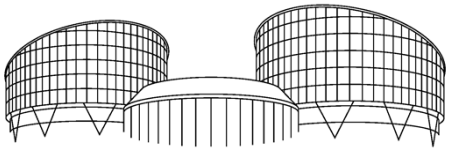

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PİŞKİN v. TURKEY

(Application no. 33399/18)

JUDGMENT

Art 6 § 1 (civil) • Fair hearing • Art 8 • Private life • Inadequate judicial review of the dismissal of an employee in a public institute, under an emergency legislative decree, for his alleged ties to a terrorist organisation regarded as the instigator of the attempted coup of 15 July 2016 • Dismissal authorised under a non-adversarial simplified procedure, without procedural safeguards or individualised summary of the reasoning • Stigmatisation and serious impact on the applicant's professional and social reputation • Absence of a thorough and serious investigation by the domestic courts
Art 15 • Failure to comply with the requirements of a fair hearing, unjustified by the derogation in time of emergency • Simplified dismissal procedure that could be justified in the light of the very special circumstances of the emergency • Emergency legislative decree that did not clearly and explicitly rule out judicial review of the measures taken for its implementation

STRASBOURG

15 December 2020

FINAL

19/04/2021

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

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In the case of Pişkin v. Turkey,

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

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

Having regard to:

the application (no. 33399/18) 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 Hamit Pişkin ("the applicant"), on 6 July 2018;

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

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the joint observations submitted by the organisations Amnesty International, the International Commission of Jurists and the Turkey Human Rights Litigation Support Project ("the intervening non-governmental organisations"), which were granted leave to intervene by the President of the Section

Having deliberated in private on 17 November 2020,

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

INTRODUCTION

1. The case concerns the dismissal of the applicant, an expert working in a public institute, following the declaration of a state of emergency in Turkey, as well as the subsequent judicial review of that measure.

THE FACTS

2. The applicant was born in 1982 and lives in Bingöl. He was represented by Mr I. Yılmaz, a lawyer practising in Bingöl.

3. The Government were represented by their Agent.

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

A. Background to the case

4. On 20 December 2010 the applicant began working as an expert at the Ankara Development Agency (*Ankara Kalkınma Ajansı*; "the Ankara Agency"), on the basis of a permanent employment contract governed by the Labour Code (Law No. 4857).

Established under Law No. 5449 of 25 January 2006, the Ankara Agency is a public-law entity responsible for coordinating the regional activities of public and private bodies. Its legal status is subject to private-law regulations.

5. The Government stated that development agencies such as the one in question are entities set up under Law No. 5449 with a view to promoting cooperation in the implementation of regional development policies at local level among the public sector, the private sector and non-governmental organisations. They explained that the agencies have access to extensive public resources in order to pursue that aim; they are public-law entities operating under the coordination of the Ministry of Industry and Technology; in that framework, using the funds and budget earmarked for the purposes of regional development, the agencies provide backing for development-oriented activities and projects.

6. The Government added that the decision-making body of the Ankara Agency was its governing board, chaired by the Governor of Ankara, and that its secretariat general was its executive body. The governing board approved proposals presented by the secretariat general for supporting programmes, projects and activities, as well as the requisite assistance for individuals and institutions.

7. The Government also explained that the Ankara Agency was a strategic institution in terms of both its power to determine regional development policies and its substantial budget (totalling 64,020,161.13 euros (EUR) for 2018); nonetheless, it was largely subject to private-law provisions; for that reason its employees were not civil servants and held employee status within the meaning of the Labour Code; at 31 December 2018 the Ankara Agency had been operating with a staff of 64 persons, including its secretary general and 28 experts like the applicant; the experts working in the Ankara Agency discharged important duties such as monitoring, assessing and supervising projects and activities supported by the Agency, as well as reporting on such activities.

8. The Government added that the Ankara Agency signed employment contracts with its employees, that the latter's duties were governed by the Labour Code, the provisions of the employment contract and the Regulations on Development Agencies, and that under the applicable

legislation the governing board was responsible for recruitment and dismissal.

B. The failed military coup of 15 July 2016

9. During the night from 15 to 16 July 2016 a group of persons belonging to the Turkish armed forces launched a coup d'état aimed at overthrowing democratically elected Parliament, Government and President of the Republic. During that night of violence more than 250 individuals were killed and over 2,500 injured.

10. On 20 July 2016 the Government declared a state of emergency for a three-month period starting on 21 July 2016. This state of emergency was subsequently extended every three months by the Council of Ministers chaired by the President.

11. On 21 July 2016 the Turkish authorities notified to the Secretary General of the Council of Europe a derogation to the Convention in respect of Article 15.

12. During the state of emergency the Council of Ministers, chaired by the President, enacted thirty-seven emergency legislative decrees (nos. 667 to 703) pursuant to Article 121 of the Constitution. Section 4 (1) (g) of one of those instruments, Legislative Decree No. 667, which was published in the Official Gazette on 23 July 2016, required all bodies answerable to a ministry to dismiss any staff considered as belonging, affiliated or linked to ("*üyeliği, mensubiyeti, iltisakı veya irtibatı*") terrorist organisations or to organisations, structures or groups which the National Security Council had established as being involved in activities prejudicial to the State's national security (those entitles are referred to hereafter as "illegal structures").

13. The Government explained that Emergency Legislative Decree No. 667 had introduced a special procedure for the state of emergency facilitating the dismissal of individuals working in public institutions who were affiliated or linked with illegal structures. The Government stated that the main aim of that measure had been to protect the public institutions from the influence of such structures and to prevent the latter from using public resources and installations. They submitted that the aim of the procedure had been to combat terrorism effectively and to defend the principles of democracy.

C. Termination of the applicant's employment contract

14. On 26 July 2016 the governing board of the Ankara Agency met to assess the situation of its employees. At the end of the meeting, the decision was taken to terminate the employment contracts of six persons, including the applicant, pursuant to section 4 (1) (g) of Emergency Legislative Decree

No. 667, on account of their belonging to structures posing a threat to national security or of their affiliation or links with such structures.

15. On 12 August 2016 the applicant was notified of the decision concerning the termination of his employment contract. The decision merely stated that the contract had been terminated pursuant to section 4 (1) (g) of Emergency Legislative Decree No. 667.

16. The Government presented before the Court the declaration of termination of the applicant's employment by the Ankara Agency as sent to the social security office. The section of the declaration concerning the reason for the termination of employment contained the reference code "22", which the Government explained meant that the applicant had been dismissed for "other reasons". The Government specified that in the document on the termination of employment the reasons for the termination of the relevant worker's employment were indicated by choosing one of thirty-six possible codes. They added that the reference code "29", for example, corresponded to "termination of employment by the employer on account of conduct on the employee's part incompatible with the rules of morality and goodwill".

D. The applicant's efforts to resume his duties

17. On 14 August 2016 the applicant applied to the Ankara Labour Court ("the Labour Court") to set aside the decision to terminate his contract. Before that court he argued, in particular, that his dismissal had not been based on any valid reason and had therefore been unfair and invalid. Moreover, he submitted that his employer had not complied with the dismissal procedure laid down in Article 19 of the Labour Code and Article 435 of the Code of Obligations. He argued that under the aforementioned provisions his employer should have given him written notice of termination of contract, clearly and specifically stating the grounds of dismissal. Lastly, he claimed compensation equivalent to four months' salary.

18. On 1 September 2016 the Labour Court decided to supplement the case file. It requested, in particular, documents concerning the applicant's employment contract and other information on the termination of the latter (including the notice of termination of contract and any defence submissions by the applicant).

19. On 4 October 2016 the applicant wrote to the Ankara Agency asking it to send him the reason for the termination of his employment contract.

20. On 5 October 2016 the applicant submitted a supplementary memorial to the Labour Court, reiterating his pleas concerning the lack of valid notification of his termination of employment. Furthermore, he challenged the lawfulness of the termination of his employment contract and submitted that he had been dismissed for no valid reason. As regards the

provision relied upon to justify his dismissal, that is to say section 4 (1) (g) of Emergency Legislative Decree No. 667, he categorically denied having any kind of link with the FETÖ/PDY ("Fetullahist Terrorist Organisation/Parallel State structure"), which the Turkish authorities considered as an armed terrorist organisation which had premediated the failed military coup. He also described it as a terrorist organisation, submitting that his employer had deliberately circumvented the applicable legal provisions in order to deprive him of the minimum procedural safeguards, such as accepting his defence submissions. He considered that his dismissal had amounted to a breach of his right to presumption of innocence in that it had been based on a subjective assessment that he had links with the terrorist organisation in question. In particular, he submitted that his employer had been unable to provide any explanation or criterion for considering him as someone linked to a terrorist organisation. In his view, the fact that the assessment in question had been left to the arbitrary discretion of the secretary general of the Ankara Agency showed that he had suffered an injustice. The applicant considered that in its observations in response (no copy of which was supplied to the Court by the parties), the Ankara Agency had claimed that it had not needed any evidence in order to make the assessment in question. The applicant stated that such an approach was contrary to his constitutional rights. He also pointed out the following: he had never met any of the members of the Agency's governing board, and consequently the only administrative officer who could have made such an assessment was the secretary general; yet the latter would have required specific information in order to form his opinion; the fact was that there was no evidence – such as the fact of holding a bank account in the Asya Bank, membership of an association, a foundation, a trade union, or some kind of body affiliated to the structure in question, or again a subscription to certain publications – capable of justifying the assessment in question; that being the case, in the absence of any such evidence, the fact of making such an assessment could only be described as arbitrary and manifestly unfair. Finally, the applicant requested a hearing of the secretary general of the Ankara Agency and the gathering of the evidence on which the assessment in question had been based.

21. By letter of 20 October 2016 the Ankara Agency informed the applicant that it was a public-law entity, even though it was subject to the rules of private law, and that its governing board, which had decided to terminate the contract in question, was competent to terminate employment contracts.

22. On 25 October 2016 the Labour Court held a public hearing. On that occasion it heard two witnesses for the applicant.

The first witness, S.A.E., said that he was not among the six employees dismissed. His statement might be summarised as follows: he had worked with the applicant for six years and had never noted any activities relating to

the reasons given for the termination of the applicant's contract; he had no information on the reasons why the employer had made the assessment in question; he had never noted any links between the applicant and the FETÖ/PDY terrorist organisation; and he did not believe that the applicant had any sympathies for the said illegal structure.

The second witness, A.A., made the following statement: he had worked temporarily with the applicant for one-and-a-half years before going back to his own department in 2014; during his period of professional cooperation with the applicant he had never noted the latter's involvement in activities suggesting an affiliation with the illegal structure in question; he had no information on how the governing board had reached the impugned assessment.

23. By judgment of the same day, the Labour Court dismissed the applicant's request on the grounds that the termination of the employment contract had been lawful. In that regard, it held that that measure had been ordered by a competent body, namely the governing board of the Ankara Agency, pursuant to Article 4 (1) (g) of Emergency Legislative Decree No. 667, which had been enacted in the framework of the state of emergency following the failed military coup of 15 July 2016.

The relevant parts of that judgment read as follows:

> "... The defendant employer is an agency ... set up under Law No. 5449. It is essential that ... persons with links to illegal organisations should not be employed in public institutions. It is undisputed that pursuant to Law No. 5449 the governing board of the [defendant] agency has power to terminate employment contracts .... At its meeting on 26 July 2016 the governing board ... decided to terminate the employment contracts of six persons, including the applicant, pursuant to section 4 (1) (g) of the emergency legislative decree .... The appeal must be rejected inasmuch as the termination of the employment contract [should be considered as] a valid termination on the grounds that it was ordered by the governing board of the defendant agency, which is competent in matters of termination of contract, under the provisions of Emergency Legislative Decree No. 667 adopted following the declaration of the state of emergency after the failed military coup perpetrated by the FETÖ/PDY organisation on 15 July 2016" ("*Davacının hizmet akdi 15/07/2016 tarihinde FETÖ/PDY örgütü tarafından meydana getirilen silahlı darbe kalkışması sonrasında ilan edilen olağanüstü hal kapsamında çıkarılan 667 sayılı KHK hükümlerine dayanılarak ve davalı ajansın feshe yetkili yönetim kurulunca fesih edilmekle, bu şekildeki fesihte KHK'ye göre geçerli bir fesih olmakla davanın reddine karar verilerek ...*)."

Even though the Government submitted that the Labour Court dismissed the applicant's appeal on the grounds that "the termination of the applicant's employment had been based on the provisions relating to termination with a valid reason (*geçerli neden*) as set out in Article 18 of the Labour Code [Law No. 4857]", the Court observes that it transpires from that court's judgment that it had not relied in its reasoning, even implicitly, on that provision of the Code.

24. On 23 November 2016 the applicant appealed to the Ankara Regional Court ("the Regional Court"). Reiterating the arguments which he had put to the court of first instance, he complained, first of all, about the lack of reasoning in the judgment of 25 October 2016 delivered by the Labour Court, and secondly, submitted that his dismissal had been unfair and invalid because it had not been based on a valid reason. Moreover, he argued that his dismissal as ordered on the basis of Emergency Legislative Decree No. 667 was not only likely to damage his reputation but had also been arbitrary. He took the view that the impugned measure, which had been ordered on account of the alleged existence of links with a terrorist organisation, had been imposed on him in the absence of any conviction and was therefore incompatible with the presumption of innocence.

25. On 24 March 2017 the Regional Court dismissed the applicant's appeal and upheld the judgment of 25 October 2016. The relevant parts of the Regional Court's judgment read as follows:

> "... Having examined the dispute on the basis of the case file, our court must dismiss the appeal because it transpires from the parties' submissions and the documents presented in support [of the latter] that the termination of the employment contract had been based on a valid reason (*geçerli neden*) [inasmuch as] the applicant's contract had been terminated pursuant to Emergency Legislative Decree No. 667 issued following the failed military coup of 15 July 2016; section 4 of the Legislative Decree, headed 'measures relating to civil servants', provides as follows: persons 'considered as belonging, affiliated or linked to terrorist organisations or to organisations, structures or groups whose involvement in activities prejudicial to the State's national security had been established by the National Security Council' will be excluded from the 'civil service ... on the approval of the departmental director' and will no longer be employed directly or indirectly in the civil service ...".

26. On 21 April 2017 the applicant appealed on points of law. In his appeal, reiterating the arguments which he had put to the first- and second-instance courts, he submitted that the employment contract had been terminated arbitrarily and without any valid reason owing to an unfounded assessment by the secretary general of the Ankara Agency. Furthermore, he complained of the lack of reasoning of the judicial decisions given against him.

27. By judgment of 15 June 2017 the Court of Cassation upheld the judgment of the Regional Court, considering that it had complied with the law and the relevant procedural rules.

E. The applicant's individual appeal

28. On 21 August 2017 the applicant lodged an individual appeal with the Constitutional Court contesting his dismissal. In his application form he first of all complained of a violation of his right to a fair trial. On that point he stated the following:

– the termination of his employment contract, which he considered had been ordered without any valid reason and on the basis of Emergency Legislative Decree No. 667, was incompatible with the "no punishment without law" principle;

– administrative instruments adopted during the state of emergency should include measures valid only for the duration of the state of emergency; yet that had not been the situation in the present case. The applicant stated the following: "in the present case, the situation which I faced because of the personal opinion expressed by the secretary general [of the Ankara Agency] produced consequences which exceeded the framework of the state of emergency, and my situation involves an important and vital issue that affects my and my family's life and will continue to affect it for a lifetime" ("*Bu somut olayda genel sekreterin şahsi kanaatiyle karşı karşıya kaldığım bu durum OHAL'le sınırlı bir işlem ve eylemden öte ömür boyu benim ve ailemin hayatını etkileyen önemli ve hayati bir konudur*");

– the impugned measure infringed his right to a fair trial. In that regard, the applicant cited paragraphs 2 (presumption of innocence) and 3 (a) and (b) (rights of the defence) of Article 6 of the Convention. He submitted in particular that he had been dismissed without any opportunity to present defence submissions, and that he had at no stage benefited from an investigation into the "charges" against him. Moreover, he challenged the impartiality of Judge Y.T., a member of the Labour Court, because he had allegedly stated at the 25 October 2016 hearing that he had dismissed all similar appeals which he had had to adjudicate. Furthermore, the applicant affirmed that he had never been informed of the "charges" against him.

Moreover, referring to Articles 48 (right to work) and 70 (right to enter the civil service and prohibition of discrimination in entering the civil service) of the Constitution, as well as to Article 1 § 2 of the European Social Charter, the applicant submitted that he had been totally and definitively prohibited from re-entering the civil service and that his right to work had therefore been violated.

Lastly, the applicant explained that he had suffered negative discrimination in his attempts to find other employment on account of his dismissal as ordered in the wake of the failed military coup. He argued that he had suffered violations not only of his right to work but also of his and his family's right to life, and complained in particular that his rights had been infringed. He specified that he had been branded a "traitor" and a "terrorist", and that that situation was preventing him from continuing his life in society.

29. By decision of 10 May 2018 (no. 2017/32309), the Constitutional Court dismissed the applicant's individual appeal. First of all, it reclassified the applicant's complaints to examine them in the light of the right to a fair trial and the right to work. Secondly, it declared them inadmissible, those concerning the right to a fair trial as being manifestly ill-founded, and those

concerning the right to work as being incompatible *ratione materiae* with the provisions of the Constitution.

The Constitutional Court's decision read as follows:

> "The appeal concerns an allegation that the right to a fair trial and the right to work have been violated.
>
> Complaints concerning the [alleged] lack of reasoning and the right to have the requisite facilities and time for preparation of one's defence in the framework of the right to a fair trial
>
> The appeal was examined in the framework of the jurisdiction of the Constitutional Court and in the light of the information and documents presented. It should be concluded that, manifestly, no violation of those rights could was found, taking the proceedings as a whole.
>
> Complaint concerning the right to proceedings complying with the fairness principle (*hakkaniyete uygun yargılanma*) in the framework of the right to a fair trial
>
> The allegations set out in the appeal concern the courts' appraisal of the evidence and the interpretation of the rules of law; inasmuch as no manifest error of appreciation (*bariz takdir hatası*) or fact constituting an obvious instance of arbitrary action (*açık keyfilik oluşturan bir husus*) had been established, the allegations amounted to a 'legal remedy category' (*kanun yolu şikayeti* [essentially corresponding to 'fourth instance'-type complaints]).
>
> Complaint concerning the right to work
>
> Pursuant to section 45 (1) of Law No. 6216 establishing the Constitutional Court and its rules of procedure, if an individual remedy is to be examined, the right [relied upon] ... must be protected by the Constitution and safeguarded by the European Convention on Human Rights and the Protocols thereto as ratified by Turkey.
>
> It follows that the right relied upon in the individual application does not fall within the ambit of the protection afforded by the Constitution and the Convention ....
>
> In the light of the foregoing considerations, the court decides to dismiss the complaints concerning a fair trial as manifestly ill-founded ... [and] the complaints concerning the right to work as being incompatible *ratione materiae* ..."

F. Criminal investigation

30. On 30 July 2016 the Ankara prosecutor's office launched an investigation against 95 persons, including the applicant, on charges of belonging to an armed terrorist organisation.

31. On 5 September 2018 the Ankara prosecutor's office gave a discontinuance decision in respect of the applicant and the other 94 persons concerned by the investigation on the grounds that there was insufficient evidence to justify the requisite suspicions in order to bring criminal proceedings. To that end it noted, *inter alia*, that the concerned persons had been neither users of the ByLock communication application nor members or leaders of associations or societies suspected of supporting the criminal organisation in question, and that they did not hold bank accounts with the Bank Asya.

II. RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

A. The Turkish Constitution

32. The relevant provisions of the Turkish Constitution as in force at the material time read as follows:

Article 15

"In times of war, mobilisation, a state of emergency, the exercise of fundamental rights and freedoms may be partially or entirely suspended, or measures derogating from the guarantees embodied in the Constitution may be taken to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

Even under the circumstances indicated in the first paragraph, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable except where death occurs through acts in conformity with law of war; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties shall not be made retroactive; nor shall anyone be held guilty until so proven by a court ruling."

