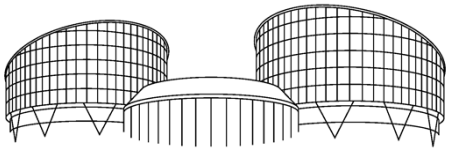

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF URAT v. TURKEY

(Applications nos. 53561/09 and 13952/11)

JUDGMENT

STRASBOURG

27 November 2018

FINAL

06/05/2019

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

In the case of Urat v. Turkey,

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

Robert Spano, *President,*
Julia Laffranque,
Işıl Karakaş,
Paul Lemmens,
Jon Fridrik Kjølbro,
Stéphanie Mourou-Vikström,
Ivana Jelić, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 23 October 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 53561/09 and 13952/11) 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 two Turkish nationals, Mr Cemal Urat and Mr Ahmet Urat ("the applicants"), on 4 September 2009 and 18 January 2011 respectively.

2. The first applicant, Cemal Urat, was represented by Mr M. Sadak, a lawyer practising in Istanbul. The second applicant, Ahmet Urat, was represented by Mr E. Özkan, a lawyer practising in Diyarbakır. The Turkish Government ("the Government") were represented by their Agent.

3. The applicants alleged, in particular, that their dismissal from the civil service despite the absence of a criminal conviction against them had violated their right to the presumption of innocence.

4. On 29 August 2013 application no. 13952/11 was communicated to the Government. On 12 December 2016 the complaints concerning the alleged violation of the applicant's right to the presumption of innocence and the fairness of the disciplinary proceedings in application no. 53561/09 were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants, who are brothers, were born in 1964 and 1962 respectively and live in Mardin.

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

1. Criminal proceedings against the applicants

7. At the time of the events giving rise to the application, the applicants held teaching posts with the Ministry of Education and were employed as primary school teachers.

8. On 22 January 2000 the first applicant was taken into police custody on suspicion of membership of an illegal organisation, Hizbullah, following the discovery of his profile in the format of a CV (*özgeçmiş*) amongst documents confiscated from the organisation's safe house in Beykoz, Istanbul. On 26 January 2000 he was questioned by the police. In his statement, which he refrained from signing, he denied the allegations that he was a member of Hizbullah but submitted that he had given some of the same personal information about himself reflected in the CV to an individual named F.Ş. in 1983. He further submitted that he had adopted a religious lifestyle and had been in contact with religious communities since 1983; however, his activities had never gone beyond reading the Quran to children in mosques. In a statement given on 29 January 2000 to the public prosecutor, the applicant stated that he had refrained from signing his statements before the police since they had contained expressions which had not been used by him. He further submitted that the fact that his profile had been discovered in the safe house meant nothing, since anyone could have given that information to Hizbullah. He stated that, in any event, he had not given information about himself to the organisation.

9. On 22 January 2000 the second applicant was taken into police custody in similar circumstances to the first applicant, that is, following the discovery of his profile in the format of a CV amongst documents confiscated from the organisation's safe house in Istanbul. On 28 and 29 January 2000 he was questioned by the police and the Mardin public prosecutor respectively, and denied all allegations against him on both occasions. Claiming that he had never been in contact with Hizbullah, he stressed that the CV shown to him as evidence by the police during questioning differed from the one he had seen at the time of his detention a week earlier, and that they both contained inaccurate information about his background.

10. On 29 February 2000 the public prosecutor filed an indictment with the Diyarbakır State Security Court, accusing the applicants of membership of an illegal armed organisation. He further accused the second applicant of complicity in the murder of two individuals and the wounding of a third.

11. By Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004, State Security Courts were abolished. The cases against the applicants were therefore transferred to the Diyarbakır Assize Court.

12. On 13 September 2004 the Diyarbakır Assize Court held that the first applicant's involvement with the terrorist organisation had been limited

to handing in his CV and attending its indoctrination sessions, which therefore fell within the scope of aiding and abetting rather than membership. Having regard to the fact that the alleged crime had been committed before 23 April 1999, the court held that Law no. 4616 – which provided for the suspension of criminal proceedings in respect of certain offences committed before that date (see paragraph 38 below) – was applicable. It thus suspended the criminal proceedings against the first applicant. On 28 September 2007 the proceedings against him were discontinued on account of the expiry of the five-year prosecution period. The decision became final on 31 October 2007.

13. On 7 December 2007 the Diyarbakır Assize Court reclassified the charge against the second applicant as aiding and abetting an illegal organisation and discontinued the proceedings in respect of that charge on account of the expiry of the five-year prosecution period. It further acquitted him of the remaining charges for lack of sufficient evidence.

2. Disciplinary proceedings against the applicants

a. Preliminary disciplinary investigation

14. Owing to the fact that they were being prosecuted on charges of membership of an illegal organisation, the applicants were suspended from their positions. Furthermore, on 27 January 2000, following the initiation of the criminal investigation against the applicants, the Mardin Directorate of Education ("the Directorate") initiated a disciplinary investigation against the applicants and a number of other civil servants into their political and ideological activities. Among those questioned within the context of that investigation were the applicants, about six to nine of their colleagues, as well as the principal and vice-principal of the primary school. In respect of the first applicant, three teachers briefly stated that they had been aware that the applicant was a Hizbullah supporter or had heard such rumours. One teacher colleague stated that he believed the applicant was a Hizbullah supporter as he had seen his wife wearing a *çarşaf* (chador). In respect of the second applicant, the teachers said that they knew him to be religious but that they had not witnessed him engaging in any ideological propaganda at school. One teacher submitted that the second applicant was rumoured to be a Hizbullah supporter. In respect of both applicants, most of the teachers submitted that their suspension from the school had disrupted the working order of the institution in so far as the applicants' students had had to be transferred to the rest of the teachers, resulting in merged classes of sixty to seventy pupils. The principal and vice-principal stated that they had not witnessed or been made aware of anything to suggest that the applicants had connections with the illegal organisation. The applicants denied the allegations and stated that they wanted to return to their duties as soon as possible.

