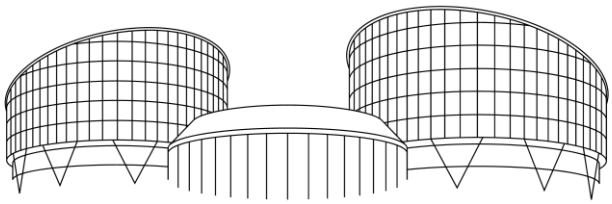

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KILIÇGEDİK AND OTHERS v. TURKEY

(Applications nos. 4517/04, 4527/04, 4985/04, 4999/04, 5115/04, 5333/04, 5340/04, 5343/04, 6434/04, 10467/04 and 43956/04)

JUDGMENT

This version was rectified on 17 January 2012
under Rule 81 of the Rules of Court.

STRASBOURG

14 December 2010

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

In the case of Kılıçgedik and Others v. Turkey**,**

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

Françoise Tulkens, *President,*
Ireneu Cabral Barreto,
Dragoljub Popović,
Nona Tsotsoria,
Işıl Karakaş,
Kristina Pardalos,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 23 November 2010,

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

PROCEDURE

1. The case originated in 11 applications (nos. 4517/04, 4527/04, 4985/04, 4999/04, 5115/04, 5333/04, 5340/04, 5343/04, 6434/04, 10467/04 and 43956/04) 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 28 Turkish nationals, Zeki Kılıçgedik, Hasan Yıldırım, Kemal Bülbül, Kemal Okutan, Kudret Gözütok, Muharrem Bülbül[1], Eşref Odabaşı, Güven Özata, Serhat İman, Mehmet Yücedağ, Sakine Berktaş, Sabri Sel, Ali Gelgeç, Ferhat Avcı, Hıdır Berktaş, Beser Kaplan, Abuzer Yavaş, Mehmet Yardımcıel, Bedir Çetin, Ramazan Sertkaya, Rıza Kılınç, İsmail Turap, Şükrü Karadağ, Hacı Pamuk, Abuzer Arslan, Arif Atalay, Hasan Doğan and Hayri Ateş ("the applicants"), who are listed with further particulars in the appendix. They were represented by lawyers whose names are also indicated in the appendix. The Turkish Government ("the Government") were represented by their Agent.

2. The applicants alleged, in particular, that a ban imposed by the Constitutional Court had prevented them from continuing to take part in active politics and had thus infringed their rights under Article 3 of Protocol No. 1 to the Convention.

3. On 6 February 2008 the President of the Second Section decided to give notice of the applications to the Government. It was also decided to examine the merits of the applications at the same time as their admissibility (Article 29 § 3).

1. The applicant's name has been changed from Muharrem Bilbil to Muharrem Bülbül.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. *Halkın Demokrasi Partisi* (People's Democracy Party, hereafter referred to as "HADEP") was a political party which was established on 11 May 1994. It opened branches in 47 cities and in hundreds of districts. The applicants were members of HADEP and they held executive positions within the party.

5. On 29 January 1999 the chief prosecutor at the Court of Cassation brought proceedings before the Constitutional Court and demanded that HADEP be dissolved. The prosecutor argued that HADEP had become a "centre of illegal activities against the integrity of Turkey". In support of his allegations he referred to a number of pending criminal proceedings against HADEP members, including the applicants.

6. In its decision of 13 March 2003, which was published in the Official Gazette on 19 July 2003 and thus became final, the Constitutional Court dissolved HADEP[2]. The Constitutional Court based its decision on sections 68 and 69 of the Constitution and sections 101 and 103 of Law no. 2820 on Political Parties. In arriving at its conclusion, the Constitutional Court took account of the actions and statements of certain leaders and members of HADEP, including the applicants. As an ancillary measure under section 69 § 9 of the Constitution and section 95 of Law no. 2820, the Constitutional Court banned the applicants and 18 other HADEP members and leaders from becoming founder members, ordinary members, leaders or auditors of any other political party for a period of five years.

7. Details of the criminal proceedings which had been brought against the applicants and which were referred to by the Constitutional Court in its decision are detailed below. In the opinion of the Constitutional Court, the actions of the applicants which are set out below, as well as the actions of the remaining 18 HADEP members and leaders, proved that a link existed between the applicants, HADEP and the PKK[3].

