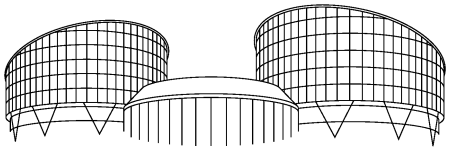

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF GÜLCÜ v. TURKEY

(Application no. 17526/10)

JUDGMENT

STRASBOURG

19 January 2016

FINAL

06/06/2016

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

In the case of Gülcü v. Turkey,

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

Julia Laffranque, *President,*
Işıl Karakaş,
Nebojša Vučinić,
Valeriu Griţco,
Ksenija Turković,
Jon Fridrik Kjølbro,
Georges Ravarani, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 15 December 2015,

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

PROCEDURE

1. The case originated in an application (no. 17526/10) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Turkish national, Mr Ferit Gülcü ("the applicant"), on 16 March 2010.

2. The applicant was represented by Ms S. Şahin and Mr M. Şahin, lawyers practising in Diyarbakır. The Turkish Government ("the Government") were represented by their Agent.

3. On 31 August 2012 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1992 and lives in Diyarbakır.

A. Events of 14 July 2008

5. On 14 July 2008 a demonstration was held in Diyarbakır to protest about the conditions of detention of Abdullah Öcalan, the leader of the PKK (Kurdish Workers' Party), an illegal armed organisation.

6. According to a report prepared by four police officers on 21 July 2008 following the examination of video footage of the demonstration recorded by the police, on 11 July 2008 the Fırat News Agency, a website which was controlled by the PKK, had published a declaration of the Democratic People's Initiative of Turkey and Kurdistan. The declaration contained instructions to hold meetings and marches in each town and city on 14 July 2008 to show support for Abdullah Öcalan. The report also stated that on the website www.rojaciwan.com, which was also controlled by the PKK, a news article containing a call for participation in the reading out of a press statement to be held by the Party for a Democratic Society (*Demokratik Toplum Partisi* (DTP)) in Diyarbakır on 14 July 2008 had been published.

7. The report stated that the police had received information according to which the Diyarbakır branch of the DTP was the organiser of the press statement to be held and MPs, mayors and local politicians from the DTP as well as members of a number of non-governmental organisations would gather in front of the DTP's Diyarbakır party office at around 5.30 p.m. and march to Koşuyolu Park, where they would make a press statement. The police took the necessary measures as they suspected that there could be violent protests during the march, which could become a demonstration for the PKK.

8. According to the police report, people started to assemble by 4.30 p.m. in front of the DTP party office. Mayors and MPs were among the demonstrators. By 5.50 p.m. approximately 3,000 people had gathered. Thereafter, demonstrators started to march, arriving at 6.30 p.m.at Koşuyolu Park, where the press statement was made. At 7 p.m. while Emine Ayna, a Member of Parliament from the DTP, was giving a speech, a group of people started throwing stones at the police officers and the cars parked in the neighbourhood. Both in front of the local branch of the DTP and during the march, demonstrators chanted slogans praising Abdullah Öcalan, such as "Every Kurd is Öcalan's fedai[1]" (*"Her Kürt Apo'nun Fedaisidir"*), "We will drop the world without Öcalan on your head" (*"Öcalansız dünyayı başınıza yıkarız"*), "The Youth to Botan[2], to the free country" ("*Gençlik Botan'a, Özgür Vatana"*), "Salutations to İmralı [3]" (*"Selam Selam İmralı'ya Bin Selam*"), "With our blood, with our life, we are with you, Öcalan" (*"Canımızla, kanımızla, seninleyiz Öcalan"*) , "Long live President Öcalan" (*"Biji Serok Apo"*), "Martyrs are immortal" (*"Şehîd Namirin"*), "No life without the Leader, Mr./Esteemed Öcalan" (*"Başkansız yaşam olmaz, Sayın Öcalan"*). They carried banners which contained slogans such as "Stop the

1. The word "*fedai*" (from Arabic) has two meanings in Turkish: 1. A person who gives his or her life for another person or for a cause; 2. A person who protects another person or a place.

2. Botan is the name of a historical/geographical region situated in south-east Turkey. The PKK carried out its first acts in this region.

3. İmralı is the island where Mr Abdullah Öcalan is serving a prison sentence.

torture in İmralı" ("*İmralı işkencesine son"*) and "We make war for life, we die for peace" (*Yaşamak için savaşırız; Barış için ölürüz"*); photographs of Abdullah Öcalan and flags of the so-called "Confederation" were also brandished. Subsequent to the press statements, when the crowd dispersed, some people within the crowd knocked over waste containers and attacked the police and the shops in the neighbourhood with stones and bats while chanting slogans in support of the PKK and its leader. The police gave a warning to those people and asked them to disperse. The demonstrators refused to obey the warnings. As a result, the police had to use proportionate force against the group, who were holding an illegal demonstration. The police intervened using truncheons, water and tear gas. The police report also noted that some people had taken down the Turkish flag in the schoolyard of the Diyarbakır nursery school.

9. At the end of the report it was noted that, according to the video footage, the applicant had thrown stones at the police together with a number of other persons and had acted with the group which had taken down the Turkish flag at the Diyarbakır nursery school.

10. The report of 21 July 2008 also contained twenty-four photographs extracted from the video footage recorded by the police. In four photographs, the applicant is seen in a group of young men while, according to the police, throwing stones at the security forces. In two photographs, he is seen while standing together with a group of people by a flag pole. A total of six photographs concern the taking down of the Turkish flag; one photograph contains an image of a knocked-over waste container; and one other photograph shows a damaged passenger van. The remaining photographs contain images of demonstrators standing in front of a building or walking.

B. Criminal proceedings against the applicant

11. The applicant was arrested on 21 July 2008. According to the arrest and transfer report, the video recording of the demonstration by the police showed that the applicant had thrown stones at the police officers and had been in the crowd which had taken down the Turkish flag in a schoolyard. The officers who drafted the report stated therein that the applicant had been informed of his rights when arrested and had been transferred to the children's branch of the Security Directorate, as he had been found to be a minor subsequent to a medical check. The applicant noted "I am not signing" and put his signature under that sentence on the report.

12. On 22 July 2008 the applicant made statements before the Diyarbakır public prosecutor in the presence of a lawyer. His statement reads as follows:

> "...I am a primary school graduate and a peddler. On 14 July 2008 my brother and I were selling watermelons in front of Koşuyolu Park in Diyarbakır. Suddenly, a large

> group of demonstrators chanting the slogan "Long live President Öcalan" ("*Biji Serok Apo*") approached us. Subsequently, the police intervened and took a number of persons into custody. Some individuals among the crowd then began throwing stones at the police officers. I also joined the demonstrators at the beginning and chanted the slogan "Long live President Öcalan". I then threw stones at the police officers. After a short while, some people went to a school. I also went with them. Some of them climbed on the flagpole in the school garden. They took down the Turkish flag and replaced it with a PKK flag. I was not involved in taking down the Turkish flag. I did not have any particular purpose when I chanted the slogan and threw stones at the police. I only acted together with the crowd. I do not know why there was a demonstration. I do not have any connection with the illegal organisation. The person in the photograph that you have shown is me."

13. On the same day the applicant was brought before a judge of the Fifth Division of Diyarbakır Assize Court. He maintained that his statements to the public prosecutor had reflected the truth. His lawyer asked the court not to remand the applicant in custody, submitting that the applicant was a minor and therefore not capable of realising the meaning and consequences of his acts.

14. The judge remanded the applicant in custody in view of the existence of a strong suspicion that he had committed the offences of "committing an offence on behalf of an illegal organisation without being a member of the organisation", in breach of Law no. 2911, and "dissemination of propaganda in support of a terrorist organisation", and having regard to the evidence.

15. On 22 July 2008 the Diyarbakır public prosecutor filed a bill of indictment against the applicant with the Fifth Division of Diyarbakır Assize Court, which had special jurisdiction to try a number of aggravated crimes enumerated under Article 250 § 1 of the Code of Criminal Procedure at the material time. The applicant was charged with membership of an illegal organisation as he was considered to have committed a crime on behalf of an illegal organisation under Article 314 § 2 of the Criminal Code (Law no. 5237) on the basis of Articles 220 § 6 and 314 § 3 of the same Code, resisting the security forces by way of throwing stones under sections 23(b) and 33(c) of the Meetings and Demonstration Marches Act (Law no. 2911), disseminating propaganda in support of the PKK under section 7(2) of the Prevention of Terrorism Act (Law no. 3713) and denigration of the symbols of the sovereignty of the State under Article 300 § 1 of the Criminal Code.

16. On 21 October 2008 the Fifth Division of Diyarbakır Assize Court held the first hearing in the case. During the hearing, the applicant reiterated his statements of 22 July 2008 and asked to be released. He maintained that he had participated in the demonstration, chanted the slogan "Long live President Öcalan" and thrown stones at the police when they intervened. He submitted that he had not been among those who had taken down the Turkish flag.

17. The public prosecutor asked the court to convict the applicant under Articles 300 and 314 of Law no. 5237, section 7(2) of Law no. 3713 and sections 23(b) and 33(c) of Law no. 2911. The public prosecutor also requested that the sentences be reduced taking into account the fact that the applicant had been aged between 15 and 18 years old at the material time.

18. On 11 November 2008 the Fifth Division of Diyarbakır Assize Court rendered its judgment in the case against the applicant. The court noted, at the outset, a summary of the applicant's defence submissions, the public prosecutor's observations on the merits of the case and the following evidence in the case file: the applicant's statements before the public prosecutor and the judge on 22 July 2008; his identity documents and a document showing that he did not have a previous criminal record; the arrest and transfer report of 21 July 2008; an incident report dated 14 July 2008; printed versions of documents downloaded from the Internet; the police report of 21 July 2008 describing the events of 14 July 2008[4] and the applicant's participation in those events; photographs extracted from the video footage recorded by the police; and medical reports.

19. In its judgment, the Assize Court held as follows:

> "...
>
> THE INCIDENT, EVIDENCE AND ASSESSMENT
>
> In a declaration made on 11 July 2008 on the website of the Fırat News Agency, which is controlled by the terrorist organisation, the PKK, the Democratic People's Initiative of Turkey and Kurdistan gave the following instructions:
>
> 'This year's July 14 celebrations should be made on the basis of the approach of "live and make the leadership live"... in each town and city, a march should be held on 14th of July with a view to showing respect for our leader. This march should have the nature of *Serhildan* (rebellion); should paralyse the life of the enemy and be handled in a way that shows how to deal with the Kurdish people's leader ... in the form of vicious notification to the enemy that the approach to the people's leader is the approach to the Kurdish people, and at the same time, a reason for war for the Kurdish people ... every city and district should determine the itinerary depending on the conditions and get prepared ... today, as well, there are attacks against our leadership and our people ... this march should be the victory of human dignity.'
>
> Similarly, on the website entitled www.rojaciwan.com, which is also controlled by the PKK, a news article containing a call for participation in the reading out of a press statement was published:
>
> "...while the shaving off of Öcalan is provoking heated reaction, the non-governmental organisations have lent support to the press statement to be made under the leadership of the Democratic Society Party. The NGOs have described the treatment of Öcalan as torture and made a call to participate."
>
> Against this background, on 14 July 2008 at around 4.30 p.m. people began to gather in front of the local branch of the DTP. Among the crowd, there were Members of Parliament and mayors who were members of the DTP. At around 5.50 p.m. there

4. This document was not submitted to the Court by the parties.

were 3,000 persons gathered. At 5.50 p.m. the crowd started the march and arrived in Koşuyolu Park at around 6.30 p.m. Both in front of the local branch of the DTP and during the march, demonstrators chanted slogans praising Abdullah Öcalan, the leader of the terrorist organisation, such as "Every Kurd is Öcalan's fedai" (*"Her Kürt Apo'nun Fedaisidir"*), "We will drop the world without Öcalan on your head" (*"Öcalansız dünyayı başınıza yıkarız"*), "The Youth to Botan, to the free country" ("*Gençlik Botan'a, Özgür Vatana"*), "Salutations to İmralı" (*"Selam Selam İmralı'ya Bin Selam*"), "With our blood, with our life, we are with you, Öcalan" (*"Canımızla, kanımızla, seninleyiz Öcalan"*), "Long live President Öcalan" (*"Biji Serok Apo"*), "Martyrs are immortal" (*"Şehîd Namirin"*), "No life without the Leader, Mr./Esteemed Öcalan" (*"Başkansız yaşam olmaz, Sayın Öcalan"*). They carried banners which contained slogans such as "Stop the torture in İmralı" ("*İmralı işkencesine son"*) and "We make war for life, we die for peace" (*Yaşamak için savaşırız; Barış için ölürüz"*); photographs of Abdullah Öcalan, the leader of the terrorist organisation and flags of the so-called "Confederation". At around 6 p.m. speeches began. At 7 p.m., while Emine Ayna, a Member of Parliament from the DTP, was giving a speech, a group of people started throwing stones ... at the police officers and the cars parked in the neighbourhood. Subsequent to the press statements, when the crowd dispersed, some people within the crowd knocked over waste containers and attacked the police and the shops in the vicinity with stones and bats while chanting slogans in support of the PKK and its leader. The police gave a warning to those people and asked them to disperse. The demonstrators refused to obey the warnings. As a result, the police had to interfere with the group who were holding an illegal demonstration. Some within the crowd took down the Turkish flag in the schoolyard of the Diyarbakır nursery school ...

In this connection, in the light of the indictment, the applicant's indirect confessions, the incident report, the document containing the description of the events of 14 July 2008 prepared by the police, the arrest report, photographs showing the accused and the whole content of the case file, it has been established that the accused Ferit Gülcü actively took part in the illegal demonstrations held on 14 July 2008 in Diyarbakır in accordance with the instructions of the terrorist organisation PKK; that he chanted the slogan "Long live President Öcalan" (*"Biji Serok Apo"*) together with the crowd; that he attacked the police with stones; that he acted together with the group who took down the Turkish flag in the schoolyard of the Diyarbakır nursery school; and that he incited the persons who took down the flag, thereby strengthening their will to commit that offence.

In his defence submissions, the accused accepted that he had taken part in the illegal demonstration; that he had made propaganda in support of the terrorist organisation; and that he had resisted the police by way of throwing stones. He denied, however, the veracity of the allegation that he had participated in the taking down of the Turkish flag in the schoolyard of the Diyarbakır nursery school. Having regard to the documents and photographs in the case file, it has been understood that the accused acted together with the group who took down the Turkish flag in the schoolyard of the Diyarbakır nursery school and that he incited the persons who took down the flag, thereby strengthening their will to commit that offence.

An accused should be convicted under Article 314 § 2 on the basis of Articles 314 § 3 and 220 § 6 of the Criminal Code if it is established that the offences in question were committed within the scope of an [illegal] organisation's activities or if those offences serve as the evidence or basis of offences committed on behalf of an [illegal] organisation.

> In the present case, it has been understood that on 14 July 2008 the accused took part in the meetings and demonstrations, which subsequently became illegal, held as a result of the general call made by the organisation and the calls disseminated by the media controlled by the organisation and in accordance with the organisation's purposes and that, with that aim, he committed the following offences: dissemination of terrorist propaganda, breach of Law no. 2911, denigration of symbols of the sovereignty of the State. It has thus been concluded that these acts, which were committed within the knowledge and in line with the will of the organisation, were perpetrated on behalf of the organisation. Therefore, the accused should also be convicted under Article 314 § 2 with reference to Articles 314 § 3 and 220 § 6 of Law no. 5237 along with the convictions for his other acts..."

20. Diyarbakır Assize Court then acquitted the applicant on the charge of denigration of the symbols of the sovereignty of the State under Article 300 § 1 of the Criminal Code, noting that it was not established that the crime had been committed by the applicant.

21. However, the Assize Court convicted the applicant under Article 314 § 2 of the Criminal Code, on the basis of Articles 220 § 6 and 314 § 3 of the same Code; section 7(2) of Law no. 3713; and sections 23(b) and 33(c) of Law no. 2911 and sentenced him to a total of seven years and six months of imprisonment.

22. The Assize Court first convicted him of membership of an illegal organisation pursuant to Article 314 § 2 of the Criminal Code on the basis of Articles 220 § 6 and 314 § 3 of the same Code as it found it established that the applicant had taken part in the events of 14 July 2008 which had become propaganda in support of the illegal organisation, upon the call made by the PKK. Applying the minimum penalty, the court sentenced the applicant to five years' imprisonment; increased it by one and a half times by virtue of section 5 of Law no. 3713 (seven years and six months); reduced it by one third by virtue of Article 31 § 3 of the Criminal Code, taking into account that the accused had been aged between 15 and 18 at the material time (five years); and, finally, reduced it by one sixth under Article 62 § 1 of the Criminal Code taking into account the accused's "sincere confessions", as well as his attitude and behaviour during the proceedings (thus reaching a total of four years and two months of imprisonment).

23. Diyarbakır Assize Court also convicted the applicant of disseminating propaganda in support of a terrorist organisation under section 7(2) of Law no. 3713. Applying the minimum penalty, it sentenced the applicant to one year of imprisonment; reduced it by one third by virtue of Article 31 § 3 of the Criminal Code taking into account the fact that the accused had been aged between 15 and 18 at the material time (eight months); further reduced it by one sixth under Article 62 § 1 of the Criminal Code, taking into account his "sincere confessions", as well as his attitude and behaviour during the proceedings (thus reaching a total of six months and twenty days). The court decided not to commute the sentence to a fine

under section 7(2) of Counter-Terrorism Law no. 3713, or to defer it pursuant to section 13 of Law No. 3713. It finally found Article 231 of the Code of Criminal Procedure governing the suspension of the pronouncement of a judgment inapplicable in the circumstances of the applicant's case.

24. The first-instance court finally convicted the applicant of resistance to security forces pursuant to sections 23(b) and 33(c) of Law no. 2911. Applying the minimum penalty, the court sentenced the applicant to five years' imprisonment; reduced it by one third by virtue of Article 31 § 3 of the Criminal Code, taking into account the fact that the accused had been aged between 15 and 18 at the material time (three years and four months); reduced it by one sixth under Article 62 § 1 of the Criminal Code, taking into account the accused's "sincere confessions" as well as his attitude and behaviour during the proceedings (thus reaching a total of two years, nine months and ten days' imprisonment). It decided not to commute the sentence to a fine, and not to defer it either, regard being had to the overall sentence and the fact that the accused did not give the impression that he would refrain from committing a crime.

25. On 6 October 2009 the Court of Cassation upheld the judgment of 11 November 2008.

26. On 16 December 2009 the final decision was deposited with the registry of the first-instance court.

C. Subsequent developments

27. On 25 July 2010 Law no. 6008 entered into force.

28. On 26 July 2010 the applicant's representative lodged a petition with the Fifth Division of Diyarbakır Assize Court. Noting that Law no. 6008 had amended certain provisions of Laws nos. 2911 and 3713, the applicant's representative requested that the court examine whether the amended versions of those provisions could be considered to be in favour of the applicant and, if so, whether the execution of the applicant's sentence could be suspended.

29. On the same day the Fifth Division of Diyarbakır Assize Court decided to suspend the execution of the applicant's sentence in view of the fact that certain provisions of Laws no. 2911 and 3713 amended by Law no. 6008 were in favour of juvenile offenders. Subsequently, the applicant was released from prison and a new procedure was initiated in accordance with Article 7 § 2 of the Criminal Code, according to which in the case of a difference between the legal provisions in force on the date of commission of a crime and those in force after that date, the provision which is more favourable will be applied to the offender.

30. On 3 December 2010 the Fifth Division of Diyarbakır Assize Court held that it no longer had jurisdiction over the applicant's case in the light of

a new paragraph added to Article 250 of the Code of Criminal Procedure by Law no. 6008. According to this new paragraph, minors could not be tried by assize courts which had special jurisdiction.

31. On 20 January 2011 and 22 February 2011 Diyarbakır Juvenile Assize Court and Diyarbakır Juvenile Court decided, respectively, that they were not competent to examine the case.

32. Upon both juvenile courts declining jurisdiction, the case was transferred to the Court of Cassation to resolve the issue of jurisdiction. On 3 October 2012 the Court of Cassation decided that Diyarbakır Juvenile Court had jurisdiction over the case.

33. Subsequently, Diyarbakır Juvenile Court started the re-assessment of the applicant's case with a view to determining the applicable legal provisions and the sentences in accordance with Article 7 § 2 of the Criminal Code (see paragraph 29 above) and in the light of the amendments made to Laws nos. 2911 and 3713 by Law no. 6008 (*uyarlama yargılaması*).

34. On an unspecified date the applicant made statements before Diyarbakır Juvenile Court. He contended that he had already served his prison sentence and that he contested the new procedure.

35. On 20 December 2012 Diyarbakır Juvenile Court rendered its judgment regarding the applicant. Having regard to the amendments made to Laws nos. 2911 and 3713 by Law no. 6008, the Juvenile Court revoked the applicant's convictions contained in the judgment of 11 November 2008, holding that the amendments applied by Law no. 6008 were in favour of the applicant.

36. The first-instance court then acquitted the applicant of the charge of membership of a terrorist organisation under Article 314 § 2 of the Criminal Code, having regard to section 34/A of Law no. 2911, which had entered into force on 25 July 2010 with Law no. 6008 (see paragraph 50 below).

37. Diyarbakır Juvenile Court further convicted the applicant of disseminating propaganda in support of a terrorist organisation under section 7(2) of Law No. 3713. Applying the minimum penalty, it sentenced the applicant to one year of imprisonment under this head; reduced it by one third by virtue of Article 31 § 3 of the Criminal Code, taking into account the fact that the accused had been aged between 15 and 18 at the material time (eight months); and further reduced it by one sixth under Article 62 of the Criminal Code, taking into account the possible implications of the sentence for the minor (thus reaching a total of six months and twenty days). Having regard to the length of the sentence and to the fact that the applicant did not have a criminal record, the court considered that the applicant would not commit any further crime and suspended the pronouncement of the judgment on condition that he did not commit another wilful offence for a period of three years in accordance with Article 231 of the Code of Criminal

Procedure (Law no. 5271) and Article 23 of the Code of Juvenile Protection (Law no. 5395).

38. The Juvenile Court further convicted the applicant of participation in a demonstration while in possession of prohibited materials pursuant to section 33(1) of Law no. 2911. Applying the minimum penalty, it sentenced the applicant to six months' imprisonment under this head; reduced it by one third by virtue of Article 31 § 3 of the Criminal Code, taking into account the fact that the accused had been aged between 15 and 18 at the material time (four months); and further reduced it by one sixth under Article 62 of the Criminal Code, taking into account the possible implications of the sentence for the minor (thus reaching a total of three months and ten days). Considering that the applicant would not commit any further crime and having regard to the length of the sentence and to the fact that the applicant did not have a criminal record, the court decided to suspend the pronouncement of the judgment on condition that he did not commit another wilful offence for a period of three years in accordance with Article 231 of Law no. 5271 and Article 23 of Law no. 5395.

39. Diyarbakır Juvenile Court also convicted the applicant of resistance to the security forces which had used force to disperse the demonstrators pursuant to section 32(1) of Law no. 2911. Applying the minimum penalty, the first-instance court sentenced the applicant to six months' imprisonment under this head; reduced it by one third by virtue of Article 31 § 3 of the Criminal Code, taking into account the fact that the accused had been aged between 15 and 18 at the material time (four months); and further reduced it by one sixth under Article 62 of the Criminal Code, taking into account the possible implications of the sentence for the minor (thus reaching a total of three months and ten days). Having regard to the length of the sentence and to the fact that the applicant did not have a criminal record, the court considered that the applicant would not commit any further crime and suspended the pronouncement of the judgment on condition that he did not commit another wilful offence for a period of three years in accordance with Article 231 of the Code of Criminal Procedure (Law no. 5271) and Article 23 of the Code of Juvenile Protection (Law no. 5395).

40. Diyarbakır Juvenile Court finally convicted the applicant of obstructing the security forces in the execution of their duties by way of resistance together with other persons and using the influence of an organisation pursuant to section 32(2) of Law no. 2911 and Article 265 § 1 of the Criminal Code. Applying the minimum penalty, the court sentenced the applicant to six months' imprisonment under this head. It then increased the sentence by one third as the crime had been committed collectively (eight months); further increased it by one half pursuant to Article 265 § 4 of the Criminal Code as the crime had been committed using the influence of an organisation (twelve months); reduced it by one third by virtue of Article 31 § 3 of the Criminal Code, taking into account the fact that the

accused had been aged between 15 and 18 at the material time (eight months); and further reduced it by one sixth under Article 62 of the Criminal Code, taking into account the possible implications of the sentence for a minor (thus reaching a total of six months and twenty days). Having regard to the length of the sentence and to the fact that the applicant did not have a criminal record, the court considered that the applicant would not commit any further crime and suspended the pronouncement of the judgment on condition that he did not commit another wilful offence for a period of three years in accordance with Article 231 of Law no. 5271 and Article 23 of Law no. 5395.

41. On 31 December 2012 the judgment of 20 December 2012 became final in the absence of any objection.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Criminal Code (Law no. 5237)

42. Under Article 7 § 2 of the Criminal Code, in case of a difference between the legal provisions in force at the date of commission of an offence and those in force after that date, the provision which is more favourable is applied to the offender.

43. At the material time, Article 220 of the Criminal Code read as follows:

Establishing organisations for the purpose of criminal activity

"Article 220 - (1) Anyone who establishes or directs organisations for the purpose of criminal activity shall be liable to imprisonment of between two and six years provided that the structure of the organisation, the number of members, and the quantity of equipment and supplies are sufficient to commit the intended crimes.

(2) Anyone who becomes a member of an organisation established for the purpose of criminal activity shall be liable to imprisonment of between one and three years.

(3) If the organisation is armed, the sentences stated above shall be increased by a proportion of between one quarter and one half.

(4) Any crime committed within the framework of the organisation's activities shall be punished separately.

(5) The heads of the organisations shall also be sentenced as the perpetrators of all crimes committed within the framework of the organisation's activities.

(6) Anyone who commits a crime on behalf of the (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation.

(7) Anyone who aids and abets an (illegal) organisation knowingly and intentionally, even if they do not belong to the hierarchical structure of the organisation, shall be punished as a member of the organisation.

(8) Anyone who makes propaganda for the organisation or its objectives shall be punished by imprisonment of between one and three years. If the said crime is committed through the media and press the sentence shall be increased by one half."

Paragraphs 6 and 7 of Article 220 were amended by Law no. 6352, which entered into force on 2 July 2012, as follows:

"(6) Anyone who commits a crime on behalf of the (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation. The penalty to be imposed for membership may be reduced by up to half.

(7) Anyone who aids and abets an (illegal) organisation knowingly and intentionally, even if they do not belong to the hierarchical structure of the organisation, shall be punished as a member of the organisation. The penalty to be imposed for membership may be reduced by up to two thirds depending on the nature of the assistance."

Article 220 § 6 was further amended by Law no. 6459, which entered into force on 11 April 2013. It currently reads as follows:

(6) Anyone who commits a crime on behalf of the (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation. The penalty to be imposed for membership may be reduced by up to half. This paragraph shall be applicable only for armed organisations.

44. Article 314 of the Criminal Code reads as follows:

Armed organisations

"**Article 314 -** (1) Anyone who forms an armed organisation to commit the crimes listed in the fourth and fifth sections of this chapter, or commands such an organisation, shall be liable to a term of imprisonment of between ten and fifteen years.

(2) Anyone who becomes a member of an (armed) organisation mentioned in the first paragraph of this Article shall be liable to a term of imprisonment of between five and ten years.

(3) Other provisions relating to the crime of forming an organisation for the purpose of criminal activity are also applicable for this crime."

45. Article 300 § 1 of the Criminal Code reads as follows:

Denigration of symbols of the sovereignty of the State

"**Article 300** - (1) Anyone who publicly tears, burns or otherwise denigrates the Turkish flag shall be sentenced to a term of imprisonment of between one and three years. This provision shall apply to all signs bearing the white crescent and star on a red ground described in the Constitution as a symbol of the sovereignty of the State of the Republic of Turkey..."

46. Article 265 § 1 of the Criminal Code reads as follows:

Resistance with a view obstructing the execution of duties

"**Article 265** - (1) Anyone who uses methods of violence or threats against a public officer with a view to obstructing him or her in the execution of his or her duties shall be liable to imprisonment of between six months and three years."

B. The Meetings and Demonstration Marches Act (Law no. 2911)

47. According to section 23(b) of the Meetings and Demonstration Marches Act (Law no. 2911), in force at the material time, meetings or demonstration marches during which the demonstrators or the participants bear, *inter alia*, firearms, explosives, cutting and perforating tools, stones, bats, iron or rubber bars, wires, chains, poisons, gas or fog materials, were considered to be "unlawful meetings and demonstration marches".

48. Section 33(c) of Law no. 2911 provided as follows, before it was amended by Law no. 6008 on 25 July 2010:

"Section 33 ... (c) Persons who show resistance with weapons or materials listed in section 23(b) while being dispersed [during meetings and demonstration marches] shall be liable to a term of imprisonment of between five and eight years..."

Following the amendments introduced by Law no. 6008, section 33 of Law no. 2911 read, in so far as relevant, as follows:

"Persons who take part in meetings and demonstration marches while carrying weapons or materials listed in section 23(b) shall be liable to a term of imprisonment of between six months and three years..."

49. Following the amendments introduced by Law no. 6008, section 32(1) and (2) of Law no. 2911 currently reads as follows:

"Persons taking part in unlawful meetings or demonstration marches who continue not to disperse despite warnings or use of force shall be liable to a term of imprisonment of between six months and three years. If the offender is one of the organisers of the meeting or the demonstration march, the sentence shall be increased by half.

Persons who resist the security forces by methods of violence or threats despite warnings or use of force shall also be punished for committing the crime proscribed by Article 265 of the Criminal Code (Law no. 5237) of 26 September 2004."

50. By Law no. 6008 a new provision, section 34/A, was added in Law no. 2911. Section 34/A reads as follows:

"Section 2(2) of the Prevention of Terrorism Act (Law no. 3713) shall not be applicable to children who commit the crime of resistance during unlawful meetings and demonstration marches or who commit the crime of propaganda during meetings and demonstration marches in which they take part."

C. The Prevention of Terrorism Act (Law no. 3713)

51. At the material time, section 7(2) of the Prevention of Terrorism Act read as follows:

> "Any person who disseminates propaganda in support of a terrorist organisation shall be liable to a term of imprisonment of between one and five years..."

52. Section 2(2) of Law no. 3713 which is referred to in section 34/A of Law no. 2911 (see paragraph 50 above) reads as follows:

> "Persons who commit crimes on behalf of a (terrorist) organisation shall be considered as terror offenders even if they are not a member of that terrorist organisation."

D. Code of Criminal Procedure (Law no. 5271)

53. Suspension of the pronouncement of a judgment is governed by Article 231 of the Code of Criminal Procedure, the relevant paragraphs of which read as follows:

> "...
>
> (5) If the accused has been convicted on the charges against him and ordered to pay a fine or sentenced to imprisonment for less than two years, the court may decide to suspend the pronouncement of the judgment ... The suspension of the pronouncement of the judgment entails that the judgment shall not bear any legal consequences for the offender.
>
> (6) Suspension of the pronouncement of the judgment may be decided provided that:
>
> (a) the offender has never been found guilty of a wilful offence;
>
> (b) the court is convinced, taking into account the offender's personal traits and his behaviour during the proceedings, that there is little risk of any further offence being committed; [and]
>
> (c) the damage caused to the victim or to society is redressed by way of restitution or compensation.
>
> ...
>
> (8) If the pronouncement of the judgment is suspended, the offender will be kept under supervision for the following five years.
>
> ...
>
> (10) If the offender does not commit another wilful offence and abides by the obligations of the supervision order, the judgment [whose] pronouncement had been suspended will be cancelled and the case discontinued.
>
> (11) If the offender commits another wilful offence or acts in violation of the obligations of the supervision order, the court shall impose the sentence. Nevertheless, the court may evaluate the offender's situation and may decide that ... up to half of the total sentence will not be executed. If the conditions so permit, the court may also

suspend the execution of [any] imprisonment or commute it to other optional measures.

(12) An objection to the decision to suspend the pronouncement of the judgment may be filed."

54. At the material time, according to Article 250 of the Code of Criminal Procedure and section 4 of the Prevention of Terrorism Act assize courts with special jurisdiction were competent to try a number of crimes, including the crimes proscribed by Article 314 of the Criminal Code and section 7(2) of the Prevention of Terrorism Act.

By Law no. 6008 a new paragraph (paragraph 4) was inserted in Article 250 of the Code of Criminal Procedure, according to which children could not be tried by assize courts which had special jurisdiction.

On 5 July 2012 both Article 250 of the Code of Criminal Procedure and section 4 of the Prevention of Terrorism Act were repealed and assize courts with special jurisdiction were abolished.

E. Code of Child Protection (Law no. 5395)

55. Article 23 of the Code of Child Protection reads as follows:

"At the end of the criminal proceedings brought against a child, the court may decide to suspend the pronouncement of the judgment if the conditions are fulfilled. With regard to these persons, the period of supervision is three years."

F. The decision of the Court of Cassation of 4 March 2008 (Case no. 2007/9-282, Decision no. 2008/44)

56. In criminal proceedings brought against a certain F.Ö., on 29 September 2006 Diyarbakır Assize Court convicted him under section 7(2) of Law no. 3713 and section 32(1) and (3) of Law no. 2911 on account of his participation in and conduct during three demonstrations.

57. On 21 February 2007 the Ninth Criminal Division of the Court of Cassation quashed the judgment of the first-instance court, holding that F.Ö.'s acts constituted not only the offences proscribed in section 7(2) of Law no. 3713 and section 32(1) and (3) of Law no. 2911, but also membership of an illegal organisation under Article 314 § 2 of the Criminal Code on the basis of Articles 220 § 6 and 314 § 3 of the same Code, as he had committed those offences on behalf of the organisation. The Ninth Chamber therefore considered that F.Ö. should be punished for having committed the offence of membership of an illegal organisation and the other offences proscribed in section 7(2) of Law no. 3713 and section 32(1) and (3) of Law no. 2911.

58. On 31 May 2007 Diyarbakır Assize Court reiterated its previous judgment that F.Ö.'s acts did not constitute the offence proscribed in Article 314 § 2 of the Criminal Code. The Assize Court noted the following:

"...

In cases where people participate in the funerals of members of a terrorist organisation or in Newroz celebrations, subsequent to abstract and generalised calls of that organisation, and in cases where chanting slogans constitutes propaganda for that organisation, it is not possible to state that those crimes were committed on behalf of the organisation. In order for a court to conclude that a crime was committed on behalf of an organisation, the latter must have called for action not to an undefined collective, but rather to an individual person who is capable of directly committing that act.

..."

59. As a result of the disagreement between Diyarbakır Assize Court and the Ninth Criminal Division of the Court of Cassation, the case was transferred to the Plenary Court of Cassation (Criminal Divisions). On 4 March 2008 the Plenary Court of Cassation decided to quash the judgment of the Assize Court. Its decision, in so far as relevant, reads as follows:

"...

In the criminal proceedings brought against F.Ö. under Articles 314 § 2, 53, 63, 58 § 9 of the Criminal Code (Law no. 5237) and section 5 of the Prevention of Terrorism Act (Law no. 3713) with reference to Articles 220 §§ 6 and 7 and 314 § 3 of the same Code, the first-instance court held that the accused should be convicted under section 7(2) of Law no. 3713, section 32(1) and (3) of Law no. 2911 and not under Article 314 § 2 of the Criminal Code.

The Plenary Court of Cassation (Criminal Divisions) must resolve the following issues:

1. Whether the acts of the accused which were considered to have constituted three separate crimes could also be considered to be crimes committed on behalf of an [illegal] organisation in view of the provision which reads as follows:

'Anyone who commits a crime on behalf of the (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation.'

...

In the light of the information specific to the present case file and also the general information obtained from other case files concerning the [illegal] organisation, it is considered as follows:

The PKK, whose aim is to form a Marxist–Leninist state by separation of a part of the territory under the sovereignty of the Republic of Turkey by means of an armed struggle, started developing new policies involving its members and supporters abroad following the arrest of its leader Abdullah Öcalan. To that end, the so-called Presidential Council of the organisation held a congress (the 7th Congress) between 2 and 23 January 2000. At this congress a new action plan, namely the 'Democratisation and Peace Project', was adopted. Furthermore, the Central Committee was replaced by the Party Assembly while the ARGK and the ERNK were replaced by the HPG (Kurdistan People's Defence Force) and the YDK (Kurdistan Democratic People's Union) respectively. A new party regulation was prepared and the emblem of the organisation was also changed.

In order to ensure the implementation of the decisions taken at the 7th Congress, a conference that was named as 'the 6th National Conference' by the PKK was held between 5 and 22 August 2000. In accordance with the new strategy for achieving the organisation's main goals, an action plan of 'Civil Disobedience' was adopted. This non-violent action plan aimed at damaging the international reputation of the State of the Republic of Turkey and its security forces and was contrary to the legislation of the Republic of Turkey.

In this regard, the following actions had been planned and implemented:

(1) Submitting written petitions to university administrations by university students, who are the supporters or members of the organisation, requesting the inclusion of Kurdish in the curriculum as an elective course;

(2) Creating pressure by submitting petitions to Directorates of National Education by the parents of primary and secondary school students for the use of the Kurdish language as the language of education;

(3) Dressing up in traditional female Kurdish costumes (action to be organised by sympathiser groups);

(4) Applying to courts or population registration offices and requesting to have 'Kurdish' written on identity cards;

(5) Filing applications containing the phrase 'I also am a member of the PKK and I support its new strategy';

(6) Extending the campaign for 'education in Kurdish', which had been pursued at the universities, to primary schools and high schools, by the PKK's so-called Presidency Council.

At the 8th Congress held between 4 and 10 April 2002, the name PKK was changed to KADEK (*Kongra Azadi U Demokrasi A Kürdistane* – Kurdistan Freedom and Democracy Congress) and this congress was declared as the '1st Foundation Congress'.

Following this congress, a number of NGOs started to voice requests for 'education in mother tongue, prohibition of death penalty, general amnesty and permission to publish in the Kurdish language' in every arena.

At the 9th Congress held between 26 October and 15 November 2003, the name KADEK was changed to KONGRA-GEL (Kurdish People's Congress) and this congress was declared as the 1st Foundation Congress.

Following this congress, throughout 2003 the organisation continued the aforementioned campaigns in accordance with the civil obedience movement (*Siyasi Serhildan*). In this regard:

(1) Between 16 and 26 May 2004 the PKK held its 10th Congress, which is named as the 2nd Extraordinary Congress, on Mount Kandil in Northern Iraq, and decided to re-activate the militants of the HPG, the organisation's armed wing, due to the weakening of Abdullah Öcalan's influence as a result of the polarisations within the organisation, the inclusion of KONGRA-GEL in the list of terrorist organisations by the European Union, the failure to achieve the expected success within the past five years and in order to unify the organisation's supporter base by reasserting the requests for a general amnesty, legalisation of the [organisation's] political activities and constitutional recognition of the Kurdish cultural identity. It was further decided to carry out (armed) actions as a reprisal for the losses suffered during military operations launched against the organisation.

It was also decided to bring forward the following issues via the individuals and NGOs sympathising with the organisation in order to shape public opinion and to apply pressure on the State in the international arena:

1. Adoption of a general amnesty;

2. Release of the leader of the terrorist organisation from prison;

3. Recognition of constitutional citizenship rights for Kurdish people;

4. Declaration of a ceasefire by both parties and establishment of peace;

5. Urging the State to take concrete steps concerning the Kurdish issue and the release of Abdullah Öcalan in order to maintain a conflict-free environment.

The organisation also reverted back to its original name of 'PKK' (*Partiye Karkerani Kürdistan* – Kurdistan Workers' Party) on 4 April 2005, the birthday of Abdullah Öcalan, who is still serving a prison sentence.

(2) On 24 March 2006 fourteen PKK militants were killed in the Şenyayla region in the proximity of Solhan district, called Senyayla, during a military operation carried out by security forces of the 49th Internal Security Infantry Brigade Command and Bingöl Provincial Gendarmerie Command in the region encompassing Bingöl and Muş provinces. Following the autopsy and forensic procedures carried out in Malatya, the remains of four of the militants were released to their families in order to be buried in Diyarbakır. On 28 March 2006 at around 7 a.m., the remains were taken to Şerif Efendi Mosque, located on Bağlar Medine Boulevard, where around 1500-2000 people had gathered. The crowd blocked the traffic; carried the coffins, chanted separatist and violent slogans in support of the organisation and its leader in Turkish and Kurdish and sang the organisation's so-called youth march, the '*Hernepeş*' (Forward). Furthermore, some of the demonstrators burned tyres on the road and some masked and unmasked protestors waved posters of Abdullah Öcalan and banners of the organisation. A banner of 2 x 1 metres in size containing the phrases 'Martyrs are our honour' and 'PKK' in capital letters was also held up.

Despite the warnings of the security forces that the demonstrators should not chant illegal slogans, disseminate propaganda in support of the organisation and wave illegal flags, the crowd got agitated and started throwing stones at the police officers on duty, injured a number of police officers and caused extensive material damage to State buildings and vehicles, banks, shops and vehicles belonging to private individuals, by throwing stones and Molotov cocktails.

The demonstrations continued on 29, 30 and 31 March, as the protesters burned numerous vehicles, looted local businesses, hurled Molotov cocktails particularly at open shops, blocked the roads and attacked police officers and police vehicles with stones, bats and Molotov cocktails, staged an arson attack on a bank building and took down and burned a Turkish flag.

Prior to these demonstrations, some media organs controlled by the PKK had called for mass protests. In this respect, Fırat News Agency published the following statements made on behalf of the PKK People's Defence Committee by T.K., a high-level executive of the organisation, on its homepage: '...Kurdish people have clearly, openly demonstrated their determination and persistence in their requests for freedom and democracy and in supporting the leader A. It is without doubt that Kurdish people will carry on the resistance in various ways throughout the year. It must be understood that the proletarian people, especially the Kurdish youth and women, are determined to turn 2006 into a year of civil disobedience (*Serhildan*) with the motto "freedom and democratic solutions for the Kurdish issue". Newroz has been one of its [the civil

disobedience] most important, most glorious peaks. At the moment, on account of our day and our week of heroism, our people have been carrying on their democratic actions with a view to remembering, embracing and understanding our martyrs. This will continue throughout the month of April...'

Similarly, on the web page of the HPG, statements summoning the people to partake in actions of civil disobedience called '*serhildan*' had been published: 'Amed[5] ...! They have launched a full scale war against you. They have resorted to all of the dirty tools of war, ranging from drug addicts to prostitutes, from thinner addicts to bag-snatchers, from batons to torture, from bullets to genocide... You must know these. You must know and rise up: The military, the police, the MIT (the Turkish intelligence agency), the JITEM (Gendarmerie Intelligence and Counter-Terrorism), they are all gangs of executioners...'

The Kurdish organisation *Komalen Ciwan* close to the PKK issued the following statement on its Internet homepage: '... As the Kurdish people celebrate Newroz in a spirit of peace, the belligerent security forces continue their massacres against our people with chemical weapons. Most recently we have been shaken by the massacre of fourteen guerrillas – heroic children of our people in Muş. We are enduring a deep agony. It is the debt of honour of the Kurdish people and the people of A ... to protest against this massacre and to look out for the brave insurgents of the Kurdish people. For this reason, on 28th of March, in a way that befits our week of heroism, we are calling our people to down their shutters, not to work and to collectively attend the funeral in an effort to embrace our six martyrs...'

On 27 March 2006 brochures containing the same statements were handed out to the public in various locations in Diyarbakır.

Along with these web sites which are the media organs of the organisation [the PKK], *Roj TV*, which is the 'voice' of the organisation, created tension within society with its frequent broadcasts calling the people to stop going to work, to close down their businesses and not to send their children to school. People who attended the funerals of the deceased PKK members carried out the said actions. Similarly, the protests spread to many other cities and districts, notably Batman, Siirt, Istanbul and Mersin. Throughout the nationwide protests, above two hundred police officers were injured; several cars were burned; the windows of an indeterminate number of shops were smashed and many State buildings were set on fire. 9 people died during the events, whereas 41 persons were injured.

Archive records of 400 people who were apprehended in relation to the incidents in Diyarbakir reveal that a number of them had previously been investigated on charges of membership of the PKK, aiding the PKK, and disseminating propaganda in support of that organisation. Some of them had been previously convicted on charges such as usurpation and robbery and they tried to take advantage of the chaotic atmosphere which lasted for 3 to 4 days. Out of 77 people who had participated in the protests and who were taken into custody, 26 were younger than 18 years old.

F.Ö., who had participated in the protests which occurred upon the PKK's appeals and instructions, was apprehended on 5 May 2006.

It has been established beyond any doubt, in the light of the incident reports, reports containing a description of the events on the basis of police video recordings, video footage and photographs, that the accused were involved in the following incidents, apart from the events of 28 April 2006:

5. The name of the city of Diyarbakır in Kurdish.

– Participation in the funeral of E.E., a member of the PKK who had been killed on 26 February 2006. The accused carried the deceased terrorist's coffin, sang the PKK's so-called anthem '*Hernepeş'*, chanted slogans praising the PKK and its so-called leader, such as 'Öcalan Öcalan, Öcalan is our political will', 'Kurdistan will be the grave for fascism' and 'Guerrilla strikes to found Kurdistan' and directed the group;

– Participation in the Newroz celebrations held in Diyarbakır Fairground on 21 March 2006. The accused was among a group of people who attacked the police officers at the control points at the entrances to the fairground, destroyed the barriers and carried the flags symbolising PKK and the posters of its so-called leader. The accused directed the group and 10 police officers were injured.

The dispute to be resolved by the Plenary Court of Cassation (Criminal Divisions) is whether the accused's acts (participation in illegal demonstrations of 26 February, 21 March and 28 March 2006, specially held upon the appeals by the PKK in accordance with the latter's general invitation for demonstrations and with its new strategy; leading a group of demonstrators carrying symbols of the PKK and posters of Abdullah Öcalan; giving instruction to the demonstrators to attack the police; attack on the police; being in a group of people who received the remains of members of the organisation killed by the security forces during operations in line with the calls of the PKK and making a victory sign; chanting slogans such as 'Öcalan is our political will', 'Our leader is our political will' and 'Guerrilla strikes to found Kurdistan; directing a group that lit a fire on a road and blocked the traffic, which constitute independent offences, can also be considered offences committed on behalf of the organisation.

Article 314 § 3 of the Criminal Code (Law no. 5237), which entered into force on 1 June 2005, reads as follows:

'(3) Other provisions relating to the offence of establishing organisations for the purpose of criminal activity are also applicable for this offence.'

Article 220 § 6 of the Criminal Code reads as follows:

'(6) Anyone who commits a crime on behalf of the (illegal) organisation, even if they are not a member of that organisation, shall also be punished for being a member of the organisation.'

...

The aforementioned provision reflects an approach that is utterly different from the approach of the former Criminal Code (Law no. 765). According to this provision, the offences committed in line with an [illegal] organisation's activities impose further criminal responsibility. Acts of aiding are also considered as membership of an organisation. A separate offence of aiding an [illegal] organisation was not envisaged. Aiding an organisation by way of providing weapons was proscribed in a separate provision, i.e. Article 315, having regard to the gravity of that offence. Other acts of aiding were proscribed in Articles 220 and 314 of the same Code.

In the circumstances of the present case, the [illegal] organisation's public call has been made concrete through broadcasts from media organs of the organisation and there is no need for such calls to target identified individual persons. It is established that the acts carried out on behalf of the organisation were within the knowledge of the organisation and in line with its will. The acts of an accused who participates in these acts carried out on behalf of the organisation constitute a breach of Article 314 § 2 of the Criminal Code on the basis of Articles 220 § 6 and 314 § 3 of the Criminal

Code, along with the breaches of criminal law provisions. Thus, the judgment [of the first-instance court] must be quashed.

..."

III. RELEVANT INTERNATIONAL MATERIALS

A. United Nations Documents

1. The United Nations Convention on the Rights of the Child

60. The Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, has binding force under international law *vis-à-vis* the Contracting States, including all of the member States of the Council of Europe.

Article 1 of the Convention states:

"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

Article 3 § 1 reads:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

Article 37 reads, in so far as relevant, as follows:

"States Parties shall ensure that:

...

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age ...;"

The relevant part of Article 40 provides:

"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

...

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

...

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

2. General Comment No. 10 (2007) of the United Nations Committee on the Rights of the Child (CRC/C/GC/10)

61. The relevant part of the General Comment No. 10 of the Committee on the Rights of the Child, dated 25 April 2007, reads:

"23. Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40 (1) of CRC). The arrest, detention or imprisonment of a child may be used only as a measure of last resort (art. 37 (b)). It is, therefore, necessary - as part of a comprehensive policy for juvenile justice - to develop and implement a wide range of measures to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care (art. 40 (4)).

...

28. When judicial proceedings are initiated by the competent authority (usually the prosecutor's office), the principles of a fair and just trial must be applied... At the same time, the juvenile justice system should provide for ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pre-trial detention, as a measure of last resort. In the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.

...

71. The Committee wishes to emphasize that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the age, lesser culpability, circumstances and needs of the child, as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC..."

3. Concluding Observations of the United Nations Committee on the Rights of the Child: Turkey (CRC/C/TUR/CO/2-3)

62. The relevant part of the Concluding Observations of the United Nations Committee on the Rights of the Child: Turkey (CRC/C/TUR/CO/2-3), dated 30 July 2012, states as follows:

> "Freedom of association and peaceful assembly
>
> ...
>
> 39. The Committee recommends that the State party continue its efforts to ensure full enjoyment of the freedoms of expression, association and peaceful assembly by children by amending its legislation to remove the remaining obstacles to these rights, including the minimum age for forming an organisational committee for outdoor meetings. The Committee further recommends that the State party take all measures to remove other obstacles in the procedures and facilitate the process to ensure that children are able to exercise their rights in accordance with the law.
>
> ...
>
> Administration of juvenile justice
>
> 66. The Committee commends the State party for its extensive reforms in the area of juvenile justice, including new legislative changes resulting in the increase of the age of criminal liability from 11 to 12 years, requiring all persons under the age of 18, including those charged under the Counter-terrorism Law, to be considered in juvenile courts; introducing reduced sentences for children and special measures for children who are pushed into crime; as well as establishing child prisons, child prosecutors and child police. However, the Committee is concerned at the following:
>
> (a) Insufficient number of professionals working in the juvenile justice system;
>
> (b) Poor quality of legal assistance provided to children under the free legal aid programme, due to the low compensation for lawyers;
>
> (c) Long duration of trials involving children, resulting in large numbers of children in pre-trial detention, compared to children serving sentences;
>
> (d) Unduly heavy penalties against children and lack of alternative measures;
>
> (e) Reports that amendments to the Counter-terrorism Law are not upheld in practice, as children detained during demonstrations are initially held together with adults;
>
> (f) Long detention periods and poor conditions in some prisons;
>
> ...
>
> 67. The Committee recommends that the State party bring the juvenile justice system fully in line with the Convention on the Rights of the Child, in particular articles 37, 39 and 40, and with other relevant standards, including the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), the Vienna Guidelines for Action on Children in the Criminal Justice System and the Committee's general comment No. 10 (2007) on the rights of the child in juvenile justice. In particular, the Committee urges the State party to:
>
> (a) Increase the number of professionals working in the juvenile justice system;

(b) Take measures to provide incentives for lawyers to work on cases involving children;

(c) Expedite the investigation and trial process in cases involving children, so as to reduce the number of children in pre-trial detention;

(d) Take immediate measures to ensure that the detention of children is used as a last resort and that alternative measures are applied for children;

(e) Ensure enforcement of the amendments to the Counter-terrorism Law and ensure that children detained and charged under this law are provided with all basic legal guarantees;

...”

B. Council of Europe documents

1. Resolution 2010 (2014) of the Parliamentary Assembly of the Council of Europe

63. In its Resolution 2010 (2014), adopted on 27 June 2014 and entitled “Child-friendly juvenile justice: from rhetoric to reality”, the Parliamentary Assembly of the Council of Europe states the following:

“...

6. In particular, the Assembly calls on the member States to:

6.1. establish a specialised juvenile justice system by means of dedicated laws, procedures and institutions for children in conflict with the law, *inter alia* the institution of a Children’s ombudsperson, following the positive practice of some member States;

6.2. set the minimum age of criminal responsibility at at least14 years of age, while establishing a range of suitable alternatives to formal prosecution for younger offenders;

6.3. prohibit exceptions to the minimum age of criminal responsibility, even for serious offences;

6.4. ensure that detention of juveniles is used as a measure of last resort and for the shortest possible period of time, in particular by:

6.4.1. determining an age limit below which it is not permitted to deprive a child of his or her liberty, preferably higher than the minimum age of criminal responsibility;

6.4.2. developing a broad range of alternative non-custodial measures and sanctions to pre-trial detention and post-trial incarceration, including educational measures, community sanctions and treatment programmes;

6.4.3. abolishing life imprisonment of any kind for children;

6.4.4. establishing a reasonable maximum period to which a child may be sentenced;

6.4.5. providing regular reviews of custodial measures and/or sanctions a child may be subjected to;

6.5. ensure that deprivation of liberty, used only as a measure of last resort, aims at rehabilitating and reintegrating children into society, in particular by providing appropriate training and treatment programmes;

6.6. develop a broad range of diversion programmes, respecting human rights standards and based, *inter alia*, on principles of restorative justice, with a view to dealing with juvenile offenders without resorting to judicial proceedings;

6.7. decriminalise status offences, which are acts classified as offences only when committed by children;

6.8. ensure that all actors involved in the administration of juvenile justice receive appropriate training, with a view to guaranteeing an effective implementation of children's rights in this context;

6.9. prevent the detention of young offenders by, *inter alia*, introducing a system of rapid intervention with the aim of allowing a multi-professional team, including the police, social workers, psychiatric nurses and youth workers, to facilitate the investigation of crimes committed by young offenders and to offer them and their families support and rehabilitation.

..."

2. Recommendation R (87) 20 of the Committee of Ministers of the Council of Europe

64. The recommendation of the Committee of Ministers to member States of the Council of Europe on social reactions to juvenile delinquency (R (87)20), adopted on 17 September 1987 at the 410th meeting of the Ministers' Deputies, in so far as relevant, reads as follows:

"Recommends the governments of member states to review, if necessary, their legislation and practice with a view:

...

7. to excluding the remand in custody of minors, apart from exceptional cases of very serious offences committed by older minors; in these cases, restricting the length of remand in custody and keeping minors apart from adults; arranging for decisions of this type to be, in principle, ordered after consultation with a welfare department on alternative proposals..."

3. Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe

65. The Recommendation on the European Rules for juvenile offenders subject to sanctions or measures (CM/Rec(2008)11), adopted by the Committee of Ministers on 5 November 2008, reads, in so far as relevant, as follows:

"A. Basic principles

...

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and

mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

...

10. Deprivation of liberty of a juvenile shall be a measure of last resort and imposed and implemented for the shortest period possible. Special efforts must be undertaken to avoid pre-trial detention. ..."

4. Reports of the Commissioner for Human Rights of the Council of Europe

66. In his report published on 1 October 2009, following his visit to Turkey on 28 June to 3 July 2009 (CommDH(2009)30), Mr Thomas Hammarberg, the former Commissioner for Human Rights of the Council of Europe, stated the following:

"... 35. During his visit to Turkey, the Commissioner was informed that over the previous nine months approximately 250 children of Kurdish origin, more than 190 of them between 13 and 17 years of age, had been arrested and detained, after having taken part in demonstrations organized by Kurdish groups and thrown stones at police forces. In particular he has been informed that four children aged between 16 and 17 have been detained in the Diyarbakır prison since 14 July 2008, charged with membership of a terrorist organization as a result of participating in a protest in the above town.

36. NGOs that met with the Commissioner during his visit indicated that prosecution in such cases is often based on Article 220, paragraph 6, of the Criminal Code which provides that any person who commits an offence on behalf of an illegal organisation, even though they are not a member of the organization, shall be sentenced for the offence as well as for membership of the organization. The extensive use of this provision by courts against participants of Kurdish-related demonstrations follows a ruling of the General Criminal Board of the Court of Cassation in March 2008 which indicated that persons participating in demonstrations following public calls by the illegal organization PKK should be brought into the ambit, *inter alia*, of the above provision of the Criminal Code...

167. It appears necessary to revisit certain over-restrictive provisions of the legislation concerning elections, political parties and broadcasting, as well as criminal law provisions, such as the Criminal Code Articles 301 and 220 which have been used in a number of occasions in a manner that has unjustifiably suppressed freedom of expression..."

67. In his report published on 12 July 2011, following his visit to Turkey on 27 to 29 April 2011 (CommDH(2011)25), Mr Thomas Hammarberg stated the following:

"... 18. Following his 2009 visit the Commissioner expressed his deep concern about the application of Article 220 of the Criminal Code, and in particular its paragraphs 6 and 8, and considers that this concern remains valid in the context of freedom of expression and freedom of the media in Turkey..."

68. In his report published on 10 January 2012, following his visit to Turkey on 10 to 14 October 2011 (CommDH(2012)2), Mr Thomas Hammarberg stated the following:

> "... 63. In his 2009 report on Turkey, the Commissioner expressed his concerns about the interpretation and application of the Turkish Anti-Terrorism Act (Act No. 3713) and certain provisions of the TCC, notably Article 220 dealing with criminal organisations. The Commissioner was particularly preoccupied by the wide interpretation of the courts concerning the definition of offences and their constitutive acts under the above provisions.
>
> 64. Pursuant to Article 220 TCC, a person shall be punished as a member of a criminal organisation, even if they are not a member of that organisation or part of its hierarchical structure, if they commit an offence on behalf of that organisation (paragraph 6), or help it knowingly and willingly (paragraph 7). The Commissioner had noted in his 2009 Report that persons participating in demonstrations following public calls by the illegal organization PKK were brought into the ambit of paragraph 6, in accordance with a ruling of the Court of Cassation in March 2008...
>
> 67. The Commissioner observes that the application of Article 220 TCC, as well as of Articles 6 and 7 of the Anti-Terrorism Act, continues to raise serious concerns...
>
> 68. The Commissioner is fully aware of the severe threat posed to Turkish society by terrorism and terrorist organisations, as well as of the obligation of the Turkish state to combat it with effective measures, including effective investigations and fair proceedings. He wishes to underline, however, that a major lesson learned in the fight against terrorism in Europe has been the importance of public confidence in the justice system. This means that any allegation of terrorist activity must be established with convincing evidence and beyond any reasonable doubt. Experience has shown time and time again that any deviation from established human rights principles in the fight against terrorism, including in the functioning of the judiciary, ultimately serves the interests of terrorist organisations.
>
> 69. In this connection, it is crucial to bear in mind that violence or the threat to use violence is an essential component of an act of terrorism, and that restrictions of human rights in the fight against terrorism 'must be defined as precisely as possible and be necessary and proportionate to the aim pursued'.
>
> 70. The Commissioner considers that the provisions contained in the Turkish anti-terror legislation and Article 220 TCC allow for a very wide margin of appreciation, in particular in cases where membership in a terrorist organisation has not been proven and when an act or statement may be deemed to coincide with the aims or instructions of a terrorist organisation. The Commissioner encourages the Turkish authorities to reflect on and address these concerns through legislative measures and/or case-law."

69. On 20 February 2012 Mr Thomas Hammarberg published his comments concerning a draft law presented to the Parliament of Turkey by the Government, which envisaged amendments to various legal provisions, including Article 220 of the Criminal Code. The draft law in question was subsequently adopted on 2 July 2012 (Law no. 6352). In his comments, the former Commissioner for Human Rights considered as follows:

> "... 16. The proposed amendments to Article 220 TCC (Article 65 of the Bill) could be considered in conjunction with the previous amendment. These amendments

concern paragraphs 6 and 7 of Article 220 TCC, which provide that a person shall be punished as a member of a criminal organisation, even if they are not a member of that organisation or part of its hierarchical structure, if they commit an offence on behalf of that organisation (paragraph 6), or help it knowingly and willingly (paragraph 7). With these amendments, the penalty is reduced by half for paragraph 6, and may be reduced by up to two thirds for paragraph 7. This would potentially allow persons being tried for these offences, especially where the criminal organisation is considered to fall under the scope of Article 314 TCC on armed criminal organisations, to benefit from alternative measures to remand in custody.

17. While acknowledging that this amendment can have short-term benefits for a number of ongoing trials, the Commissioner considers that it does not offer a lasting solution to serious problems caused by Article 220. As previously highlighted by the Commissioner, his main concern relating to Article 220 is the fact that it allows for a very wide margin of appreciation, in particular in cases where membership in a terrorist organisation has not been proven and when an act or statement may be deemed to coincide with the aims or instructions of a terrorist organisation. The Commissioner considers that this issue calls for a more substantial review of the definition of the offences concerned, and encourages the Turkish authorities to tackle this question in the context of their future reform package, along with other legislative problems identified by the Commissioner in his reports on Turkey."

C. Non-governmental Organisations' Reports

1. Report of Human Rights Watch of 1 November 2010

70. On 1 November 2010 the Human Rights Watch published a report entitled "Protesting as a Terrorist Offence / The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey". The 75-page report mainly concerned trials and convictions of demonstrators in Turkey under Laws nos. 5237, 2911 and 3713. The report, in so far as relevant, reads as follows:

"In Turkey, many hundreds of people currently face prosecution, or are serving substantial sentences for terrorism convictions. Their 'crime' was to engage in peaceful protest, or to throw stones or burn a tire at a protest. Legal amendments since 2005, along with case law since 2008, have allowed courts in Turkey to convict demonstrators under the harshest terrorism laws, by invoking two articles of the Turkish Penal Code in combination with the Anti-Terror Law. In July 2010, as this report was being finalized, the government passed legal amendments to improve the treatment of child demonstrators...

...

There are ... fairly frequent localized protests in cities throughout southeast Turkey and in mainly Kurdish-populated districts of cities such as Adana. These typically involve groups of youths and children, who shout pro-Öcalan and PKK slogans, burn tires in the street, and respond to police orders to disperse by throwing stones.

In the past, courts in Turkey convicted these protestors under laws governing public order or of 'making propaganda for a terrorist organization' (Article 7/2, Anti-Terror Law). Yet in recent years, criminal justice officials have deemed Kurdish protestors demonstrating against Turkey's policies towards the Kurds to be 'committing crimes on behalf of the PKK without being a member of that organization' (Article 220/6,

Turkish Penal Code). As a result, they are prosecuted as if they were actually fighting the government as armed 'members' of the PKK (Article 314/2, Turkish Penal Code). These serious charges, on top of more usual charges under the Law on Demonstrations and Public Assemblies, could result in sentences of 28 years in prison, or more, if there are repeated offenses. To date, the majority of adults convicted under these laws have received prison terms of between seven and 15 years. Prior to a July 2010 legal amendment, child protestors typically received prison sentences of between four and five years, though in 2010, at least several children were sentenced to seven-and-a-half years in prison.

Law enforcement authorities and the courts allege that the PKK and its representatives are organizing the demonstrations as part of a wider policy to promote civil unrest, and even uprising, among Kurds in towns and cities throughout Turkey. By way of evidence the government and courts point to the PKK's decrees issued at various congresses, and the fact that senior PKK representatives use sympathetic media outlets to issue 'appeals' to the Kurdish population to take to the streets in protest. Hence, the template for individual indictments includes an abstract overview of PKK history and policies, followed by a statement of the alleged specific criminal activities of the defendant. In none of the cases examined by Human Rights Watch had prosecutors submitted evidence to establish that the individual defendant either heard the PKK's 'appeal' or had been directly instructed or motivated by the PKK to participate in the demonstration, much less that the individual had any other specific link with the PKK or committed a crime under its orders.

The Turkish courts consider it no obstacle to conviction that the prosecution has failed to provide evidence of the defendant's specific intent to support or aid the illegal activities of the PKK. The General Penal Board of the Court of Cassation has held that it is sufficient to show that sympathetic media outlets broadcast the PKK's 'appeals' – speeches by the PKK leadership calling on the Kurdish population to protest or raise their voices on various issues. Then the defendant, by joining the demonstration, is assumed to have acted directly under PKK orders. Yet even at extremely local demonstrations not announced in the media beforehand, protestors are routinely charged with acting under the orders of the PKK. In some cases, courts have held that the PKK's 'appeal' to participate in demonstrations is a continuous generic one, and therefore a specific instance of appeal to the population need not be proved.

This legal framework makes no distinction between an armed PKK combatant and a civilian demonstrator.

...

On July 22, 2010, after civil society groups campaigned extensively against the prosecution of children under terrorism laws, the Turkish parliament adopted several amendments to limit the applicability of such laws to child demonstrators. Law no. 6008, published in the *Official Gazette* on July 25, 2010, states that all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts; child demonstrators 'who commit propaganda crimes' or resist dispersal by the police will not be charged with 'committing crimes on behalf of a terrorist organization' and hence 'membership in a terrorist organization' and children will not face aggravated penalties, and may benefit from sentence postponements and similar measures for public order offenses.

The amendments also reduce penalties for both children and adults for forcibly resisting police dispersal and offering 'armed resistance,' including with stones, during demonstrations under the Law on Demonstrations and Public Meetings. Yet the new law omits any provision to prevent children from being charged with 'making

propaganda for a terrorist organization' (either under Article 7/2 of the Anti-Terror Law or Article 220/8 of the Turkish Penal Code).

..."

2. Reports of Amnesty International

71. The report of Amnesty International published on 17 June 2010, entitled "All Children Have Rights / End Unfair Prosecutions of Children under Anti-terrorism Legislation in Turkey" concerned the rights of the children who are arrested, detained and tried under Laws nos. 5237, 2911 and 3713 on account of their participation in demonstrations. The report reads, in so far as relevant:

"...While comprehensive statistics regarding the number of children prosecuted under antiterrorism legislation following demonstrations is not available, official statistics show that prosecutions were initiated against 513 children under Article 314 of the Penal Code which criminalizes leadership or membership of an armed organization in 2006-7 and against 737 children under the Anti-Terrorism Law during the same period. Following a parliamentary question tabled by a Member of Parliament Sevahir Bayındır in May 2009, the Justice Ministry in a written answer in December 2009 stated that from 2006-8 prosecutions were initiated against 1,308 children under the Anti-Terrorism Law and 719 children under Article 314 of the Penal Code.

...

Children alleged to have participated in the demonstrations are frequently prosecuted under the Anti-Terrorism Law, specifically Article 7/2 which criminalizes making propaganda for a terrorist organization, and under Article 314 of the Penal Code via Article 220/6 of the Penal Code that criminalizes those who commit crimes in the name of a terrorist organization additionally, as if they were members of the organization. In a lesser number of cases Article 220/7 of the Penal Code is applied which states: 'persons knowingly and willingly assisting the organization but not within the hierarchical structure of the organization are punished as members of the organization'. This application of the law followed a ruling of the Supreme Court of Appeals (case number 2007/9282). The Court considered that the tactics of the PKK were to make use of civil disobedience. In this context the Court ruled that in demonstrations publicized by media organizations regarded by the Turkish state to be associated with the PKK, such as *Roj TV* and *Fırat News Agency*, those that participate in demonstrations could be said to be acting on behalf of a terrorist organization.

Children, who have been prosecuted in connection with their participation in the demonstrations, have frequently faced multiple charges for the same act including making propaganda for a terrorist organization, membership of a terrorist organization and, in addition, violation of the Law on Meetings and Demonstrations.

...

Under the Convention on the Rights of the Child, which applies to everyone under 18, states are required to establish laws, procedures, authorities and institutions specifically applicable to children accused of infringing the penal law. The UN Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules'), adopted by the UN General Assembly in November 1985, stipulate in

particular that proceedings for children should be conducive to the best interests of the child and shall be conducted in an atmosphere of understanding allowing them to participate and to express themselves freely, and that the well-being of the child should be the guiding factor in the consideration of the case.

Amnesty International is concerned that by law, children aged 15-17 are tried in Special Heavy Penal courts under the same procedures as adults for terrorism-related offences. Article 9 of the Anti-Terrorism Law stipulates that children aged 15 and above are tried in Special Heavy Penal Courts for prosecutions brought under anti-terrorism legislation... The courts follow the same procedures as for the prosecution of adults save for the fact that the hearings are closed to the public.

..."

72. On 27 March 2013 Amnesty International published a report entitled "Turkey: Decriminalize Dissent / Time to deliver on the Right to Freedom of Expression". The relevant passages of the report read as follows:

"Article 220/6: Committing a crime in the name of a terrorist organization

Article 220/6 of the Turkish Penal Code allows the state to punish individuals who have not been proven in court to be members of terrorist organization as though they were, if deemed to have performed a criminal act "in the name of an organization". In full, the Article reads:

'A person who commits a crime in the name of an organization without being a member of that organization is punished as a member of the organization. The punishment for membership of an organization can be reduced by up to one half.'

Courts have used this Article as the basis for imposing increased sentences for supposedly criminal activity with little evidence, either of the commission of a recognizably criminal offence or any demonstrable link to a 'terrorist organization'. As with direct membership cases, the evidence presented for having committed a crime 'in the name of an organization' frequently amounts to nothing more than participation in demonstrations, or the writing of pro-Kurdish articles.

...

Amnesty International considers that 220/6 is neither necessary for the prosecution of individuals for genuinely terrorist-related offences, nor, in practice, applied in such a way as to uphold the right to freedom of expression. Amnesty International therefore recommends that the Article be repealed and that legitimate prosecutions be brought instead under other, existing Penal Code articles requiring proof of membership or intent to assist a terrorist organization."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

73. The applicant complained about his conviction for participating in a demonstration and the allegedly disproportionate sentences imposed on him. He relied on Articles 6, 9 and 10 of the Convention.

74. The Court reiterates that it is the master of the characterisation to be given in law to the facts of the case and is not bound by the characterisation given by the applicant or the Government (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005; *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, § 43, ECHR 2012; and *Zorica Jovanović v. Serbia*, no. 21794/08, § 43, ECHR 2013).

75. The Court notes that, in the circumstances of the present case, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, which is a *lex specialis* (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202; *Galstyan v. Armenia*, no. 26986/03, § 95, 15 November 2007; *Kasparov and Others v. Russia*, no. 21613/07, § 82, 3 October 2013; and *Lütfiye Zengin and Others v. Turkey*, no. 36443/06, § 35, 14 April 2015). The Court also observes that the applicant's submissions under Articles 6 and 9 of the Convention essentially concern the alleged breach of his right to freedom of assembly. Accordingly, the Court will examine these complaints from the standpoint of Article 11 of the Convention.

76. However, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present case, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 (see *Ezelin*, cited above, § 37; *Galstyan*, cited above, § 96; and *Kasparov and Others*, cited above, § 83).

Article 11 of the Convention reads as follows:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

77. The Government contested the applicant's allegations.

A. Admissibility

78. The Court considers that the issue of the applicant's "victim status" is closely linked to the merits of the applicant's complaints under this head. It therefore joins this issue to the merits. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

79. The applicant submitted that he had been convicted under Article 314 § 2 of the Criminal Code with reference to Articles 220 § 6 and 314 § 3 of the same Code despite the fact that he had not been a member of any illegal organisation and that there had been no evidence in the case file showing that the demonstration of 14 July 2008 had been held upon the instructions of the PKK. The applicant stated that it had not been established that the calls published on different websites emanated from the PKK as alleged. He contended that, in any event, in order to be convicted of membership of an illegal organisation under Article 314 § 2 of the Criminal Code, with reference to Article 220 § 6, a person should receive a personalised call from an illegal organisation to commit a specific offence on its behalf. As the appeal which allegedly emanated from the PKK was an abstract and generalised appeal, containing no call to commit any offence, he should not have been convicted of committing an offence on behalf of the organisation or, accordingly, for membership of an illegal organisation.

80. The applicant further contended that propaganda should be defined as influencing a person or a group of people about a certain opinion or attempting to convince them about the veracity of that opinion. Besides, for an offence of dissemination of propaganda to be made out, the person should have the intention of disseminating propaganda. According to the applicant, in the light of the aforementioned explanation, he could not be considered as having committed the offence of disseminating propaganda in support of a terrorist organisation in breach of section 7(2) of Law no. 3713. He further had not used a weapon when taking part in the demonstration as maintained in the judgment convicting him, pursuant to sections 23(b) and 33(c) of Law no. 2911. He had thrown pebbles at the security forces after the latter had launched an attack on the demonstrators. The applicant finally considered that, even assuming that he had committed the offences in question, only one sentence should have been imposed on him and that he had been disproportionately sentenced.

(b) The Government

81. In their submissions dated 13 March 2013, the Government stated at the outset that there had been an interference with the applicant's right to freedom of assembly as he had been taken into police custody and subsequently convicted for his participation in a demonstration organised in support of the PKK.

82. The Government further submitted that the interference in question had been prescribed by law. They noted in this regard that the applicant's

conviction had been based on section 23(b) of Law no. 2911 and Articles 220 § 6 and 314 § 2 of the Criminal Code. According to the Government, these provisions, and in particular Article 220 § 6 of the Criminal Code, fulfilled the requirement of "foreseeability" for the purposes of Article 11 of the Convention.

83. With regard to the applicant's conviction under Article 220 § 6 of the Criminal Code, the Government contended that the applicant had deliberately taken part in the demonstration held in Diyarbakır on 14 July 2008 in support of a terrorist and armed criminal organisation, following the publication of a call for participation on the website of the Fırat News Agency, which was considered to be the voice of the PKK. The Government noted that the applicant had not denied the fact that he had participated in the demonstration. He had, however, denied being a member of the PKK. Thus, the charges brought against him under Article 220 § 6 of the Criminal Code were in conformity with the domestic law, given that he had not been an active and permanent member of the PKK.

84. The Government contended that criminal proceedings were brought against both adults and minors who had committed the offence proscribed by Article 220 § 6 of the Criminal Code. However, being a minor was a mitigating circumstance under Article 31 § 3 of the Criminal Code.

85. The Government also stated that all illegal activities allowing terrorist organisations to achieve their aims would be considered to be acts committed on behalf of those organisations. The Government further noted that the expression "committing a crime" was deemed to refer to an offence proscribed by one of the criminal codes in Turkish law.

86. Referring to the Court's judgment in the case of *Leyla Şahin v. Turkey* ([GC], no. 44774/98, § 98, ECHR 2005-XI), the Government submitted, in particular, that Article 220 § 6 of the Criminal Code, read in the light of the decision of the Plenary Court of Cassation (Criminal Divisions) dated 4 March 2008 (see paragraphs 56-59 above) was sufficiently precise in its terms as to satisfy the requirement of foreseeability. According to the Government, an applicant who threw stones at the security forces during a demonstration organised in support of a terrorist organisation and who accepted that he had committed that act should have been aware of the fact that his acts would be punished. In the Government's view, the applicant was aware of the consequences of his acts having regard, in particular, to the fact that other demonstrators had knocked over waste containers, thrown stones at the police and destroyed cars and shop windows. The Government therefore concluded that the interference with the applicant's right to freedom of assembly had a legal basis in domestic law.

87. As to the question of a "legitimate aim", the Government contended that the interference in question pursued the aims of protecting public order and the rights and freedom of others. They further submitted that the

national authorities had a positive obligation to take reasonable and appropriate measures to protect people and public order during public demonstrations.

88. As to the question of the necessity of the interference in a democratic society, the Government submitted at the outset that the demonstration in issue had been illegal as the organisers had failed to notify the national authorities of its existence in accordance with the provisions of Law no. 2911. The Government considered that while individuals who held demonstrations without giving prior notification to the national authorities had the right to hold peaceful gatherings and to express their opinions without intervention by the security forces, they should be prepared to be sanctioned for failing to comply with the requirement of prior notification. In this regard, the Government referred to the national authorities' duty to take the necessary measures in order to guarantee the smooth conduct of legal demonstrations and the security of all citizens.

89. The Government further contended that the interference in the present case had been necessary given that the applicant had not only been convicted on account of participation in an illegal demonstration but also for throwing stones at the police. They noted that the applicant and the other demonstrators had been asked to disperse, but had refused to do so.

90. The Government finally stated that at the time of the submission of their observations, that is to say on 13 March 2013, the re-assessment of the applicant's sentence was pending and therefore the proportionality of the penalties imposed on the applicant could not and should not be assessed by the Court. On 20 June 2014 the Government submitted the judgment of Diyarbakır Juvenile Court dated 20 December 2012, upon the request of the Court. However, they did not make any further submissions on the basis of the judgment of 20 December 2012.

2. The Court's assessment

(a) Whether there was an interference

91. The Court reiterates that an interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, whether legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an act of assembly and those, such as punitive measures, taken afterwards (see *Ezelin*, cited above, § 39). Thus, the Court has considered in a number of cases that penalties imposed for taking part in a rally amounted to an interference with the right to freedom of assembly (see, for example, *Ezelin*, cited above, § 41; *Osmani and Others v. "the former Yugoslav Republic of Macedonia"* (dec.), no. 50841/99, ECHR 2001-X; *Mkrtchyan v. Armenia*, no. 6562/03, § 37, 11 January 2007; *Galstyan*, cited above, § 101; *Ashughyan v Armenia*,

no. 33268/03, § 77, 17 July 2008; *Sergey Kuznetsov v. Russia*, no. 10877/04, § 36, 23 October 2008; *Uzunget and Others v. Turkey*, no. 21831/03, § 43, 13 October 2009; and *Yılmaz Yıldız and Others v. Turkey*, no. 4524/06, § 34, 14 October 2014).

92. The Court notes that it is not disputed between the parties that there was an interference with the applicant's right to freedom of assembly. In particular, in their submissions to the Court, the Government considered that the applicant's arrest and conviction pursuant to Article 314 § 2 of the Criminal Code on the basis of Articles 220 § 6 and 314 § 3 of the same Code, section 7(2) of Law no. 3713 and sections 23 (b) and 33(c) of Law no. 2911 had constituted an interference with the applicant's right to freedom of assembly. The Court nevertheless must examine two issues under this head.

93. Firstly, the Court observes that the applicant was arrested, detained on remand and subsequently convicted on the ground of having attended a demonstration and thrown stones at the security forces during that demonstration. The Court reiterates in this regard that in a number of cases where demonstrators had engaged in acts of violence, it held that the demonstrations in question had been within the scope of Article 11 of the Convention but that the interferences with the right guaranteed by Article 11 of the Convention were justified for the prevention of disorder or crime and for the protection of the rights and freedoms of others.

94. Thus, for instance in the aforementioned case of *Osmani and Others*, the applicant, the mayor of a town, stated in a speech made during a public assembly his refusal to remove an Albanian flag, in defiance of a decision of the Constitutional Court. That speech triggered a fight between those citizens who wanted to remove the flag and those who wanted to keep it. After that incident, that applicant organised an armed vigil to protect the Albanian flag. The police later found weapons in the town hall and in the applicant's flat. On the same day as they found the cache of weapons, the police were attacked by a group of about 200 people, who were armed with metal sticks and threw stones, rocks, Molotov cocktails and teargas projectiles at them. The Court found that in the very sensitive interethnic situation of that time the applicant's speeches and actions had encouraged interethnic violence and violence against the police. Nonetheless, noting that the applicant was found guilty of stirring up national, racial and religious hatred, disagreement and intolerance, on account of the fact that he had organised a public meeting, the Court rejected the Government argument that Article 11 of the Convention was not applicable in that case. The Court considered that there had been an interference with the exercise of the applicant's freedom of peaceful assembly. It then examined the necessity and the proportionality of the sanction imposed on the applicant and concluded that the applicant's complaint under Article 11 was manifestly ill-founded.

95. Similarly, in the case of *Protopapa v. Turkey* (no. 16084/90, (§§ 104-112, 24 February 2009), where the applicant and other demonstrators had clashed with the security forces while demonstrating and had subsequently been arrested, the Court considered that there had been an interference with the applicant's right of assembly. The Court however concluded that the interference was necessary in a democratic society as it found that the intervention of the security forces had been provoked by the demonstrators' acts of violence and that the interference had not been disproportionate for the purposes of Article 11 § 2 (see also *Vrahimi v. Turkey*, no. 16078/90, §§ 111-122, 22 September 2009; *Andreou Papi v. Turkey*, no. 16094/90, §§ 105-116, 22 September 2009); and *Asproftas v. Turkey*, no. 16079/90, §§ 103-114, 27 May 2010).

96. Finally, in the case of *Taranenko v. Russia* (no. 19554/05, §§ 70-71 and §§ 90-97, 15 May 2014), the applicant was part of a group of about forty people who forced their way through identity and security checks into the reception area of the President's Administration building which was open to public. When they stormed the building, the protestors pushed one of the guards aside and jumped over furniture before locking themselves in a vacant office where they started to wave placards and to distribute leaflets out of the windows. The applicant was arrested, subsequently charged with participation in mass disorder in connection with her taking part in the protest action and remanded in custody for a year, at the end of which time she was convicted as charged. She was sentenced to three years' imprisonment, suspended for three years. In those circumstances, the Court considered that the applicant's arrest, detention and conviction constituted an interference with the right to freedom of expression. Unlike the aforementioned cases, in the case of *Taranenko,* the Court ultimately found a violation of Article 10 of the Convention interpreted in the light of Article 11.

97. In the present case, the Court observes that according to the documents in the case file the demonstration of 14 July 2008 was organised by the DTP to protest about the conditions of detention of Abdullah Öcalan. The Court notes that nothing in the case file suggests that this demonstration was not intended to be peaceful or that the organisers had violent intentions. The Court further observes that the applicant claimed that when he first joined the demonstrators, he started walking and chanting slogans with them. Thus, he had the intention of showing support for Mr Öcalan, but not of behaving violently when he started demonstrating, and these submissions were not contested by the Government. Besides, there is nothing in the domestic courts' decisions showing that the applicant had violent intentions when he joined the demonstration. What is more, the charges against the applicant did not concern infliction of any bodily harm on anyone. The Court therefore accepts that during the events of 14 July 2008 the applicant enjoyed the protection of Article 11 of the Convention (compare *Primov*

and Others v. Russia, no. 17391/06, § 156, 12 June 2014), as also acknowledged by the Government.

98. The Court must secondly address the issue of the applicant's "victim status" under this head. In this connection, the Court observes that the applicant was convicted under Article 314 § 2 of the Criminal Code, on the basis of Articles 220 § 6 and 314 § 3 of the same Code; section 7(2) of Law no. 3713; and sections 23(b) and 33(c) of Law no. 2911 by the judgment of Diyarbakır Assize Court and sentenced to a total of seven years and six months' imprisonment. This judgment was upheld by the Court of Cassation on 6 October 2009 (see paragraphs 18-25 above). Subsequent to the entry into force of Law no. 6008, the applicant was released from prison on 25 July 2010 and a re-assessment of the applicant's convictions and sentences was carried out by Diyarbakır Juvenile Court. The Juvenile Court rendered its judgment on 20 December 2012, acquitting the applicant of the charges brought against him under Article 314 § 2 of the Criminal Code and convicting him under section 7(2) of Law no. 3713, sections 33(1), 32(1) and (2) of Law no. 2911 and Article 265 § 1 of the Criminal Code (see paragraphs 35-40 above). The court also decided to suspend the pronouncement of the judgment with regard to the applicant's convictions under the aforementioned provisions for a period of three years in accordance with Article 231 of Law no. 5271 and section 23 of Law no. 5395.

99. The Court reiterates in this connection that a decision or measure favourable to an applicant is not sufficient in principle to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Öztürk v. Turkey* [GC], no. 22479/93, § 73, ECHR 1999-VI; *Erdoğdu v. Turkey*, no. 25723/94, § 72, ECHR 2000-VI; *Müslüm Özbey v. Turkey*, no. 50087/99, § 26, 21 December 2006; and *Ulusoy v. Turkey*, no. 52709/99, § 34, 31 July 2007).

100. In the instant case, the Court observes at the outset that the applicant was released from prison on 25 July 2010 and the content of the judgment of 20 December 2012 was more favourable to the applicant compared to that of 11 November 2008 in so far as it concerned the applicant's conviction under Article 314 § 2 of the Criminal Code. However, the Court does not lose sight of the fact that the applicant was detained on remand for three months and twenty days between 21 July and 11 November 2008 and partly served his prison sentence arising from the judgment of Diyarbakır Assize Court between 11 November 2008 and 25 July 2010. Thus, the applicant was deprived of his liberty for more than two years within the context of the criminal proceedings brought against him. Besides, the judgment of 20 December 2012 neither acknowledged nor afforded redress for the alleged breach of the applicant's right to freedom of assembly on account of his previous conviction under Article 314 § 2 of the

Criminal Code. The Court therefore finds that following the judgment of 20 December 2012, the applicant did not lose his "victim" status to complain about a breach of Article 11 on account of his conviction under Article 314 § 2 of the Criminal Code by the judgment of 11 November 2008 (see, *Birdal v. Turkey*, no. 53047/99, § 25, 2 October 2007, and *Aktan v. Turkey*, no. 20863/02, §§ 27-28, 23 September 2008).

101. The Court further observes that, in its judgment of 20 December 2012, Diyarbakır Juvenile Court did not conduct a new examination of the facts of the case when it once again convicted the applicant of dissemination of propaganda in support of a terrorist organisation and resistance to security forces. Nor did it provide reasoning for the applicant's re-conviction of these charges. The Court therefore finds that Diyarbakır Juvenile Court adhered to the conclusions of Diyarbakır Assize Court regarding the assessment of the evidence and the establishment of the facts of the applicant's case. Besides, the judgment of 20 December 2012 did not acknowledge or provide redress for the alleged breach of the applicant's freedom of assembly on account of the applicant's original convictions for having disseminated propaganda in support of the PKK and having resisted to the police. Thus, in the Court's view, the re-assessment of the applicant's convictions and sentences as well as the application of Article 231 of Law no. 5271 did not deprive the applicant of victim status. What is more, the juvenile court's judgment also had a deterrent effect on the applicant's future exercise of his right guaranteed under Article 11, since the pronouncement of the applicant's convictions under section 7(2) of Law no. 3713, sections 33(1), 32(1) and (2) of Law no. 2911 and Article 265 § 1 of the Criminal Code was suspended on condition that he did not commit another wilful offence and any failure on the applicant's part to comply with that condition would lead to the pronouncement of these convictions and the execution of the sentences (see paragraphs 36-39 and 52 above and compare *Erdoğdu*, cited above, § 72; *Aslı Güneş v. Turkey*, no. 53916/00, § 21, 27 September 2005; *Ulusoy*, cited above, §§ 32-35; *İsak Tepe v. Turkey*, no. 17129/02, § 14, 21 October 2008; *Lütfiye Zengin and Others*, cited above, §§ 44 and 58).

102. Having regard to the above, the Court considers that the judgments of 11 November 2008 and 20 December 2012 and the applicant's detention, both pending trial and for the execution of his sentence, entailed real and effective restraint and had a deterrent effect on the applicant's exercise of his right to freedom of assembly. As a result, the Court concludes that the applicant's criminal convictions for membership of the PKK, dissemination of propaganda in support of the PKK and resistance to the police contained in the aforementioned judgments, as well as the imposition upon him of prison sentences and his detention between 21 July 2008 and 25 July 2010, constituted interference with his right to freedom of assembly as guaranteed by Article 11 of the Convention.

(b) Whether the interference was prescribed by law

103. The Court reiterates that the expression "prescribed by law" in Article 11 of the Convention not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question. The law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail and to regulate their conduct (see, among many others, *Leyla Şahin*, cited above, § 84; *Kruslin v. France*, 24 April 1990, § 27, Series A no. 176-A; and *Vyerentsov v. Ukraine*, no. 20372/11, § 52, 11 April 2013). Besides, the legal norms should be compatible with the rule of law (see, for example, *Association Ekin v. France*, no. 39288/98, § 44, ECHR 2001-VIII; and *Cumhuriyet Vakfı and Others v. Turkey*, no. 28255/07, § 50, 8 October 2013).

104. Further, as regards the words "in accordance with the law" and "prescribed by law" which appear in Articles 8 to 11 of the Convention, the Court observes that it has always understood the term "law" in its "substantive" sense, not its "formal" one; it has included both "written law", encompassing enactments of lower ranking statutes (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 93, Series A no. 12) and regulatory measures taken by professional regulatory bodies under independent rule-making powers delegated to them by Parliament (see *Barthold v. Germany*, judgment of 25 March 1985, § 46, Series A no. 90), and unwritten law. "Law" must be understood to include both statutory law and judge-made "law" (see, among many other authorities, *The Sunday Times v. the United Kingdom (no. 1)*, 26 April 1979, § 47, Series A no. 30; and *Kruslin*, cited above, § 29). In sum, the "law" is the provision in force as the competent courts have interpreted it (see *Leyla Şahin*, cited above, § 88).

105. In the present case, the Court observes that it is not in dispute between the parties that the interference in question had a legal basis: By the judgment of 11 November 2008, the applicant was convicted of the crimes proscribed by Article 314 § 2 of Law no. 5237, with reference to Articles 220 § 6 and 314 § 3 of the same Law; sections 23(b) and 33(c) of Law no. 2911; and section 7(2) of the Prevention of Terrorism Act (Law no. 3713). The applicant's criminal convictions contained in the judgment of 20 December 2012 were based on section 7(2) of Law no. 3713, sections 33(1), 32(1) and (2) of Law no. 2911 and Article 265 § 1 of the Criminal Code.

106. As regards the applicant's conviction under Article 314 § 2 of the Criminal Code with reference to Articles 220 § 6 and 314 § 3 of the same Code, the Court observes that the decision of the Plenary Court of Cassation (Criminal Divisions) of 4 March 2008 concerns the conviction of a certain F.Ö. under Article 314 § 2 of Law no. 5237 with reference to Articles 220

§ 6 and 314 § 3 of the same Code, section 7(2) of Law no. 3713 and section 32(1) and (3) of Law no. 2911 on account of his participation in and conduct during three demonstrations (see paragraphs 56-59 above). The line of reasoning in this decision was also used by Diyarbakır Assize Court in its judgment of 11 November 2008 (see paragraph 19 above). The Court therefore considers that the question as to whether the interference based on Article 314 § 2 of the Criminal Code with the applicant's right to freedom of assembly was prescribed by law must be examined on the basis not only of the wording of Articles 220 § 6, 314 § 2 and 314 § 3 of the Criminal Code, but also on that of the decision of 4 March 2008. There remains the question of the accessibility and foreseeability of the effects of the aforementioned provisions and the decision of 4 March 2008, as well as their compatibility with the rule of law.

107. In this connection, the Court considers that there is no doubt that the aforementioned provisions of Laws nos. 5237, 3713 and 2911 were accessible. As to the decision of 4 March 2008, the Court observes that while this decision was not published in the Official Gazette, it was available on the Internet. Thus, the Court does not find it necessary to pursue further the issue of the accessibility of domestic law (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 242, 4 December 2015).

108. Regarding the question whether the domestic courts' interpretation of the offence of membership of an illegal organisation could reasonably be foreseen by the applicant at the material time, the Court observes that Diyarbakır Assize Court considered that the applicant had taken part in the demonstration of 14 July 2008 and committed the offences proscribed under sections 23(b) and 33(c) of Law no. 2911 and section 7(2) of the Prevention of Terrorism Act (Law no. 3713) on behalf of the PKK, given that the latter had made a general call for participation in this demonstration. The applicant was therefore convicted of membership of the PKK and sentenced to four years and two months' imprisonment. This interpretation of Articles 220 § 6 and 314 §§ 2 and 3 of the Criminal Code is in accordance with the reasoning contained in the decision of the Plenary Court of Cassation of 4 March 2008. According to this line of interpretation, at the material time, if a demonstrator took part in a demonstration or a march for which the PKK had made a general call to participate, and committed one or more offences proscribed under the criminal codes during that event, he or she would be liable to be punished not only for the individual offences committed but also for membership of the PKK. In the light of its examination of these matters below, from the point of view of the "necessity" of the interference in a democratic society (see paragraphs 110-118 below), the Court considers that it is not required to reach a final conclusion on the lawfulness issue in so far as it relates to the applicant's conviction under Article 314 § 2 of the Criminal Code. For the same reason, the Court does not deem it necessary to examine the lawfulness of the

applicant's convictions under section 7(2) of the Prevention of Terrorism Act (Law no. 3713) and sections 23(b) and 33(c) of Law no. 2911 by the judgment of 11 November 2008 and those under section 7(2) of Law no. 3713, sections 33(1), 32(1) and (2) of Law no. 2911 and Article 265 § 1 of the Criminal Code contained in the judgment of 20 December 2012.

(c) Whether the interference pursued a legitimate aim

109. The Court is of the opinion that, in the present case, the national authorities may be considered to have pursued the legitimate aims of preventing disorder and crime and the protection of the rights and freedoms of others.

(d) Whether the interference was necessary in a democratic society

110. The Court reiterates that the right to freedom of assembly is a fundamental right in a democratic society and is one of the foundations of such a society. This right, of which the protection of personal opinion is one of the objectives, is subject to a number of exceptions which must be narrowly interpreted, and the necessity for any restrictions must be convincingly established. When examining whether restrictions on the rights and freedoms guaranteed by the Convention can be considered "necessary in a democratic society" the Contracting States enjoy a certain but not unlimited margin of appreciation. It is, in any event, for the European Court to give a final ruling on the restriction's compatibility with the Convention and this is to be done by assessing the circumstances of a particular case (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 142, 15 October 2015; *Galstyan*, cited above, § 114, and the cases cited therein).

111. In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole. An interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *Navalnyy and Yashin v. Russia*, no. 76204/11, § 53, 4 December 2014). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 11 of the Convention (see, *Kudrevičius and Others* cited above, § 143; and also *mutatis mutandis*, *Cumhuriyet Vakfı and Others,* cited above, § 59). The Court further reiterates that the nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of the interference (see, *mutatis mutandis*, *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, § 66, ECHR 1999‑IV; *Kar and Others v. Turkey*, no. 58756/00, § 48,

3 May 2007; and *Murat Vural v. Turkey*, no. 9540/07, § 64, 21 October 2014).

112. In the present case, the Court observes at the outset that Diyarbakır Assize Court concluded that the applicant had participated in the march as a result of the calls of the PKK published on two websites when it convicted the applicant of membership of the PKK, without providing any reason for that conclusion. Even assuming that the applicant took part in the demonstration of 14 July 2008 after having received the PKK's call, the Court observes that there is no justification in the first-instance court's judgment for the conclusion that the applicant participated in the demonstration and acted pursuant to the PKK's purposes or on behalf of that organisation upon its specific instructions to him. In this regard, the Court agrees with the Council of Europe's Commissioner for Human Rights that the conviction of a person for membership of an illegal organisation for an act or statement which may be deemed to coincide with the aims or instructions of an illegal organisation is of concern (see paragraphs 66-69 above).

113. Likewise, the judgment of Diyarbakır Assize Court does not contain any information as to the reasons for which the applicant was found guilty of disseminating propaganda in support of a terrorist organisation. The Assize Court did not explain which of the acts of the applicant, a fifteen-year-old boy at the material time, constituted the offence proscribed by section 7(2) of Law no. 3713. Besides, the assize court noted in its judgment that in his statements before the national authorities the applicant had accepted that he had made propaganda in support of an illegal organisation (see paragraph 19 above), whereas there is nothing in the case file to substantiate this finding. Both before the Diyarbakır public prosecutor and the Fifth Division of Diyarbakır Assize Court the applicant maintained that he had participated in the demonstration, chanted the slogan "Long live President Öcalan" and thrown stones at the police when they intervened (see paragraphs 12, 13 and 16 above). On no occasion did he state that he had disseminated propaganda in support of the PKK. Besides, Diyarbakır Juvenile Court also failed to offer an explanation for the applicant's conviction under section 7(2) of Law no. 3713 (see paragraph 37 above).

114. The Court reiterates in this connection that the obligation to provide reasons for a decision is an essential procedural safeguard under Article 6 § 1 of the Convention, as it demonstrates to the parties that their arguments have been heard, affords them the possibility of objecting to or appealing against the decision, and also serves to justify the reasons for a judicial decision to the public. This general rule, moreover, translates into specific obligations under Articles 10 and 11 of the Convention, by requiring domestic courts to provide "relevant" and "sufficient" reasons for an interference. This obligation enables individuals, amongst other things, to

learn about and contest the reasons behind a court decision that limits their freedom of expression or freedom of assembly, and thus offers an important procedural safeguard against arbitrary interference with the rights protected under Articles 10 and 11 of the Convention. The Court is of the opinion that the failure of the domestic courts to provide relevant and sufficient reasons to justify the applicant's conviction under Article 314 § 2 of the Criminal Code and section 7(2) of Law no. 3713 also stripped the applicant of the procedural protection that he was entitled to enjoy by virtue of his right under Article 11 (see, *mutatis mutandis*, *Saygılı and Seyman v. Turkey*, no. 51041/99, § 24, 27 June 2006; *Menteş v. Turkey (no. 2)*, no. 33347/04, §§ 51-54, 25 January 2011; and *Cumhuriyet Vakfı and Others*, cited above, §§ 67-68, and the cases cited therein).

115. In assessing the proportionality of the interference with the applicant's right to freedom of assembly, the Court has also had regard to the fact that the applicant was a minor at the relevant time. In this context, the Court notes Article 37 of the UN Convention on the Rights of the Child and General Comment No. 10 (2007) of the United Nations Committee on the Rights of the Child, according to which the arrest, detention or imprisonment of a child can be used only as a measure of last resort and for the shortest appropriate period of time (see paragraphs 60 and 61 above). The Committee of Ministers and the Parliamentary Assembly of the Council of Europe also issued resolutions and recommendations in the same vein (see paragraphs 62-64 above). In the present case, there is nothing in the case file to show that the national courts sufficiently took the applicant's age into consideration in ordering and continuing his detention on remand or in imposing a prison sentence. The Court notes the extreme severity of the penalties imposed on the applicant by Diyarbakır Assize Court pursuant to Article 314 § 2 of the Criminal Code and section 7(2) of Law no. 3713, that is, a total of four years, eight months and twenty days of imprisonment, a sentence that the applicant partly served for a period of one year and eight months before he was released. What is more, the applicant was detained pending trial for almost four months and the Government did not argue that alternative methods had been considered first or that the applicant's detention had been used only as a measure of last resort, in compliance with their obligations under both domestic law and a number of international conventions (see, *mutatis mutandis*, *Güveç v. Turkey*, no. 70337/01, § 108, ECHR 2009 (extracts)).

116. Finally, as to the applicant's conviction under sections 23(b) and 33(c) of Law no. 2911 and subsequently under sections 32 (1) and (2), 33(1) of Law no. 2911 and Article 265 § 1 of the Criminal Code for throwing stones at police officers, the Court first observes that both the applicant's statements before the national authorities and the photographs in the case file reveal that he threw stones at the security forces and was thus involved in an act of violence. The Court considers that when individuals are

involved in such acts the State authorities enjoy a wider margin of appreciation when examining the need for an interference with freedom of assembly (see, *mutatis mutandis*, *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999-IV). As a result, the imposition of a sanction for such a reprehensible act would be considered to be compatible with the guarantees of Article 11 of the Convention, as also submitted by the Government (see *Osmani and Others*, cited above; *Galstyan*, cited above, § 115; and *Yılmaz Yıldız and Others*, cited above, § 42). While it is true that with the judgment of 20 December 2012 the juvenile court decided to suspend the pronouncement of the criminal convictions arising from the applicant's act of violence, the Court cannot overlook the harshness of the sentence imposed on the applicant by Diyarbakır Assize Court pursuant to sections 23(b) and 33(c) of Law no. 2911, that is to say, two years, nine months and ten days' imprisonment, a sentence that the applicant partly served, or the lengthy period during which he was detained pending trial. In the Court's view, its considerations regarding the disproportionate nature of the penalties imposed on the applicant by the assize court pursuant to Article 314 § 2 of the Criminal Code and section 7(2) of Law no. 3713 equally apply under this head, in particular, in view of the applicant's age. In this context, the Court cannot but conclude that the applicant's punishment for throwing stones at the police officers during the demonstration was not proportionate to the legitimate aims pursued.

117. In the light of the foregoing, the Court finds that the applicant's criminal convictions for membership of the PKK, dissemination of propaganda in support of the PKK and resistance to the police as well as the imposition upon him of prison sentences and his detention between 21 July 2008 and 25 July 2010, were not "necessary in a democratic society".

There has accordingly been a violation of Article 11 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 5 AND 6 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 1 TO THE CONVENTION

118. The applicant complained of a violation of Article 5 of the Convention and Article 2 of Protocol No. 1 to the Convention. He further complained that he should have been tried by a juvenile court and not an assize court.

119. The Court observes that the applicant submitted these complaints in very general terms and failed to provide detailed explanations or supporting documents. He thereby failed to lay the basis of an arguable claim, which might have allowed its effective examination by the Court.

120. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

121. 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."

122. The applicant did not submit a claim for just satisfaction within the specified time-limit. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins* the issue of the applicant's "victim status" to the merits of the applicant's complaints under Article 11 of the Convention, and holds that the applicant has victim status;

2. *Declares* the complaints under Article 11 of the Convention admissible and the remainder of the application inadmissible;

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

Done in English, and notified in writing on 19 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith	Julia Laffranque
Registrar	President