15. In an investigation report dated 30 June 2000, investigators took into account the evidence in the criminal proceedings, in particular the fact that

the applicants' CVs had been discovered on a computer confiscated from the organisation's safe house, and concluded that the applicants were members of Hizbullah. They also went on to add that this conclusion was corroborated by the statements of the applicants' teacher colleagues. They then decided that the nature of the criminal proceedings against the applicants on charges of membership of a terrorist organisation fell within the ambit of section 125 (E) (a) of the Law on Civil Servants (Law no. 657), which provides for the dismissal of a civil servant for disrupting the peace, tranquillity and working order of an institution for ideological and political purposes. The investigators therefore recommended the applicants' dismissal on those grounds.

16. On 24 October 2000 the applicants were invited by the Supreme Disciplinary Council of the Ministry of Education ("the Supreme Disciplinary Council") to submit defence statements in response to the allegations concerning their active membership of the illegal terrorist organisation Hizbullah and their alleged disruption of the peace, tranquillity and order at the workplace for ideological and political purposes.

17. In separate submissions the applicants denied all the allegations against them. They denied having given Hizbullah their CVs and highlighted obvious spelling mistakes, discrepancies and inaccurate information in the copies contained in the case file to demonstrate that they had been prepared by someone else without their knowledge. The first applicant further argued that the disciplinary investigation file contained no objective assessment of whether he had engaged in ideologically or politically motivated behaviour at the workplace so as to disrupt the peace, tranquillity and the working order of the school. In that respect he submitted that the conclusion reached by the disciplinary authorities was not grounded on facts but solely on accusations and rumours.

18. By a decision of the Supreme Disciplinary Council dated 18 April 2001, the applicants were dismissed from the civil service pursuant to section 125 (E) (a) of Law no. 657. The relevant parts of the decision read as follows:

> "...The acts attributed to the applicant[s]: Membership of the illegal terrorist organisation Hizbullah and carrying out activities for the organisation, disrupting the peace, tranquillity and working order of the institution for ideological and political purposes.
>
> ...
>
> Based on the examination of the information and documents in the case file, the veracity of the acts attributed to the applicant[s] and their continuous nature has been established. Having regard to the importance of the teaching post and the characteristics and seriousness of the offence, it has not been deemed appropriate to impose a lighter penalty. Based on the following considerations, the recommendation for the applicant[s]' dismissal was accepted unanimously ..."

b. Proceedings before the Administrative Courts against the dismissal of the first applicant

19. On 4 August 2001 the first applicant brought a claim against the Ministry of Education in the Diyarbakır Administrative Court, challenging his dismissal. He requested a stay of execution of the dismissal order because criminal proceedings were still pending against him.

20. On 10 January 2002 the Diyarbakır Administrative Court rejected his request for a stay of the dismissal order.

21. Relying on his right to be presumed innocent, on 18 February 2002 the first applicant challenged that decision before the Regional Administrative Court.

22. On 4 March 2002, having regard to the fact that the first applicant had been dismissed on account of his alleged membership of a terrorist organisation, the Regional Administrative Court granted his request for a stay of the dismissal decision and held that he had been charged with a criminal, not a disciplinary, offence, the determination of which could only be made by a competent criminal court. It therefore held that he could not be dismissed from public service for membership of a terrorist organisation without a final conviction. If he were to be convicted, however, he could be dismissed on the grounds that he no longer qualified for civil service. The case was remitted to the Diyarbakır Administrative Court.

23. On 3 December 2002 the Diyarbakır Administrative Court adjourned its examination of the merits of the case pending the outcome of the criminal proceedings.

24. On 14 April 2005, shortly after the Diyarbakır Assize Court's decision to suspend the criminal proceedings, the Diyarbakır Administrative Court rejected the first applicant's request for the dismissal decision to be quashed. The relevant parts of the judgment read as follows:

> "The applicant and other civil servants holding various posts in the district have been the subject of a disciplinary investigation in connection with their alleged acts of 'disrupting the peace, tranquillity and working order of the institution for ideological and political purposes; participating, provoking, encouraging or otherwise assisting in acts such as boycotts, occupations, obstructions, slowdowns and strikes or being collectively absent from work.' The Ministry of Education's investigation report dated 30 June 2000 recommended the applicant's dismissal from public service because [he] was a member of the Hizbullah terrorist organisation.
>
> Despite the fact that the criminal proceedings against the applicant [on charges of membership of a terrorist organisation] have been suspended, it is an established principle of case-law that exoneration from criminal liability does not preclude the finding of a disciplinary offence. Hence, following an examination of the case file and investigation report, the court finds it established that the applicant committed the disciplinary offence in so far as he gave the organisation his profile and attended its lessons and meetings."

25. On 21 June 2005 the first applicant appealed against the judgment of the Diyarbakır Administrative Court to the Supreme Administrative Court, requesting a stay of the decision ordering for his dismissal from service. He challenged the grounds on which he had been dismissed, arguing that

membership of a terrorist organisation was not one of the disciplinary offences listed in the Law on Civil Servants which warranted dismissal from public service. Moreover, he relied on his right to be presumed innocent since the criminal proceedings against him had been suspended and there had been no definitive finding of guilt. He also argued that the Diyarbakır Administrative Court's failure to give reasons in its decision implied that it had not established the facts giving rise to the disciplinary action independently.