2. An application introduced by HADEP and its Secretary General Mr Ahmet Turan Demir is pending before the Court under application no. 28003/03.
3. Workers' Party of Kurdistan, an illegal organisation.

A. Zeki Kılıçgedik, Hıdır Berktaş, Sakine Berktaş, Muharrem Bülbül[4], Hasan Yıldırım, Beser Kaplan, Serhat İman, Sabri Sel, Ferhat Avcı, Ali Gelgeç, Abuzer Yavaş **and Hasan Doğan**

8. These applicants were executive members of HADEP's Malatya branch. In 1998 criminal proceedings were brought against them for lending assistance to an illegal organisation, namely the PKK, contrary to Article 169 of the Criminal Code then in force. The allegations against them included allowing hunger strikers to use HADEP premises in their protest against the arrest of Abdullah Öcalan in Italy. Banners had also been displayed on HADEP's premises expressing discomfort with the arrest, as well as denigrating the Turkish state and actions of the Turkish security forces. People present on the premises had also been allowed to watch PKK propaganda broadcasts on Med TV. Various pro-PKK newspapers and journals, as well as photographs of various PKK members who had been killed in operations, were also recovered from the premises.

9. These applicants were subsequently tried by the Malatya State Security Court and were found guilty on 16 December 1999. They were sentenced to three years and nine months' imprisonment and their conviction was upheld by the Court of Cassation on 4 December 2000.

10. The execution of the applicants' prison sentences was suspended following the entry into force of Law no. 4616 on Conditional Release, Stay of Proceedings and Suspension of Punishment.

B. Bedir Çetin, Hacı Pamuk, İsmail Turap, Abuzer Arslan, Rıza Kılınç, Şükrü Karadağ and Ramazan Sertkaya

11. These applicants were executive members of HADEP's Adıyaman branch. In 1999 criminal proceedings were brought against them for lending assistance to the PKK, contrary to Article 169 of the Criminal Code then in force. The allegations against them included allowing hunger strikers to use HADEP premises in their protest against the arrest of Abdullah Öcalan in Italy and keeping a PKK flag on the same premises.

12. These applicants were subsequently tried by the Malatya State Security Court and were found guilty on 6 May 1999. They were sentenced to three years and nine months' imprisonment and their conviction was upheld by the Court of Cassation on 15 May 2000[5].

13. The execution of the applicants' prison sentences was suspended following the entry into force of Law no. 4616.

4. The applicant's name has been changed from Muharrem Bilbil to Muharrem Bülbül.
5. See *Gülseren Öner and Others v. Turkey*, no. 64684/01, 1 June 2004.

C. Kemal Bülbül

14. On 24 February 2000 the Ankara State Security Court found Mr Bülbül guilty of lending assistance to the PKK, contrary to Article 169 of the Criminal Code then in force, in a speech he had made at a HADEP congress. He was sentenced to three years and nine months' imprisonment. While the proceedings were pending before the Court of Cassation, Law no. 4616 entered into force. The Ankara State Security Court accordingly suspended the criminal proceedings against him on 2 May 2001[6].

15. In 1998 another set of criminal proceedings was brought against the applicant on account of a document entitled "*The Kurds who Suffered Historical Injustices, the Kurdish Problem and Recommendations for its Solution*", which had been found in his house. The proceedings were suspended following the entry into force of Law no. 4616.

D. Kemal Okutan

16. Mr Okutan was chairman of the Ankara branch of HADEP until 1997. On 4 June 1997 the Ankara State Security Court found him guilty of lending assistance to the PKK, contrary to Article 169 of the Criminal Code then in force, in a speech he had made at a HADEP congress in 1996. He was sentenced to four years and six months' imprisonment. While they were pending against him the proceedings were suspended following the entry into force of Law no. 4616.

E. Kudret Gözütok

17. Mr Gözütok was a member of the HADEP party council. A number of documents and books prepared by PKK members having been found in his law firm, on 4 June 1997 the Ankara State Security Court found him guilty of lending assistance to the PKK, contrary to Article 169 of the Criminal Code then in force, and sentenced him to four years and six months' imprisonment. The proceedings were suspended before the Court of Cassation following the entry into force of Law no. 4616.

