moreover, the applicant's father had been present during the search. Consequently, the Government submitted that the search in question had had a basis in domestic law.

2. The Court's assessment

51. The Court notes at the outset that the notion of "home" in Article 8 § 1 of the Convention encompasses a private individual's home (see *Kolesnichenko v. Russia*, no. 19856/04, § 29, 9 April 2009, and *Buck v. Germany*, no. 41604/98, § 31, ECHR 2005-IV). In the instant case, it is not disputed between the parties that the search of the applicant's house by police officers on 20 March 2007 constituted an interference with his right to respect for his home, protected under Article 8 of the Convention (see *Kilyen v. Romania*, no. 44817/04, § 31, 25 February 2014, and *Kaletsch v. Germany* (dec.), no. 31890/06, 23 June 2009). Such interference is not justified under Article 8 unless it is in accordance with the law, pursues at least one of the legitimate aims enumerated in the second paragraph of that provision and is necessary in a democratic society (see *DELTA PEKÁRNY a.s. v. the Czech Republic*, no. 97/11, § 79, 2 October 2014).

52. Therefore, the Court should ascertain whether the interference complained of was "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

53. The expression "in accordance with the law" requires, firstly, that the impugned measure should have some basis in domestic law and be compatible with the rule of law. Secondly, it refers to the quality of the law in question, requiring that it be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law (see, among other authorities, *Camenzind v. Switzerland*, 16 December 1997, § 37, *Reports* 1997-VIII). The phrase thus implies, *inter alia*, that domestic law must be sufficiently foreseeable in its terms to give individuals an adequate indication as to the circumstances in which and conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 117, ECHR 2014 (extracts)).

54. According to the Court's settled case-law, the phrase "in accordance with the law" requires, at a minimum, compliance with domestic law (see *Peev v. Bulgaria*, no. 64209/01, § 43, 26 July 2007). Even if it is primarily for the national authorities, notably the courts, to interpret and apply the relevant domestic law (see *Kruslin v. France*, 24 April 1990, § 29, Series A no. 176-A, and *Amann v. Switzerland* [GC], no. 27798/95, § 52, ECHR 2000-II), the Court can and should exercise a certain power to review whether domestic law has been complied with (see *Craxi v. Italy (no. 2)*, no. 25337/94, § 78, 17 July 2003).

55. Turning to the circumstances of the present case, the Court notes that

while the search was conducted pursuant to a judicial warrant issued under Articles 116 and 117 of the Code of Criminal Procedure, it was the applicant's contention that the search of his house had been unlawful in terms of domestic law in that it had been conducted in the absence of two attesting witnesses, the presence of whom was mandatory under Article 119 § 4 of the Code of Criminal Procedure.

56. The Court observes that under Turkish criminal procedural law, the presence of two attesting witnesses is a legal requirement for the domestic authorities to be able to conduct a search at private residences, business premises and any other enclosed places without the participation of a public prosecutor (Article 119 of the Code of Criminal Procedure, see paragraph 34 above). This point thus concerns the legality of a search and falls to be examined under the question of whether the search was in accordance with the law (see, *Özgün Öztunç v. Turkey*, no. 5839/09, §§ 37-40, 27 March 2018, and compare *Dragan Petrović v. Serbia*, no. 75229/10, §§ 74 and 77, 14 April 2020).

57. The Court has already held, *inter alia*, that non-compliance with statutory requirements owing to the absence of witnesses whose presence was mandatory under the legal provisions of a given Contracting State could give rise to the conclusion that the search was conducted in a manner not in accordance with the law and therefore unlawful (see *Alexov v. Bulgaria*, no. 54578/00, §§ 128-130, 22 May 2008). The Court observes that by putting in place a legal framework and requiring the relevant authorities, notably the police, to meticulously observe the requirement to have two attesting witnesses present for searches of private residences carried out in the absence of a public prosecutor as an element of lawfulness, Turkish law provides a particularly important procedural safeguard capable of offering individuals adequate and sufficient guarantees against abuse or arbitrary interference by the public authorities with their rights protected by Article 8 of the Convention.