26. In a decision dated 27 September 2005 the Supreme Administrative Court dismissed the first applicant's request for a stay of the dismissal order without providing any further reasons. On 6 June 2006 it also dismissed his appeal.

27. On an unspecified date the first applicant requested a stay of his dismissal order and rectification of the decision in the Supreme Administrative Court, maintaining the same grounds of appeal as in his previous appeal (see paragraph 25 above).

28. The Supreme Administrative Court dismissed the first applicant's requests on 13 February 2008 and 14 April 2009 respectively, without responding to his arguments.

c. Proceedings before the Administrative Courts against the dismissal of the second applicant

29. On an unspecified date the second applicant brought a case before the Diyarbakır Administrative Court, challenging his dismissal and requesting a stay of execution of the dismissal order. On 10 January 2002 the Administrative Court dismissed the request for a stay of execution.

30. The second applicant appealed against that decision to the Diyarbakır Regional Administrative Court. He complained, *inter alia*, that the criminal proceedings on charges of membership of an illegal organisation were still pending before the Diyarbakır State Security Court and that, therefore, his dismissal without a conviction on the basis of abstract accusations infringed the presumption of innocence; that the allegations that he had disturbed the peace and order at the workplace remained completely unproven and unsubstantiated; and that in delivering its decision, the Supreme Disciplinary Council had failed to comply with the six-month time-limit set out in Law no. 657.

31. On 4 March 2002 the Diyarbakır Regional Administrative Court ordered a stay of execution of the dismissal decision. It reiterated at the outset the three principal conditions for an act to be considered a disciplinary offence: (i) that it be carried out by the employees of an institution within that institution; (ii) that it disrupt the established order of the institution; and (iii) that the act constituting the disciplinary offence, as well as the related penalty, be set out in the relevant laws and regulations. The Regional Administrative Court then went on to examine the different types of offences that may be committed by civil servants, differentiating between acts amounting to disciplinary offences exclusively, acts

considered to be offences under both disciplinary and criminal laws and, lastly, acts defined as offences only under the Criminal Code. In the light of this classification, the Diyarbakır Regional Administrative Court decided that the act attributed to the second applicant, that is, membership of a terrorist organisation, fell under the third category of acts punishable only under the Criminal Code, the determination of which could only be made by a competent criminal court. Bearing in mind that the relevant criminal proceedings were still pending before the Diyarbakır State Security Court, the Regional Administrative Court concluded that the second applicant could not, for the time being, be lawfully dismissed from the civil service on account of membership of a terrorist organisation. The case was remitted to the Diyarbakır Administrative Court.

32. On 8 September 2006 the Diyarbakır Administrative Court annulled the Supreme Disciplinary Council's dismissal decision as unlawful. Noting the discrepancy in the latter's decision, the court stated that while the second applicant was being accused by the administration of membership of a terrorist organisation, the legal basis put forward for his dismissal was the disruption of peace and order at the workplace through ideological and political propaganda under section 125 (E) (a) of Law no. 657. Considering that none of the people questioned at the school had witnessed such propaganda by the second applicant there, and bearing further in mind that "membership of a terrorist organisation" was not one of the exhaustive grounds for dismissal from the civil service listed in the relevant section, the second applicant's dismissal had had no legal basis.

33. The Ministry of Education appealed against the decision. On 20 June 2008 the Supreme Administrative Court overturned the decision of the Diyarbakır Administrative Court and amended the legal grounds for the second applicant's dismissal. The Supreme Administrative Court firstly acknowledged that the charges against the second applicant of aiding and abetting an illegal organisation had been discontinued on account of the expiry of the five-year prescription period laid down for that offence, and that he had been acquitted of the remaining charges. Referring to the second applicant's statements given to the police, his CV obtained from the Hizbullah safe house in Istanbul and the bill of indictment filed against him by the Mardin public prosecutor, the Supreme Administrative Court then found it established that the second applicant was a member of a terrorist organisation who in addition had recruited members to the organisation and pursued the ideology of the terrorist organisation in the classroom. It continued that even if his colleagues had not witnessed such action on the part of the second applicant at the school, his dismissal had still been justified under a different subsection of section 125 (E), namely subsection (g), which authorised the dismissal of civil servants who were found to engage in "disgraceful and shameful conduct incompatible with the position of a civil servant".

34. On 27 May 2009 the Diyarbakır Administrative Court transferred the case to the Mardin Administrative Court, which was deemed to be the court with jurisdiction in the instant case.

35. On 24 November 2009, complying with the decision of the Supreme Administrative Court, the Mardin Administrative Court upheld the disciplinary decision ordering the second applicant's dismissal from the civil service under section 125 (E) (g) of Law no. 657. The relevant parts of the judgment read:

> "Notwithstanding the discontinuation of the criminal proceedings against the applicant on charges of membership of an armed organisation and his acquittal on charges of murder and battery, the investigation and [criminal] case file reveal that the applicant's profile was discovered in the organisation's [safe] house in Istanbul and that his statements to the police and the bill of indictment demonstrate the fact that he was a member of the organisation, recruiting new members and lecturing on its ideologies, facts which were corroborated by his statements and [CV]. These acts fall within the scope of disgraceful and shameful conduct incompatible with the position of a civil servant ... which therefore justify his dismissal from public service."

36. On 17 September 2010 the Supreme Administrative Court dismissed a request for leave to appeal lodged by the second applicant.

II. RELEVANT DOMESTIC LAW

37. Section 125 (E) of the Law on Civil Servants (Law no. 657), in so far as relevant, provides as follows:

> "...The following acts and conduct shall result in dismissal from the civil service:
>
> (a) Disrupting the peace, tranquility and working order of the institution for ideological and political purposes; participating in such acts as boycotts, occupations, obstructions, slowdowns and strikes or being collectively absent from work for these purposes; provoking, encouraging or assisting in such acts;
>
> ...
>
> (g) Engaging in disgraceful and shameful conduct incompatible with the position of a civil servant;
>
> ..."