F. Eşref Odabaşı

18. Mr Odabaşı was the chairman of the Kırşehir branch of HADEP. On 1 December 1997 the Ankara State Security Court convicted him of "incitement to hatred and hostility by making a distinction based on race

6. See *Kemal Bülbül v. Turkey*, no. 47297/99, 22 May 2007.

and regional identity", in breach of Article 312 of the Criminal Code in force at the material time[7].

G. Hayri Ateş

19. Mr Ateş was the chairman of the youth commission of HADEP. On 24 December 1998 the İzmir State Security Court found him guilty on two counts of spreading separatist propaganda, in breach of section 8 of the Prevention of Terrorism Act, in two speeches he had given earlier that year. In his speeches the applicant had advocated recognition of the Kurdish identity, and argued that the Kurds in Turkey were being suppressed by those ruling the country. He had also stated that the ceasefire declared by Abdullah Öcalan had raised the peoples' hopes. He was sentenced to one year and eight months' imprisonment and his conviction was upheld by the Court of Cassation on 5 March 1999. While the applicant was serving his prison sentence, Law no. 4454 entered into force and the execution of the remainder of his sentence was suspended. On 15 July 2003 section 8 of the Prevention of Terrorism Act was repealed.

H. Mehmet Yücedağ

20. Mr Yücedağ was the chairman of the youth council of HADEP in Malatya. On 16 December 1999 the Malatya State Security Court convicted him of lending assistance to the PKK, contrary to Article 169 of the Criminal Code then in force, and sentenced him to three years and nine months' imprisonment. The court found that the applicant had committed this offence by having organised seminars for university students, during which he had claimed that there were Kurdish people in Turkey who were experiencing a number of problems.

21. His conviction was upheld by the Court of Cassation on 4 December 2000 but the execution of the sentence was suspended following the entry into force of Law no. 4616.

I. Arif Atalay

22. Mr Atalay was the secretary of the Seyhan branch of HADEP. On 16 December 1998 the Adana State Security Court convicted him of incitement to hatred and hostility, contrary to Article 312 of the Criminal Code in force at the time. He was sentenced to 10 months' imprisonment. His conviction was based on a speech which he had made during a party congress. According to the Adana State Security Court, during his speech Mr Atalay had said things such as that the Kurds and Turks were different

7. See *Odabaşı v. Turkey*, no. 41618/98, 10 November 2004.

people, that the Republic of Turkey was at war with the Kurdish people and that the Kurds who were killed during that war were martyrs.

J. Güven Özata

23. Mr Özata was the deputy leader of HADEP. On 17 September 1998 he was found guilty by the Ankara State Security Court of spreading separatist propaganda, contrary to Article 312 of the Criminal Code then in force. According to the Ankara State Security Court, in an article he had written in 1997 the applicant had argued that the Kurds and Turks were two different nations and that the fight the Turkish armed forces had been waging against the PKK was a "dirty war and murder". He was sentenced to two years' imprisonment and his conviction was subsequently upheld by the Court of Cassation. On 3 September 1999 execution of the applicant's prison sentence was suspended in accordance with Law no. 4454 concerning the suspension of pending cases and penalties in media-related offences.

K. Mehmet Yardımcıel

24. On 21 March 1997 Mr Yardımcıel made a speech during *Newruz* celebrations in his capacity as chairman of the Kars branch of HADEP. In his speech the applicant stated the following:

"We, the Kurdish people, should join forces with the revolutionaries, workers and patriots... The Kurds like the colour red; because red is the colour of the blood they have been shedding for years for their freedom. The Kurds like the colour green; because it is the colour of getting ready for liberation. The Kurds like the colour yellow; because it is the colour of getting ready for everything".

25. Criminal proceedings were brought against him for spreading separatist propaganda in breach of section 8 of the Prevention of Terrorism Act. On 4 June 1999 he was found guilty as charged and sentenced to ten months' imprisonment. He was also ordered to pay a fine. His conviction was upheld by the Court of Cassation on 7 October 1999.

26. On 3 September 1999 Law no. 4454 entered into force and the execution of the judgment against the applicant was suspended. On 15 July 2003 section 8 of the Prevention of Terrorism Act was repealed.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. Article 169 of the Criminal Code in force at the relevant time provided as follows:

"Any person who, knowing that such an armed gang or organisation is illegal, assists it, harbours its members, provides it with food, weapons and ammunition or clothes or facilitates its operations in any manner whatsoever, shall be sentenced to not less than three and not more than five years' imprisonment ..."

28. Article 312 of the Criminal Code in force at the relevant time provided as follows:

"Non-public incitement to commit an offence

A person who expressly praises or condones an act punishable by law as an offence or incites the population to break the law shall, on conviction, be liable to between six months' and two years' imprisonment and a heavy fine of between six thousand and thirty thousand Turkish liras.

A person who incites people to hatred or hostility on the basis of a distinction between social classes, races, religions, denominations or regions, shall, on conviction, be liable to between one and three years' imprisonment and a fine of between nine thousand and thirty-six thousand liras. If this incitement endangers public safety, the sentence shall be increased by one-third to one-half.

The penalties to be imposed on those who have committed the offences defined in the previous paragraph shall be doubled when they have done so by the means listed in Article 311 § 2."

29. Section 8 of the Prevention of Terrorism Act provided, in so far as relevant, as follows:

"Written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation are prohibited. Any person who engages in such an activity shall be sentenced to not less than one and not more than three years' imprisonment and a fine of between one hundred million and three hundred million Turkish liras. The penalty imposed on a reoffender may not be commuted to a fine."

30. Article 69 § 9 of the Constitution provides as follows:

"Founding members or ordinary members whose actions or declarations lead to the permanent dissolution of a political party shall be disqualified from acting as founders, ordinary members, administrators or financial controllers of another political party for a period of five years starting from the date of publication in the Official Gazette of the reasoned decision of the Constitutional Court."

31. Section 95 of Law no. 2820 on Political Parties provides as follows:

"Founding members or ordinary members whose actions or declarations lead to the dissolution of a political party shall be disqualified from acting as founders, ordinary members, administrators or financial controllers of another political party for a period of five years starting from the date of publication in the Official Gazette of the reasoned decision of the Constitutional Court..."

32. Under Law no. 4616, execution of sentences in respect of offences committed before 23 April 1999 could be suspended if no crime of the same or a more serious kind was committed by the offender within a five-year period.

THE LAW

33. Given the similarity of the applications, as regards both fact and law, the Court deems it appropriate to join them.

I. ALLEGED VIOLATIONS OF ARTICLES 9, 10 AND 11 OF THE CONVENTION AND ARTICLE 3 OF PROTOCOL No. 1

34. The applicants complained that the ban imposed on them had prevented them from making use of their political rights and from becoming members of political parties. In respect of this complaint some of them relied on Articles 9, 10 or 11 of the Convention, while others invoked Article 3 of Protocol No. 1 to the Convention.

35. The Court deems it appropriate to examine these complaints solely from the standpoint of Article 3 of Protocol No. 1 which reads as follows:

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

36. The Government contested that argument.

A. Admissibility

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

B. Merits

38. The applicants complained that the ban imposed on them because of past criminal proceedings brought against them for having exercised their freedom of speech meant that they were being punished twice.

39. They further argued that the ban had effectively prevented them from taking an active part in politics during crucial periods.

40. The Government argued that the ban imposed on the applicants pursued the legitimate aims of preventing disorder, protecting the rights of others and protecting territorial integrity, thus preserving national security.

41. The Government considered that the ban had not impaired the very essence of the applicants' rights under this provision. To that end they argued, firstly, that the restriction had not been permanent but limited to five years and during the five-year period only one general election had been held. Secondly, it would have been possible for the applicants to stand as independent candidates in that election.

42. Finally, the Government submitted that the circumstances of the applicants differed from those of the applicants in the cases of *Selim Sadak and Others v. Turkey (no. 2)* (nos. 25144/94, 26149/95 to 26154/95, 27100/95 and 27101/95, ECHR 2002-IV), *Ilıcak v. Turkey* (no. 15394/02, 5 April 2007), and *Kavakçı v. Turkey* (no. 71907/01, 5 April 2007), in which the Court had found violations of Article 3 of Protocol No. 1 on account of a similar ban imposed on them as a result of which they had had to forfeit their parliamentary seats. The Government pointed to the fact that the applicants in the present case were not members of parliament at the time of the imposition of the ban.

43. The Court reiterates that implicit in Article 3 of Protocol No. 1 are the subjective rights to vote and to stand for election. Although those rights are important, they are not absolute. Since the above-mentioned provision recognises them without setting them forth in express terms, let alone defining them, there is room for implied limitations. In their internal legal orders the Contracting States make the rights to vote and to stand for election subject to conditions which are not in principle precluded under Article 3 of Protocol No. 1. They have a wide margin of appreciation in this sphere, but it is for the Court to determine in the last resort whether the requirements of Article 3 of Protocol No. 1 have been complied with; it has to satisfy itself that the conditions do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate (see *Selim Sadak and Others*, cited above, § 31 and the cases cited therein).

44. The Court would also point out that Article 3 of Protocol No. 1 enshrines a characteristic principle of an effective political democracy, and is accordingly of prime importance in the Convention system. As to the links between democracy and the Convention, it made the following observations (*ibid*, § 32 and the cases cited therein):

> "Democracy is without doubt a fundamental feature of the European public order ... That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights ... The Preamble goes on to affirm that European countries have a common heritage of political traditions, ideals, freedom and the rule of law. The Court has observed that in that common heritage are to be found the underlying values of the Convention ...; it has pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society ..."

45. Furthermore, the Court also reiterates that this Article guarantees the individual's right to stand for election and, once elected, to sit as a member of parliament (*ibid*, § 33).

46. Turning to the facts of the present case, and concerning the Government's argument that the present case differed from the three cases referred to by them (see paragraph 42 above), the Court observes that on 22 June 2001, that is before the Constitutional Court imposed the ban on the applicant in the above-mentioned case of *Kavakçı v. Turkey*, following the dissolution of the political party from whose list she had been elected as a member of parliament, the Speaker of the National Assembly had removed her parliamentary status in March 2001 on account of her having breached the Nationality Act. Thus, at the time of the imposition of the ban, she was no longer a member of parliament.

47. Furthermore, like the applicants in the present case, the applicant in the case of *Sılay v. Turkey* (no. 8691/02, 5 April 2007), whose application was examined by the Court on the same date as the above-mentioned *Kavakçı* and *Ilıcak* judgments and which also concerned the ban imposed by the Constitutional Court in its same decision of 22 June 2001, was not a member of parliament at the time of the imposition of the ban. It therefore cannot agree with the Government's submissions that the present case was different from those referred to above.

48. The Court has already considered the legal basis for the imposition of similar bans on politicians, and found it to be too wide to be considered proportionate to the legitimate aims pursued (see *Selim Sadak and Others*, cited above, § 40; *Sılay*, cited above, §§ 31-34; *Kavakçı*, cited above, §§ 44-47; *Ilıcak*, cited above, §§ 34-37; and *Sobacı v. Turkey*, no. 26733/02, §§ 30-33, 29 November 2007).

49. The Court reaches the same conclusion in the present case. In this connection it also notes that, despite the fact that the convictions of three of the applicants had never become final because the criminal proceedings against them were suspended following the entry into force of Law no. 4616 (see paragraphs 14-17 above), but before the Court of Cassation decided on their appeals, the three applicants were still held responsible for the dissolution of HADEP within the meaning of Article 69 § 9 of the Constitution. The Court considers that since the penalty in this case was based on a legal norm which is open to such a wide interpretation, it cannot be regarded as proportionate to any of the legitimate aims relied on by the Government.

50. It follows that the substance of the applicants' rights under this provision was impaired. There has accordingly been a violation of Article 3 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

51. The applicants complained of a violation of Article 6 of the Convention on account of alleged shortcomings in the proceedings before

the Constitutional Court, including, in particular, their inability to defend themselves in those proceedings.

52. The Government argued that Article 6 of the Convention was not applicable in the instant case.

53. The Court observes that in a number of previous cases which concerned dissolutions of political parties in Turkey, complaints under Article 6 of the Convention concerning the alleged shortcomings in the proceedings before the Constitutional Court were rejected as being incompatible *ratione materiae* with Article 6 of the Convention on the ground that the right in question was a political right *par excellence* (see, *inter alia*, *Sılay v. Turkey* (dec.), no. 8691/02, 6 April 2004; *Yazar and Others v. Turkey*, nos. 22723/93, 22724/93 and 22725/93, §§ 66-67, ECHR 2002-II, and *The Welfare Party and Others v. Turkey* (dec.), nos. 41340/98, 41342/98, 41343/98, 41344/98, 3 October 2000). The Court sees no reason to reach a different conclusion in the instant case and concludes that Article 6 of the Convention is not applicable.

54. It follows that the complaints under Article 6 of the Convention are inadmissible as being incompatible *ratione materiae* with the provisions of the Convention, and must be rejected in accordance with Article 35 § 3 and 4 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLES 7, 13 AND 14 OF THE CONVENTION

55. Finally, the applicants complained that the ban imposed on them by the Constitutional Court had also been in breach of Articles 7, 13 and 14 of the Convention.

56. The Government contested that argument.

57. Having regard to its conclusion as to compliance with Article 3 of Protocol No. 1, the Court does not consider it necessary to examine these complaints separately (see *Selim Sadak and Others*, cited above, § 47).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. Article 41 of the Convention provides:

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

A. Damage

59. Each of the 11 applicants in applications nos. 4517/04, 4527/04, 5115/04 and 5333/04 claimed 75,000 euros (EUR) in respect of non-pecuniary damage.

60. Each of the five applicants in application no. 4985/04 claimed EUR 10,000 in respect of pecuniary, and EUR 15,000 in respect of non-pecuniary damage.

61. Each of the nine applicants in applications nos. 4999/04, 5340/04 and 5343/04 claimed EUR 100,000 in respect of non-pecuniary damage.

62. The applicant in application no. 6434/04 claimed EUR 20,000 in respect of pecuniary, and EUR 20,000 in respect of non-pecuniary damage.

63. The applicant in application no. 10567/04 claimed EUR 100,000 in respect of non-pecuniary damage.

64. The applicant in application no. 43956/04 claimed EUR 15,000 in respect of non-pecuniary damage.

65. The Government were of the opinion that the sums claimed by the applicants were excessive and not supported by evidence.

66. The Court does not discern any causal link between the violation found and the pecuniary damage alleged by some of the applicants. It therefore rejects their claims for pecuniary damage. The Court considers that the finding of a violation of Article 3 of Protocol No. 1 is sufficient to remedy the non-pecuniary damage suffered by the applicants. In this connection it notes that, unlike the applicants in the above-mentioned *Selim Sadak and Others* case, the applicants were not members of parliament (see, *Selim Sadak and Others*, cited above, § 56).

B. Costs and expenses

67. The 11 applicants in applications nos. 4517/04, 4527/04, 5115/04 and 5333/04 claimed EUR 15,000 for costs and expenses in respect of each of the four applications. No documentary evidence or other information has been provided by the applicants in support of those claims.

68. The five applicants in application no. 4985/04 claimed the total sum of EUR 6,345 in respect of their costs and expenses. In support of their claim the applicants submitted that they had incurred a total of EUR 285 for various expenses such as photocopying, telephone calls, stationery, etc. They also claimed that each applicant had had a two-hour long meeting with their legal representative for which they had been charged a total of 3,500 Turkish liras (TRY; approximately EUR 2,000). The applicants also claimed the sum of TRY 7,080 (approximately EUR 4,060) in respect of the fees of their legal representative, for which they referred to the fee scales recommended by the Ankara Bar Association.

69. Each of the nine applicants in applications nos. 4999/04, 5340/04 and 5343/04 claimed EUR 15,000 in respect of costs and expenses, but they have not provided any documentary evidence or other information in support of their claims.

70. The applicant in application no. 6434/04 claimed EUR 5,250 in respect of costs and expenses. This sum included EUR 150 for translation costs for which the applicant submitted a receipt and EUR 5,000 in respect of the fees of his lawyer who worked on the case for a total of 10 hours.

71. The applicant in application no. 10567/04 claimed EUR 15,000 in respect of costs and expenses, but has not provided any documentary evidence or other information in support of this claim.

72. The applicant in application no. 43956/04 claimed TRY 2600 (approximately EUR 1,240 at the time of the submission of the claim) in respect of costs and expenses. This sum included TRY 2,000 (approximately EUR 950) for the fees of his legal representative, for which the applicant submitted an official bill.

73. The Government considered the sums claimed to be excessive and unsupported by adequate documentation.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the applicants in applications nos. 4517/04 4527/04, 4999/04, 5115/04, 5333/04, 5340/04, 5343/04 and 10467/04 did not submit any bills or any other information quantifying their claims. In the absence of such information and substantiation, the Court makes no award under this head to those applicants.

75. Regard being had to the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award the sum of EUR 3,000 jointly to the five applicants in application no. 4985/04; the sum of EUR 1,500 to the applicant in application no. 6434/04; and the sum of EUR 1,240 to the applicant in application no. 43956/04, to cover costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;

2. *Declares* the complaint under Article 3 of Protocol No. 1 to the Convention admissible and the complaint under Article 6 of the Convention inadmissible;

3. *Holds* that there has been a violation of Article 3 of Protocol No. 1 to the Convention;

4. *Holds* that there is no need to examine separately the complaints under Articles 7, 13 and 14 of the Convention;

5. *Holds* that the finding of a violation of Article 3 of Protocol No. 1 constitutes adequate just satisfaction in respect of non-pecuniary damage;

6. *Holds*

(a) that the respondent State is to pay seven of the twenty-eight applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, plus any tax that may be chargeable to those applicants, in respect of costs and expenses, to be converted into Turkish liras at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) jointly to the applicants Kemal Bülbül, Kemal Okutan, Kudret Gözütok, Muharrem Bülbül[8] and Eşref Odabaşı;

(ii) EUR 1,500 (one thousand five hundred euros) to the applicant Arif Atalay; and

(iii) EUR 1,240 (one thousand two hundred and forty euros) to the applicant Hayri Ateş;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Françoise Tulkens
President

8. The applicant’s name has been changed from Muharrem Bilbil to Muharrem Bülbül.

ANNEX

App. no.	Applicant's name	Date of birth	Place of residence	Representative	Date of introduction
4517/04	Zeki Kılıçgedik	1950	Malatya	Hasan Doğan in Malatya	13/1/2004
4527/04	Hasan Yıldırım	1948	Malatya	Hasan Doğan in Malatya	13/1/2004
4985/04	Kemal Bülbül Kemal Okutan Kudret Gözütok Muharrem Bülbül[9] Eşref Odabaşı	1963 1957 1957 1959 1966	Ankara Ankara Bursa Kırşehir Malatya	Levent Kanat in Ankara	17/12/2003
4999/04	Güven Özata	1945	Ankara	Yusuf Alataş in Ankara	19/11/2003
5115/04	Serhat İman	1975	Malatya	Hasan Doğan in Malatya	13/1/2004
5333/04	Mehmet Yücedağ Sakine Berktaş Sabri Sel Ali Gelgeç Ferhat Avcı Hıdır Berktaş Beser Kaplan Abuzer Yavaş	1973 1976 1947 1971 1971 1941 1957 1953	Malatya Malatya Adıyaman Malatya Malatya Malatya Malatya Malatya	Hasan Doğan in Malatya	13/1/2004
5340/04	Mehmet Yardımcıel	1961	Kars	Yusuf Alataş in Ankara	13/1/2004
5343/04	Bedir Çetin, Ramazan Sertkaya Rıza Kılınç İsmail Turap Şükrü Karadağ Hacı Pamuk Abuzer Arslan	1949 1960 1966 1963 1951 1963 1941	Adıyaman	Yusuf Alataş in Ankara	17/11/2003
6434/04	Arif Atalay	1950	Adana	Mustafa Çinkılıç in Adana	9/1/2004
10467/04	Hasan Doğan	1948	Malatya	Berna Aktaş in Malatya	13/1/2004
43956/04	Hayri Ateş	1964	Izmir	Zeynep Sedef Özdoğan in İzmir	23/9/2004

9. The applicant’s name has been changed from Muharrem Bilbil to Muharrem Bülbül.