Article 120: Declaration of a State of Emergency on Account of Widespread Acts of Violence and Serious Deterioration of Public Order

"In the event of the emergence of serious indications of widespread acts of violence aimed at the destruction of the free democratic order established by the Constitution or of fundamental rights and freedoms, or serious deterioration of public order because of acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months."

Article 121: Rules Relating to the States of Emergency

"In the event of a declaration of a state of emergency under the provisions of Articles 119 and 120 of the Constitution this decision shall be published in the Official Gazette and shall be submitted immediately to the Turkish Grand National Assembly for approval. If the Turkish Grand National Assembly is in recess, it shall be summoned immediately. The Assembly may alter the duration of the state of emergency, extend the period for a maximum of four months each time at the request of the Council of Ministers, or may lift the state of emergency.

The financial, material, and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119, and, applicable according to the nature of each kind of state of emergency, the procedures as to how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sort of powers shall be conferred on public servants, what kind of changes shall be made in the status of officials, and the procedure governing emergency rule shall be regulated by the Law on State of Emergency.

During the state of emergency, the Council of Ministers, meeting under the chairmanship of the President, may issue decrees having force of law on matters necessitated by the state of emergency. These decrees shall be published in the

Official Gazette, and shall be submitted to the Turkish Grand National Assembly on the same day for approval; the time limit and procedure for their approval by the Assembly shall be indicated in the Rules of Procedure."

B. Emergency Legislative Decree No. 667 (Law No. 6749)

33. The relevant parts of Emergency Legislative Decree No. 667, which came into force on 23 July 2016, read as follows:

Article 4

(1) Persons considered as belonging, affiliated or linked to terrorist organisations or structures, formations or groups which the National Security Council has determined are involved in activities prejudicial to the national security of the State (*Terör örgütlerine veya Milli Güvenlik Kurulunca Devletin milli güvenliğine karşı faaliyette bulunduğuna karar verilen yapı, oluşum veya gruplara üyeliği, mensubiyeti veya iltisakı yahut bunlarla irtibatı olduğu değerlendirilen*):

...

(g) personnel employed in all kinds of posts, positions and status (including workers) in institutions affiliated or related to a ministry, are dismissed from the civil service upon the proposal of the head of unit, with the approval of the director of the recruitment department (*Bir bakanlığa bağlı, ilgili veya ilişkili diğer kurumlarda her türlü kadro, pozisyon ve statüde (işçi dahil) istihdam edilen personel, birim amirinin teklifi üzerine atamaya yetkili amirin onayıyla kamu görevinden çıkarılır*.)

...

(2) Persons dismissed in accordance with the first paragraph cannot be employed in the civil service again, and may not be assigned such duties either directly or indirectly ...." (*Birinci fıkra uyarınca görevine son verilenler bir daha kamu hizmetinde istihdam edilemez, doğrudan veya dolaylı olarak görevlendirilemezler ...*)

Under Law No. 6749 enacted on 18 October 2016 and published in the Official Gazette on 29 October 2016, Legislative Decree No. 667 was approved by the National Assembly, thus becoming law.

C. Legal regulations on employment contracts and the Labour Code

1. Legal regulations governing employment contracts

34. The legal status of employment contracts is governed by the Labour Code (Law No. 4857 of 22 May 2003). The provisions of the Civil Servants Law (Law No. 657) are inapplicable to employees, including those working in public institutions.

35. The Labour Code provides essentially for two modes of termination of employment contracts by the employer: termination with a valid reason (*geçerli nedenle fesih*) and termination with a just reason (*haklı nedenle fesih*).

Termination with a valid reason, commonly known as "valid termination" (*geçerli fesih*), is governed by Articles 17-21 of the

Labour Code. It is subject to specific formal requirements: issuing notice of termination in writing, stating the reasons for the dismissal in clear and precise language and gathering the observations of the employee in question concerning the reason given (section 19 (1) and (2) of the aforementioned law). Furthermore, in cases of valid termination, the employer is required to grant the employee severance pay and a length-of-service indemnity (*kıdem ve ihbar tazminatı*).

Termination with a just reason, commonly known as "just termination" (*haklı fesih*), is governed by section 25 of the aforementioned law. While a person cannot be dismissed for a valid reason without asking the employee to submit his observations in defence, recourse by the employer to termination of contract in accordance with the conditions set out in section 25 (II) is not subject to that requirement (section 19 (2) of the aforementioned law). In order to explain the differences between the two modes of contract termination, the Government referred to a leading judgment adopted by the plenary assembly of the civil chambers of the Court of Cassation on 12 April 2017 (E.2014/7-2461, K.2017/719). The relevant parts of that judgment read as follows:

> "... Termination with a just reason and termination with a valid reason are regulated separately in Law No. 4857, and the reasons used for the two types of termination are different .... The valid reason is set out in section 18 of Law No. 4857, and even though such reason is not as serious as a just reason, a valid reason is based on the employee's conduct, lack of competence or corporate requirement. Unlike termination with a valid reason, termination with a just reason is set forth in separate terms for the employee and the employer: section 24 of Law No. 4857 regulates the employee's right to terminate [the contract] immediately for a just reason, while section 25 of that Law deals with the employer's right to terminate the employment contract immediately for a just reason. Contrary to [the case of] valid termination, the cases in which contracts can be terminated for a just reason are individually listed in the aforementioned provisions. Moreover, although the employer is not required to grant the employee severance pay and a length-of-service indemnity in the event of termination of employment with a just reason, the employee is entitled to severance pay and a length-of-service indemnity in cases of termination of employment with a valid reason".

36. According to the Government, an action seeking re-entry into previous employment is a declaratory action (*tespit davası*) capable of establishing the contract termination regime (valid reason or just reason). Thus in practice the amounts payable in respect of severance pay and length-of-service indemnity could be claimed by means of separate proceedings before the Labour Court.

2. The Labour Code

37. The relevant provisions of the Labour Code read as follows:

Article 1: Purpose and scope

"The purpose of this Law is to regulate the working conditions and work-related rights and obligations of employers and employees working under an employment contract.

With the exception of those cited in Article 4, this Law shall apply to all the establishments and to their employers, employer's representatives and employees, irrespective of the subject matter of their activities."

Article 17: Notice of termination

"Before terminating a continual employment contract made for an indefinite period, a notice to the other party must be served by the terminating party.

The contract shall then terminate:

...

d. in the case of an employee whose employment has lasted for more than three years, at the end of the eighth week following the serving of notice to the other party.

These are minimum periods and may be increased by contracts between the parties.

..."

Article 18: Justification of termination with a valid reason (*Feshin geçerli sebebe dayandırılması*)

"The employer who terminates the contract of an employee engaged for an indefinite period, who is employed in an establishment with thirty or more workers and who meets a minimum seniority of six months, must depend on a valid reason for such termination connected with the capacity or conduct of the employee [in question] or based on the operational requirements of the establishment or service...

...".

Article 19: Procedure in termination

"The notice of termination shall be given by the employer in written form including the reason for termination, which must be specified in clear and precise terms.

The employment of an employee engaged under a contract with an open-ended term shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made. The employer's right to break the employment contract in accordance with Article 25/II of the Labour Law (for serious misconduct or malicious or immoral behaviour of the employee) is, however, reserved."

Article 20: Procedure of appeal against termination

"The employee who alleges that no reason was given for the termination of his employment contract ... shall be entitled to lodge an appeal against that termination with the labour court within one month of receiving the notice of termination. ...

The burden of proving that the termination was based on a valid reason shall rest on the employer. However, the burden of proof shall be on the employee if the latter claims that the termination was based on a reason different from the one presented by the employer."

Article 21: Consequences of termination without a valid reason

"If the court or the arbitrator concludes that the termination is unjustified because no valid reason has been given or the alleged reason is invalid, the employer must re-engage the employee in work within one month. If, upon the application of the employee, the employer does not re-engage him in work, compensation of not less than four months' wages and not more than eight months' wages shall be paid to him by the employer.

In its verdict ruling the termination invalid, the court shall also designate the amount of compensation to be paid to the employee in case he is not re-engaged in work.

...."

Article 25: The breaking of the employment contract by the initiative of the employer (summary termination) (*haklı nedenle*)

"The employer may break the contract, whether for a definite or indefinite period, before its expiry or without having to comply with the prescribed notice periods, in the following cases:

I. For reasons of health

...

II. For immoral, dishonourable or malicious conduct or other similar behaviour

(a) If, when the contract was concluded, the employee misled the employer by falsely claiming to possess qualifications or to satisfy requirements which constitute an essential feature of the contract, or by giving false information or making false statements;

...

(e) If the employee commits a dishonest act against the employer, such as a breach of trust, theft or disclosure of the employer's trade secrets;

...".

D. Reopening of proceedings

38. Section 375 § 1 (i) of the CCP reads as follows:

"1. The reopening of proceedings may be requested for the following reasons:

(...)

(i) Where the European Court of Human Rights has issued a final judgment finding that the [final domestic] decision has been made in breach of the Convention for the Protection of Human Rights and Fundamental Freedoms or its additional protocols (...)"

E. Case-law of the Constitutional Court

39. The Government referred to a decision given by the Constitutional Court on 25 December 2018 (*Mehmet Akif Günder*, no. 2018/4268). The case giving rise to that decision concerned the termination of the

employment contract of a researcher employed at the Turkish Institute of Scientific and Technical Research ("TÜBİTAK") ordered under Article 25 of the Labour Code. In its decision the Constitutional Court declared the appeal before it inadmissible as manifestly ill-founded.

The relevant parts of that decision read as follows:

> "24. The termination of an employment contract by an employer on account of the loss or serious deterioration of the requisite trust for continuing the work relationship with his employee is, in practice, referred to as 'reasonable suspicion termination' (*makul şüphe feshi*). In the instant case, in its judgment of 2 February 2017 the court of first instance examined the arguments put forward by the appellant on the necessity of objectively proving the existence of circumstances linked to the situation in question which are incompatible with morality and good faith, or other similar circumstances as exhaustively listed in Article 25 II of Law No. 4857. In the judgment in question, the court of first instance pointed out that even though, according to the relevant case-law, the employer was required to rely on objective facts and evidence if the termination was to be valid, a more flexible approach should be adopted in the particular circumstances of the case in issue. It was noted that Turkey was experiencing an exceptional and extraordinary situation following the failed military coup of 15 July 2016 perpetrated by FETÖ/PDY. The court of first instance thus concluded that the projects being developed by TÜBİTAK had been linked to national security and that this also [involved] military activities which were confidential [by definition], and that by its very nature, the institute could not have been expected to continue to work with individuals deemed liable to cause [some degree of] vulnerability in security terms. The court of first instance [dismissed the appellant's case] and concluded that the conditions had been met for a valid termination (*geçerli fesih*). [In so doing it had regard to the importance of the institute in question and of the researcher's duties] ...
>
> 25. It is incumbent on the trial courts (*derece mahkemeleri*) to interpret the law. In the present case, as regards disputes concerning labour law, it is not for the Constitutional Court to consider whether the interpretation and assessment of the courts geared to determining the reasons for the termination describable as just and valid had complied with the relevant legislation. In that connection, the allegations put forward by the appellant concerned the assessment of the evidence by the courts and the interpretation of the legal rules; inasmuch as no manifest error of appreciation (*bariz takdir hatası*) or factor amounting to a clearly arbitrary act (*açık keyfilik oluşturan bir husus*) were established, the allegations fell into the 'legal remedy category' (*kanun yolu şikayeti*).
>
> 26. In the light of the foregoing considerations, the appeal must be dismissed as manifestly ill-founded, without proceeding to examine the other admissibility criteria. For the reasons set out above, this part of the appeal must be declared inadmissible.
>
> ..."

40. On 25 September 2020 the Government presented three judgments delivered by the Constitutional Court on 2 July 2020: *Emin Arda Büyük*, no. 2017/28079, *Berrin Baran Eker*, no. 2018/23568, and *C.A.*(3), no. 2018/10286.

The case giving rise to the *Emin Arda Büyük* and *Berrin Baran Eker* judgments had concerned the termination of the employment contracts of a medical secretary at the Adnan Menderes University (E.A. Büyük) and an

employee (B.B. Eker) of the Kayapınar municipality in Diyarbakır. The termination of the employment contracts had been based on the employers' assessment that the appellants had maintained links with an illegal structure within the meaning of section 4 of Emergency Legislative Decree No. 667. In those judgments the Constitutional Court had found a violation of the right of access to a tribunal on the grounds that the courts trying the case had failed, in particular, to consider whether the dismissal had been based on a valid reason. The Constitutional Court had acknowledged that the fact of maintaining a link with an illegal structure constituted valid grounds for dismissal for the purposes of section 4 of Emergency Legislative Decree No. 667. It considered, however, that the facts put forward as valid grounds of dismissal should have been scrutinised in detail by the courts in question during the judicial proceedings. Affirming that the courts in question had not considered whether all the conditions had been fulfilled for valid termination of contract, the Constitutional Court found that the appellants' right of access to a tribunal had been infringed.

As regards the *C.A.(3)* judgment, the case also concerned the termination of a municipal employee's contract pursuant to Article 25 II of the Labour Code (termination for suspicion) following disciplinary proceedings. The courts hearing the case dismissed the appellant's appeals on the basis of specific factual evidence (in particular, the fact that the appellant had been one of the leaders of an association dissolved under the Emergency Legislative Decree). Moreover, the appellant had subsequently been convicted of belonging to a terrorist organisation.

In its judgment, the Constitutional Court held that even though the appellant's dismissal had amounted to an interference with the right to respect for private life secured under Article 8 of the Convention, that interference had been justified and necessary in a democratic society. It accordingly observed that the suspicion in question had been based on material facts and that the termination of the employment contract had been deemed necessary by the competent courts after an individual examination of the appellant's situation. Furthermore, it noted that the judicial decisions had comprised relevant and sufficient reasoning such as to convince the court that the interference corresponded to a pressing social need. Moreover, pointing out that the appellant had not been subject to any restrictions preventing him from applying for a job in the private sector, it found that the interference had been proportionate.

F. Case-law of the Court of Cassation

41. In Turkish law the concept of "termination for suspicion" is one of the extraordinary methods available to an employer in order to terminate an employment contract. This concept, which has come to constitute a reason for termination of contract, was developed by the Court of Cassation on the

basis of Article 25 II (e) of the Labour Code. "Termination for suspicion" is defined as termination of an employment contract by an employer on account of a loss or serious deterioration of the requisite trust for maintaining a work relationship between the employer and the employee. Furthermore, according to the Court of Cassation, the existence of a suspicion must be based on objective facts and events liable to destroy the requisite trust for maintaining the employment contract, and the employer must endeavour to clarify the circumstances linked to the situation in question.

42. The Government presented several judgments of the Court of Cassation delivered after the failed military coup of 15 July 2016 concerning the concept of "termination for suspicion".

1. 19 November 2018 judgment of the 9th Civil Chamber of the Court of Cassation (E.2018/8567, K.2018/13419)

43. The case giving rise to the judgment delivered on 19 November 2018 by the 9th Civil Chamber of the Court of Cassation concerned the termination on 17 October 2016 of an employment contract pursuant to Article 18 of the Labour Code. At first instance, the Labour Court had declined jurisdiction to examine the action to set aside the termination under section 16 of Emergency Legislative Decree No. 675. Subsequently, the Regional Court had overturned the first-instance judgment and decided to set aside the termination in question for lack of grounds of termination. In so doing it had stated, in particular, that the notice of termination had failed to point out that the termination was based on the Emergency Legislative Decree. The case had then been brought before the Court of Cassation.

Having assessed the case, the Court of Cassation decided to overturn the Regional Court's judgment, considering that the impugned measure was an instance of "termination for suspicion" based on the Labour Code.

The relevant parts of the judgment of the Court of Cassation read as follows:

> "According to the case file, on 17 October 2016 the appellant's contract was terminated on the following grounds: 'it has been decided to terminate [the contract] on the basis of section 18 of Law No. 4857'. However, in his observations in reply, counsel for the employer stated that the contract had been terminated in the framework of the legislative decrees and decisions of the Commission issued in the context of the state of emergency. According to the arguments put forward by counsel for the employer, there had been sufficient evidence on the plaintiff's relations, links and/or affiliation with [the terrorist organisation] FETÖ/PDY and [that evidence] justified the termination of the said contract by the employer on the basis of suspicions. The employer in question could not have been expected to continue to employ a worker suspected of having relations, links or contacts with FETÖ/PDY. It should also be acknowledged that the perpetuation of the contract had become intolerable and that it would have run counter to the principles of good faith to expect the employer in question to maintain the employment contract when the employee [was the subject] of such suspicions, and that, for that reason, the employer was

entitled to terminate the contract. The action must therefore be rejected, inasmuch as the termination met the conditions governing termination for suspicion and had been based on a valid reason."

2. *5 November 2018 judgment of the 9th Civil Chamber of the Court of Cassation (E.2018/8846, K.2018/19530)*

44. The case giving rise to the judgment delivered on 5 November 2018 by the 9th Civil Chamber of the Court of Cassation concerned the termination on 29 July 2016 of an employment contract pursuant to Emergency Legislative Decree No. 667. At first instance the Labour Court had declined jurisdiction to assess the application to set aside the termination under section 16 of Emergency Legislative Decree No. 675. Subsequently the Regional Court had overturned the first-instance judgment and decided to nullify the termination in question for non-compliance with the provisions of the Labour Code. The case had then been brought before the Court of Cassation.

Having assessed the case, the Court of Cassation decided to overturn the judgment of the Regional Court on the grounds that the impugned measure had been an instance of "termination for suspicion" based on the Labour Code.

The relevant parts of the judgment of the Court of Cassation read as follows:

> "... Even though the criminal proceedings against the appellant led to a discontinuance decision, according to the arguments put forward by counsel [for the employer], there had been sufficient evidence on the plaintiff's relations, links and/or affiliation with [the terrorist organisation] FETÖ/PDY and [that evidence] justified the termination of the said contract by the employer on the basis of suspicions. The employer in question could not have been expected to continue to employ a worker suspected of having relations, links or contacts with FETÖ/PDY. It should also be acknowledged that the perpetuation of the contract had become intolerable and that it would have run counter to the principles of good faith to expect the employer in question to maintain the employment contract when the employee [was the subject] of such suspicions, and that, for that reason, the employer was entitled to terminate the contract. The action must therefore be rejected, inasmuch as the termination met the conditions governing termination for suspicion and had been based on a valid reason."

3. *5 May 2018 judgment of the 22nd Civil Chamber of the Court of Cassation (E.2018/1204, K.2018/5780)*

45. The case giving rise to the judgment delivered on 5 March 2018 by the 22nd Civil Chamber of the Court of Cassation concerned the termination on 27 September 2016 of the employment contract of an employee recruited by an electricity distribution company pursuant to section 4 (1) (e) and (f) of Emergency Legislative Decree No. 667, as decided after payment of the length-of-service indemnity and severance pay. At first instance the Labour Court had declined jurisdiction to assess the application for annulment of

the termination pursuant to section 16 of Emergency Legislative Decree No. 675. Subsequently the Regional Court had overturned the first-instance judgment and decided to annul the termination in question for non-compliance with the provisions of the Labour Code. The case was then brought before the Court of Cassation.

Having assessed the case, the Court of Cassation decided to overturn the judgment of the Regional Court on the grounds that the impugned measure had been an instance of "termination for suspicion" based on the Labour Code.