38. Law no. 4616, in so far as relevant, provides:

> "4. In respect of offences committed before 23 April 1999 which carry a maximum prison sentence of ten years:
>
> - where no criminal investigation has been commenced or no indictment has been filed, the institution of criminal proceedings shall be suspended;
>
> - where the criminal proceedings have reached the final stages but no definitive finding on the merits has been adopted or where a definitive finding on the merits has not yet become final, the adoption of a definitive finding on the merits shall be suspended.
>
> If the person concerned is remanded in custody, he or she shall be released. Documents and evidence concerning the offences shall be kept until the statute of limitations has been reached."

THE LAW

I. JOINDER OF THE APPLICATIONS

39. In view of the similarity between the applications in terms of the facts and the substantive issues they raise, the Court decides to join them and to examine them together in accordance with Rule 42 § 1 of the Rules of Court.

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

40. The applicants complained that their dismissal from the civil service despite the absence of a criminal conviction against them had violated their right to the presumption of innocence as provided in Article 6 § 2 of the Convention, which reads as follows:

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

41. The Government contested that argument.

A. Admissibility

42. Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law". The Court has acknowledged in its case-law the existence of two aspects to the protection afforded by the presumption of innocence: a procedural aspect relating to the conduct of the criminal trial, and a second aspect, which aims to ensure respect for a finding of innocence in the context of subsequent proceedings, where there is a link with criminal proceedings which have ended with a result other than a conviction (see, generally, *Allen v. the United Kingdom* [GC], no. 25424/09, §§ 93-94, ECHR 2013). Under the first aspect, the principle of the presumption of innocence prohibits public officials from making premature statements about the defendant's guilt and acts as a procedural guarantee to ensure the fairness of the criminal trial itself. However, it is not limited to a procedural safeguard in criminal matters: its scope is broader and requires that no representative of the State should say that a person is guilty of an offence before his or her guilt has been established by a court (see *Konstas v. Greece*, no. 53466/07, § 32, 24 May 2011). In that connection the presumption of innocence may be infringed not only in the context of a criminal trial, but also in separate civil, disciplinary or other proceedings that are conducted simultaneously with the criminal proceedings (see *Kemal Coşkun v. Turkey*, no. 45028/07, § 41, 28 March 2017). While the scope of the first aspect under Article 6 § 2 of the Convention covers the period in which a person has been charged with a criminal offence until the criminal proceedings are finalised, the second

aspect of the protection of the presumption of innocence comes into play when the criminal proceedings end with a result other than conviction, and requires that the person's innocence *vis-à-vis* the criminal offence is not called into doubt in subsequent proceedings (see *Allen*, cited above, § 94).

43. The second aspect of the protection afforded by Article 6 § 2 requires that a person must be treated in a manner that is consistent with his or her innocence after the conclusion of criminal proceedings which have terminated in an acquittal or discontinuation (ibid., § 103). The extension of the protection of Article 6 § 2 to subsequent non-criminal proceedings constitutes an important safeguard for the person's established innocence in relation to any charge not proven.

44. In order for the second aspect of Article 6 § 2 to be applicable to subsequent proceedings, the Court requires an applicant to demonstrate the existence of a link between concluded proceedings and subsequent proceedings. Such a link is likely to be present, for example, where the subsequent proceedings require examination of the outcome of the prior criminal proceedings and, in particular, where they oblige the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant's possible guilt (see *Allen*, cited above, § 104).

45. In *Allen* (ibid., § 125), the Grand Chamber noted that there was no single approach to ascertaining the circumstances in which the second aspect of Article 6 § 2 would be violated in the context of proceedings following the conclusion of criminal proceedings. As illustrated by the Court's existing case-law, much will depend on the nature and context of the proceedings in which the impugned decision was adopted. However, in all cases and regardless of which approach applied, the language used by a decision maker would be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2 (ibid., §§ 125 and 126).

46. In the present case, the Court notes that the applicants' complaint essentially concerns their dismissal from the civil service and the way in which their objections concerning the alleged violation of their right to the presumption of innocence were treated by the administrative courts reviewing their dismissal. The Court observes in that connection that disciplinary and criminal proceedings were initiated simultaneously against the applicants following the allegations that they were members of an illegal organisation. The disciplinary decisions to dismiss them were taken while the criminal proceedings were still pending. In the case of the first applicant, the reasoning of the disciplinary decision was endorsed by the administrative court in its judgment of 14 April 2005 and by the Supreme Administrative Court on 6 June 2006, that is, after the decision had been taken on 13 September 2004 to suspend the criminal proceedings against the applicant on charges of membership of an illegal organisation. Moreover,

those judgments were upheld during the subsequent rectification proceedings, even though by that time the criminal proceedings against the applicant had been formally discontinued. In the case of the second applicant, the Supreme Administrative Court in its decision of 20 June 2008 endorsed the findings of the disciplinary authorities and held that the legal classification of the applicant's conduct corresponded to the disciplinary offence of disgraceful and shameful conduct that was incompatible with the position of a civil servant. The reasoning of the Supreme Administrative Court was followed by the Mardin Administrative Court in its judgment of 24 November 2009. The Court notes that those decisions also post-dated the decision to discontinue the criminal proceedings against that applicant on charges of membership of an illegal organisation and to acquit him of the murder of two individuals and the wounding of a third.