58. In the instant case, the Court notes that the police officers who conducted the search were examined by the trial court in their capacity as witnesses. They acknowledged that they had carried out the search without ensuring the presence of two other persons, as was required by Article 119 § 4 of the Code of Criminal Procedure. The Government, for their part, did not dispute that fact either, but reiterated the statements the police officers who had conducted the search had made in their capacity as witnesses before the trial court. According to them, two attesting witnesses had not been present during the search, allegedly because it had been conducted at daybreak. In the Government's view, as the search had concerned a terrorist offence, nobody in the vicinity of the house had agreed to take part in it.

59. Be that as it may, the fact remains that none of those points was indicated in the search report, which was also drawn up by those officers. Nor was there any other evidence capable of demonstrating that the officers

actually took any steps to ensure the presence of two attesting witnesses. More importantly, the domestic courts did not even outline those points in their decisions, let alone assess them (see *Bože v. Latvia*, no. 40927/05, § 82 *in fine*, 18 May 2017). In any event, none of these grounds had any basis in the statutory provisions concerning searches. In fact, it appears that the Turkish Code of Criminal Procedure and the relevant provisions do not provide any exceptions for non-compliance with the crucial safeguard set out in Article 119 § 4 of the Code of Criminal Procedure in so far as searches of private residences are concerned (see *Aydemir v. Turkey*, no. 17811/04, § 99, 24 May 2011, and compare *Kobiashvili v. Georgia*, no. 36416/06, §§ 62-64, 14 March 2019).

60. That being the case, the Court is unable to conclude that the search of the applicant's house was carried out in accordance with the law.

61. There has accordingly been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (D) OF THE CONVENTION

62. The applicant complained under Article 6 § 1 of the Convention that he had not had a fair trial on account of the trial court's use of unlawful and unreliable evidence allegedly found during the unlawful search of his house to sentence him to more than twenty-five years' imprisonment. Relying on Article 6 § 3 (d) of the Convention, he further complained that the trial court had used the unlawful evidence given by K.Ş. in his statements and the photographic identification procedure without examining him as a witness and clarifying the discrepancies in his statements. Article 6 §§ 1 and 3 (d) of the Convention reads, in so far as relevant, as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."
>
> ... ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

A. Admissibility

63. 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

(a) The applicant

64. The applicant argued that he had not had a fair trial in that he had been convicted on the basis of unlawful evidence obtained from an unlawful search. In that connection, he submitted that the search of his house had been carried out in a manner that had clearly disregarded the relevant statutory provisions since it had not been conducted in the presence of two attesting witnesses, as required by Article 119 § 4 of the Code of Criminal Procedure. That fact had been indirectly confirmed by the Government, who had tried to downplay an unlawful practice by referring to it as a "procedural deficiency". In the applicant's view, the absence of two attesting witnesses during the search of his house had had the effect of preventing an effective judicial review of the legality of the search and the question of whether the documents had already been in the house prior to their seizure or had been planted there by the police.

65. Furthermore, when the police officers had testified as witnesses during the trial, the applicant had attempted to ask them whether his father had been present during the search of each room, but the trial court had not allowed that question, finding it of absolutely no relevance. The applicant thus rejected the Government's argument that his father's presence was sufficient to remedy the prejudice stemming from the unlawfulness of the search.

66. Lastly, the applicant furnished the Court with different reports of searches which had been carried out early in the morning in İzmir within the context of different investigations into terrorist offences, where the police had been able to secure the presence of attesting witnesses. In the applicant's view, these were sufficient to rebut the Government's reliance on the police officers' submissions that they had been unable to find an attesting witness because it had been too early in the morning and the case had concerned a terrorist offence. In any event, none of that information had been duly recorded by the police officers in the search report. In view of the above, the applicant invited the Court to find a violation of Article 6 of the Convention.