The relevant parts of the judgment of the Court of Cassation read as follows:

> "According to the case file, the present case concerns termination for suspicion. In this mode of termination the employer's suspicions about his employee lead to a deterioration in mutual trust between the employer and the employee. A suspicion deteriorating the trust-based relationship is a suspicion linked to the employee's character, whose compatibility with his post as required for maintaining the employment contract [evaporated] on account of a suspicion which the employer considered intolerable. The suspicion is justified by serious, important and concrete facts rendering the employee incompatible with his work, which cannot be performed without the trust-based relationship; consequently, termination for suspicion is a mode of termination bound up with the employee's capacities.
>
> Even though the employee's conduct, which constitutes the grounds of termination, could not be proved conclusively, it should be accepted that, as shown by the witness statements, the existence of suspicion was established, such that the work relationship could not be perpetuated by the employer. Consequently, it has not been established that the termination of the employment contract was based on a just reason (*haklı neden*), but it must be accepted that it was based on a valid reason (*geçerli neden*) ..."

III. RELEVANT INTERNATIONAL MATERIALS

A. Opinion on Emergency Legislative Decrees Nos. 667 to 676 adopted by the European Commission for Democracy through Law of the Council of Europe (Venice Commission)

46. On 12 December 2016 the Venice Commission made public its opinion as adopted at its 109th plenary session (9-10 December 2016), concerning Legislative Decrees Nos. 667 to 676 enacted in the framework of the state of emergency (Opinion on Emergency Decree Laws nos. 667-676 adopted following the failed coup of 15 July 2016 (CDL-AD(2016)037)).

47. In its opinion, having described the factual context of the attempted coup d'état of 15 July 2016, the Venice Commission analysed the raisons d'être of the emergency legislative decrees in question. The relevant parts of the opinion read as follows:

> "67. ... Dismissals of public servants are said to concern persons 'considered to be a member of, or have a relation, connection (link) or contact with terrorist organisations

or structure/entities or groups established by the National Security Council as engaging in activities against the national security of the State'. These broad formulas show that the emergency measures may be applied to all organisations which represent a threat to the national security, and not only the Gülenist network.

68. There is no doubt that the State is not only permitted but even required to take energetic measures against all terrorist organisations, irrespective of their political platforms, religious affiliations or ethnic composition, as long as these measures are consistent with the State's domestic and international law obligations ..."

48. It also transpires from the aforementioned Opinion that "[s]ince the adoption of the emergency decree laws, more than 100,000 public servants have been dismissed .... It is not entirely clear how many public servants were dismissed by decisions taken at the lower level, i.e. by the relevant administrative entities or judicial bodies under Decree Law no. 667, and how many were mentioned directly in the lists appended to the subsequent decree laws."

49. In its opinion the Venice Commission analysed the aims of the measures geared to dismissing civil servants, judges, prosecutors and public-service employees as ordered under the Emergency Legislative Decrees. The relevant parts of the opinion read as follows:

"81. ... Articles 3 and 4 of Decree Law no. 667 provide for the dismissal of judges and other public servants, to be implemented by decisions of relevant judicial bodies or administrative entities ...

84. Given the nature of the conspiracy which led to the coup of 15 July 2016, the Venice Commission understands the need to conduct a swift purge of persons clearly implicated in the coup from the State apparatus. Any action aimed at combating the conspiracy would not be successful if some of the conspirators are still active within the judiciary, prosecution service, police, army, etc.

85. However, the same result may be achieved by employing temporary measures, and not permanent ones. The risk of a repeated coup may be significantly reduced if the supposed Gülenists, as a precautionary measure, were suspended from their posts, and not dismissed ..."

50. Moreover, in its opinion the Venice Commission examined the criteria used in assessing possible links between individuals and illegal structures. In substance, the Venice Commission considered that those criteria, which were aimed at evaluating any links between a person and an illegal structure and determining the point in time when any reasonable and well-informed person ought to have realised that maintaining his relationship with such structure was clearly unacceptable, should be foreseeable. It also considered that it was incumbent on the national courts to conduct judicial review of those criteria.

The relevant parts of the Opinion read as follows:

"103. The criteria used to assess the links of the individuals to the Gülenist network have not been made public, at least not officially. The Venice Commission rapporteurs were informed that dismissals are ordered on the basis of an evaluation of a combination of various criteria, such as, for example, making monetary

contributions to the Asya bank and other companies of the 'parallel state', being a manager or member of a trade union or association linked to Mr Gülen, using the messenger application ByLock and other similar encrypted messaging programmes. In addition, the dismissals may be based on police or secret service reports about relevant individuals, analysis of social media contacts, donations, web-sites visited, and even on the fact of residence in student dormitories belonging to the 'parallel state' structures or sending children to the schools associated with Mr Gülen. Information received from colleagues from work or neighbours and even continuous subscription to Gülenist periodicals are also mentioned amongst those many criteria which are used to put names on the 'dismissals lists'".

...

119. Disciplinary liability, or any other similar measure, should be foreseeable; a public servant should understand that he/she is doing something incompatible with his/her status, in order to be disciplined for it. Hence, it is important to establish a moment in time at which a reasonable and well-informed person – and public servants should be reasonable and well-informed – must have understood that their continued connections with the Gülenist network were clearly unacceptable.

120. The obvious difficulty in the situation at hand is that, according to the Turkish authorities, for many years the Gülenist network had two faces: it was at the same time a secret organisation using questionable methods to gain influence within the State, and a network of lawfully operating associations and projects. The Turkish authorities seem to depart from a sweeping presumption that the 'lawful incarnation' of the Gülenist network had always been merely a façade, and that all those who ever collaborated with or participated in any project affiliated with Mr Gülen knew about the real purposes and methods of the organisation.

...

127. It is important to define, on the basis of objective facts, the moment in time when, if ever, the Gülenist network as a whole (or any parts thereof) became an organisation 'meaningful connections' with which became incompatible with the obligation of loyalty required from public servants. In addition, it is important to define the moment in time when this should have become clear to all public servants. ... The Turkish courts, in turn, should review whether the position of the Government on this point is objectively justified.

128. The next question is the intensity of the connections which a public servant needed to maintain with the Gülenist network or its aspects in order to be dismissed. The Decree Laws speak of 'relation, connection or contact', 'membership, affiliation or connection', etc. Those broad definitions imply that any sort of link to the Gülenist network may lead to dismissal.

129. The Turkish authorities explained that the assessment of this "intensity" is based on a number of factual elements present in each case. Thus, only such links which amount to 'membership' may lead to criminal prosecution. The authorities refer to Article 314 of the Criminal Code, which addresses membership in a criminal organisation. According to the Turkish authorities, the difference between being a member of a criminal organisation and having 'connections', 'contacts', 'relations' etc. depends on the number of criteria fulfilled by a person and is defined by the administrative entities applying the emergency decree laws. ...

...

130. The Venice Commission acknowledges that the connection required to justify suspensions (or even dismissals) may be less intensive than the one required for defining a person as a 'member' of a criminal organisation. 'Membership' requires an 'organic relationship' with the criminal organisation. Removal of a public servant (temporary or permanent) may require a weaker connection to the criminal organisation.

131. Still, this connection should be meaningful – i.e. it should raise objective doubts in his or her loyalty, and exclude any innocent, accidental, etc. contacts. The Venice Commission recommends amending the wording of the decree laws accordingly: a dismissal may be ordered only on the basis of a combination of factual elements which clearly indicate that the public servant acted in a way which objectively cast serious doubts on his or her loyalty to the democratic legal order ..."

51. As regards the decision-making process, the Venice Commission criticised the lack of individualised reasoning and drew attention to the effectiveness of *ex post facto* judicial review.

"140. In sum, the Venice Commission concludes that the decision-making process which led to the dismissals of public servants was deficient in the sense that the dismissals were not based on individualised reasoning, which made any meaningful *ex post* judicial review of such decisions virtually impossible ..."

B. General Comment no. 29 on the state of emergency (CCPR/C/21/Rev.1/Add.11) of the UN Human Rights Committee

52. On 24 July 2001, at its 1950th meeting, the United Nations Steering Committee on Human Rights adopted a general comment on the state of emergency.

The relevant parts of this text (available at the following address: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=fr) read as follows:

"1. Article 4 of the Covenant is of paramount importance for the system of protection for human rights under the Covenant. On the one hand, it allows for a State party unilaterally to derogate temporarily from a part of its obligations under the Covenant. On the other hand, article 4 subjects both this very measure of derogation, as well as its material consequences, to a specific regime of safeguards. The restoration of a state of normalcy where full respect for the Covenant can again be secured must be the predominant objective of a State party derogating from the Covenant ...

2. Measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature ...

...

11. ...States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.

...

14. Article 2, paragraph 3, of the Covenant requires a State party to the Covenant to provide remedies for any violation of the provisions of the Covenant. This clause is not mentioned in the list of non-derogable provisions in article 4, paragraph 2, but it constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective.

15. It is inherent in the protection of rights explicitly recognized as non-derogable in article 4, paragraph 2, that they must be secured by procedural guarantees, including, often, judicial guarantees. The provisions of the Covenant relating to procedural safeguards may never be made subject to measures that would circumvent the protection of non-derogable rights. Article 4 may not be resorted to in a way that would result in derogation from non-derogable rights. ...

16. Safeguards related to derogation, as embodied in article 4 of the Covenant, are based on the principles of legality and the rule of law inherent in the Covenant as a whole. As certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.

..."

C. Revised European Social Charter

53. Article 24 of the European Social Charter (revised), came into force in respect of Turkey on 2007, provide as follows:

Article 24 – The right to protection in cases of termination of employment

"With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;

b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

D. International Labour Organisation

54. The relevant provisions of the International Labour Organisation Convention on Termination of Employment, 1982 (No. 158) which came into force in respect of Turkey on 4 January 1995 are as follows (see also Termination of Employment Recommendation, 1982 (no. 166)):

Article 4

"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."

Article 8

"1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator. ..."

IV. NOTICE OF DEROGATION BY TURKEY

55. On 21 July 2016 the Permanent Representative of Turkey to the Council of Europe sent the Secretary General of the Council of Europe the following notice of derogation:

"I communicate the following notice of the Government of the Republic of Turkey.

On 15 July 2016, a large-scale coup attempt was staged in the Republic of Turkey to overthrow the democratically-elected government and the constitutional order. This despicable attempt was foiled by the Turkish state and people acting in unity and solidarity. The coup attempt and its aftermath together with other terrorist acts have posed severe dangers to public security and order, amounting to a threat to the life of the nation in the meaning of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The Republic of Turkey is taking the required measures as prescribed by law, in line with the national legislation and its international obligations. In this context, on 20 July 2016, the Government of the Republic of Turkey declared a State of Emergency for a duration of three months, in accordance with the Constitution (Article 120) and the Law No. 2935 on State of Emergency (Article 3/1b). ...

The decision was published in the Official Gazette and approved by the Turkish Grand National Assembly on 21 July 2016. Thus, the State of Emergency takes effect as from this date. In this process, measures taken may involve derogation from the obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms, permissible in Article 15 of the Convention.

I would therefore underline that this letter constitutes information for the purposes of Article 15 of the Convention. The Government of the Republic of Turkey shall keep you, Secretary General, fully informed of the measures taken to this effect. The Government shall inform you when the measures have ceased to operate.

..."

56. The notice of derogation was withdrawn on 8 August 2018, following the end of the state of emergency.

THE LAW

I. PRELIMINARY REMARKS

A. The Turkish derogation

57. The Government first of all pointed out that the applicant's complaints should be examined in the light of the Notice of Derogation transmitted to the Secretary General of the Council of Europe on 21 July 2016 under Article 15 of the Convention, which provides:

> "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
>
> 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
>
> 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed."

58. The Government considered that having availed itself of its right of derogation to the Convention pursuant to Article 15, Turkey had not infringed the provisions of that instrument. In that connection it stated that there had been a public emergency threatening the life of the nation on account of the risks arising out of the attempted military coup and that the measures adopted by the national authorities in reaction to that emergency had been rendered strictly necessary by the situation.

59. At this stage the Court would reiterate that in its judgment in the case of *Mehmet Hasan Altan* (no. 13237/17, § 93, 20 March 2018), it noted that the attempted military coup had revealed the existence of a "public emergency threatening the life of the nation" within the meaning of the Convention. As to whether the measures taken in the present case were strictly required by the exigencies of the situation and consistent with the other obligations under international law, the Court considers it necessary to examine the applicant's complaints on the merits, and will do so below.

B. The scope of the case

60. The Government raised a preliminary objection concerning the scope of the case before the Court. They considered that the applicant, who had relied on several articles of the Convention, had not put forward any complaint under Article 8.

61. The applicant contested that argument.

62. The Court reiterates that for the purposes of Article 32 of the Convention, the scope of a case "referred to" the Court in the exercise of the right of individual application is determined by the applicant's complaint, and that a complaint consists of two elements: factual allegations and legal arguments (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (see *S.M. v. Croatia* [GC], no. 60561/14, § 218, 25 June 2020 and the references therein).

63. However, the Court cannot base its decision on facts which are not covered by the complaint, given that, while it has jurisdiction to review circumstances complained of in the light of the entirety of the Convention or to "view the facts in a different manner", it is nevertheless limited by the facts presented by the applicants in the light of national law. Yet this does not prevent an applicant from clarifying or elaborating upon his or her initial submissions during the Convention proceedings. The Court has to take account not only of the original application but also of the additional documents intended to complete the latter by eliminating any initial omissions or obscurities. Likewise, the Court may clarify those facts *ex officio* (see *Radomilja and Others*, cited above, §§ 121-122 and 126).

64. In the present case the Court notes that in his initial application before it, having summarised the domestic proceedings, the applicant pointed out that he had been dismissed on account of his alleged links with a terrorist organisation. The applicant argued that his dismissal had been based on a subjective assessment by the secretary general of the institute where he had been working. He explained that he had been dismissed on the basis of slander, that is to say an accusation devoid of any basis in fact. He also stated that he had not re-entered the civil service, and that that situation had had an impact on both his current status and his future. In the complaints section the applicant had complained of a breach not only of Articles 6, 7, 13, 15, 17 and 18 of the Convention but also of Article 3. On that point he submitted that his dismissal as ordered on account of his alleged links with a terrorist organisation had amounted to treatment contrary to Article 3 of the Convention. The applicant asserted that because

of this dismissal as decided on for the aforementioned reason and ordered without first of all asking him for his observations in defence, he was now labelled as a "terrorist" and "traitor".

65. The Court reiterates that on 15 January 2019 the applicant's complaints, inasmuch as they were relevant, were communicated to the Government under Articles 6, 7, 8 and 15 of the Convention. In particular, the parties were invited to indicate whether the facts of the case had amounted to a violation of Article 8 of the Convention, having regard, *inter alia*, to the alleged consequences of the dismissal, which had been described in the light of Article 3. In his observations in reply to those of the Government, the applicant emphasised the repercussions of his dismissal and specified that the relevant complaint was raised under Article 8.

66. Having regard to the foregoing considerations, the Court notes that the applicant relied explicitly on Article 3 of the Convention and set forth arguments based on that provision. His complaint undoubtedly raised an issue which the Court, by virtue of the *jura novit curia* principle and in view of its case-law (see, *mutatis mutandis*, *S.M. v. Croatia*, cited above, § 224), could seek to determine whether it fell to be characterised under Article 8 of the Convention. That finding is clearly without prejudice to the Court's assessment of the applicability and real scope of the protection secured under that provision.

67. Consequently, the Court rejects the objection concerning the scope of the case put forward by the Government. As regards the legal characterisation, it holds that the "scope" of the case before it relates to legal issues falling to be characterised under Articles 3 and 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

68. The applicant submitted that neither the dismissal procedure and related administrative proceedings nor the subsequent judicial proceedings had complied with the guarantees of a fair trial, including the principles of equality of arms and adversarial proceedings. He complained that his dismissal had not been accompanied by the minimum procedural guarantees, that is to say conducting a prior investigation and requesting defence submissions from the applicant. Moreover, he argued that the subsequent judicial proceedings had not remedied those shortcomings, given that the domestic courts had merely referred to the provisions of Legislative Decree No. 667 and had set forth no reasoning or criteria capable of justifying the dismissal order.

Under Article 6 § 2 of the Convention he complained of a violation of the presumption of innocence.

Under Article 6 § 3 (a) and (b) of the Convention he complained that he had not been informed of the nature of and reason for the charges against

him, and that he had not had the requisite time and facilities for preparing his defence.

The relevant parts of Article 6 §§ 1, 2 and 3 (a) and (b) of the Convention provide:

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> ..."

A. As to admissibility

69. The Government raised two objections as to inadmissibility: one concerning non-exhaustion of domestic remedies, and one relating to incompatibility *ratione materiae*.

1. Exhaustion of domestic remedies

70. The Government submitted that the applicant could have lodged an application for severance pay and a length-of-service indemnity on account of valid termination of contract within the meaning of the Labour Code.

71. The applicant did not make any submissions on that objection.

72. The Court notes that in his appeal of 14 August 2016 before the Labour Court, the applicant lodged a request for not only the annulment of the decision to terminate his contract but also the award of severance pay and a length-of-service indemnity, and that he submitted that his dismissal had not been based on any valid grounds. The civil courts examined his request and dismissed it. Moreover, the Constitutional Court, the final national authority adjudicating the case, assessed the applicant's complaint on the merits and failed to find any such infringement.

73. The Court considers that regard being had to the rank and authority of the Constitutional Court in the Turkish judicial system, and in the light of that court's reasoning concerning the complaint in question, action seeking the award of the aforementioned indemnity on account of valid termination, relying on the provisions of the Labour Code had, and in fact still has, no chance of success (see, to similar effect, *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 27, Series A no. 332, and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 58, ECHR 2010).

74. The Court concludes therefore that the Government's objection in this regard must be rejected.

2. Applicability of Article 6 of the Convention

(a) The parties' submissions

(i) The Government

75. The Government raised a preliminary objection as to the applicability of Article 6 of the Convention under both its limbs.

76. The Government first of all submitted that the criminal limb of Article 6 of the Convention was inapplicable *ratione materiae* for the reasons set out below.

77. They argued that the present case was not comparable to cases relating to lustration proceedings. The Government went on to emphasise the following: lustration policies had been implemented both in eastern European countries after the break-up of the Soviet Union and in Germany during the reunification process, with a view to completing the democratisation process, transforming the country in line with the fundamental rights and obviating possible dangers; furthermore, those policies had been applied in the above-mentioned countries in order to ensure the implementation of the principles of democracy after the democratic transition; subjecting public servants who had been loyal to the old, undemocratic regime to lustration had been central to such policies; in that framework, the main criterion applied had been the fact of having covertly collaborated with the intelligence services during the period in which the old regime had been in power. The Government added that as regards lustration procedures occurring after the dissolution of a political regime, the Court had found that the criminal limb of Article 6 was applicable where there was a criminal connotation among the aspects of the measures implemented (the respondent Government referred here to the case of *Matyjek v. Poland* (dec.), no. 38184/03, §§ 53 and 54, ECHR 2006-VII). The Government also stated that such proceedings were linked to the deprivation of public rights.

As regards the present case, the Government argued that the process implemented in Turkey had differed from that used in cases of lustration. They explained that the FETÖ/PDY members who had infiltrated the most sensitive State institutions in Turkey had not only posed a potential threat to the democratic system, but had also demonstrated, by attempting to overthrow those currently in power, the enormous threat which they represented to the democratic State; consequently, in the wake of the failed military coup, Legislative Decree No. 667 had been enacted in order to ensure that persons considered as having links or relations or being

affiliated with the organisation in question could be quickly removed from the civil service.

78. The Government referred to the case of *Matyjek*, cited above, pointing out that in accordance with the criteria set out in *Engel and Others v. the Netherlands* (8 June 1976, Series A no. 22), the Court had found that the criminal limb of Article 6 of the Convention applied to a lustration procedure. They stated the following: the Court had, in particular, considered that even though the lustration procedure was not characterised as "criminal" under domestic law, it had possessed features with a strong criminal connotation (see *Matyjek*, cited above, § 51); it had concluded that the nature of the offence, taken in conjunction with the nature and the severity of the prescribed penalties (prohibition on engaging in specific political or legal professions for a long period), had been such that the accusations against the applicant had amounted to a criminal charge within the meaning of Article 6 of the Convention (ibid., § 58).