47. As to which aspect of Article 6 § 2 should apply to the applicants' complaints, while the Court notes that both aspects of Article 6 § 2 remained relevant for the time period in which the disciplinary and criminal proceedings were conducted in parallel to each other, having regard to the fact that both administrative court judgments post-dated the decisions in the criminal proceedings against the applicants, the Court takes the view that the features of the second aspect of Article 6 § 2, which requires that a person's innocence is not called into doubt in subsequent proceedings, are predominant in the present cases. However, this overlap in time between the proceedings does not lead to an automatic application of Article 6 § 2 to the subsequent proceedings; there must also be a link between two such sets of proceedings to justify extending the principle of the presumption of innocence to subsequent proceedings. The Court notes in that connection that the parties do not dispute the fact that the dismissal of the applicants from the civil service was directly related to the events leading to the criminal proceedings. The fact that the disciplinary authorities and administrative courts examined the criminal file and based their reasoning to a great extent on its contents is sufficient to enable the Court to conclude that a strong link existed between the criminal and disciplinary proceedings (see *Alkaşı v. Turkey*, no. 21107/07, § 28, 18 October 2016). As a result, Article 6 § 2 is applicable in the context of the disciplinary and judicial proceedings at issue. The application is therefore not incompatible *ratione materiae* with the provisions of the Convention.

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

B. Merits

1. The parties' arguments

49. The applicants maintained their arguments.

50. The Government did not dispute the fact that the disciplinary investigation against the applicants had been conducted on the basis of the criminal investigation file. However, they submitted that other evidence, such as witness statements, had been collected during the disciplinary investigation. They argued that the disciplinary authorities, on the basis of a less strict burden of proof, had reached the conclusion that the applicants should be held liable in terms of disciplinary law for their conduct which had given rise to a criminal investigation. In the case of the first applicant, they argued that the grounds for his dismissal had been disturbing the peace and order of the work environment and not membership of an illegal organisation and, therefore, the decision could not be considered to be contrary to the applicant's right to the presumption of innocence. They argued in that connection that the findings of the disciplinary and judicial authorities had only concluded that the applicant had a link with the illegal organisation without suggesting that he had been aiding and abetting a terrorist organisation from a criminal law perspective. In the case of the second applicant, they contended that since the Mardin Administrative Court in its judgment of 24 November 2009 had limited its reasoning to the disciplinary sphere by expressly indicating that the criminal charges against the applicant had been discontinued, it could not be said that that court's reasoning ran contrary to the presumption of innocence. Lastly, they argued that where there were serious suspicions against civil servants, the disciplinary bodies should not have to await the outcome of criminal proceedings, which could take years to finalise. In the face of serious allegations such as those in the present cases, it would be contrary to the public interest if the disciplinary authorities were required to await the outcome of the criminal proceedings.

2. The Court's assessment

(a). General principles

51. The Court reiterates that the second aspect of the protection afforded by Article 6 § 2 requires that a person must be treated in a manner that is consistent with his or her innocence after the conclusion of criminal proceedings which have terminated in an acquittal or discontinuation (see *Allen*, cited above, §§ 94 and 103). Its general aim, in this second aspect, is to protect individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged. In these cases, the presumption of innocence has already operated, through the application at trial of the various requirements inherent in the procedural guarantee it affords, to prevent an unfair criminal conviction being imposed. Without protection to ensure respect for the acquittal or the discontinuation decision in any other proceedings, the fair trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the

person's reputation and the way in which he or she is perceived by the public. To a certain extent, the protection afforded under Article 6 § 2 in this respect may overlap with the protection afforded by Article 8 (ibid., § 94).

52. The presumption of innocence will be violated in cases concerning statements after the discontinuation of criminal proceedings if, without the accused's having previously been proved guilty according to law and, notably, without his having had the opportunity to exercise his rights of defence, a judicial decision concerning him reflects an opinion that he is guilty (see *Bikas v. Germany*, no. 76607/13, § 44, 25 January 2018). This may be so even in the absence of any formal finding; it suffices that there is some reasoning suggesting that the court regards the accused as guilty (see *Minelli v. Switzerland*, 25 March 1983, § 37, Series A no. 62).

53. It appears from the Court's case-law that there is no single approach to ascertaining the circumstances in which Article 6 § 2 will be violated in the context of proceedings which follow the conclusion of criminal proceedings. Much will depend on the nature and context of the proceedings in which the impugned decision was adopted (see *Allen*, cited above, § 125, and *Vella v. Malta*, no. 69122/10, § 55, 11 February 2014). In cases concerning disciplinary proceedings, the Court accepted that there was no automatic infringement of Article 6 § 2 where an applicant was found guilty of a disciplinary offence arising out of the same facts as a previous criminal charge which had not resulted in a conviction. It emphasised that the disciplinary bodies were empowered to, and capable of, establishing independently the facts of the cases before them and that the constitutive elements of the criminal and disciplinary offences were not identical (see *Allen*, cited above, § 124, and the cases cited therein). The Court has held in that connection that it is neither the purpose nor the effect of the provisions of Article 6 § 2 to prevent the authorities vested with disciplinary power from imposing sanctions on a civil servant for acts with which he has been charged in criminal proceedings where such misconduct has been duly established. The Court further reiterates that the Convention does not preclude that an act may give rise to both criminal and disciplinary proceedings, or that two sets of proceedings may be pursued in parallel. The Court reiterates in that connection that even exoneration from criminal responsibility does not, as such, preclude the establishment of civil or other forms of liability arising out of the same facts on the basis of a less strict burden of proof (see, for example, *Moullet v. France* (dec.), no. 27521/04; 13 September 2007; *Çelik (Bozkurt) v. Turkey*, no. 34388/05, § 32, 12 April 2011; *Erkol v. Turkey*, no. 50172/06, §§ 38-41, 19 April 2011; *Tripon v. Romania* (dec.) no. 27062/04 § 25, CEDH, 7 February 2012; *Teodor v. Romania*, no. 46878/06, § 40, 4 June 2013; *Milojević v. Serbia* (dec.), nos. 43519/07 and 2 others, § 37, 3 September 2013; and, *mutatis mutandis*, *Y v. Norway*, no. 56568/00, § 42, ECHR 2003‑II (extracts)). However, in the absence of a final criminal conviction, if the disciplinary decision were to contain a statement imputing criminal liability to the applicant for the

misconduct alleged against him in the disciplinary proceedings, it would raise an issue under Article 6 § 2 (see *Kemal Coşkun*, cited above, § 53, and the cases cited therein).