(b) The Government

67. At the outset, the Government submitted that the search of the applicant's house had been carried out pursuant to a judicial warrant and that the applicant's father had been present during the search. Moreover, at the applicant's request, the trial court had heard the police officers who had conducted the search with a view to remedying the procedural deficiency

stemming from the absence of two attesting witnesses. Both the applicant and his lawyer had been able to put questions to the police officers, who had stated that they had been unable to have two attesting witnesses present because the search had taken place early in the morning. In the Government's view, it had been natural for people not to have wanted to participate in the search of a house given that a terrorist offence had been at issue. Accordingly, the Government argued that the trial court had not considered that the evidence had lacked the procedural requirements and invited the Court to hold that Article 6 of the Convention had not been violated in the instant case.

2. The Court's assessment

(a) The general principles

68. It is not for the Court to deal with alleged errors of law or fact committed by the national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention, for instance where, in exceptional cases, such errors may be said to constitute "unfairness" incompatible with Article 6 of the Convention (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017).

69. The Court reiterates that, while Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140; *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports* 1998‑IV; *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX; and *Moreira Ferreira v. Portugal (no. 2)*, cited above, § 83).

70. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible or, indeed, whether the applicant was guilty or not. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. This involves an examination of the "unlawfulness" in question and, where a violation of another Convention right is concerned, the nature of the violation found (see *Bykov v. Russia* [GC], no. 4378/02, § 89, 10 March 2009; *Lee Davies v. Belgium*, no. 18704/05, § 41, 28 July 2009; and *Prade v. Germany*, no. 7215/10, § 33, 3 March 2016).

71. In determining whether the proceedings as a whole were fair, regard must also be had to whether the rights of the defence were respected. It must be established, in particular, whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use (see *Szilagyi v. Romania* (dec.), no. 30164/04, 17 December 2013). In addition, the quality of the evidence must be taken into consideration,

including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see, among other authorities, *Bykov*, cited above, § 90, and *Lisica v. Croatia*, no. 20100/06, § 49, 25 February 2010). While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker (see *Lee Davies*, cited above, § 42; *Bykov,* cited above, § 90; and *Bašić v. Croatia*, no. 22251/13, § 48, 25 October 2016).

72. The Court also reiterates that, according to its established case-law reflecting a principle linked to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based (see *Moreira Ferreira v. Portugal (no. 2)*, cited above, § 84). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I). Without requiring a detailed answer to every argument advanced by the complainant, this obligation presupposes that parties to judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A, and *Higgins and Others v. France*, 19 February 1998, §§ 42-43, *Reports* 1998-I). Moreover, in cases relating to interference with rights secured under the Convention, the Court seeks to establish whether the reasons provided for decisions given by the domestic courts are automatic or stereotypical (see, *mutatis mutandis*, *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, § 210, ECHR 2017).

73. In view of the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective, the right to a fair trial cannot be seen as effective unless the requests and observations of the parties are truly "heard", that is to say, properly examined by the tribunal (see *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, § 206, 16 November 2017; *Carmel Saliba v. Malta*, no. 24221/13, § 65, 29 November 2016 with further references therein; and *Fodor v. Romania*, no. 45266/07, § 28, 16 September 2014). In examining the fairness of criminal proceedings, the Court has also held in particular that by ignoring a specific, pertinent and important point made by the accused, the domestic courts fall short of their obligations under Article 6 § 1 of the Convention (see *Zhang v. Ukraine*, no. 6970/15, § 61, 13 November 2018, and *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011).

(b) Application of those principles to the present case

74. The Court notes at the outset that the trial court convicted the

applicant of membership of a terrorist organisation and causing damage to public property for mounting an attack on a public passenger bus with Molotov cocktails and accordingly sentenced him to a total of twenty-five years and four months' imprisonment. As regards the offence of membership of a terrorist organisation, the trial court relied on two pieces of evidence: (i) the statements K.Ş. had made in the context of a separate set of criminal proceedings and his identification of the applicant from a photograph, and (ii) the documents found and seized during the search of the applicant's house.