79. Returning to the present case, the Government submitted that it was different from the case of *Matyje*k cited above. They considered, first of all, that the impugned dismissal had not been based on a "criminal charge", and that it had fallen within the employer's right to terminate contracts. They continued their reasoning as follows: the governing board of the Ankara Agency, which had terminated the applicant's employment contract, was an administrative body which lacked the powers of a public prosecutor; moreover, the court which had reviewed the case was the Labour Court, which was not a criminal court ; labour courts determined disputes between employers and employees in accordance with the provisions of the Labour Code; they applied procedures set out in labour law and the rules of civil procedure; the applicant's legal status had been regulated by the Labour Code and the Code of Civil Procedure, and he had benefited from the guarantees set forth in the provisions in question; furthermore, there had been no reference to criminal legislation in the impugned provision of the Legislative Decree. Consequently, in the Government's view, the first Engel criterion had not been met (legal characterisation under domestic law), because the measure applied in respect of the applicant had not been characterised as criminal in domestic law.

80. The Government further submitted that the second *Engel* criterion (the substantive nature of the offence) had also not been fulfilled. Once again referring here to *Matyjek*, cited above, they stated that in the latter case the lustration proceedings had been aimed at establishing the veracity of the declaration of lustration, that the court, acting as a lustration court, had had to adjudicate whether the person who was the subject of the lustration proceedings had breached the law by submitting a false declaration, and that, if it found that that had been the case, it would impose the penalties prescribed by law. The Government pointed out that in its

decision the Court had held that the impugned offence had not been devoid of purely criminal features.

Turning to the facts of the present case, the Government stated that the applicant had not been required by law to submit such a declaration and that his employment contract had been terminated on the grounds that he had had links with a terrorist organisation at the time of termination of his employment. They deduced that the second criterion had not been fulfilled either.

81. As regards the third *Engel* criterion (the nature and degree of severity of the penalty in question), the Government argued that in the present case the applicant had been in a different situation from that of the applicant in *Matyjek* (cited above), who had lost his seat as an MP and been declared ineligible for ten years as a result of the finding under a final judgment that he had lied in his declaration of lustration. They reasoned as follows: in the present case the reasons justifying a valid termination of contract were set out in Law No. 4857; it had also been determined by domestic case-law that termination of employment based on suspicions fell within the scope of termination with a valid reason; in the instant case the impugned termination of the employment contract had been based on a suspicion harboured by the applicant's employer against him concerning links with the FETÖ/PDY organisation. The Government added that there was no ban on re-entering the civil service, that the applicant could apply for a post in the civil service and that he could lodge an application for severance pay and a length-of-service indemnity for valid termination. They also stated that the impugned measure had had no effect on the applicant's police record (they referred in that connection to the case of *Dogmoch v. Germany* (dec.), no. 26315/03, 18 September 2006). The Government therefore considered that the third criterion had not been fulfilled either.

82. Furthermore, the Government considered that the civil limb of Article 6 of the Convention was inapplicable to the present case.

83. In conclusion, the Government submitted that both limbs of Article 6 of the Convention were inapplicable in the present case.

(ii) The applicant

84. The applicant, who had complained of a violation of Article 6 §§ 1, 2 and 3 (a) and (b) of the Convention, did not express a view on the applicability of that provision.

(iii) Intervening non-governmental organisations

85. The intervening non-governmental organisations submitted that the criminal limb of Article 6 of the Convention might be applicable to the dispute in issue. They pointed out that according to the Court's case-law, a "charge" within the meaning of Article 6 § 1 could be defined as "the

official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence" (see *Eckle v. Germany*, 15 July 1982, § 73, Series A no. 51); the Court had often had occasion to reaffirm that the concept of a "criminal charge" in Article 6 § 1 was an autonomous one (see *Blokhin v. Russia* [GC], no. 47152/06, § 73, 23 March 2016); according to the established case-law of the Court, the existence of a "criminal charge" must be assessed on the basis of the three criteria set out in *Engel and Others* (cited above, § 82), commonly known as the "Engel criteria".

86. The intervening parties added that in *Sidabras and Džiautas v. Lithuania* (dec.), nos. 55480/00 and 59330/00, 1 July 2003), the Court had found that the criminal limb of Article 6 did not apply to a complaint concerning the dismissal of public servants (in that case, former KGB employees), who had also been banned from exercising certain activities for ten years. They explained that in order to reach that conclusion the Court had noted, *inter alia*, that the fact of being a former member of the KGB (considered by the legislature as a criminal organisation) had not been a criminal offence under the Lithuanian Criminal Code; the Court had therefore considered that the impugned measure came under Lithuanian labour law rather than criminal law; moreover, it had observed that the aim of the impugned measure had been to prevent former employees of a foreign secret service from working for public institutions and in other spheres of activity vital to State national security; the Court had concluded that, having regard to that aim, the measure in question had lain outside the field of criminal law.

87. The intervening non-governmental organisations provided information on the mass dismissal of Turkish public servants and public-sector employees after 15 July 2016. They explained that those persons had been dismissed because they were considered as belonging or being affiliated or linked to terrorist organisations; now, membership of a criminal organisation constituted a criminal offence punishable under Articles 220 and 314 of the Penal Code (PC); the other types of conduct, that is to say the facts of "being affiliated" and "being linked" to such organisations, were also criminal offences under Article 220 § 7 PC, which laid down that "anyone who has knowingly and deliberately helped and assisted a criminal organisation shall be penalised", and section 7 of the Law on the Combat of Terrorism, which prohibited "propaganda for a terrorist organisation"; furthermore, in Turkish law, the dismissals carried out after 15 July 2016 had been considered by the Constitutional Court as *sui generis* measures, because, according to that court, whose approach had been followed by the Council of State, they were "extraordinary" measures rather than measures characterisable as criminal or administrative.

88. As regards the nature of the accusations levelled at those concerned, the intervening non-governmental organisations explained that their nature

should be examined in the light of the following three factors: firstly, the public-sector employees in Turkey had been dismissed not only on account of their past conduct but owing to the alleged existence of links with a present danger, embodied by a terrorist organisation; secondly, the fact of having links with or being a member of such an organisation constituted a serious offence under national legislation; the member States of the Council of Europe had considered terrorist crimes and other acts associated with such crimes as serious offences requiring severe punishment; thirdly, the measure in question did not only concern a limited group of public servants such as judges and prosecutors or army officers, from whom a "bond of confidence and loyalty" is demanded, but also covered all public-sector employees (teachers, health professionals, etc.).

89. As regards the nature and severity of the sanction, the intervening non-governmental organisations stated that the measures adopted during the state of emergency in Turkey with regard to public-sector employees were different from "*post-Soviet lustration cases*". They first of all pointed out that in Turkey public-sector dismissals were unlimited in time, that the Legislative Decrees provided that "persons dismissed from their duties ... shall no longer be recruited to the civil service and can no longer be assigned public-sector duties", and that the dismissal amounted to a total and definitive ban on re-entering the civil service. Referring to the Opinion of the Venice Commission (see paragraphs 46 et seq. above), they further pointed out that those measures had "legal effects far beyond the loss of employment", such as a lifetime ban on working in the public sector or in a private security company, loss of titres, honorary distinctions or ranks, cancellation of passport, virtually immediate eviction from official accommodation, etc. They consequently submitted that the permanent nature of those measures suggested that their aims were punitive and deterrent rather than purely preventive.

90. Moreover, the intervening non-governmental organisations argued that the dismissal of the persons concerned had not been preceded by any disciplinary or criminal proceedings, which meant that the persons concerned had been unable to defend themselves and that the dismissals had not been accompanied by any individualised decisions. The intervening third parties also submitted that the procedures for dismissing public-sector workers had not been accompanied by procedural safeguards equivalent to those provided in the framework of criminal proceedings.

91. The intervening non-governmental organisations also referred to the relevant international materials, which emphasised the importance during the state of emergency of the right to a fair trial, the presumption of innocence and the right to an effective remedy.

92. Finally, as regards the presumption of innocence, they considered that in the absence of appropriate legal reasoning distinguishing between the grounds of dismissal and the facts characterising the commission of a

criminal offence, a judicial decision to dismiss an employee involving the *de facto* finding that the latter's conduct had amounted to a criminal offence might well infringe the presumption of innocence.

(b) The Court's assessment

93. The Court notes that according to the Government neither the civil nor the criminal limb of Article 6 § 1 was applicable in the present case. It will first of all consider the applicability to the proceedings in question of the civil limb of that provision, and will then go on to assess the applicability of its criminal limb.

(i) Applicability of the civil limb of Article 6 § 1 of the Convention

94. The Court reiterates that for Article 6 § 1 in its "civil" limb to be applicable, there must be a dispute ("contestation" in the French text) over a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (see, among many other authorities, *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, ECHR 2012; *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 42, ECHR 2015; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 71, 29 November 2016; and *Regner v. the Czech Republic* [GC], no. 35289/11, § 99, 19 September 2017).

95. In the instant case the Court notes that there was indubitably a "dispute" over a right recognised under domestic law, that the dispute was genuine and serious or that the outcome of the proceedings was directly decisive for the right concerned. It further observes that the dispute related to a right which was civil by its nature, since it was a dispute between an employer and an employee about the way the latter's employment had been terminated (see, *mutatis mutandis*, *Frydlender v. France* [GC], no. 30979/96, § 27, ECHR 2000-VII.

96. It remains to be seen whether the right in question was civil by its nature for the purposes of Article 6 § 1 of the Convention, given that the present case concerns the dismissal of an employee working for a development agency.

97. The Court notes that the applicant's employer is a public-law entity which is not strictly speaking a public authority. On the other hand, as the Government pointed out, the agency in question is a body set up under specific legislation which conducts activities in spheres relating to the civil service. The Court observes, however, that the applicant was not a "civil

servant" within the meaning of the relevant domestic law, and that as an employee his employment contract was subject to the rules of labour law.

98. The Court emphasises that an employment relationship under the ordinary law, based on an employment contract concluded between an employee and an employer, gives rise to civil obligations for both parties, which are, respectively, to carry out the tasks provided for in the contract and to pay the stipulated salary. An employment relationship between a public-law entity, including the State, and an employee may be based, according to the domestic provisions in force, on the labour-law provisions governing relations between private individuals or on a body of specific rules governing the civil service. There are also mixed systems, combining the rules of labour law applicable in the private sector with certain specific rules applicable to the civil service (see *Regner*, cited above, § 106).

99. Consequently, the proceedings concerning the applicant's dismissal clearly related to one of his civil rights, since employment disputes, especially those concerning measures terminating employment in the private sector, concern civil rights within the meaning of Article 6 § 1 of the Convention (see *Regner*, cited above, § 121).

100. That being so, even supposing that the applicant should be considered as having been an employee under contract discharging duties equivalent or similar to those of a public servant, the Court reiterates that, according to its case-law, disputes between the State and its civil servants fall in principle within the scope of Article 6 except where both the following cumulative conditions are fulfilled: firstly, the State in its national law must have expressly excluded access to a court for the post or category of staff in question, and secondly, the exclusion must be justified on objective grounds in the State's interest (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-IV).

101. In the present case it is evident that the first of those two conditions was not fulfilled. Indeed, Turkish law allowed development agency employees to appeal to the labour courts against the termination of their employment contracts. That remedy was available to the applicant, and he availed himself of it. It follows that the civil limb of Article 6 is applicable to the present case.

(ii) Applicability of the criminal limb of Article 6 of the Convention

102. Given that the applicant put forward several complaints under Article 6 §§ 2 and 3 of the Convention, the Court will also consider whether Article 6 also applies to the proceedings in question under its criminal limb.

103. The Court reaffirms that the concept of a "criminal charge" in Article 6 is an autonomous one. Under its established case-law, the existence of any "criminal charge" must be assessed on the basis of three criteria, commonly known as the "Engel criteria" (see *Engel and Others*, cited above, § 82). The first criterion is the legal characterisation of the

offence in domestic law, the second the actual nature of the offence, and the third the degree of severity of the penalty incurred by the person concerned. The second and third criteria are alternative and not necessarily cumulative. This does not, however, exclude a cumulative approach where separate analysis of each criterion does not make it possible to reach a clear conclusion as to the existence of a criminal charge. The fact that an offence is not punishable by imprisonment is not by itself decisive for the purposes of the applicability of the criminal limb of Article 6 of the Convention since, as the Court has stressed on numerous occasions, the relative lack of seriousness of the penalty at stake cannot deprive an offence of its inherently criminal character (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 122, 6 November 2018 and the references therein).

104. The Court does not consider it necessary to conduct an abstract analysis of the dismissal procedure established in Turkey under Legislative Decree No. 667. Its task is to consider, in the light of the criteria set out in the *Engel and Others* judgment (cited above, §§ 82-83), whether in the case in hand the dismissal proceedings, inasmuch as they concern the applicant's specific case, could be seen as equivalent to proceedings relating to a "criminal charge" within the meaning of Article 6 of the Convention.

105. As regards the first Engel criterion – the legal characterisation of the offence in domestic law – the Court observes from the outset that the applicant's employment contract was terminated pursuant to section 4 (1) (g) of Legislative Decree No. 667. The dismissal procedure was conducted by the applicant's employer under the judicial supervision of the labour courts, and neither the prosecuting authorities nor the criminal courts were involved in determining the case (see, *mutatis mutandis*, *Ramos Nunes de Carvalho e Sá*, cited above, § 124). Indeed, the applicant was able to contest his dismissal before the Labour Court (cf. *Matyjek*, decision cited above, § 50 (in that case the organisation and conduct of the lustration proceedings had been based on the model of Polish criminal proceedings, and the rules of the Code of Criminal Proceedings had applied directly to the proceedings in question)). It is undisputed here that the procedure in question came under labour law rather than criminal law (cf. *Sidabras and Džiautas*, decision cited above, and *Rainys and Gasparavičius v. Lithuania* (dec.), nos. 70665/01 and 74345/01, ECHR 2004).

106. As regards the second criterion – the actual nature of the offence – the Court observes that the Legislative Decree authorising the termination of the employment contract had targeted not a broad sector of the population but a specific category of persons, namely public servants, judges, prosecutors and public-service employees. The procedure in issue is *sui generis* and was adopted following the proclamation of the state of emergency in Turkey. There are of course similarities between the wording of section 4 (1) (g) of Legislative Decree No. 667 – that is, membership of

or affiliation with a terrorist organisation or another type of organisation posing a threat to national security – and the definition of certain criminal offences in the Penal Code. However, this fact alone is insufficient to conclude that the dismissal proceedings in question are comparable to proceedings concerning a "criminal charge". First of all, there is no doubt that those proceedings do not belong to the category of repression-related proceedings (cf. *Matyjek*, decision cited above (in that case there had been a close link between the lustration proceedings and the criminal sphere)). In fact, the applicant was not accused of a criminal offence at any point during the domestic proceedings. Prima facie, under the terms of the aforementioned Legislative Decree, the point at issue had been an "assessment" put forward by the employer on the applicant's presumed links or affiliation with a criminal structure. That consideration had led the employer to terminate the employment contract. At all events, according to the Court's case-law, the fact that an action subject to a disciplinary sanction under administrative law also comprises substantive factors constituting a criminal offence is not sufficient grounds for considering that the person brought before the domestic courts as allegedly responsible for the action is "charged with an offence" (see, *mutatis mutandis*, *Moullet v. France* (dec.), no. 27521/04, 13 September 2007, concerning disciplinary proceedings against a civil servant; see also *Vagenas v. Greece* (dec.), no. 53372/07, 23 August 2011).

107. As regards the third criterion – the degree of severity of the sanction in question – the Court notes that the termination of the applicant's employment contract was the main, and the immediate, consequence of the measure in question. Clearly, the ban on re-entering the civil service, one of the consequences of implementing section 4 (2) of Legislative Decree No. 667, which is contested by the Government, might have a punitive dimension; yet in the present case, the severity of the sanction in itself does not bring the offence into the criminal sphere. The termination of the employment contract is a measure typically applied in an ordinary labour dispute which cannot be confused with a legal penalty (see, *mutatis mutandis, Vagenas*, decision cited above).

108. Furthermore, the Court reiterates that it has never noted any criminal-law connotations in situations similar to the present case. It thus concluded that the compulsory retirement of members of the armed forces could not be considered as a criminal sanction for the purposes of Article 6 § 1 of the Convention (see *Tepeli and Others v. Turkey* (dec.), no. 31876/96, 11 September 2001, and *Suküt v. Turkey* (dec.), no. 59773/00, 11 September 2007). The Court has also explicitly held that the proceedings concerning the dismissal of a bailiff for having committed a large number of misdemeanours "did not involve the determination of a criminal charge against the applicant" (see *Bayer v. Germany*, no. 8453/04, § 37, 16 July 2009).

109. Having regard to the foregoing considerations, the Court considers that the facts of the present case do not reveal any reasons for finding that the proceedings concerning the termination of the applicant's employment contract concerned a decision on a criminal charge within the meaning of Article 6 of the Convention. Consequently, that provision is inapplicable under its criminal limb.

4. Conclusion

110. Ultimately, the Court considers that the civil limb of Article 6 § 1 of the Convention is applicable to the present case. It also holds that the facts of the case reveal no reasons for considering that the proceedings in question concerned a decision on a criminal charge within the meaning of Article 6 of the Convention. Therefore, reiterating that although the first paragraph of Article 6 applies both to disputes relating to civil rights and to criminal charges, the second and third paragraphs only protect "accused persons", the Court concludes that the applicant's complaints under Article 6 §§ 2 (presumption of innocence) and 3 (a) and (b) (detailed information on the charges against the accused and their right to have adequate time and facilities for the preparation of their defence) are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and that they must be rejected in pursuance of Article 35 § 4.

111. Further noting that the complaints under Article 6 § 1 of the Convention set forth above are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that they are not inadmissible on any other grounds, the Court declares them admissible.

B. Merits

1. The parties' submissions

(a) The applicant

112. The applicant reiterated his allegations to the effect that neither the administrative proceedings relating to his dismissal nor the subsequent judicial proceedings had complied with the guarantees of a fair trial, and in particular the principles of equality of arms and adversarial proceedings. He complained that his dismissal had not been accompanied by the minimum procedural guarantees, that is to say conducting a prior investigation and requesting defence submissions from the applicant. Moreover, he argued that the subsequent judicial proceedings had not remedied those shortcomings, given that the domestic courts had merely referred to the provisions of Legislative Decree No. 667 and had set forth no reasoning or criteria capable of justifying the dismissal order. He further submitted that whereas his dismissal had been based on the alleged existence of links

between himself and a terrorist organisation, he had never been notified of the criteria and evidence underpinning the impugned measure and had at no stage benefited from adversarial proceedings.

(b) The Government

113. The Government contested the applicant's arguments, submitting that the termination of his employment contract had been determined by the governing board of the Ankara Agency as an emergency measure pursuant to Legislative Decree No. 667. They argued in particular that it had transpired from the judicial decisions that the impugned measure had been based on valid reasons in conformity with section 18 of Law No. 4857.

114. Emphasising the judicial proceedings which had taken place after the termination decision, the Government stated as follows: the applicant had lodged an appeal with the Labour Court; during the related proceedings he had fully benefited from the principles of equality of arms and adversarial proceedings; he had been able to put forward his arguments, attended the public hearing, had appealed on points of fact and law, and had presented sample judicial decisions before the competent courts; he had been able to challenge the first-instance judgment before the Regional Court, before bringing his case before the Court of Cassation; furthermore, he had lodged an individual appeal with the Constitutional Court, once again submitting his allegations and objections; moreover, it was undisputed that the authorities called upon to determine the applicant's case and the Constitutional Court had been independent tribunals competent to determine all the aspects of the matter.

115. The Government also stated that even in normal circumstances, in situations incompatible with the rules of morality and goodwill as set out in Article 25 II of the Labour Code, employers could immediately terminate employment contracts without asking the employee for his observations in defence. They affirmed that in the present case the applicant's employment contract had been terminated during the state of emergency in accordance with the provisions of Legislative Decree No. 667. They added that that instrument had not provided for any specific procedure and that the right of dismissed employees to avail themselves of the appropriate remedies were nonetheless reserved.