(b). Application to the present cases

(i). As regards the first applicant

54. The Court observes at the outset that in the case of the first applicant the conclusion reached by the Diyarbakır Assize Court in the criminal proceedings, namely that his activities had remained within the scope of the offence of aiding and abetting an illegal organisation, does not amount to a finding of guilt, taking into account the suspension of the criminal proceedings without any formal decision having been taken (see paragraph 12 above). The Court considers that the purpose of that qualification by the Diyarbakır Assize Court was to assess whether, on the basis of the case file before it, the offence for which the first applicant was being tried fell within the scope of offences to which Law no. 4616 was applicable. Indeed, the wording of Law no. 4616 is unequivocal, in that it requires criminal courts to suspend criminal proceedings in respect of certain offences without reaching a definitive conclusion as to the defendant's guilt (see, in particular, *Çelik (Bozkurt) v. Turkey*, no. 34388/05, § 33, 12 April 2011). Against this background, the Court therefore concludes that the suspension decision in the case of the first applicant did not constitute a finding of guilt. As a result, the Court must determine whether the Diyarbakır Administrative Court, through its reasoning or the language used in its judgment, respected the applicant's right to be presumed innocent, since he had not been found guilty by a criminal court.

55. In its impugned judgment of 14 April 2005 (see paragraph 24 above), the Diyarbakır Administrative Court started out by summarising the factual and legal background giving rise to the first applicant's dismissal. It then noted that his dismissal from the civil service had been recommended because he was considered to be a member of the Hizbullah terrorist organisation. In its reasoning, the administrative court considered that the first applicant had committed a disciplinary offence by giving his profile to Hizbullah and by attending its lessons and meetings, indicating therefore that these findings fell within the scope of "disrupting the peace, tranquillity and working order of the institution for ideological and political purposes." Accordingly, the Court has to assess whether the reasoning and language used by the Diyarbakır Administrative Court were compatible with the guarantees under Article 6 § 2 of the Convention.

56. The Court notes that the first part of the Diyarbakır Administrative Court's judgment contains only a recapitulation of the factual and legal background of the case and does not reflect an opinion or contain a statement to the effect that the first applicant was guilty of a criminal offence, namely membership of an illegal organisation. The second part of the judgment, which reiterates the principle that exoneration from criminal

liability does not preclude the finding of a disciplinary offence, is likewise not problematic from the angle of Article 6 § 2 of the Convention. Thus it remains for the Court to determine whether the last sentence where the court finds the first applicant's disciplinary liability to be established on the basis of the alleged facts, namely that the first applicant had given the organisation his profile and that he had attended its lessons and meetings, could be said to impute criminal guilt to the first applicant. The Court considers that the language used in the statement cannot be equated to a finding of criminal liability for the offences with which the first applicant had been charged in the criminal proceedings. The meaning that flows from the impugned statement is not that the first applicant had been a member of the terrorist organisation – which had been the charge in the criminal proceedings – but merely that he had handed his CV to the organisation and attended its lessons and meetings, which was found sufficient by the administrative court to entail his disciplinary liability. For this reason, the Court cannot find that the language used by Diyarbakır Administrative Court in finding against the first applicant in the disciplinary proceedings at issue offended the presumption of innocence guaranteed to him under Article 6 § 2 of the Convention.

57. There has therefore not been a violation of that provision.

(ii). As regards the second applicant

58. The Court notes that the Mardin Administrative Court, following the reasoning of the Supreme Administrative Court's decision of 20 June 2008, upheld the second applicant's dismissal by amending its legal grounds from "disrupting the peace, tranquillity and working order of the institution for ideological and political purposes" to "disgraceful and shameful conduct incompatible with the position of a civil servant". In its reasoning, the domestic court stated that certain elements in the criminal case file demonstrated that he had been a member of the Hizbullah terrorist organisation. In the Court's view, this statement alone amounted an unequivocal declaration of the second applicant's criminal liability and ran counter to the second applicant's right not to have his innocence called into question with respect to criminal proceedings which had been discontinued.

59. Consequently there has been a violation of Article 6 § 2 in respect of the second applicant.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

60. The first applicant complained about the unfairness of the administrative proceedings, referring to the absence of adequate reasons provided in the decision of the Diyarbakır Administrative Court.

61. He relied on Article 6 § 1 of the Convention, which reads in so far as relevant as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal established by law..."

A. Admissibility

62. The Court notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

63. The first applicant argued that the administrative courts had based their findings solely on the basis of the accusations against him in criminal proceedings and had not produced reasons of their own to uphold his dismissal from the civil service.

64. The Government submitted that the standard of proof applicable in administrative proceedings was not the same as that in the criminal proceedings. Therefore, no fault could be attributed to the administrative courts which upheld the first applicant's dismissal from the civil service on the basis of evidence presented by the administrative authorities, even though that evidence included elements that originated in the criminal investigation. In that respect they argued that no arbitrariness could be detected in the administrative court's conclusions in so far as that court was empowered to assess the evidence presented by the parties independently.