75. As to the incident relating to the public passenger bus, the trial court indicated in its reasoned judgment that the sole evidence relating thereto was the document entitled "*Sürece Ait Rapordur*" ("Progress Report") found during the search of the applicant's house on 20 March 2007, in which the author had admitted to having thrown a Molotov cocktail at the bus. As a result, it is safe to conclude that the evidence found during the search and the evidence given by K.Ş. played a central role in the applicant's conviction (compare *Tsion v. Georgia* (dec.), no. 7720/12, 16 June 2020).

76. As regards the search of the applicant's house, the Court notes that the applicant denied that the documents found were his, arguing that they might have been planted by the police, who had failed to conduct the search in the presence of two attesting witnesses despite this being mandatory under Article 119 § 4 of the Code of Criminal Procedure. On that basis, the applicant argued that a judicial review of the crucial question of whether the police had planted the evidence in his house had effectively become impossible owing to non-compliance with the above-mentioned statutory provision.

77. The Court reiterates that it has already found a violation of Article 8 of the Convention on the grounds that the search of the applicant's house was not carried out in the manner which was not in accordance with the law since it was conducted in the absence of two attesting witnesses.

78. The Court's case-law under Article 6 of the Convention does not automatically exclude the use of evidence by the domestic courts which may be considered "unlawful" under the domestic legal provisions (see, among other authorities, *Parris v. Cyprus* (dec.), no. 56354/00, 4 July 2002). However, in cases where the defence is able to lay the basis of an arguable claim capable of calling into question the reliability or authenticity of a piece of evidence, regardless of whether it was "unlawful" or not in terms of domestic law, the Court's case-law under Article 6 of the Convention requires the domestic courts to conduct a thorough assessment, in an adversarial manner, of all the circumstances of the case with a view to allaying any doubts as to the authenticity of evidence (see *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 157, 18 December 2018; *Bykov*, cited above, § 95; and *Horvatić v. Croatia*, no. 36044/09, § 82, 17 October 2013).

79. Furthermore, the Court notes that both the Constitution of Turkey and the Code of Criminal Procedure provide very strong procedural safeguards *vis-à-vis* unlawfully obtained evidence by establishing a firm stance against the admissibility and use of such evidence in criminal proceedings. First and foremost, Article 38 § 6 of the Constitution indicates that unlawfully obtained things or items (*bulgu*) (which have not yet been classed as evidence) cannot be admitted as evidence. Similarly, Article 206 § 2 (a) of the Code of Criminal Procedure provides that evidence obtained unlawfully is not admissible. Article 217 § 2 of the same Code stipulates that an offence may be proven by all kinds of lawfully obtained evidence. Article 230 § 1 (b) of the Code places the trial court under a duty to specify the evidence upon which it has decided to rely and explicitly and separately indicate the evidence obtained unlawfully. In that connection, the Court further notes that the Constitutional Court has also adopted a similar approach in respect of the use by the domestic courts of evidence obtained from searches deemed to be contrary to the relevant statutory provisions (see paragraphs 36 and 37).

80. Against this background, the Court considers that the absence of an appropriate response from the domestic courts *vis-à-vis* a substantiated claim that a certain piece of evidence has been obtained in breach of statutory requirements or the rights and freedoms protected by the Convention and the Protocols thereto would, in principle, be incompatible with the requirements of a fair trial, including, in particular, where the evidence was of decisive importance for the conviction.

81. In the present case, the Court's role is to ascertain, in the light of its above-mentioned case-law, (i) whether the applicant was able to put forward a *prima facie* case against the lawfulness, authenticity, veracity and admissibility of the evidence found during the search of his house, and (ii) whether the domestic courts carried out a thorough examination on those points in the manner described above (see, *mutatis mutandis*, *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 51, 28 January 2020). Evidently, the yardstick against which the nature and scope of such scrutiny is to be measured will be determined in accordance with the importance of the evidence in question; the more important the role of the evidence for an applicant's conviction, the more rigorous the domestic courts' scrutiny should be (see, *mutatis mutandis*, *Murtazaliyeva*, § 166 for a similar approach in respect of the domestic courts' duty *vis-à-vis* the defence's requests to examine a witness, and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, § 116, ECHR 2011 for a similar approach in respect of the procedural safeguards *vis-à-vis* the evidence given by absent witnesses).

82. The Court considers that the first part of the above question must be answered in the affirmative, particularly given that the applicant and his co-defendants either themselves or through their lawyers used on several

occasions their legal possibility to draw the domestic courts' attention to the fact that, in their view, the searches had not been conducted in accordance with the requirements of domestic law.

83. That being so, the Court must further assess whether the domestic courts carried out a thorough examination of the lawfulness of the search of the applicant's house as well as the admissibility, reliability and quality of the evidence found and seized. Given the central role of the documents discovered during the search for the applicant's conviction, the Court considers that it was imperative for the trial court to subject these issues to the most searching scrutiny (see, *mutatis mutandis*, *Bosak and Others v. Croatia*, nos. 40429/14 and 3 others, § 80, 6 June 2019). Moreover, as the documents contained no elements which might reasonably have led an objective observer to conclude that they had been drawn up by the applicant, the Court notes that the national courts were under a duty to exhaust every reasonable possibility of finding out exactly whether the author of that document, who had confessed to attacking the public passenger bus, was the applicant (see, *mutatis mutandis*, *Kasparov and Others v. Russia*, no. 21613/07, § 64, 3 October 2013). In any event, the need to carry out those examinations as to the lawfulness of the search and the evidence obtained from it was incumbent on the trial court under the Constitution and the Code of Criminal Procedure.

84. In that connection, the Court observes that the trial court heard evidence from three police officers and that two of them admitted that the search had indeed been carried out in the absence of two attesting witnesses because it had taken place in the early hours of 20 March 2007. Moreover, when the applicant's lawyer wanted to ask one of the officers whether the applicant's father had been present when each room had been searched, the trial court rejected that question, finding it of absolutely no relevance in ascertaining the truth, without giving any reasons for that conclusion. In the Court's view, this question was all the more pertinent given that it might have shed light on the applicant's allegation that the police officers had planted the relevant documents in his house. In the same vein, the trial court appears to have made no assessment of the applicant's submission that the fact that his father had signed the search report did not mean much due to the fact that he did not speak Turkish (compare *Kirakosyan v. Armenia (no. 2)*, no. 24723/05, § 62, 4 February 2016).

85. Similarly, the trial court also failed to take any steps to examine the link between the applicant and the document discovered during the search of his house, a one-page printout, which contained neither his fingerprints nor his signature (see, *mutatis mutandis*, *Layijov v. Azerbaijan*, no. 22062/07, § 73, 10 April 2014).

86. It is striking to note that the trial court's reasoned judgment made no mention of the evidence given by the two police officers who had admitted their failure to fulfil the statutory requirement under Article 119 § 4 of the

Code of Criminal Procedure, that is to say the presence of two attesting witnesses (contrast *Erduran and Em Export Dış Tic. A.Ş. v. Turkey*, nos. 25707/05 and 28614/06, § 110, 20 November 2018). The trial court merely held that the search had been "authorised by a judge" and had therefore been "in accordance with the procedure" without in any way assessing the relevance of the police officers' statements (see, *mutatis mutandis*, *Carmel Saliba v. Malta*, cited above, § 70). Such scant and stereotypical reasoning means that the trial court failed to demonstrate that it had duly examined and effectively answered the applicant's specific, pertinent and important objections against the lawfulness of the search as well as the admissibility, authenticity and veracity of the main piece of evidence obtained from it before imposing an extremely severe custodial sentence on him.

87. More importantly, the trial court failed to fulfil its duty to apply the relevant procedural safeguards enshrined in the Constitution and the Code of Criminal Procedure regarding the unlawfulness of evidence, which would have led it to rule on the admissibility of the contested evidence. In the Court's view, that procedural shortcoming had a particular bearing on the overall fairness of the criminal proceedings against the applicant, in view of the weight attached, under Article 53 of the Convention, to the non-application by the domestic courts of the enhanced protection afforded to the applicant by the domestic legal provisions, including the Constitution, regarding the admissibility and lawfulness of the main piece of evidence.

88. In view of the above, the Court cannot conclude that the applicant's defence submissions going to the heart of the lawfulness, admissibility, authenticity and veracity of the main piece of evidence received an appropriate response from the domestic courts, which appear to have sidestepped the effective procedural safeguards by failing to provide reasons capable of showing that they had duly considered them.

89. In sum, the use of the main piece of evidence found during the search of the applicant's house without applying the necessary procedural safeguards rendered the criminal proceedings against him unfair (see *Botea v. Romania*, no. 40872/04, §§ 42-43, 10 December 2013, and contrast *Musa Karataş v. Turkey*, no. 63315/00, §§ 92 and 95, 5 January 2010).

90. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

91. That being the case, the Court does not consider it necessary to examine the merits of the applicant's complaint under Article 6 §§ 1 and 3 (d) of the Convention regarding his alleged inability to examine K.Ş. before the trial court.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

92. 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

93. The applicant claimed 100,000 euros (EUR) in respect of pecuniary damage, arguing that because he had been deprived of his liberty since 20 March 2007, he had been unable to provide for his family of nine. As to non-pecuniary damage, the applicant claimed EUR 100,000 corresponding to the pain and suffering he had had to endure as a result of having been sentenced to more than twenty-five years' imprisonment.

94. The Government contested those claims, arguing that (i) there was no causal link between the claims and the alleged violations of the Convention and (ii) that the claims were in any event excessive and did not correspond to the amounts awarded in the Court's case-law.

95. The Court notes that the applicant failed to substantiate his pecuniary damage claims; it therefore rejects this claim. On the other hand, it awards the applicant EUR 10,000 in respect of non-pecuniary damage, plus any tax that may be chargeable, in the light of the two different violations it has found in the instant case (see *Cevat Özel v. Turkey*, no. 19602/06, § 42, 7 June 2016, and *Karabeyoğlu v. Turkey*, no. 30083/10, § 136, 7 June 2016). Notwithstanding that conclusion, the Court reiterates that the most appropriate form of redress would be a retrial in accordance with the requirements of Article 6 of the Convention, should the applicant so request (see *Soytemiz v. Turkey*, no. 57837/09, §§ 63-64, 27 November 2018).

B. Costs and expenses

96. The applicant also claimed EUR 3,000 for legal fees and a further EUR 229 for postage and translation costs incurred before the Court. In support of those claims, he submitted postal receipts and an invoice regarding the translation expenses.

97. The Government invited the Court to reject, pursuant to Rule 60 §§ 1 and 3 of the Rules of Court, the applicant's claims under this head, with the exception of the translation expenses.

98. 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 rejects the claim for legal fees

given the absence of any documents to support it. On the other hand, it considers it reasonable to award the sum of EUR 229 for postal and translation expenses incurred in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

C. Default interest

99. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

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

4. *Holds* that there is no need to examine the complaint under Article 6 §§ 1 and 3 (d) of the Convention;

5. *Holds,*
   (a) that the respondent State is to pay the 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 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 229 (two hundred and twenty-nine euros), plus any tax that may be chargeable to the applicant, 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;

6. *Dismisses*, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President