116. The Government acknowledged that in normal circumstances, under Article 18 of the Labour Code, the employment contract could not have been terminated without asking the employee for his observations in defence. Nonetheless, they pointed out that in the instant case the decision to terminate the applicant's employment contract had fallen within the scope of Article 15 of the Convention, since that contract had been terminated in the framework of an emergency measure. In that connection, the Government considered that the failure first of all to obtain the applicant's observations had been an emergency measure compatible with the demands

of the situation under the circumstances of the state of emergency, had been necessary and had not been clearly incompatible with any obligations under international law. They added that that breach of procedural rules could have been remedied during the adversarial proceedings from which, according to the applicant, he had benefited after his employment contract had been terminated.

117. Furthermore, referring to the reasoning provided by the domestic courts, the Government submitted that those courts had provided sufficient explanations concerning the reasons for the termination. They also argued that the criminal investigation concerning the applicant had been ongoing on 25 October 2016, when the Labour Court had given its decision. In fact, such a circumstance would have been considered sufficient for terminating the employment contract with a valid reason under the well-established case-law of the Court of Cassation.

118. The Government added that the Labour Court had given a reasoned decision, had ruled that persons suspected of having links with an illegal organisation should not be employed in civil-service institutions, and had considered that the impugned dismissal had been based on a valid reason rather than on a just reason. They also submitted that the Regional Court, hearing and determining as an appellate court, had duly reasoned its judgment and had stated its reasons for dismissing the applicant's appeal. Finally, the Government stated that the Constitutional Court's decision had also been sufficiently reasoned.

(c) Intervening non-governmental organisations

119. The intervening non-governmental organisations did not express a view on those complaints.

2. The Court's assessment

120. The Court observes at the outset that the applicant has submitted that neither the dismissal procedure, taken together with the related administrative proceedings, nor the subsequent judicial proceedings had complied with the guarantees set out in Article 6 § 1 of the Convention. Consequently, those two sets of proceedings must be assessed separately for the purposes of the present case.

(a) Proceedings relating to the termination of the employment contract

121. As regards the procedure relating to the termination of the applicant's employment contract, the Court notes first of all that according to the Government the impugned termination had been an emergency measure adopted pursuant to Legislative Decree No. 667, and that, also according to the respondent Government, it had transpired from the judicial

decisions that the measure in question had been based on a "valid reason" within the meaning of section 18 of Law No. 4857.

122. The Court notes, however, that the applicant's employment contract had been terminated by decision of his employer, who had referred to section 4 (1) (g) of Emergency Legislative Decree No. 667, and not to the provisions of the Labour Code governing termination with a valid reason. Clearly, the termination had not been effected under an ordinary dismissal procedure as laid down in Articles 17-21 of the Labour Code or under an ordinary disciplinary procedure; nor had it been a "termination for suspicion" within the meaning of Article 25 II of the Labour Code. Termination with a valid reason, as laid down in Articles 17-21 of the Labour Code, is subject to certain formal requirements: a termination notice must be issued in writing, clearly and precisely stating the reason for the dismissal, and the employee concerned must submit his observations on the reason indicated (Article 19 §§ 1 and 2). Furthermore, in cases of termination with a valid reason, the employer is required to provide the employee with severance pay and a length-of-service indemnity. The fact is that those procedural requirements were not complied with in the present case.

123. The Court takes note of the Government's position, apparently to the effect that those breaches had been justified under Article 15 of the Convention inasmuch as Emergency Legislative Decree No. 667 had been a provision adopted in the wake of the failed military coup of 15 July 2016.

124. The Court notes that there can be no doubt that the situation complained of by the applicant – that is to say the termination of his employment contract by the Ankara Agency – was a direct result of the derogating measures taken during the state of emergency. Indeed, during that period the Council of Ministers, chaired by the President and acting in conformity with Article 121 of the Constitution, adopted thirty-seven legislative decrees (nos. 667 to 703). Among those texts, Legislative Decree No. 667 not only authorised the removal of civil servants but also required public institutions such as the applicant's employer to dismiss civil-service employees under simplified procedure. Adversarial proceedings formed no part of the decision-making process which resulted in the termination of the applicant's employment contract. By the same token, the Legislative Decree in question made no provision for specific procedural guarantees. It was sufficient for the employer to consider that the employee was a member of or was affiliated or linked to the illegal structures defined in Legislative Decree No. 667, without even providing cursory individualised reasoning.

125. In that connection, the Court is prepared to accept that Legislative Decree No. 667 was enacted in order to provide a simplified procedure for the immediate dismissal of civil servants or other civil-service employees who had clearly been involved in the failed military coup of 15 July 2016. As the Venice Commission rightly pointed out, "[a]ny action aimed at

combating the conspiracy would not [have been] successful if some of the conspirators [were] still active within the judiciary, prosecution service, police, army, etc." (see paragraph 49 above, para. 84). Such a procedure might be considered as justified in the light of the very specific circumstances of the state of emergency.

126. In particular, the Court emphasises that even if the aforementioned dismissal procedure were considered at variance with Article 6 § 1 in one way or another, no issue would arise if there was available to the applicant a remedy ensuring the determination of his asserted civil right by an independent judicial body that did have sufficient jurisdiction and did itself provide the safeguards required by Article 6 § 1 (see, *mutatis mutandis*, *British-American Tobacco Company Ltd v. the Netherlands*, 20 November 1995, § 78, Series A no. 331; see also *Oerlemans v. the Netherlands*, 27 November 1991, §§ 53-58, Series A no. 219). The important thing is that such a remedy exists and is accompanied by sufficient guarantees (see, *mutatis mutandis*, *Air Canada v. the United Kingdom*, 5 May 1995, § 62, Series A no. 316-A). The characteristics of a judicial body with full jurisdiction include the power to quash in all respects, on questions of fact and law, the decision of the body below. Such a body must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Chevrol v. France*, no. 49636/99, § 77, ECHR 2003-III; see also, *mutatis mutandis*, *A. Menarini Diagnostics S.r.l. v. Italy*, no. 43509/08, § 59, 27 September 2011).

127. In that regard, the Court considers that inasmuch as the arguments put forward by the Government concern the simplified procedure established during the state of emergency, they can be deemed admissible. In order to reach that conclusion the Court attaches importance to the fact that the Legislative Decree in question placed no limitations on the judicial review to be conducted by the domestic courts after the termination of the employment contracts of those concerned, including the applicant in the instant case. The latter had been able to contest the impugned termination decision before the Labour Court, appeal to the Regional Court against the latter's decision and lodge an appeal on points of law, and he had also filed an individual appeal with the Constitutional Court. Moreover, the applicant did not raise any argument which could call into question the independence and impartiality of those courts (see, *mutatis mutandis*, *A. Menarini Diagnostics S.r.l.*, cited above, § 60).

128. The Court observes that the applicant essentially contested the thoroughness of the judicial review in question. He argued in that regard that the domestic courts had merely referred to the wording of Legislative Decree No. 667 and had provided no reasoning or any criteria capable of justifying the dismissal order. He further submitted that whereas his dismissal had been based on the alleged existence of links between himself and a terrorist organisation, he had never been apprised of the criteria and

evidence on which the impugned measure had been based, and had at no stage benefited from adversarial proceedings.

129. Consequently, the Court takes the view that the crucial question arising in the present case is whether the applicant's inability to take cognisance of the reasons for which his employer had terminated his employment contract on account of the alleged existence of links with a terrorist organisation had been adequately counterbalanced by effective judicial review. Indeed, it is undisputed between the parties that the applicant had access to a tribunal, which had full jurisdiction to determine the case and to set aside the impugned decision.

(b) The judicial review

(i) Relevant principles

130. The Court refers to the principles flowing from its case-law on the extent of judicial review, which are summarised in its *Ramos Nunes de Carvalho e Sá* judgment (cited above, §§ 176-186).

131. Having regard to the applicant's complaints and the circumstances of the case, the Court notes that it is called upon to adjudicate neither on whether the domestic courts assessed the facts and applied the law correctly nor on the merits of their findings.

The issue before the Court is whether the applicant benefited from a genuine assessment of his submissions during the proceedings before the domestic courts (see *Obermeier v. Austria*, 28 June 1990, § 68, Series A no. 179), and therefore from "adequate review" in conformity with Article 6 of the Convention (cf. *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, §§ 51 and 54, Series A no. 43; see also, *mutatis mutandis*, *Denisov v. Ukraine* [GC], no. 76639/11, § 67, 25 September 2018). That provision in principle requires a remedy in whose framework the tribunal has jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI). This means, in particular, that the court must have the power to examine point by point each of the litigant's grounds on the merits, without refusing to examine any of them, and give clear reasons for their rejection. As to the facts, the court must be able to examine those that are central to the litigant's case (see, among other authorities, *Bryan v. the United Kingdom*, 22 November 1995, §§ 44-45, Series A no. 335‑A, and *Aleksandar Sabev v. Bulgaria*, no. 43503/08, § 51, 19 July 2018; see also, *mutatis mutandis*, *Donadzé v. Georgia*, no. 74644/01, § 131, 7 March 2006).

132. In assessing whether, in a given case, the extent of the review carried out by the domestic courts was sufficient, the Court has held that it must have regard to the powers of the judicial body in question and to such factors as: (a) the subject-matter of the decision appealed against, and in

particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and, if so, to what extent; (b) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the administrative body; and (c) the content of the dispute, including the desired and actual grounds of appeal (see *Ramos Nunes de Carvalho e Sá*, cited above, § 179 and the references therein). Whether the review carried out was sufficient will thus depend on the circumstances of a given case: the Court must therefore confine itself as far as possible to examining the question raised in the case before it and to determining if, in that particular case, the extent of the review was adequate (see *SA Patronale hypothécaire v. Belgium*, no. 14139/09, § 38, 17 July 2018).

133. In that connection, it must be remembered that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective", and that the maintaining in the domestic law of the right to bring a labour-law claim does not in itself ensure the effectiveness of the right to access to a court, if that possibility is devoid of any substance and thus of any prospect of success (see *K.M.C. v. Hungary*, no. 19554/11, § 33, 10 July 2012).

134. Moreover, Article 6 of the Convention obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument put forward by the plaintiff. This obligation presupposes that a litigant can expect to obtain a specific, explicit reply to pleas which are decisive to the outcome of the proceedings (see, among many other authorities, *Ruiz Torija v. Spain*, 9 December 1994, §§ 29-30, Series A no. 303-A). It should also be recalled that under the principle of equality of arms, as one of the features of the wider concept of a fair trial, each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent (see, among other authorities, *APEH Üldözötteinek Szövetsége and Others v. Hungary*, no. 32367/96, § 39, ECHR 2000-X).

135. The Court also reiterates that it is not its task to take the place of the domestic courts. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011). The Court is not competent to hear appeals against national courts' decisions, nor is it its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, among many other authorities, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the Court to

review. The Court should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (*Bochan (no. 2)*, cited above, § 61, and *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 149, 17 October 2019). The Court's sole task in connection with Article 6 of the Convention is to examine applications alleging that the domestic courts have failed to observe specific procedural safeguards laid down in that Article or that the conduct of the proceedings as a whole did not guarantee the applicant a fair hearing (see, among many other authorities, *Donadzé v. Georgia*, no. 74644/01, §§ 30-31, 7 March 2006; see also *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 197, ECHR 2012)

(ii) Application of those principles to the present case

136. The Court deems it necessary to conduct a joint examination of the applicant's complaints concerning the different aspects of what he sees as the inadequate extent of the judicial review conducted by the domestic courts, because those complaints are very closely linked. In order to determine whether the judicial review conducted in the case in hand was sufficient for the purposes of the case-law of the organs of the Convention, the Court must assess that review in the light of the following criteria: (a) the scope of the case; (b) the characteristics of the judicial proceedings; and (c) the review of applicant's complaints and the reasoning of the domestic courts.

(α) The scope of the case

137. In the instant case the Court notes that the applicant's appeal concerned major legal and factual issues.

First of all, the applicant contested the termination of his employment contract before the Labour Court, alleging in particular that that measure had been at variance with domestic law – that is, the Labour Code – since, in his view, it had not been based on any valid reason. That question of the legal regime under which the contract was terminated undoubtedly provides an important contribution to resolving the matter.

Secondly, the applicant submitted that there had been no explanation for his employer's assessment that he had links with an illegal structure, and that he had at no stage been informed of the grounds mentioned in that assessment to justify the termination of his contract. The applicant's arguments thus centred on questions not only of law but also of fact.

138. The Court also observes that the Government did not submit before it that the applicant's employer had been exercising discretionary powers. The Court must also reiterate that, as stated above (see paragraph 124), the decision-making process concerning the termination of the applicant's

employment contract had been very cursory and had been devoid of any specific procedural guarantees. It had been sufficient for the employer to consider that the employee was a member of or was affiliated or linked to the illegal structures defined by Emergency Legislative Decree No. 667, without even the briefest individualised reasoning. Consequently, the termination of the applicant's employment contract had been based entirely on the employer's assessment concerning his alleged links with an illegal structure.

139. The Court notes that the only option left to the applicant, having benefited from no procedural guarantees during the proceedings concerning the termination of the employment contract, was to ask the domestic courts for factual or other evidence capable of justifying his employer's point of view. That was the only channel through which the applicant could contest the verisimilitude, the truth and the reliability of the evidence in question. Accordingly, it was incumbent on the courts to examine all these factual and legal questions relevant to the case before them in order to afford the litigant concerned, namely the applicant, effective judicial review of the employer's decision. In the Court's view, that is the central issue of the case.

(β) Characteristics of the judicial proceedings

140. The Court observes that, as stated above (see paragraph 129), it is undisputed between the parties that the applicant had access to a tribunal which had full jurisdiction to hear and determine the case and to set aside his employer's decisions. Moreover, during the proceedings before the court hearing the applicant's case at first instance, that court decided to supplement the case file, heard witnesses called by the applicant and held a public hearing. Furthermore, the applicant had not been prevented from accessing any decisive piece of evidence provided to the domestic courts by the employer (cf. *Regner*, cited above, § 73). In the light of the foregoing, the Court is prepared to accept that the judicial process sufficiently satisfies the requirements of adversarial proceedings and equality of arms without prejudice to its subsequent examination of the applicant's allegations concerning the effectiveness of judicial review.

(γ) Review of applicant's complaints and reasoning of the judicial decisions

141. The Court observes that, as stated above, the domestic courts were called upon to hear and determine questions of law and of fact. Those courts had to adjudicate on the legal basis for the impugned termination of contract and on any factors capable of justifying the employer's assessment that the applicant had links with an illegal structure.

142. The Court notes that in its 25 October 2016 judgment the Labour Court dismissed the applicant's appeal on the grounds that the termination of the employment contract should be considered as a valid termination

based on section 4 (1) (g) of Emergency Legislative Decree No. 667. In doing so the court merely noted that the competent body had decided on that measure pursuant to a provision of Legislative Decree No. 667. Adjudicating on an appeal lodged by the applicant, the Regional Court, for its part, upheld the first-instance judgment, reprising the wording of section 4 of the Emergency Legislative Decree. The Court of Cassation then upheld the Regional Court's judgment by summary judgment.

143. The Court observes that the applicant's case as adjudicated by the domestic courts did not concern a termination "with just reason" within the meaning of Article 25 II of the Labour Code. Moreover, even though the domestic courts held that "the termination of the employment contract had been based on a valid reason", they also pointed out that it had been based on section 4 (1) (g) of Legislative Decree No. 667.

144. In that connection, the Court takes particular note of the judicial decisions given by the domestic courts concerning the dismissal of employees following the failed military coup of 15 July 2016 (see paragraphs 39-45 above). Those decisions show that a variety of judicial practices emerged in the wake of that event. In some cases the domestic courts explicitly referred to Article 25 II of the Labour Code – which governs termination with a just reason – or resorted to the concept of "termination for suspicion" to justify the dismissals in question (see paragraphs 38-43 above). In the present case, however, the Government did not allege that the applicant's employment contract was terminated pursuant to Article 25 II of the Labour Code.

145. The Court also takes note of the Government's position that the impugned measure was based on a "valid reason", in accordance with Article 18 of the Labour Code. That provision states that "a valid reason" must be based on "the capacities or conduct of the employee ... or on the exigencies of the corporation or the work" (see paragraph 37 above). It should be noted that none of those reasons was mentioned by the domestic courts, which did not in fact refer to that provision, even implicitly, during the domestic proceedings. They confined themselves to explaining that the termination in issue had been based on the provisions of the Emergency Legislative Decree, without providing any further information on the valid reason in question.

146. Indeed, the Court observes that it transpires from the judicial decisions given in the present case that the domestic courts merely assessed whether the dismissal had been determined by the competent body and whether the decision in question had a legal basis. Neither the legal regime of termination "with a valid reason" nor the question whether the employer was in possession of any fact possibly justifying such grounds of dismissal, that is to say the alleged existence of links with an illegal structure, were never really discussed by the domestic courts.

147. More specifically, the Court notes that at no stage in the proceedings before the different trial benches did the domestic courts consider the question whether the termination of the applicant's employment contract for presumed links with an illegal structure had been justified by his conduct or any other relevant evidence or information. Furthermore, it does not transpire from the dismissal decisions given by the trial courts that the applicant's arguments were ever carefully considered. Indeed, relying exclusively on the employer's assessment and refraining from seeking or verifying the factual bases of that assessment and from themselves assessing any factor which might have been crucial in determining the case, those courts merely considered whether the body which decided to terminate the employment contract had the requisite jurisdiction and whether the impugned termination had had a legal basis. In conclusion, it does not transpire from the impugned decisions that the arguments put forward by the applicant had ever really been heard, that is to say had been duly examined by the trial courts.

148. As regards the Constitutional Court, the Court observes that the applicant lodged an individual appeal before that court, relying on the protection of his constitutional rights, in particular his right to a fair trial (see paragraph 29 above). There can be no doubt that, in the framework of the proceedings in question, the Constitutional Court could have played a fundamental role at the national level in protecting the right to a fair trial and remedying the breaches noted above, as is shown by the two recent judgments in cases similar to the present case (paragraph 40 above). However, by giving a summary inadmissibility decision, the latter failed to conduct any analysis of the legal and factual issues in question.

149. Having regard to the foregoing considerations, the Court holds that the conclusions set out in the judicial decisions given in the instant case do not demonstrate that the domestic courts conducted an in-depth, thorough examination of the applicant's arguments, that they based their reasoning on the evidence presented by the applicant and that they validly reasoned their dismissal of the latter's challenges. Without requiring a detailed answer to every argument advanced by the complainant (see *Ruiz Torija*, cited above, § 29), 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 *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, § 84, 11 July 2017). The shortcomings in the present case noted above put the applicant at a distinct disadvantage as compared with his opponent. The Government's observations are unsubstantiated by any documentation and comprise no elements persuading the Court to reach any other conclusion. Indeed, they reprise word for word the impugned judicial decisions and therefore do not convince the Court.

(δ) Conclusion

150. In the light of all the foregoing considerations, the Court notes that, whereas the domestic courts theoretically held full jurisdiction to determine the dispute between the applicant and the administrative authorities, they deprived themselves of jurisdiction to examine all questions of fact and law relevant to the dispute before them, as required by Article 6 § 1 (see, *mutatis mutandis*, *Terra Woningen B.V.,* cited above, § 54; *I.D. v. Bulgaria*, no. 43578/98, § 50, 28 April 2005; and *Fazliyski v. Bulgaria*, no. 40908/05, § 59, 16 April 2013).

151. The Court concludes therefore that the applicant was not actually heard by the domestic courts, which thus failed to guarantee his right to a fair trial within the meaning of Article 6 § 1 of the Convention. In reaching this conclusion in the present case, it takes account in particular of the failure of the national courts to conduct an in-depth, thorough examination of the applicant's arguments and to give reasons for dismissal of the latter's challenges.