65. In the present case the Court notes that the Diyarbakır Administrative Court's judgment was founded on the conclusion that the first applicant had given his profile to a terrorist organisation and attended its lessons and meetings, which therefore justified his dismissal from civil service.

66. The Court observes in that connection that the first applicant challenges the manner in which a piece of evidence – the discovery of his profile in a terrorist organisation's safe house – was weighed up in the administrative proceedings against him. Therefore the first applicant's arguments essentially concern the assessment of evidence and standard of proof used by the domestic courts. However, the Court reiterates that Article 6 § 1 of the Convention does not lay down any rules on the admissibility of evidence or the way in which evidence should be assessed, these being primarily matters for regulation by national law and the national courts. Normally, issues such as the weight attached by the national courts to particular items of evidence or to findings or assessments submitted to them for consideration are not for the Court to review. The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 83, 11 July 2017 and the cases cited therein:

Bochan v. Ukraine (no. 2) [GC], no. 22251/08, § 61, ECHR 2015; *Dulaurans v. France*, no. 34553/97, §§ 33-34 and 38, 21 March 2000; *Khamidov v. Russia*, no. 72118/01, § 170, 15 November 2007; and *Anđelković v. Serbia*, no. 1401/08, § 24, 9 April 2013; *Pavlović and Others v. Croatia*, no. 13274/11, § 49, 2 April 2015; *Yaremenko v. Ukraine (no. 2)*, no. 66338/09, §§ 64-67, 30 April 2015; and *Tsanova-Gecheva v. Bulgaria*, no. 43800/12, § 91, 15 September 2015).

67. 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. 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). It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 of the Convention, can only be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A).

68. Finally, a domestic judicial decision cannot be qualified as arbitrary to the point of prejudicing the fairness of proceedings unless no reasons are provided for it or if the reasons given are based on a manifest factual or legal error committed by the domestic court, resulting in a "denial of justice" (see *Moreira Ferreira*, cited above, § 87).

69. Thus, in *Dulaurans* the Court found a violation of the right to a fair trial because the sole reason why the French Court of Cassation had arrived at its contested decision rejecting the applicant's cassation appeal as inadmissible was the result of "une erreur manifeste d'appréciation" ("a manifest error of assessment") (see *Dulaurans*, cited above, § 38). The thinking underlying this notion of "erreur manifeste d'appréciation" (a concept of French administrative law), as used in the context of Article 6 § 1 of the Convention, is doubtless that if the error of law or fact by the national court is so evident as to be characterised as a "manifest error" – that is to say, is an error that no reasonable court could ever have made –, it may be such as to disturb the fairness of the proceedings (see *Bochan (no. 2)*, cited above, § 62). In *Khamidov*, the unreasonableness of the domestic courts' conclusion as to the facts was "so striking and palpable on the face" that the Court held that the proceedings complained of had to be regarded as "grossly arbitrary" (see *Khamidov*, cited above, § 174). In *Anđelković*, the Court found that the arbitrariness of the domestic court's decision, which principally had had no legal basis in domestic law and had not contained any connection between the established facts, the applicable law and the outcome of the proceedings, amounted to a "denial of justice" (see

Anđelković, cited above, § 27). In *Carmel Saliba v. Malta* (no. 24221/13, §§ 69-79, 29 November 2016), the Court criticised the domestic courts for having relied on the inconsistent testimony of one witness and having failed to adequately comment on the remaining evidence; combined with other less significant shortcomings of the civil proceedings, this meant that those proceedings had not been fair. In *Tel v. Turkey* (no. 36785/03, § 75, 17 October 2017), the Court held that the administrative court's dismissal of the request to rectify a decision which had been based solely on a document that that court had set aside with retroactive effect in a related set of proceedings had been a manifest error of assessment.

70. In the present case, while the judgment of the administrative court can be reproached for being very brief, it cannot be said that it lacked reasons entirely. What therefore remains for the Court to determine is whether the reasons advanced by the domestic court were based on a manifest factual or legal error. In determining this issue, the Court has to bear in mind that a civil standard of proof, that is balance of probabilities, was applicable to the administrative proceedings in question. That effectively meant that the trial court had to determine on the basis of the evidence provided by the parties whether the factual allegation supporting the claim was more probable than not. In that respect, while the crucial piece of evidence was the fact that criminal proceedings had been lodged against the applicant following the discovery of his CV in a safe house, the case as examined by the administrative court hinged on whether the first applicant's alleged misconduct could require his disciplinary liability on the legal grounds cited by the administrative authority. The first applicant challenged the findings of the administrative authorities by denying the allegations and submitting that the profile found in the safe house could not have been handed over by him since it contained obvious spelling errors and inaccurate information. No other fact was submitted by the applicant although it was open to him to adduce any evidence or argument to persuade the trial court in the proceedings which were conducted adversarially. In the Court's view, it cannot therefore be said that the applicant was put in a situation of extreme and unattainable standard of proof so that his claim, could not, in any event have had even the slightest prospect of success (compare *Khamidov,* cited above, § 174). Neither is it the case that the trial court gave an unreasonable weight to one piece of evidence by excluding other evidence which had called into question the credibility and relevance of the evidence presented by the other party (compare *Carmel Saliba*, cited above, § 69).

71. Having regard to the considerations set out above, the Court considers that the domestic court's reasoning in the first applicant's case did not reach the threshold of arbitrariness or manifest unreasonableness described in paragraph 69 above, or amount to a denial of justice.

Accordingly, the first applicant did have a "fair hearing" of his case, as required by Article 6 § 1 of the Convention.

Hence, there has been no violation of that provision.

IV. OTHER COMPLAINTS UNDER ARTICLE 6 § 1 OF THE CONVENTION

72. The applicants complained about the unfairness of the disciplinary and judicial proceedings against them, alleging that the administrative courts had acted *ultra vires* in upholding their dismissals on the basis of their alleged membership of a terrorist organisation despite the offence not being one of the exhaustive grounds of dismissal listed in the Law no. 657 on Civil Servants.

73. The Government contested that argument.

74. The Court observes that the applicants' complaint essentially concern a question of interpretation and application of national law, which it is not its primary role to deal with. In this respect, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national authority or court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain*, cited above, § 28).

75. Noting that these complaints concern the administrative courts' evaluation of domestic law and facts, the Court finds that the present case does not disclose any elements of arbitrariness or manifest unreasonableness and that the applicants had a full opportunity to put forward their arguments. Accordingly, no appearance of a violation of Article 6 § 1 of the Convention has been shown. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. OTHER ALLEGED VIOLATIONS

76. Lastly, the second applicant brought additional complaints under Articles 5, 7, 13, 14, and Article 1 of Protocol 1 to the Convention with respect to the disciplinary proceedings. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. Article 41 of the Convention provides:

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

A. Damage

78. The second applicant claimed 80,000 euros (EUR) in respect of pecuniary damage corresponding, *inter alia*, to his loss of income due to his dismissal from public service. He further claimed EUR 40,000 in respect of non-pecuniary damage.

79. The Government contested his claims, considering them excessive and unsubstantiated.

80. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the second applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

81. The second applicant did not claim costs and expenses. Accordingly, the Court makes no award of this nature.

C. Default interest

82. 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

1. *Decides*, unanimously, to join the applications;

2. *Declares*, unanimously, the first applicant's complaint with regard to the reasoning of the Diyarbakır Administrative Court's judgment raised under Article 6 § 1 of the Convention and the applicants' complaint raised under Article 6 § 2 of the Convention admissible and the remainder of the applications inadmissible;

3. *Holds*, unanimously, that there has been no violation of Article 6 § 2 of the Convention in respect of the first applicant;

4. *Holds*, unanimously, that there has been a violation of Article 6 § 2 of the Convention in respect of the second applicant;

5. *Holds*, by six votes to one, that there has been no violation of Article 6 § 1 of the Convention in respect of the first applicant with regard to the reasoning in the Diyarbakır Administrative Court's judgment;

6. *Holds*, unanimously,
(a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses*, unanimously, the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Lemmens is annexed to this judgment.

R.S.
S.H.N.

PARTLY DISSENTING OPINION OF JUDGE LEMMENS

1. To my regret, I am unable to follow the majority in their conclusion that there has been no violation of Article 6 § 1 of the Convention. My disagreement has to do with a different approach to the obligation for courts to give reasons for their decisions.

The majority limit themselves to examining whether reasons were given and, if so, whether the reasons were or were not based on a manifest factual or legal error (see paragraph 70 of the judgment). They conclude that the domestic courts' reasoning "did not reach the threshold of arbitrariness or manifest unreasonableness ... or amount to a denial of justice" (see paragraph 71 of the judgment). I do not question that finding, but consider that it provides an insufficient basis in the present case for concluding that there has been no violation of Article 6 § 1.

2. The obligation to give reasons does not consist only of an obligation to state the reasons which have led the court to decide as it does. It also comprises an obligation to give a reply to the arguments of the parties. Without requiring a detailed answer to every argument advanced by them, this obligation presupposes that they can expect to receive a specific and explicit reply to the arguments which, if accepted, would be decisive for the outcome of the proceedings (see, among other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A; *Hiro Balani v. Spain*, 9 December 1994, §§ 27-28, Series A no. 303-B; *Mugoša v. Montenegro*, no. 76522/12, § 60, 21 June 2016; and *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017). By fulfilling that obligation, the court shows to the parties that they have been heard (see, among other authorities, *Suominen v. Finland*, no. 37801/97, § 37, 1 July 2003, and *Tatishvili v. Russia*, no. 1509/02, § 58, ECHR 2007-I).

3. Turning to the present case, in the proceedings brought by the first applicant against his dismissal the Diyarbakır Administrative Court rejected the appeal on the basis of very brief reasoning, consisting of one page. It found it established "that the applicant committed the disciplinary offence in so far as he gave the organisation his profile and attended its lessons and meetings" (see paragraph 24 of the judgment).

However, at no point in the disciplinary proceedings (including the judicial-review proceedings), or in the criminal proceedings for that matter, was there a definite finding that the applicant had actually given his profile to the organisation or that he had attended its lessons and meetings. In fact, the applicant had argued that the information as written in the profile contained spelling mistakes, discrepancies and inaccurate information which demonstrated that it had been prepared by someone else without his knowledge. The applicant had, moreover, submitted that the disciplinary investigation file contained no objective assessment of whether he had engaged in ideologically or politically motivated behaviour at the workplace

so as to disrupt the peace, tranquillity and working order of the school (see paragraph 17 of the judgment).

In these circumstances, and also taking into account what was at stake for the applicant, the Diyarbakır Administrative Court was not entitled to limit itself to referring in a very general way to the case file and the investigation report (see paragraph 24 of the judgment). Having regard to the applicant's explicit denial of the facts with which he was charged, the obligation to give reasons required the court to refer to factual elements that supported its conclusion that the applicant had himself given his profile to the organisation and that he had attended its lessons and meetings, or that he had displayed blameworthy conduct at the workplace. By not doing so, the court did not make clear why it did not accept the applicant's arguments.

The failure by the Diyarbakır Administrative Court to reply to the applicant's arguments was not corrected by the Supreme Administrative Court, which did not give any further reasons (see paragraphs 26 and 28 of the judgment).

4. As no answer was given to the applicant's arguments, there has in my opinion been a violation of Article 6 § 1 of the Convention.