152. As regards Article 15 of the Convention, the Court refers to its conclusions as set out above (see paragraph 125) on the proceedings concerning the termination of the applicant's employment contract. In that connection, even though proceedings such as those established under Legislative Decree No. 667 might have been accepted as justified in the light of the very specific circumstances of the state of emergency, it should be emphasised that the legislative decree in question placed no restrictions on the judicial review to be exercised by the domestic courts following the termination of the employment contracts of the individuals concerned, including the present applicant.

153. Moreover, in the Court's view, even in the framework of a state of emergency, the fundamental principle of the rule of law must prevail. It would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 § 1 - namely that civil claims must be capable of being submitted to a judge for an effective judicial review - if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (see, *mutatis mutandis*, *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B). As a result, in view of the seriousness of the consequences for the Convention rights of those persons, where an emergency legislative decree such as the one at issue in the present case does not contain any clear or explicit wording excluding the possibility of judicial supervision of the measures taken for its implementation, it must always be understood as authorising the courts of the respondent State to exercise sufficient scrutiny so that any arbitrariness can be avoided (see, *mutatis mutandis*, *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 146, 21 June 2016).

In those circumstances, the failure to observe the requirements of a fair trial cannot be justified by the Turkish derogation.

There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

154. The applicant complained of his dismissal on the grounds that he had links with a terrorist organisation inasmuch as it had amounted to treatment contrary to Article 3 of the Convention: he stated that because of his dismissal he was now labelled a "terrorist" and "traitor".

In the light of its current case-law and of the nature of the applicant's complaint, the Court considers that the issues raised in the instant case fall more properly to be examined under Article 8 of the Convention. Accordingly, being the master of the characterisation to be given in law to the facts of a case (see, for example, *S.M. v. Croatia*, cited above, § 243), the Court will examine the present case under Article 8 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to respect for his private ... life ...
>
> 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

1. Exhaustion of domestic remedies

(a) The parties' submissions

155. The Government submitted that the applicant had not exhausted the available domestic remedies. First of all they argued that in his individual Appeal to the Constitutional Court he had not validly raised his complaint under Article 8 of the Convention.

156. Secondly, they argued that it transpired from the judicial decisions that the termination of the employment contract had been based on a valid reason within the meaning of section 18 of Law No. 4857. Consequently, according to the Government, the applicant ought to have re-applied for severance pay and a length-of-service indemnity.

157. The applicant did not express a view on those arguments.

158. The intervening non-governmental organisations did not express a view on that point.

(b) Assessment of the Court

159. The Court reiterates that under its well-established case-law, the purpose of the exhaustion rule is to afford a Contracting State the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. It is true that under the Court's case-law it is not always necessary for the Convention to be explicitly raised in domestic proceedings provided that the complaint is raised "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national courts the opportunity to redress the alleged breach. However, as the Court's case-law bears out, to genuinely afford a Contracting State the opportunity of preventing or redressing the alleged violation requires taking into account not only the facts but also the applicant's legal arguments, for the purposes of determining whether the complaint submitted to the Court had indeed been raised beforehand, in substance, before the domestic authorities (see *Radomilja and Others*, cited above, § 117). Indeed, it would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 Others, § 75, 25 March 2014).

160. In several cases the Court has held that the domestic remedies had been exhausted for the purposes of Article 35 § 1 of the Convention even though the applicant's constitutional appeal had been declared inadmissible: it considered that the substance of the complaint had been sufficiently raised before the Constitutional Court (see, among other authorities, *Gäfgen v. Germany* [GC], no. 22978/05, § 144, ECHR 2010; see also *Uhl v. Germany* (dec.), no. 64387/01, 6 May 2004; *Storck v. Germany* (dec.), no. 61603/00, 26 October 2004; and *Schwarzenberger v. Germany*, no. 75737/01, § 31, 10 August 2006). In other cases, however, it has ruled that the domestic remedies were not exhausted, for instance where an appeal had been declared inadmissible because the applicant had committed a procedural error (see *Jalloh v. Germany* (dec.), no. 54810/00, 26 October 2004).

161. Returning to the present case, the Court notes, as regards the first limb of the objection submitted to it, that it is undisputed between the parties that the individual appeal to the Constitutional Court was an effective remedy in the circumstances of the case, but that, in the Government's view, the applicant had not validly raised his complaint under Article 8 of the Convention when he had lodged his appeal with that court.

162. The Court observes that the applicant complained before it about the termination of his employment contract and that he submitted that since

losing his post on the grounds that he had links with a terrorist organisation, he had been branded a "terrorist" and a "traitor". It also notes that before the domestic courts he did not explicitly refer to Article 8 of the Convention or to the constitutional provision guaranteeing the right to respect for private life. It notes, however, that in the appeals lodged with the domestic courts he complained that he had been labelled as a person having links with an illegal structure (see paragraphs 20, 24, 26 and 28 above), and that he had explained that his dismissal was liable to damage his reputation (see paragraph 24 above). In his individual appeal lodged on 21 August 2017 with the Constitutional Court against the impugned dismissal, the applicant pointed out that the situation which he had faced had had consequences which exceeded the framework of the state of emergency and permanently affected his and his family's lives. He complained in that regard of a violation of the presumption of innocence, referring to Article 6 § 2 of the Convention. In particular, in his individual appeal, referring to Articles 48 (right to work) and 70 (right to enter the civil service and prohibition of discrimination in entering the civil service) of the Constitution, he argued that he had been totally and definitively prohibited from re-entering the civil service and that his right to work had therefore been violated. He added that he had sustained negative discrimination in his attempts to find fresh employment on account of his dismissal after the failed military coup. He submitted that not only his right to work but also his right to life, and that of his family, had been violated, and complained that his rights had been infringed. He explained in that connection that he had been branded a "terrorist" and a "traitor", which situation had made it impossible for him to continue with his life in society (see paragraph 28 above).

163. The Court notes that the Constitutional Court had nonetheless declared the applicant's individual appeal inadmissible: that court had considered the applicant's complaints under the right to a fair trial and the right to work, and had declared them inadmissible, the former as manifestly ill-founded and the latter as incompatible *ratione materiae*. In its decision, however, the Constitutional Court did not determine the applicant's arguments concerning the consequences of his dismissal for his private life – even though he had described in detail the damaging consequences of that measure, albeit only in the light of the right to work and the presumption of innocence principle.

164. The Court emphasises that clearly, as regards Article 8, there are a number of elements relevant to a consideration of whether a person's private life is concerned by measures effected outside a person's home or private premises (see *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, § 89, 17 October 2019). Nevertheless, in the instant case it considers that, without explicitly relying on the right to respect for his private life, the applicant drew on domestic law to put forward arguments tantamount to complaining of an infringement of the

right secured under Article 8. Indeed, the impugned facts (dismissal ordered on the grounds of alleged links with an illegal structure) and the complaint about those facts which the applicant raised before the domestic courts (right to reputation) are closely bound up with the complaint which the applicant has submitted to the Court (see, to that effect, *Portu Juanenea and Sarasola Yarzabal v. Spain*, no. 1653/13, § 62, 13 February 2018). Thus the applicant complained in substance of an infringement of his right to respect for his private life.

Under those circumstances, the Court considers that the applicant raised the substance of his complaint concerning the violation of his right to respect for his private life before the Constitutional Court, thus providing that court with an opportunity to consider those matters and to avoid, or provide redress for, the alleged violations, in accordance with the purpose of Article 35 of the Convention (see *Marić v. Croatia*, no. 50132/12, § 53, 12 June 2014).

165. As regards the second limb of the Government's objection concerning lodging an application for severance payment and a length-of-service indemnity, the Court reiterates that it rejected a similar objection in the framework of its examination of the admissibility of the complaint under Article 6 (see paragraph 74 above). It can discern no reason for departing from that finding. Consequently, the Court is not persuaded that in the present case an application for an indemnity under the Labour Code would have had any reasonable prospects of success.

166. The objection raised by the Government as to non-exhaustion of domestic remedies must therefore be rejected.

2. Applicability of Article 8 of the Convention

(a) The parties' submissions

(i) The Government

167. The Government considered that Article 8 of the Convention was inapplicable *ratione materiae* for the following reasons.

168. First of all they argued that the applicant had not mentioned, before the Court or before the Constitutional Court, any specific personal circumstance demonstrating that the impugned measure had had serious consequences for his private life. They affirmed that the impugned termination had mainly had effects on and consequences for the employment contract concluded between the applicant and his employer. Secondly, they argued that the present case did not concern sanctions imposed on the applicant. In their view the issue at stake was a contractual relationship based on free will, in respect of which the provisions of private law had been applied. In other words it was a matter of the materialisation of the consequences of the contractual relationship. Consequently, the

Government considered that, having regard to the criteria set out in *Denisov* (cited above), the termination of the applicant's employment contract had had very limited consequences and had had no repercussions on his private life. More specifically, the impugned termination had had no impact on the applicant's social relations: he could continue seeking other employment and could submit an application for an indemnity.

169. The Government also pleaded as follows: if the negative repercussions complained of were merely the foreseeable consequences of the applicant's unlawful behaviour, he could not rely on Article 8 of the Convention to allege that those negative repercussions had infringed his private life. Consequently, in the Government's view, the applicant was not eligible for the protection afforded under Article 8 of the Convention given that he had been involved in activities linked to terrorist organisations of his own free will, even though his acts had not constituted an offence under criminal law. The Government therefore invited the Court to reject the applicant's complaint as incompatible *ratione materiae* with Article 8 of the Convention.

(ii) The applicant

170. The applicant contested the Government's argument. He pointed out that he had been dismissed on the basis of alleged links with a terrorist organisation pursuant to Legislative Decree No. 667. He added that it transpired from the Government's observations that that had been the reason for the termination of his contract. While specifying that the criminal investigation had closed without any criminal proceedings having been brought against him on charges of belonging to a terrorist organisation, he affirmed in particular, and deplored the fact, that he had found himself branded a "terrorist" in society, and had thus been stigmatised. He stated that despite his postgraduate diplomas he had been unemployed since the termination of his contract and that no employer would dare offer him a post on account of the fact that his dismissal had been based on Legislative Decree No. 667.

(iii) The intervening non–governmental organisations

171. The intervening non-governmental organisations did not express a view on this matter.

(b) The Court's assessment

(i) Relevant principles

172. The Court notes that the instant case raises the question whether the facts complained of by the applicant fall within the scope of Article 8 of the Convention.

173. At this stage of its assessment it considers it useful to reiterate that no general right to employment or to the renewal of a fixed-term contract can be derived from Article 8 (see *Fernández Martínez v. Spain* [GC], no. 56030/07, § 109, ECHR 2014). Nonetheless, the Court has previously had occasion to address the question of the applicability of Article 8 to the sphere of employment. In that regard, it reiterates that the notion of "private life" is a broad concept, not susceptible to exhaustive definition (see, among other authorities, *Schüth v. Germany*, no. 1620/03, § 53, ECHR 2010). It would be too restrictive to limit the notion of "private life" to an "inner circle" in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B).

174. According to the Court's case-law there is no reason of principle why the notion of "private life" should be taken to exclude professional activities (see *Bigaeva v. Greece*, no. 26713/05, § 23, 28 May 2009, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 165-167, ECHR 2013). Restrictions on an individual's professional life may fall within Article 8 where they have repercussions on the manner in which he or she constructs his or her social identity by developing relationships with others. Moreover, professional life is often intricately linked to private life, especially if factors relating to private life, in the strict sense of the term, are regarded as qualifying criteria for a given profession (see *Özpınar v. Turkey*, no. 20999/04, §§ 43-48, 19 October 2010). Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may fall within the scope of "private life" (see *Fernández Martínez*, cited above, § 110, and the references therein).

175. Within the employment-related scenarios involving Article 8, the Court has dealt with different types of cases. It has addressed cases, in particular, of soldiers returning to civilian life (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, ECHR 1999-VI), of removals from office of judges and prosecutors (see *Özpınar,* cited above, *Oleksandr Volkov*, cited above, and *Kulykov and Others v. Ukraine*, nos. 5114/09 and 17 others, 19 January 2017), and of a transfer within the civil service (see *Sodan v. Turkey,* no. 18650/05, 2 February 2016). In other cases it has had occasion to adjudicate on restrictions on access to employment in the civil service (see *Naidin v. Romania*, no. 38162/07, 21 October 2014), on the loss of a job outside the public sector (see *Obst v. Germany*, no. 425/03, 23 September 2010; *Schüth*, cited above; *Fernández Martínez*, cited above; *Şahin Kuş v. Turkey*, no. 33160/04, 7 June 2016; and *Bărbulescu v. Romania* [GC], no. 61496/08, 5 September 2017), as well as restrictions on access to specific jobs in the private sector (see *Sidabras and Džiautas*, decision cited above; *Campagnano v. Italy,* no. 77955/01, ECHR 2006 IV; and *Bigaeva*, cited above).

176. In cases falling into the above-mentioned category, the Court applies the concept of "private life" on the basis of two different approaches: (a) identification of the "private life" issue as the reason for the dispute (reason-based approach) and (b) deriving the "private life" issue from the consequences of the impugned measure (consequence-based approach) (see *Denisov*, cited above, § 102). Where no reason-based approach justifies the applicability of Article 8, an analysis of the effects of the impugned measure on the above-mentioned aspects of private life is necessary to conclude that the complaint falls within the scope of "private life". Nevertheless, this division does not preclude cases in which the Court may find it appropriate to employ both approaches in combination, examining whether there is a private-life issue in the underpinning reasons for the impugned measure and, in addition, analysing the consequences of the measure (see *Fernández Martínez*, cited above, §§ 110-112). The Court will only accept that Article 8 is applicable where these consequences are very serious and affect his or her private life to a very significant degree (see *Denisov*, cited above, § 116).

177. The Court also reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012, and *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010). In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life.

178. Nevertheless, it is important to emphasise that Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions such as, for example, the commission of a criminal offence (see *Sidabras and Džiautas*, decision cited above, § 49, and *Axel Springer AG*, cited above, § 83). This extended principle should cover not only criminal offences but also other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life".

(ii) Application of those principles to the present case

179. In the instant case, the Court notes that the applicant, who was not a civil servant, was nevertheless employed and remunerated by a development agency, that is to say a public-law entity, on the basis of a permanent employment contract. In the light of the criteria set out in the *Denisov* judgment cited above, the Court will therefore seek to ascertain how a private-life issue can arise in the present employment-related dispute – on account either of the reasons for the termination of the employment contract or of the consequences of such termination for the applicant's private life.

180. The Court observes at the outset that the reasons explicitly stated by the employer to justify the impugned termination did not concern the applicant's performance at work. In the Court's view, the grounds of dismissal based on section 4 of Legislative Decree No. 667 (the maintaining of links with an illegal structure) was such as to affect the private life of the person concerned, which means that it could also attain a level of severity sufficient to render Article 8 of the Convention applicable to the present case, unless it can be demonstrated that such a measure had been the foreseeable consequence of the applicant's own actions (see *Denisov*, cited above, § 98).

According to the applicant, no criminal proceedings had been brought against him concerning his alleged links with the terrorist organisation in question. Indeed, it transpires from the case file that on 30 July 2016 – that is, after the applicant's employer had decided to terminate the applicant's employment contract – the public prosecutor's office instigated a criminal investigation against 95 persons, including the applicant, for members of an armed terrorist organisation. The Court emphasises that the parties provided very little information on that criminal investigation, merely presenting a copy of the discontinuance decision given by the same office on 5 September 2018, closing the said investigation. It transpires that there had been insufficient evidence justifying the suspicions to commence criminal proceedings (see paragraph 31 above).

181. The Court is prepared to accept that, regardless of the outcome of the criminal investigation, the employer could have given the domestic courts information or factual evidence capable of substantiating the applicant's alleged links with an illegal structure, thus also explaining the reasons for the breakdown of the relationship of trust with his employee. Indeed, like the Government, the Court observes that the impugned dismissal procedure, which was autonomous in terms both of the conditions for its implementation and of its procedural regime, was not a direct corollary of the criminal proceedings (see, *mutatis mutandis*, *Moullet*, decision cited above). In that connection it attaches weight to the findings of the Venice Commission, which considered that "the connection required to justify suspensions (or even dismissals) may be less intensive than the one required for defining a person as a 'member' of a criminal organisation" (see paragraph 50 above, para. 130).

182. The Court notes, however, that it transpires from the judicial proceedings before the domestic courts that the latter at no stage referred to the criminal investigation, and, moreover, that the case file contains nothing to indicate that, although subsequently closed, that investigation or the proceedings before the domestic courts concerning the applicant's dismissal had enabled the national authorities to obtain information or factual evidence capable of substantiating the grounds of dismissal.

183. In the light of the foregoing considerations, the Court concludes that there is absolutely no evidence to suggest that the termination of the employment contract in question had been the foreseeable consequence of the applicant's own actions.

184. Furthermore, as regards the repercussions of the measure in question on the right to respect for private life, the Court emphasises that it has to be determined whether, according to the evidence and the substantiated allegations put forward by the applicant, the measure had serious negative consequences for the aspects constituting his "private life", namely (i) his "inner circle", (ii) his opportunities to establish and develop relationships with others, or (iii) his reputation (see *Denisov*, cited above, § 120).

185. As regards the consequences of the impugned dismissal for the applicant's "inner circle", the Court reiterates that this argument has to be viewed as relating to the worsening of the material well-being of the applicant and his family. In that connection, it is sufficient to note that the applicant lost his job, that is to say his means of subsistence.

186. As regards the applicant's ability to forge and maintain relationships with others, the Court observes that even though, according to the Government, the termination in question mainly had effects on and consequences for the employment contract concluded between the applicant and his employer, according to section 4 (2) of Emergency Legislative Decree No. 667, "persons dismissed from their duties pursuant to the first paragraph shall no longer be recruited to the civil service and can no longer be assigned such duties directly or indirectly". In that connection the Court notes with interest the Government's argument that there is nothing to prevent the applicant from applying for a post in the public or private sector. However, in the light of section 4 (2) of Legislative Decree No. 667, which was quoted in the judgment delivered by the Regional Court (see paragraph 50 above), the Court must attach weight to the applicant's claim that he had found himself branded in society as a "terrorist" and had thus been stigmatised. In that regard, the applicant stated in particular that despite his postgraduate qualifications, he had been unemployed since the termination of his contract and that employers did not dare offer him a job because the termination had been based on Legislative Decree No. 667. Consequently, there have indeed been repercussions on the applicant's ability to forge and maintain relationships, including employment relations.

187. Finally, as regards whether the impugned measure infringed the applicant's reputation such as to seriously diminish the esteem in which he was held and to have a severe impact on his social relations, the Court merely refers to its findings concerning the grounds of dismissal adopted, that is to say the existence of links with an illegal structure. Such an assessment undoubtedly had very serious consequences for the applicant's professional and social reputation.

188. Thus, analysing the combined effect of the grounds of dismissal in the light of the objective facts of the case, and assessing the material and non-material consequences of the dismissal on the basis of the evidence presented before the Court, it must be concluded that that measure had severe negative repercussions on the applicant's private life and exceeded the threshold of severity for an issue to be raised under Article 8.

That provision is therefore applicable to the present case.

3. Other grounds of inadmissibility

189. Noting that this complaint is not manifestly ill-founded and is not inadmissible on any other grounds within the meaning of Article 35 of the Convention, the Court declares it admissible.

B. Merits

1. The parties' submission

(a) The applicant

190. The applicant stated that he had been dismissed on account of his alleged links with a terrorist organisation, on the basis of section 4 (1) (g) of Emergency Legislative Decree No. 667, which provision was explicitly referred to in the notice of termination of his employment contract. Furthermore, he submitted that according to guidelines issued subsequently, some employees who had been dismissed pursuant to that provision had been reinstated in their posts after reconsideration of their situations. He added that his own requests for such a measure had been unsuccessful. He further pointed out that the judicial decisions concerning his case had clearly stated that the termination of his employment contract had been based exclusively on the provisions of the Legislative Decree in question.

191. Moreover, he alleged that it also transpired from the Government's observations that the termination of his contract had been based on the same grounds. He reiterated his arguments concerning his insulting characterisation as a "terrorist".

As regards the code "22 - other reasons" mentioned by the Government, he affirmed that at the material time no code had existed to define his situation, and that it had only been later on, on 2 August 2016, that a code "36" had been introduced to designate dismissals ordered on the grounds of the existence of links with terrorist organisations.

(b) The Government

192. The Government reiterated its position to the effect that there had been no interference with the applicant's right to respect for his private life.

In the alternative, should the existence of an interference be accepted by the Court, they submitted that the latter had been prescribed by law, that is

to say section 4 (1) (g) of Emergency Legislative Decree No. 667 and Article 18 of the Labour Code, and that the latter had been foreseeable and accessible. They argued that where a person was affiliated to a terrorist organisation he or she should be able to foresee that they would lose the trust of their employer and that their employment contract would consequently be terminated. The Government also submitted that the said interference had pursued several legitimate aims, that is, national security, public safety and the prevention of disorder and crime, and they referred in particular to the situation immediately following the failed military coup of 15 July 2016. In that connection they explained that Legislative Decree No. 667 had been promulgated in order to protect the constitutional order, the rule of law, democracy and the fundamental rights and freedoms, and that the exceptional measures provided for in the framework of the state of emergency had been aimed, *inter alia*, at preventing any future attempted coups and effectively combating terrorism.

193. As regards the necessity of the interference, the Government argued that the applicant's dismissal had been a measure taken during the state of emergency in order to prevent disorder and protect public security on account of the terrorist threat facing Turkey in the wake of the failed military coup. They added that it had also been established by the judicial decisions that that dismissal had been based on a valid reason within the meaning of section 18 of Law No. 4857, applicable in normal circumstances. In particular, the Government invited the Court to take into consideration the notice of derogation submitted by Turkey to the Secretary General of the Council of Europe on 21 July 2016, pursuant to Article 15 of the Convention, in its European supervision of the question whether the alleged interference had been necessary in a democratic society and proportionate to the legitimate aims pursued.

194. The Government submitted that during the state of emergency, extraordinary measures had been taken against persons with connections to terrorist organisations. They specified that those measures had been accompanied by sufficient guarantees, consisting in particular of effective administrative and judicial appeals. They added that in the instant case that fact was borne out by the following: after his dismissal, the applicant had filed an action with the Labour Court, and had later appealed on points of fact and law and raised his objections against the judgment of the court of first instance; subsequently he had lodged an individual appeal with the Constitutional Court; consequently, the applicant had benefited from the procedural safeguards against arbitrariness in the decision-making process and from effective judicial review, he had been able to raise all his objections and to present evidence before three levels of jurisdiction, and he had also availed himself of his right to lodge an individual appeal with the Constitutional Court.

195. The Government argued that even though the applicant's employment contract had been terminated in accordance with the procedure set out in Legislative Decree No. 667, without any preliminary investigation or possibility for the person concerned to present his observations in defence, the Labour Code laid down the same procedure in cases of termination with a just reason, under Article 25 II of that Code. In other words, even in normal circumstances, an employment contract could have been terminated by the employer by unilateral notification, in some cases without the persons concerned submitting any observations in defence and without a preliminary investigation. In such cases the judicial authorities were responsible for assessing the termination in question.

196. The Government accepted that in normal circumstances, section 18 of Law No. 4857 required the observations in defence to be submitted. However, they stated that in the instant case the applicant's employment contract had been terminated in the framework of a procedure laid down in Emergency Legislative Decree No. 667. Consequently, they considered that that due allowance should be made for Article 15 of the Convention in assessing that requirement. In that regard, they submitted that the act of dismissing the applicant in the absence of his observations in defence had been a measure required by the state of emergency and which had been necessary. They further held that that act had not been clearly incompatible with the obligations of international law.

197. Furthermore, the Government drew the Court's attention to the fact that the applicant had not been described as a terrorist when his employment contract had been terminated and that the notice of termination of employment had not included a single word on that subject. They considered that it should be mentioned that code "22 - other reasons" had been included as grounds of dismissal in the declaration of termination of employment as sent to the national insurance office, and that consequently, the applicant's reputation had been shielded. In other words, according to the Government, the applicant had not been found guilty of any offence causing prejudice to his honour and reputation. They further submitted that very neutral language had been used in terminating the applicant's employment contract and that no incriminating expressions had been used in the notice of termination of employment.

198. The Government also argued that the applicant's employment contract had been governed by Law No. 4857 and that his dismissal had been conducted in accordance with that law. Consequently, there was nothing to prevent the applicant from being recruited to a job in the private or public sector. They stated that even though the applicant's dismissal had been ordered as a measure that had been necessary in the extraordinary emergency situation following the failed military coup, that situation had been temporary.

(c) The intervening non-governmental organisations

199. The intervening non-governmental organisations did not express a view on that complaint.

2. The Court's assessment

(a) Whether the case should be considered from the angle of the State's negative or positive obligations

200. In the present case the Court observes that the measure contested by the applicant, that is to say the termination of his employment contract, was adopted not by a State authority but by a local development agency. Despite its statute as a public-law entity in Turkish law, it was not alleged that that agency had been exercising public powers. Moreover, the applicant's employment contract had been governed by the Labour Code.

That being the case, the Court notes that the measure adopted by the said agency had been based on a provision of Emergency Legislative Decree No. 667, which required employers to terminate their employees' contracts if they considered that the latter had had links with an illegal structure. Consequently, the impugned dismissal might be regarded as an obligation deriving from the said legislative decree, which far exceeded the legal framework governing the employment contract in question (see, *mutatis mutandis*, *Fernández Martínez*, cited above, § 115). Furthermore, it should be emphasised that the authorities' responsibility would be engaged if the facts complained of stemmed from a failure on their part to secure to the applicant the enjoyment of a right enshrined in Article 8 of the Convention (cf. *Bărbulescu*, cited above, § 110)**.**

201. In those circumstances, the Court takes the view that the applicant's dismissal, which was based on his presumed links with an illegal structure, may be considered as an interference in the applicant's right to respect for his private life (see, *mutatis mutandis*, *Vogt v. Germany*, 26 September 1995, § 44, Series A no. 323, and *Oleksandr Volkov*, cited above, § 165, and the references therein).

202. As regards the extent to which the applicant's dismissal might amount to a breach of the State's positive obligations under the Convention, the Court reiterates that in addition to the primarily negative undertaking by the State to abstain from any interference with the rights guaranteed by the Convention, there "may be positive obligations inherent" in such rights (see *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 50, ECHR 2012). While the boundaries between the State's positive and negative obligations under Article 8 do not lend themselves to precise definition, the applicable principles are nonetheless similar (see *Fernández Martínez*, cited above, § 114). Since the impugned dismissal did indeed amount to an interference, the latter is only justified if the conditions set out in Article 8 § 2 have been fulfilled.

(b) The justification of the interference

203. In order to determine whether the interference amounted to a violation of the Convention, the Court must seek to ascertain whether it fulfilled the requirements of Article 8 § 2, that is, whether it was "in accordance with the law", pursued a legitimate aim under that provision, and was "necessary in a democratic society".

(i) The lawfulness of the interference

204. The Government submitted that even supposing that there had been an interference, it had been prescribed by law, that is to say section 4 (1) (g) of Emergency Legislative Decree No. 667 and section 18 of the Labour Code. They stated that those provisions had been foreseeable and accessible. When individuals joined a terrorist organisation, they should be able to foresee that they will lose their employer's trust, which will then lead to the termination of their employment contract.

205. The applicant did not express a view on that matter.

206. The Court reiterates that the words "in accordance with the law", within the meaning of Article 8 § 2 of the Convention, not only require that the impugned measure should have some basis in domestic law, but also refer to the quality of the law in question, requiring that it should be accessible to the person concerned, who must moreover be able to foresee its consequences for him, and compatible with the rule of law. The question whether the former condition has been satisfied in the instant case is uncontroversial. Indeed, no one has disputed the fact that the impugned interference – namely the applicant's dismissal – had a basis in law, that is to say section 4 (1) (g) of Emergency Legislative Decree No. 667. As regards section 18 of the Labour Code, as mentioned by the Government, the Court would merely point out that that provision was not mentioned in the decisions given by the domestic courts.

It remains to be seen whether the said legal basis also satisfied the accessibility and foreseeability requirements. The Court reiterates that the level of precision required of domestic legislation - which cannot of course provide for every eventuality - depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. Moreover, the mere fact that a legal provision is capable of more than one construction does not mean that it does not meet the requirement implied in the notion "prescribed by law". Finally, the duty of interpreting and applying domestic law falls, in the first place, to the national authorities (see *Vogt*, cited above, § 48).

207. In the instant case, the Court notes at the outset the general character of the wording of section 4 (1) (g) of Emergency Legislative Decree No. 667, with terms such as "belonging to" and "affiliated or linked with" an illegal structure. It should also be noted that the Government did

not cite any criteria concerning the definition of the concepts mentioned in that provision. Moreover, the Court takes note of the Venice Commission's considerations on the foreseeability of the criteria used to assess a person's links with an illegal structure (see paragraph 50 above).

Nevertheless, the Court takes the view that where the rules on the conduct of civil-service employees are concerned, there should be a reasonable approach in assessing statutory precision, as it is a matter of objective necessity that the *actus reus* of such offences should be worded in general language. Otherwise, the statute may not deal with the issue comprehensively and will require constant review and updating according to the numerous new circumstances arising in practice. It follows that a description of an offence in a statute, based on a list of specific behaviours but aimed at general and uncountable application, does not provide a guarantee for addressing properly the matter of the foreseeability of the law. The other factors affecting the quality of legal regulation and the adequacy of the legal protection against arbitrariness should be identified and examined (see, *mutatis mutandis*, *Oleksandr Volkov*, cited above, § 178).

208. In that regard, the Court reiterates that it has already found the existence of specific and consistent interpretational practice concerning the legal provision in issue to constitute a factor leading to the conclusion that the provision was foreseeable as to its effects (ibid., § 179). It is precisely for the judicial bodies to construe the exact meaning of general provisions of law in a consistent manner and dissipate any interpretational doubts (ibid., § 179).

209. The Court notes that the measure taken in the present case under section 4 (1) (g) of Legislative Decree No. 667, which is a state-of-emergency provision, was the subject of judicial review (see, *mutatis mutandis,* to converse effect, *Oleksandr Volkov*, cited above, § 184). Furthermore, it should be borne in mind that this case was one of the first of its kind concerning the application of the provision in question (cf. *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 150, 27 June 2017). Consequently, taking account of their interpretational role in ensuring the foreseeability of legal provisions, it was incumbent on the domestic courts to afford legal protection against arbitrary interference.

Having regard to the particular circumstances of the state of emergency and to the fact that the domestic courts had full jurisdiction to review the measures adopted pursuant to the aforementioned section 4 (1) (g), the Court is prepared to proceed on the assumption that the impugned interference was prescribed by law.

(ii) The existence of a legitimate aim

210. The parties did not dispute, in substance, that the interference with the applicant's right to respect for his private life had pursued several

legitimate aims for the purposes of Article 8 § 2 of the Convention, that is to say the protection of national security and the prevention of disorder and crime.

(iii) The necessity of the interference in a democratic society

(α) Relevant principles

211. The Court reiterates that Article 8 of the Convention is essentially aimed at protecting individuals against arbitrary interference by a public authority in the exercise of their right to respect for their private and family life, their homes and their correspondence (see *Libert v. France*, no. 588/13, §§ 40-42, 22 February 2018). That is a classic negative obligation, described by the Court as the essential objet of Article 8 (see *Kroon and Others v. the Netherlands*, 27 October 1994, § 31, Series A no. 297-C).

212. It should be pointed out that in determining whether the impugned measures were "necessary in a democratic society", the Court has to consider whether, in the light of the case as a whole, the reasons adduced to justify them were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued (see *Z v. Finland*, 25 February 1997, § 94, *Reports* 1997-I).

213. In that connection the Court reiterates that as a matter of principle, States have a legitimate interest in regulating employment conditions in the public service. A democratic State is entitled to require civil servants to be loyal to the constitutional principles on which it is founded (see *Vogt*, cited above, § 59, and *Sidabras and Džiautas*, decision cited above, § 52).

214. The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation. In particular, the Court must examine whether the decision-making process leading to measures of interference was fair and such as to afford due respect to the interests safeguarded to the individual by Article 8 (see *Connors v. the United Kingdom*, no. 66746/01, § 83, 27 May 2004; *Buckley v. the United Kingdom*, 25 September 1996, § 76, *Reports* 1996-IV; and *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001-I)

215. Finally, the Court recognises that it is for the national authorities to make the initial assessment of the necessity of the interference, though the final evaluation as to whether the reasons cited for the interference are relevant and sufficient is one for this Court. A margin of appreciation is left to Contracting States in the context of this assessment, which varies according to the nature of the activities restricted and of the aims pursued by the restrictions (see *Smith and Grady*, cited above, § 88).

(β) Application of those principles

216. The Court observes first of all that its supervision will concern two points. Firstly, it will ascertain whether the decision-making process leading to the applicant's dismissal was surrounded by safeguards against arbitrary action. Secondly, it will examine whether the applicant benefited from procedural guarantees, and in particular whether he had access to adequate judicial review, and whether the authorities acted diligently and promptly. In that regard, the Court will have regard in its analysis to its findings under Article 6 of the Convention (see paragraphs 150 and 151 above)

217. As regards the first aspect, the Court observes at the outset that the decision-making process preceding the termination of the applicant's employment contract was very cursory. Following a meeting on 26 July 2016 aimed at assessing the situation of the employees working for the Ankara Agency, it was decided to terminate the employment contracts of six employees, including the applicant, pursuant to section 4 (1) (g) of Emergency Legislative Decree No. 667, on account of their membership of structures threatening national security or of the existence of links or connections with such structures. The Court can only note the vagueness and uncertainty of such an affirmation, and conclude that the decision taken by the Agency's governing board was substantiated by a mere reference to the wording of section 4 (1) (g) of Emergency Legislative Decree No. 667, which provided for dismissing employees considered as belonging to or being affiliated or linked with an illegal structure.

218. The Court then observes that the applicant's employer failed to specify the nature of the applicant's activities potentially justifying the assessment that he had links with an illegal structure. During the proceedings before the domestic courts, no concrete accusation was explicitly levelled concerning the alleged existence of links with such a structure.

219. In that regard, the Court notes that the Government argued that the organisation in question had been atypical in nature – the Turkish authorities considered that it had premeditated the failed military coup of 15 July 2016 and that it had extensively infiltrated influential State institutions and the judicial system under the guise of lawfulness – and that the organisation had posed a threat to national security. Moreover, it transpires from the Government's observations that the applicant had been dismissed on account of his voluntary involvement in activities linked to terrorist organisations. Similarly, it transpires from the domestic courts' decisions that the applicant's employer's assessment concerned the alleged existence of links between the applicant and the FETÖ/PDY organisation. In short, the applicant was dismissed on the grounds that he had links with an illegal secret structure which the national authorities considered as having instigated the failed military coup of 15 July 2016.

220. The Court is of the view that the very specific context of the present case calls for a high level of scrutiny of the facts. In this connection, it is prepared to take into account the difficulties facing Turkey in the aftermath of the attempted military coup of 15 July 2016 (see *Alparslan Altan v. Turkey*, no. 12778/17, § 137, 16 April 2019). Those difficulties are undoubtedly a contextual factor which the Court must fully take into account in interpreting and applying Article 8 of the Convention in the present case (ibid., § 147).

221. The Court agrees with the Government that the considerations relating to civil servants' duty of loyalty are applicable in the present case *mutatis mutandis*, in view of the duties discharged by development agencies (see paragraph 5 above). On that point it refers to its findings regarding the procedure used to terminate the applicant's employment contract under Article 6 of the Convention (see paragraphs 121-127 above). Those considerations apply *a fortiori* here.

222. In the light of the foregoing considerations, the Court can accept, in keeping with its findings under Article 6, that the simplified procedure established under Legislative Decree No. 667 enabling civil servants and other civil-service employees to be dismissed might be considered as having been justified in the light of the very specific circumstances of the situation in the wake of the failed military coup of 15 July 2016, given that the measures taken during the state of emergency had been subject to judicial review. Consequently, it considers that no further assessment is required of the procedure in question in view of the above-mentioned circumstances.

223. As regards the second aspect, that is, the thoroughness of the judicial review of the impugned measure, the Court reiterates the principle that any individual subject to a measure for reasons of national security must have safeguards against arbitrary action (see *Al Nashif v. Bulgaria*, no. 50963/99, §§ 123-124, 20 June 2002; see also, among many other authorities, *Lupsa v. Romania*, no. 10337/04, § 38, ECHR 2006-VII).

224. The Court is prepared to accept that membership of structures organised along military lines or establishing a rigid, irreducible form of solidarity among their members, or else pursuing an ideology contrary to the rules of democracy, a fundamental element of "European public order", could raise an issue *vis-à-vis* national security and prevention of disorder where the members of such bodies are called upon to discharge public duties (see, *mutatis mutandis*, *Grande Oriente d`Italia di Palazzo Giustiniani v. Italy (no. 2)*, no. 26740/02, § 55, 31 May 2007).

225. Consequently, in the Court's view, the assessment by the public authorities or other bodies operating in the civil service sphere of what poses a threat to national security will naturally be of significant weight. Nevertheless, the domestic courts must be able to react in cases where invoking that concept has no reasonable basis in the facts or points to an

arbitrary interpretation (see, *mutatis mutandis*, *Al Nashif,* cited above, § 124).

226. The Court observes that in the present case it is in no real position to adjudicate on the domestic authorities' assessments which formed the grounds for the applicant's dismissal. Indeed, even though that measure was based on the alleged existence of links between the applicant and an illegal structure, the Government merely referred to the judicial decisions given by the domestic courts. As previously mentioned (see paragraph 183 above), those decisions shed no light on the criteria that were used to justify the assessment of the applicant's employer and to determine the exact nature of the charges against the applicant. The domestic courts accepted that the employer's assessment had been a valid reason for ordering the termination of his employment contract, without thoroughly assessing the impugned measure and despite the major repercussions of the latter on the applicant's right to respect for his private life,.

227. In the Court's view, even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence. If it were impossible to contest effectively a national security concern relied on by the authorities, the police or other State authorities would be able to encroach arbitrarily on rights protected by the Convention (see, *mutatis mutandis*, *Liu v. Russia (no. 2)*, no. 29157/09, §§ 85-87, 26 July 2011, and *Al-Nashif*, cited above, §§ 123-124).

228. Under those circumstances, the domestic courts failed to determine the real reasons why the applicant's employment contract had been terminated (see, in particular, the relevant international labour law standards referred to in paragraphs 53-54 above). Consequently, the judicial review of the impugned measure in the present case was inadequate.

229. Having regard to all the foregoing considerations, the Court finds that the applicant did not benefit from the minimum degree of protection against arbitrary interference required by Article 8 of the Convention. In addition, for the reasons set out in its review under Article 6 (paragraphs 152-153 above), it considers that the impugned measure cannot be said to have been strictly required by the special circumstances of the state of emergency.

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

IV. THE OTHER ALLEGED VIOLATIONS OF THE CONVENTION

230. Under Article 7 of the Convention, the applicant alleged that he had been dismissed for actions that had not constituted a criminal offence at the time of their commission.

Relying on Article 13 of the Convention, he also complained of the lack of an effective remedy to challenge the dismissal order and to ascertain the real reason(s) for the latter.

Furthermore, he complained of a breach of Articles 17 and 18 of the Convention relying on the same facts.

231. As regards the complaint under Article 7 of the Convention, the Court considers it necessary first of all to address the question whether the applicant can rely on that provision. In that regard, it reiterates that it has already found (see paragraph 109 above) that the facts of the present case do not indicate any reason for finding that the proceedings concerning the termination of the applicant's employment contract concerned a decision on a criminal charge within the meaning of Article 6 of the Convention. That finding applies *mutatis mutandis* to the complaint under Article 7 of the Convention. Consequently, the Court concludes that since the applicant was not charged with any criminal offence he cannot rely on Article 7 of the Convention.

232. It follows that that complaint is incompatible *ratione materiae* with the provisions of the Convention for the purposes of Article 35 § 3 (a), and that it must be rejected pursuant to Article 35 § 4.

233. As regards the complaint under Article 13 of the Convention, having examined the parties' observations concerning that complaint, the Court declares it admissible. It observes that the applicant complained of the lack of an effective remedy to challenge the dismissal order and to ascertain the real reason(s) for the latter. It firstly notes that that complaint is subsumed by the applicant's complaint under Article 6 § 1. At all events, the Court reiterates that the role of Article 6 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (see, for example, *Baka v. Hungary* [GC], no. 20261/12, § 181, 23 June 2016). Having regard to its conclusions under Article 6 § 1 of the Convention (see paragraph 151 above), the Court considers that the complaint under Article 13 does not give rise to any separate issue (see, for example, *Oleksandr Volkov*, cited above, § 189; see also, *mutatis mutandis, Kamasinski v. Austria*, 19 December 1989, § 110, Series A no. 168).

Consequently, the Court finds that there is no need to consider separately the merits of the complaint under Article 13 of the Convention.

234. As regards the complaints under Articles 17 and 18 of the Convention, having regard to all the evidence in its possession, and to the extent that it has power to examine the allegations, the Court does not find any appearance of a violation of the rights and freedoms guaranteed by the Convention or its Protocols. It follows that those complaints are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

235. 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. Damages

236. The applicant claimed full compensation for the pecuniary damage which he had sustained in losing the income which he would have received if the domestic courts had found his dismissal unlawful and if he had consequently continued to work for his employer. Under this head he claimed 417,495 Turkish lire (TRY) (approximately 50,914 euros (EUR)). He stated that that sum corresponded to his gross monthly salary, TRY 10,705, multiplied by thirty-nine months, the period during which he said that he had been unemployed. The applicant also claimed TRY 200,000 (about EUR 24,390) in respect of the non-pecuniary damage which he had sustained.

237. The Government contested those claims. They considered that the sums claimed were purely speculative and that there was no causal link between the applicant's dismissal and the alleged damage. Furthermore, as regards pecuniary damage, they stated that the applicant's net monthly salary had been TRY 5,813.85 (some EUR 1,970) in January 2016, TRY 5,859.26 in February 2016, TRY 5,859 in March 2016, TRY 6,097.45 in April 2016 and TRY 6,097.45 in June 2016.

238. Moreover, the Government argued that according to the Labour Code and the case-law of the Court of Cassation, if the applicant's request for reinstatement in post had been accepted by the domestic courts, he would have regained his post and received an indemnity of an amount corresponding to a maximum four months' salary in respect of his period of unemployment. They added that where an employee was not reinstated in post, he was entitled to an indemnity of an amount corresponding to between four and eight months' salary, depending on the length of the period of unemployment.

239. The Court reiterates that it has found a violation of Articles 6 and 8 of the Convention in that the national courts failed to establish the relevant facts and to perform an adequate balancing exercise between the applicant's right to respect for his private life and correspondence and the employer's interests. It does not discern any causal link between the violation found and the pecuniary damage alleged, and therefore dismisses this claim (see, to similar effect, *Bărbulescu*, cited above, § 145). On the other hand, it considers that the applicant must have sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not

suffice to remedy. Therefore, ruling on an equitable basis, it awards the applicant EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

240. The Court also reiterates that under its well-established case-law, in cases of violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of that provision not been disregarded (see *Piersack v. Belgium* (Article 50), 26 October 1984, § 12, Series A no. 85). A judgment in which it finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Ilaşcu and Others v. Moldova and Russia* [GC], no 48787/99, § 487, ECHR 2004-VII). Having regard to the nature of the violations found under Article 6 § 1 and Article 8 of the Convention in the present case (see paragraphs 153 and 229 above) and to the particular circumstances of the case, the Court considers that the reopening of the civil proceedings against the applicant at his request under Article 375 § 1 (i) of the Code of Civil Procedure (paragraph 40 above) would constitute an appropriate means of redress.

B. Costs and expenses

241. The applicant claimed TRY 20,000 for the costs and expenses incurred before the Court. He did not submit any document in support of the claim.

242. The Government contested the applicant's claims, which they described as unsubstantiated.

243. As regards the reimbursement of legal fees for the proceedings before it, the Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the relevant requirements have been met (see *Maktouf and Damjanović v. Bosnia-Herzegovina* [GC], nos. 2312/08 and 34179/08, § 94, ECHR 2013). Since the applicant did not submit any evidence in support of his claim concerning fees that had been or would be paid to his representative, the Court rejects his claim in respect of costs and expenses incurred before it.

C. Default interest

244. 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. *Declares*, unanimously, the complaints concerning the alleged violation of the right to a fair trial under the civil limb of Article 6 § 1 of the Convention and of the right to respect for private life, as well as of the right to an effective remedy, admissible, and the remainder of the application inadmissible;

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

3. *Holds*, unanimously, that there has been a violation of Article 8 of the Convention;

4. *Holds*, unanimously, that there is no need to examine separately the merits of the compliant under Article 13 of the Convention;

5. *Holds*, by six votes to one,
   (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 sum of EUR 4,000 (four thousand euros), to be converted into Turkish lire 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;

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

Done in French, and notified in writing on 15 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Jon Fridrik Kjølbro
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Concurring opinion of Judge Bošnjak;
(b) Concurring opinion of Judge Koskelo;
(c) Partly dissenting opinion of Judge Yüksel.

J.F.K.
S.H.N.

CONCURRING OPINION OF JUDGE BOŠNJAK

1. In the present case, I agree with the judgment as regards all the points of its operative part. Furthermore, I can align my views with most of its reasoning. Nevertheless, I submit this concurring opinion in order to highlight two facts: (a) in my view, the Court should have adopted a different approach in its examination of the interference with the applicant's right under Article 8 of the Convention; and (b) I disagree with the reasons for which the applicant's claim for pecuniary damages under Article 41 of the Convention was dismissed.

A. Examination of the interference with the applicant's right to respect for private life (Article 8 of the Convention)

2. I agree with the conclusion that Article 8 of the Convention is applicable in the circumstances of the present case and that there has been an interference with the applicant's right to respect for private life. Equally, I can subscribe to the reasons put forward in the judgment which lead to those conclusions. However, I believe that this interference should not have been considered from the angle of the State's negative obligations. Consequently, instead of seeking to ascertain whether the interference in question fulfilled the requirements of Article 8 § 2 of the Convention, that is to say, whether it was "in accordance with the law", pursued a legitimate aim under that provision and was "necessary in a democratic society", the Chamber should rather have considered whether the State's positive obligations had been met in the present case.

3. In its examination of the applicant's complaint under Article 6 § 1 of the Convention, the present judgment takes the view that the relationship between the applicant and his employer was an employment relationship subject to the rules of labour law governing relations between private individuals, and giving rise to civil rights and obligations for both parties (see paragraphs 94 and 95). This position remains unaffected by the fact that the applicant's employer was a public-law entity.

4. As a matter of coherence, I believe that the relationship between the applicant and his employer may not be considered differently when it comes to examining the applicant's complaint under Article 8 of the Convention. There too, the applicant's dismissal should be considered as a termination of a relationship between private individuals and not as State interference. This approach should not be altered by the fact that the applicant's dismissal was mainly triggered by the provisions of section 4 (1) (g) of the Legislative Decree No. 667, an act adopted by the State. The applicant was not dismissed *ex lege*, as the provisions of that section had no self-executing effect. Instead, it was for the employer to assess whether a particular employee could be considered as belonging, affiliated or linked to terrorist

organisations or structures, formations or groups, etc. prejudicial to the national security of the State. In this context, it is significant that the applicant himself does not contest the compatibility of the above-mentioned provisions of Legislative Decree No. 667 with the Convention. Rather, he complains that whereas his dismissal had been based on the alleged existence of links between himself and a terrorist organisation, he had never been notified of the facts and evidence underpinning the dismissal and had at no stage had an opportunity to challenge that omission (see paragraph 65 and 109 of the judgment).

5. Since the impugned interference came from the applicant's employer in the context of a labour relationship characterised as being private, it should accordingly have been analysed from the angle of the State's positive obligations. In this regard, the Court should have primarily examined the way in which the domestic courts had balanced the applicant's interests against those of his employer. In doing so, the Court could have taken into account the circumstances outlined in paragraphs 214 – 224 of the judgment, and verified whether, and if so to what extent, those circumstances had been addressed by the domestic courts in their adjudication. As transpires from the examination of the applicant's complaint under Article 6 § 1 of the Convention, the domestic courts apparently failed in their positive obligation to properly balance the interests of both parties involved. That is why, regardless of the methodology used, I consider that the conclusion on the applicant's complaint under Article 8 of the Convention is correct and that, consequently, there has been a violation of this provision in the present case.

B. Dismissal of the applicant's claim in respect of pecuniary damage (Article 41 of the Convention)

6. Under the head of pecuniary damage, the applicant claimed approximately 50,914 euros in Turkish lire, which in his view corresponded to his gross monthly salary multiplied by thirty-nine months, the period during which he said that he had been unemployed. The Chamber dismissed this claim because it discerned no causal link between the violation found and the pecuniary damage alleged. I would argue that the decision to dismiss the claim for the pecuniary damage was correct, but that the arguments for so doing were wrong.

7. According to Article 41 of the Convention, "the Court shall, if necessary, afford just satisfaction to the injured party" when, *inter alia*, "the internal law of the High Contracting Party concerned allows only partial reparation to be made." The Court has held on numerous occasions (including in the present case) that the reopening of the proceedings should be considered as an appropriate (and in some cases as the most appropriate) form of redress (see, among many other authorities, *Navalnyy and Ofitserov*

v. Russia, nos. 46632/13 and 28671/14, 23 February 2016). In the present case, the applicant has the possibility of requesting a reopening of proceedings before the competent domestic authorities on the basis of this judgment. Consequently, the decision to dismiss the applicant's claim for pecuniary damage was correct.

8. However, had this opportunity not existed, the Court would have had to award an amount in just satisfaction under this head. While it is true that the Court cannot speculate as to what the outcome of the proceedings complained of would have been had the violations of Article 6 paragraph 1 and Article 8 of the Convention not occurred, this should not lead it to conclude that no pecuniary damages should be awarded. I explained in my separate opinion in the case of *Ali Riza and Others v. Turkey* (nos. 30226/10 and 4 others) how the doctrine of the loss of real opportunities had been reflected in a number of judgments rendered by the Court, notably in *Produkcija Plus storitveno podjetje d.o.o. v. Slovenia*, no. 47072/15, paragraphs 66 and 67, 23. October 2018, *Pelisser and Sassi v. France (GC)*, no. 25444/94, paragraph 80, ECHR 1999-II, *Destrehem v. France, no. 56651/00*, paragraph 52, 18 May 2004, and *Miessen v. Belgium*, no. 31517/12, paragraph 78, 18 October 2016. In all these cases the Court held that it could not speculate on the outcome of the proceedings, yet it did not find it unreasonable to regard the applicants as having suffered a loss of real opportunities and awarded them a sum in respect of pecuniary damage.

9. In contrast, in their dismissal of the applicant's claim under the head of pecuniary damage, the majority refer to the lack of a causal link. However, it is very possible that the applicant's dismissal by his employer was unjustified, which in turn caused a loss of earnings for the applicant. Therefore, I consider that the majority's position is simply wrong and not in conformity with the well-established legal doctrine that is increasingly reflected in the Court's case-law. May I add that the majority's reference to the Court's judgment in the case of *Barbulescu v. Romania (GC)*, no. 61496/08, paragraph 145, 5 September 2017, is not relevant in the present case. While the *Barbulescu* case solely concerned a violation of Article 8 of the Convention, in the present case the Court has, rightly, also found a violation of Article 6 § 1 of the Convention. It is precisely the latter violation that should trigger the application of the doctrine of the loss of real opportunities. I hope that these considerations will be duly reflected in any future case, in particular where the domestic law of the respondent State will not allow for a reopening of proceedings on the basis of a judgment of this Court.

CONCURRING OPINION OF JUDGE KOSKELO

1. The present judgment is an important one in the context of the problems that have arisen in the respondent State regarding measures taken in the wake of the attempted coup of July 2016. I am in full agreement with the judgment in terms of the outcome, as well as most of the reasons for it. On the following points, however, I have reservations concerning the reasoning adopted in the judgment. The following issues and concerns relating to Articles 6 and 8 are interlinked.

Article 6

2. Under Article 6, the applicant complains in essence of the lack of effective judicial review of the decision taken by the Agency, his employer, to dismiss him on the grounds of his alleged links with an organisation classified as "terrorist". The applicant's grievances concerning the judicial review conducted in his case are closely connected with the fact that the dismissal itself was of a summary nature. The underlying reasons were neither specified nor substantiated, and the applicant was given no opportunity to respond to the allegation that he had links with a terrorist organisation. Under such circumstances, the very basis of the subsequent judicial review process was highly problematic. The applicant was not in a position to know exactly what he was being charged with, or on what grounds and on the basis of what evidence. Normally, there is a specific basis for a judicial review in the factual and legal elements invoked in the decision, the arguments and the evidence relied on to justify it, as well as the procedural materials underpinning the decision. In the present case there was little more than an announcement of dismissal by reference to the Emergency Legislative Decree, which itself was very imprecise (see paragraph 10 below).

3. Despite this anomalous situation, the present judgment is structured along the usual lines of an analysis set out in the Court's case-law for assessing the adequacy of judicial review. Thus, the Chamber first addresses – very succinctly – the characteristics of the judicial review from the point of view of the requirements of full jurisdiction, an adversarial procedure and the equality of arms, concluding that those basic tenets of fair proceedings were, in principle, "sufficiently satisfied" (see paragraph 140 of the judgment).

4. In my view, this approach is not quite suited to the present circumstances. For the reasons already mentioned, it is obvious that the above requirements – full jurisdiction, adversarial procedure and equality of arms – were only satisfied in a purely formal sense, as a matter of abstract

theory. This is hardly consonant with the Court's general guiding principle, namely upholding rights that are real and not only illusory, and might well lead to misunderstandings. At this juncture, it is even specifically stated that the applicant was not prevented from having access to the case file regarding evidence submitted. The trouble is, however, that the file lacked anything that could have served to elucidate the specific facts or the evidence relied on to justify the dismissal, and thus to help the applicant discern what exactly he should challenge and how.

5. Although the Chamber subsequently carries out a more substantive analysis of the manner in which the judicial review was conducted, concluding that the right to effective judicial review was violated – a finding with which I fully agree – I consider that in this particular case it would have been better, and better suited to the overall situation and context of the judicial review proceedings, to dispense with the statements set out in paragraph 140. In the specific circumstances, they are more or less void of substance. The crux of matter is the actual weakness of the judicial review that took place.

Article 8

6. In its examination of the applicant's complaints under Article 8, the Chamber follows the usual methodology in addressing the questions of whether the infringement was lawful, had a legitimate aim and met the requirements of necessity/proportionality. As regards the first limb, the Chamber concludes, albeit not firmly, that the requirements of "lawfulness" as such were not infringed (see paragraphs 206-209 of the judgment). My reservations concern this part of the analysis. In my view, the standard criteria relating to the "quality of the law" were not met in the present case. While I can understand the reasons why the Chamber has found it appropriate to pursue the assessment "all the way through", I nonetheless consider that a more rigorous review should have been undertaken in terms of the "lawfulness" test, in line with the Court's case-law. The latter has established general principles regarding the assessment of the "quality of the law" which are pertinent in the present context but are neither mentioned nor addressed in the judgment.

7. In particular, the Court has consistently held that for domestic law to meet the qualitative requirements, it must afford a measure of legal protection against arbitrary interference by public authorities with the rights guaranteed by the Convention. In matters relating to fundamental rights, it would be contrary to the rule of law, one of the basic principles of a democratic society as enshrined in the Convention, for the legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any

such discretion and the manner of its exercise (see, for instance, *Rotaru v. Romania* [GC], no. 28341/95, § 55, ECHR 2000-V, *Regner v. the Czech Republic* [GC], no. 35289/11, § 60, ECHR 2017, *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 others, § 115, 15 November 2018, and *Beghal v. the United Kingdom*, no. 4755/16, § 88, 28 February 2019, and the references therein). Accordingly, the Court has considered that its examination of whether the requirements of the "quality of the law" are satisfied must include an analysis of whether the impugned powers are sufficiently circumscribed and whether their exercise is subject to adequate legal safeguards against abuse (*Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 87, ECHR 2010, *Beghal* , cited above, § 109).

8. More specifically, the Court has conducted its assessment of the "quality of the law" by reviewing the relevant regulatory framework from the point of view of the scope of the accorded powers, the extent of the discretion, the existence of elements curtailing the exercise of the powers, the availability of judicial review, and the existence of independent oversight of the use of the powers (see, in the context of anti-terrorism measures, *Beghal*, cited above, where the Court engaged in a detailed analysis of each of these issues).

9. It is also worth mentioning that in the latter judgment, the Court stated that the absence of criteria circumscribing the exercise of discretion is likely to render difficult any meaningful judicial review of the decisions taken (ibid., §§ 103 and 105).

10. In the present case, it is notable that the relevant provision of the Emergency Legislative Decree No. 667 is worded very vaguely as far as the grounds for dismissal are concerned (see paragraph 33 of the judgment). It covers anyone "considered" to have "links" with "terrorist organisations or structures, formations or groups" determined by the National Security Council as being "involved in activities prejudicial to the national security of the State", imposing the dismissal of all such persons from their civil service posts or other public sector jobs. It is difficult to see how such a legal basis for measures that entailed dramatic and, in principle, permanent consequences for the individuals concerned could be considered consonant with the standards developed in the Court's case-law.

11. In this context, it is worth observing that the Venice Commission, in its opinion on the impugned Emergency Decrees (cited in paragraph 50 of the present judgment), also expressed concerns regarding the formulation of the relevant provisions, and recommended that they should be amended so that a dismissal could only be ordered on the basis of a combination of factual elements which clearly indicated that the public servant had acted in a way which objectively cast serious doubts on his or her loyalty to the democratic legal order (see the conclusion in paragraph 131 of the opinion).

12. The Venice Commission also noted, similarly the Court's findings in *Beghal* (see above), that the fact that the dismissals were not based on individualised reasoning made any meaningful *ex post* judicial review of such decisions virtually impossible (see paragraph 141 of the opinion, cited in paragraph 51 of the present judgment).

13. Furthermore, as regards the judicial review and the relevant requirements of independence, one should not lose sight of the fact that all the members of the judiciary were themselves subject to the threat of dismissal under the same emergency measures. In sum, the quality of the legal framework, including the relevant safeguards, appears highly problematic from the point of view of the established Convention standards.

14. As already mentioned at the outset, I can well understand, and agree with, the Chamber's desire in this case to carry out an examination of all the elements of the requirements arising under the second paragraph of Article 8. Nonetheless, I take the view that the Chamber should not have dispensed with a proper analysis of the first criterion, that of "lawfulness", in particular the requirements of "the quality of the law" as set out in the Court's established case-law. In other words, the present judgment should have taken care to avoid any misconceptions regarding the relevant standards and their applicability. In this context, it is also important to recall that any derogation under Article 15 of the Convention can only justify deviations from normal Convention standards to the extent "strictly required" by the exigencies of the situation.

PARTLY DISSENTING OPINION OF JUDGE YÜKSEL

I respectfully disagree with the Court's decision to award the applicant a sum in respect of non-pecuniary damage under Article 41, as the domestic law (Article 375 § 1 (i) of the Code of Civil Procedure) allows for such reparation to be made by reopening the proceedings, in respect of which the Court has found the violation of the Convention. Consequently, the present judgment constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained.