

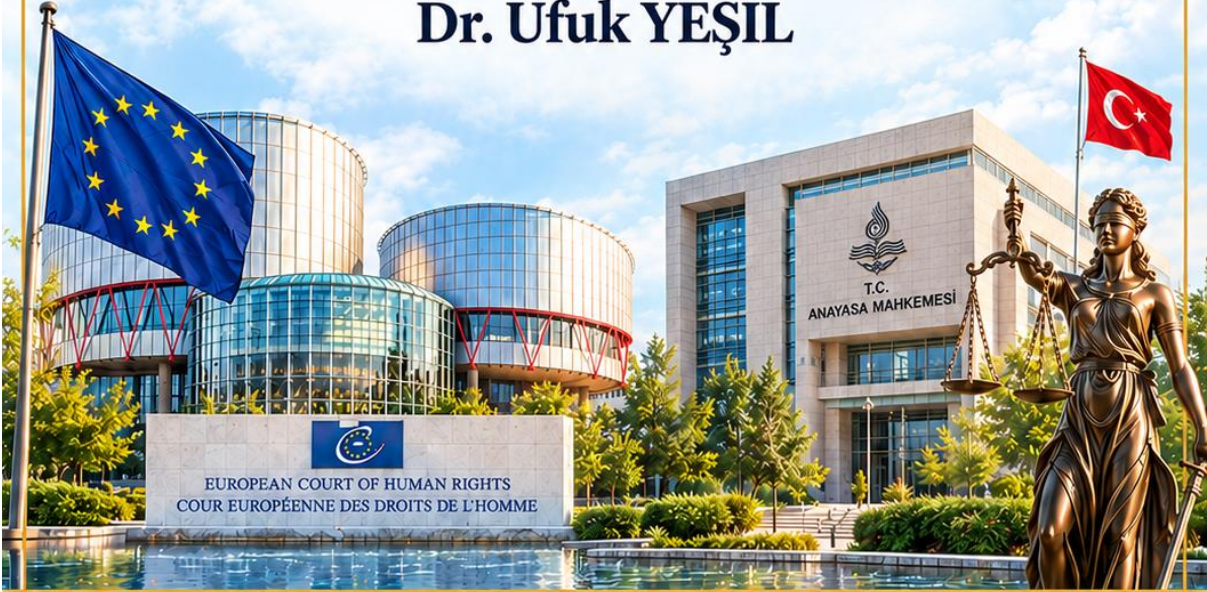


Apparent Redress, Continuing Violation:

An Assessment of the Constitutional Court's Decisions after the Yalçinkaya and Yasak Judgments

(An Examination of 228 Individual Application Decisions
Delivered between 1 October 2023 and 22 October 2026
Concerning Convictions under Article 314/2 of the Turkish
Criminal Code in Light of Articles 6 and 7 of the ECHR)

Dr. Ufuk YEŞİL



JUSTICE
SQUARE

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Foreword

The Grand Chamber judgment of the ECtHR in *Yüksel Yalçinkaya v. Türkiye* was the first decision to call into question, on such a scale, the legal basis of the convictions for membership of an organisation handed down after 15 July. The ECtHR held that deriving all the constituent elements of the offence from the use of ByLock breached the principle of legality in criminal law, and that the defence's inability to challenge this evidence breached the right to a fair trial. The *Demirhan and Others* judgment confirmed that the problem was systemic, while the *Yasak* judgment showed that the same criteria would also apply to convictions based on evidence other than ByLock. Giving effect to these judgments is an obligation owed not only to the applicants who came before the ECtHR but also to the very large number of persons in a similar situation.

Within the domestic legal order, the first addressee of this obligation is the Constitutional Court. The individual application procedure was established to protect Convention rights at national level and was designed as a remedy that must be exhausted before applying to the ECtHR. For this reason, the decisions delivered by the Constitutional Court after *Yalçinkaya* are the most important indicator of the extent to which that judgment has taken effect in domestic law.

The present study examines, from this perspective, 228 decisions delivered by the Constitutional Court between 1 October 2023 and 22 October 2026. Rather than summarising the decisions one by one, it identifies the patterns of reasoning to which the Court has repeatedly resorted in its violation and rejection decisions, and supports each finding with the paragraph number of the relevant decision. The aim is to enable the reader to verify every assessment against its source.

The title of the study captures the picture that emerges. The Constitutional Court found a large number of violations during this period. However, most of these findings remained confined to procedural safeguards; in almost all of the ByLock cases the legality complaint was either left unexamined or rejected; and the redress afforded amounted to no more than a retrial that does not prevent the same conviction from being handed down again. Although there is an appearance of redress, the violation identified by the ECtHR persists.

This study has not been prepared as a general critique of the Constitutional Court, but as a reading of the Court's own decisions and its own principles against the ECtHR's criteria. Indeed, a significant proportion of the inconsistencies identified stem from the Court's failure to apply in its rejection decisions the very criteria it uses in its violation decisions. This shows that case-law consistent with the *Yalçinkaya* and *Yasak* judgments is achievable within the Court's own jurisprudential heritage.

The study is intended to serve as a useful resource for lawyers and applicants dealing with these cases, for academics, and for the Committee of Ministers, which supervises the execution of the *Yalçinkaya* group of judgments.

Amsterdam, October 2026

Introduction

1. In its judgment of 26 September 2023 in Yüksel Yalçınkaya v. Türkiye (App. No. 15669/20),¹ the Grand Chamber of the ECtHR held that a conviction based on the use of ByLock had violated Article 7 (no punishment without law) and Article 6 § 1 (right to a fair trial) of the Convention. In Demirhan and Others v. Türkiye (App. No. 1595/20) of 22 July 2025² and in nine subsequent judgments, the ECtHR confirmed that these findings stemmed from a systemic problem (§ 38); and in its Grand Chamber judgment of 5 May 2026 in Yasak v. Türkiye (App. No. 17389/20)³ it applied the same principles to a conviction based on evidence other than ByLock, elaborating the criteria for establishing the mental element of the offence.
2. This study examines 228 individual application decisions delivered by the Constitutional Court after the Yalçınkaya judgment, between 1 October 2023 and 22 October 2026, concerning convictions for membership of an organisation handed down after 15 July on the basis of alleged links with the Gülen movement,⁴ from the standpoint of both the right to a fair trial (Article 36 of the Constitution, Article 6 of the Convention) and the principle of legality in criminal law (Article 38 of the Constitution, Article 7 of the Convention). The purpose of the examination is to establish whether the Constitutional Court, when finding violations or rejecting applications, has decided in conformity with the principles and criteria laid down by the ECtHR in the Yalçınkaya and Yasak judgments.
3. Compliance with the ECtHR's criteria is not a matter of choice for the Constitutional Court. Article 148 § 3 of the Constitution confines the individual application to allegations that any of the fundamental rights and freedoms guaranteed by the Constitution and falling within the scope of the Convention has been violated. The last paragraph of Article 90 of the Constitution gives duly ratified international agreements on fundamental rights and freedoms precedence over statutes, and Article 46 of the Convention imposes an obligation to abide by the final judgments of the ECtHR. Article 50 § 1 of Law No. 6216, in turn, provides that where a violation is found, the Court shall order what is required to redress the violation and its consequences. Within this framework, the Constitutional Court is the domestic remedy bound to apply Convention rights as interpreted by the ECtHR.
4. The study reaches the following conclusion: none of the 13 violations found by the Constitutional Court under the principle of legality concerns a case in which there was a ByLock finding against the applicant, and none of these decisions refers to the judgments of the ECtHR. In 34 of the 40 cases in which the conviction was based on ByLock and a legality complaint was raised, that complaint was set aside unexamined, either on the basis of redress confined to fair trial violations or through unreasoned Commission decisions. The fair trial violations, too, were based not on Yalçınkaya's Article 6 criteria but on the Court of Cassation's procedural grounds for quashing and on the Constitutional Court's own earlier decisions. The most striking illustration is the Hakan Can application: it concerned another conviction, resting on the same witnesses, handed down by the Çorum 2nd Assize Court, the very court whose conviction in Yasak the ECtHR found to

1 <https://hudoc.echr.coe.int/?i=001-227636>.

2 <https://hudoc.echr.coe.int/?i=001-244217>.

3 <https://hudoc.echr.coe.int/?i=001-250157>.

4 The decisions referred to in this study were obtained from the Constitutional Court's Decisions Information Bank. <https://kararlarbilgibankasi.anayasa.gov.tr>

violate Article 7; yet it was declared manifestly ill-founded forty-three days after the Yasak judgment (see Part VII).

5. The Constitutional Court has not published the majority of its inadmissibility decisions. The observations concerning rejection decisions are therefore limited to the published decisions, and the actual number of rejections is far higher. This limitation does not weaken the findings; on the contrary, it shows that the ECtHR's criteria were not applied even in the decisions the Constitutional Court chose to publish because of their value as precedent.

I. THE PRINCIPLES SET OUT BY THE ECtHR IN THE YALÇINKAYA AND YASAK JUDGMENTS

A. The Source of the Problem under Article 7 of the Convention Is Not the Law but the Manner of Its Application

6. In Yalçinkaya, the ECtHR accepted that Article 314 § 2 of the Turkish Criminal Code and the case-law of the Court of Cassation were sufficiently clear, and stated that the violation arose from the manner in which the law had been applied in the specific case. The fact that the structure in question had not been designated as a terrorist organisation at the time of the acts was not in itself regarded as a ground for a violation (§ 253); the decisive issue was whether the material and mental elements of the offence had been established on an individualised basis (§§ 254, 260). Treating the use of ByLock as proving, on its own, all the elements of the offence was held to be an unforeseeable and expansive interpretation, and it was found to result, in effect, in objective liability (§§ 262–272).
7. The significance of this finding lies in its identification of the source of the violation. The ECtHR found incompatible with the Convention not the law itself, nor the criteria adopted in the abstract by the Court of Cassation, but the reduction of those criteria in practice to a single fact. Accordingly, to determine whether a decision complies with Article 7, the question is not whether the trial court cited the Court of Cassation's criteria, but whether it actually applied them to the specific applicant. As will be seen below, the Constitutional Court did the opposite in its rejection decisions, treating the mere citation of the criteria as proof that they had been applied (see paras. 50–52).

B. Knowledge and Intent Must Be Established Separately and Individually

8. The ECtHR emphasised that the element of knowledge and intent required by the Court of Cassation's own case-law, namely joining the hierarchical structure knowingly and wilfully, with awareness of the organisation's alleged terrorist nature, must be established separately (§§ 248, 263–264), and it recalled that persons in the lower tiers might not be aware of the alleged ultimate aim (§ 266). It stated that its own power of review under Article 7 is "necessarily wider" (§ 255), that an unreasonable interpretation of the law may itself give rise to a violation (§ 256), and that the Article 7 finding concerns not the probative value of the evidence but the interpretation of the constituent elements of the offence (§ 268). It also criticised the failure to explain how acts that were lawful at the material time, such as holding an account at Bank Asya or membership of a trade union or association, came to be treated as evidence of an offence (§§ 342–343; under Article 11, §§ 390–396).
9. Three conclusions follow from these principles. First, the element of knowledge concerns what the person actually knew; the fact that the person was in a position to know cannot take its place.

Second, the element of intent requires a showing that the person joined the hierarchical structure knowingly and wilfully; being in some relationship with a structure is not, in itself, that will. Third, the ECtHR's review is not a review of arbitrariness, since whether the trial court's interpretation was reasonable and foreseeable is examined directly through the question of how the court moved from the evidence to the elements of the offence. These three conclusions have been used as the principal yardstick in assessing the decisions of the Constitutional Court.

C. The Yasak Judgment: The Same Question Arises for Evidence Other than ByLock

10. In *Yasak*, the ECtHR stated that the same question arises even where the conviction is based on evidence other than ByLock (§§ 200–201). The Court required that the mental element be established on an individual and contextual basis "with particular rigour" (§§ 202–204); that, where the acts pre-date the designation of the structure as a terrorist organisation, knowledge of its violent aims be separately demonstrated (§§ 205–206); that relationships dating from the period when the structure was lawfully active in the field of education be assessed individually and in context (§§ 207–208); and that the person's links with the structure's strategic and military branches, and his or her place in the seven-tier hierarchy, be determined (§§ 209–210). It regarded the mere listing of items of evidence side by side, followed by a conclusion as to intent, as a breach of the obligation of individual assessment (§§ 211–213).
11. The *Yasak* judgment disposed of the reading according to which *Yalçinkaya* was a judgment confined to ByLock. After *Yalçinkaya*, the Constitutional Court accepted that a legality complaint could be rejected where other evidence of "significant weight" existed alongside ByLock (Şerif Özmütlu, §§ 85, 98). In *Yasak*, however, the conviction rested on a wider range of evidence than ByLock, at the centre of which lay the applicant's role in the education branch, and the ECtHR nonetheless found a violation of Article 7 (§§ 200–201, 208–210). The issue thus ceased to be one of the quantity or type of evidence and became the question of whether intent had been individually established, whatever the evidence relied upon.

D. The Defence's Ability to Challenge the Evidence under Article 6 § 1 of the Convention

12. The ECtHR based its finding of a violation of Article 6 on the combined effect of five shortcomings: the failure to provide the applicant with the raw ByLock data and the absence of any response to that request (§ 331); the failure to accommodate the request for an independent expert examination (§§ 332–333); the absence of any response to the objections concerning inconsistencies in the lists, the numbers of users and downloads, and non-compliance with Article 134 of the Code of Criminal Procedure (§ 334); the lack of access to the decrypted content and of an opportunity to comment on it (§§ 335–336); and the failure to support with adequate reasoning the assertion that ByLock was used exclusively by certain persons and for organisational purposes (§§ 337–341).
13. The ECtHR did not make these safeguards conditional on ByLock being the "sole or decisive" evidence; rather, it relied on the absence of these safeguards in the proceedings as a whole. In *Demirhan*, it stated that neither the inclusion of detailed ByLock reports in the applicants' case files nor the Government's argument that "there is other evidence as well" altered that conclusion, and that it was for the national courts to assess, in the light of the *Yalçinkaya* principles, whether the other evidence would be sufficient for a conviction without the decisive weight attributed to the use of ByLock (*Demirhan and Others*, § 38 et seq.).

E. A Fair Trial Violation Is No Substitute for a Legality Review

14. In *Yalçinkaya*, the ECtHR examined Articles 7 and 6 under separate headings and found a separate violation of each. This distinction is not a formality. Article 6 reviews the procedure by which the conviction was reached, that is, whether the defence was able to challenge the evidence and whether the court responded to its essential objections, whereas Article 7 reviews whether the conduct for which the person was convicted constituted an offence under a foreseeable interpretation of the law. In the former, the issue is how the trial was conducted; in the latter, it is why the person was punished.
15. This difference also has different consequences. A violation of the right to a fair trial can be remedied at a retrial by completing the missing procedural steps and writing more detailed reasoning, in which case nothing prevents the same conviction from being reinstated. A legality violation, by contrast, establishes that the very interpretation on which the conviction rests is incompatible with the Convention. The court conducting the retrial is bound by that finding and cannot hand down the same conviction again on the basis of the same interpretation. Accordingly, to accept that a legality complaint has been "met" by a violation found under the right to a fair trial is to dispose of two different questions with a single answer.
16. Those criteria that relate to the constituent elements of the offence are brought together under eight headings in Table 1.

Table 1. Common Criteria of the *Yalçinkaya* and *Yasak* Judgments Concerning the Elements of the Offence

Criterion	Content	<i>Yalçinkaya</i>	<i>Yasak</i>
Element of Knowledge	Knowledge of the structure's alleged terrorist nature and of its aim of using force and violence	§§ 248, 263	§§ 203, 211
Element of intent	Joining the structure knowingly and wilfully, the state of intent, and the continuity of the will to participate	§§ 248, 263, 271	§ 203
Material element and organic link	Activities displaying continuity, diversity and intensity, or acting within the hierarchy	§§ 248, 260, 263–264	§§ 207, 209
Individualisation	No automatic inference of the elements of the offence from a single factor, no leap to a conclusion from a mere list of evidence, and the prohibition of objective liability	§§ 262, 264–265, 267–268, 271	§§ 200–202, 211–213
Tiered structure and error	Persons in the lower tiers may not have known the structure's alleged aim, which makes individual assessment all the more necessary	§ 266	§§ 204, 208, 210
Temporal element	For acts preceding the official designation as a terrorist organisation, separate proof that the aim was known	§§ 253–254, 261	§§ 198, 205–206
Lawful acts	Explanation of how acts lawful at the material time, such as Bank Asya, trade union and association activity, were treated as evidence of an offence	§§ 342–343; see § 257	§§ 207–208
Link with strategic branches	Inquiry into any personal, functional or hierarchical link with the structure's strategic and military branches	—	§ 209

II. THE OUTCOME OF THE FAIR TRIAL AND LEGALITY COMPLAINTS IN 228 DECISIONS

A. Fair Trial Violations Found in ByLock Cases and References to Yalçinkaya

17. ByLock evidence featured in 118 of the 228 decisions. In 85 of these 118 decisions, the Constitutional Court found a violation of the right to a fair trial: in 44 a violation of the right to a reasoned decision, in 29 of the right to examine witnesses, in 8 of the principles of equality of arms and adversarial proceedings, in 3 of the right to a fair hearing, in 2 of the right of access to a court and in 1 of the right to legal assistance. By contrast, Yalçinkaya was cited in only 5 of the 118 decisions involving ByLock.
18. At first sight, these figures may give the impression that the Constitutional Court afforded applicants extensive protection in ByLock cases. The distribution of the violations, however, tells a different story. All of the violations concern procedural safeguards, and more than half of them relate to the right to a reasoned decision. The elements that formed Yalçinkaya's Article 6 violation, such as the raw data, an independent expert examination, access to the decrypted content and the claim of exclusive use, were not the basis of any of these violations (see Part VIII).

B. The Constitutional Court's Rulings on the Legality Complaints

19. Table 2 shows the Constitutional Court's response to the legality complaint in the 94 decisions in which such a complaint was raised. The Court found a violation of the principle of legality in only 13 decisions. In 51 decisions it found a violation of the right to a fair trial but did not examine the legality complaint at all. In 30 decisions it rejected the legality complaint. In the Court's official case summaries, the legality complaint appears in only 77 decisions. In the remaining 17 decisions, the complaint was identified from the applicant's express submissions, from the Commission's referral decision or from the Ministry's observations, but it was not reflected in the case summary.

Table 2. The Constitutional Court's Decisions in the 94 Decisions Involving a Legality Complaint

The Constitutional Court's response to the legality complaint	Decisions
Violation of the principle of legality	13
No violation (rejection on the merits)	9
Manifestly ill-founded, out of time, non-exhaustion of remedies	21
Violation of the right to a fair trial, with the legality complaint named but not examined	44
Violation of the right to a fair trial, with the legality complaint left unexamined among the "other complaints"	4
Unreasoned dismissal of the legality complaint by the Commission and violation of the right to a fair trial	3
Total	94

20. This table shows that the Constitutional Court's most common response to legality complaints has been "not to examine" them. The legality complaint was examined on the merits in only 22

of the 94 decisions (13 violation and 9 no-violation decisions), while in 51 decisions it was set aside unexamined, either on the ground of a procedural violation or without reasons at the Commission stage.

21. The second conclusion to be drawn from the table concerns the relationship between examination on the merits and outcome. Of the 22 decisions in which the legality complaint was examined on the merits, a violation was found in 13; however, as will be shown below, in none of those 13 decisions was there a ByLock finding against the applicant. The Constitutional Court therefore selected the cases in which it examined the legality complaint on the merits largely from among those not involving ByLock, while in cases involving ByLock it either left the complaint unexamined or rejected it.

III. THE MOST COMMON PATTERNS USED TO AVOID EXAMINING THE LEGALITY COMPLAINT

A. The "Conclusion Reached and Redress Deemed Appropriate" Template and the Identical Sentence in Forty-Four Decisions

22. In 44 decisions in which it found a violation of the right to a fair trial and in which a legality complaint had been raised, the Constitutional Court set that complaint aside unexamined with the same template sentence:

"... having regard to the conclusion reached in the decision and the redress deemed appropriate ... it must be held that there is no need for a separate examination as to admissibility and merits of the complaints concerning ... the principle of legality in criminal law ..." (Ramazan Çakır [Plenary], App. No. 2019/6030, 24/2/2026, § 59; Ali Bayram İskender [Plenary], App. No. 2020/31370, 25/9/2025, § 61)

23. The template was used in two Plenary decisions,⁵ in Section decisions⁶ and in all of the joined decisions citing the Ali Bayram İskender decision.⁷
24. Of these 44 decisions and the 4 decisions below in which the principle of legality is not even mentioned by name, that is, 48 decisions in total, 38 involve an allegation of ByLock use. This shows that, in the great majority of cases in which it was confronted with the issues on which the ECtHR found an Article 7 violation in Yaşınkaya, the Constitutional Court did not examine the legality complaint. In place of a legality review, these decisions found violations of the right to a reasoned decision in 33 cases, of the right to examine witnesses in 10, of equality of arms in 3 and of the right of access to a court in 2. Together with the 3 decisions dismissed at the

5 Ali Bayram İskender, § 61; Ramazan Çakır, § 59.

6 Hıfzı Akdağ, 2019/19510, § 41; Mustafa Nazlı, 2020/29044, § 41; Behiye Çağlıyan, 2021/34076, § 39; Ömer Akgün, 2020/31577, § 24; İ.S., 2021/8272, § 33; Mustafa Türksöy, 2022/101898, § 41; Şaban Koşan, 2022/22165, § 29; Erkut Bakıcı, 2022/105470, § 32; Osman Büyükberber, 2022/104922, § 36; Y.Y., 2020/16156, § 32; Mustafa Seyhan, 2021/58283, § 55; Ahmet Musab Kesmeci, 2022/89660, § 39; Murat Polat, 2021/44845, § 37; Hasan Karakaya, 2019/7900, § 31; U.A., 2022/41175, § 25; Aydın Bilgin, 2023/103809, § 33; Oktay Sayar, 2021/58421, § 36; Gökhan Polat, 2019/42466, § 28; Adem Akgül, 2021/40272, § 44; İ.K., 2023/42643, § 35.

7 İsmail Duran and Others, 2023/68853, § 9; Ayşegül Ünlü and Others, 2020/12450, § 15; Ali Yalçın and Others, 2023/34020, § 14; Muharrem Kaya and Others, 2023/50524, § 12; Oğuzhan Demirbaş and Others, 2023/68916, § 14; Mesut Yaşar and Others, 2024/69117, § 13; Murat Keleş and Others, 2020/17391, § 11; Cihan Avdan and Others, 2022/53474, § 11; İsa Ozan and Others, 2023/108631, § 11; İbrahim Tunç and Others, 2023/17301, § 10; Selahattin Karagöz and Others, 2023/17489, § 9; Oğuz Erdoğan and Others, 2023/28810, § 9; Mahmut Parçalı and Others, 2023/39086, § 9; Tahsin Toparlak and Others, 2023/59775, § 9; Ahmet Turan and Others, 2018/12568, § 13; Fatih Kuloğlu and Others, 2023/108273, § 10; Emre Yazkan and Others, 2019/14262, § 13; Abdulkadir Boz and Others, 2023/81727, § 9; Ozan Çalışal and Others, 2023/88358, § 12; İsmail Kalay and Others, 2024/31235, § 10; Murat Taşdemir and Others, 2024/2326, § 11.

Commission stage, the 51 decisions in which the legality complaint was not examined are shown in Table 3.

Table 3. The 51 Decisions Finding a Fair Trial Violation without Examining the Legality Complaint

App. No.	Applicant	Date of Decision	Formation	ByLock	Art. 36 violation	Relevant §
2020/31370	Ali Bayram İskender	25/9/2025	Plenary	Yes	Reasoned decision	61
2019/6030	Ramazan Çakır	24/2/2026	Plenary	Yes	Reasoned decision	59
2019/19510	Hıfzı Akdağ	21/5/2024	First Section	No	Examination of witnesses	41
2020/29044	Mustafa Nazlı	28/11/2024	First Section	Yes	Examination of witnesses	41
2021/34076	Behiye Çağlıyan	14/1/2025	Second Section	No	Access to a court	39
2020/21601	Habip Güler	15/4/2025	Second Section	No	Reasoned decision	Operative provision C
2020/31577	Ömer Akgün	29/4/2025	First Section	Yes	Examination of witnesses	24
2021/8272	İ.S.	11/6/2025	Second Section	No	Examination of witnesses	33
2022/101898	Mustafa Türksoy	11/6/2025	Second Section	No	Reasoned decision	41
2022/22165	Şaban Koşan	25/6/2025	Second Section	Yes	Examination of witnesses	29
2022/105470	Erkut Bakıcı	17/7/2025	Second Section	Yes	Equality of arms	32
2022/104922	Osman Büyükberber	29/7/2025	Second Section	No	Examination of witnesses	36
2020/16156	Y.Y.	1/10/2025	Second Section	Yes	Examination of witnesses	32
2021/58283	Mustafa Seyhan	1/10/2025	Second Section	Yes	Reasoned decision	55
2022/89660	Ahmet Musab Kesmeçi	14/10/2025	First Section	Yes	Equality of arms	39
2023/68853	İsmail Duran and Others	24/12/2025	First Section	Yes	Reasoned decision	9
2021/44845	Murat Polat	17/2/2026	First Section	Yes	Reasoned decision	37
2020/12450	Ayşegül Ünlü and Others	18/2/2026	Second Section	Yes	Reasoned decision	15
2023/34020	Ali Yalçın and Others	3/3/2026	Second Section	Yes	Reasoned decision	14
2023/50524	Muharrem Kaya and Others	3/3/2026	Second Section	Yes	Reasoned decision	12

App. No.	Applicant	Date of Decision	Formation	ByLock	Art. 36 violation	Relevant §
2023/68916	Oğuzhan Demirbaş and Others	3/3/2026	Second Section	Yes	Reasoned decision	14
2024/69117	Mesut Yaşar and Others	3/3/2026	Second Section	Yes	Reasoned decision	13
2020/17391	Murat Keleş and Others	4/3/2026	First Section	Yes	Reasoned decision	11
2022/53474	Cihan Avdan and Others	4/3/2026	First Section	Yes	Reasoned decision	11
2023/108631	İsa Ozan and Others	4/3/2026	First Section	Yes	Reasoned decision	11
2023/17301	İbrahim Tunç and Others	4/3/2026	First Section	Yes	Reasoned decision	10
2023/17489	Selahattin Karagöz and Others	4/3/2026	First Section	Yes	Reasoned decision	9
2023/28810	Oğuz Erdoğan and Others	4/3/2026	First Section	Yes	Reasoned decision	9
2023/39086	Mahmut Parçalı and Others	4/3/2026	First Section	Yes	Reasoned decision	9
2023/59775	Tahsin Toparlak and Others	4/3/2026	First Section	Yes	Reasoned decision	9
2019/7900	Hasan Karakaya	8/4/2026	Second Section	Yes	Reasoned decision	31
2018/12568	Ahmet Turan and Others	9/4/2026	First Section	Yes	Reasoned decision	13
2023/108273	Fatih Kuloğlu and Others	9/4/2026	First Section	Yes	Reasoned decision	10
2022/41175	U.A.	9/4/2026	First Section	No	Access to a court	25
2023/103809	Aydın Bilgin	22/4/2026	Second Section	No	Examination of witnesses	33
2019/14262	Emre Yazkan and Others	5/5/2026	Second Section	Yes	Reasoned decision	13
2021/58421	Oktay Sayar	20/5/2026	First Section	No	Reasoned decision	36
2019/42466	Gökhan Polat	17/6/2026	First Section	Yes	Examination of witnesses	28
2023/81727	Abdulkadir Boz and Others	17/6/2026	First Section	Yes	Reasoned decision	9
2023/88358	Ozan Çalışal and Others	18/6/2026	Second Section	Yes	Reasoned decision	12
2021/40272	Adem Akgül	18/6/2026	Second Section	Yes	Reasoned decision	44
2024/31235	İsmail Kalay and Others	1/7/2026	First Section	Yes	Reasoned decision	10

App. No.	Applicant	Date of Decision	Formation	ByLock	Art. 36 violation	Relevant §
2023/42643	İ.K.	2/9/2026	First Section	Yes	Reasoned decision	35
2024/2326	Murat Taşdemir and Others	16/9/2026	First Section	Yes	Reasoned decision	11
2020/22228	Sevgi Özdemir*	18/7/2024	Second Section	Yes	Examination of witnesses	30
2021/53486	Bilge Sarıtaş Vural*	2/10/2025	First Section	No	Reasoned decision	27
2021/40443	Cengiz Çağlar Ayyıldız*	4/12/2025	First Section	Yes	Reasoned decision	31
2021/58592	Rauf Demirci*	7/1/2026	Second Section	Yes	Equality of arms	46
2019/1267	Hasan Hüseyin Koşar**	11/2/2026	First Section	Yes	Reasoned decision	18
2020/40266	Hasan Hüseyin Seyis**	21/4/2026	First Section	Yes	Reasoned decision	15, 33
2019/15873	Muhammet Okumuş**	15/9/2026	Second Section	Yes	Reasoned decision	16

* Left unexamined among the "other complaints" without the principle of legality being mentioned by name. ** The legality complaint was declared inadmissible without reasons at the Commission stage.

25. The logic of the template rests on the assumption that the violation found under the right to a fair trial, and the resulting order for a retrial, also meet the legality complaint. This assumption is mistaken in two respects. First, violations do not have the same effect on a retrial (see paras. 14–15). Second, Article 50 of Law No. 6216 requires that the violation and its consequences be redressed. Unless it is established which violation has occurred, it cannot be determined how the consequences of that violation are to be redressed.
26. Nor is this assumption supported by the content of the decisions in which the template was used. In most of these decisions, the Constitutional Court expressly limited the scope of the violation, emphasised that the decision "does not mean that an acquittal or a conviction must be handed down", and rejected the claim for compensation (see Part VIII, heading C). A violation decision that offers the retrial court no guidance on how intent is to be established, and does not even expect the outcome to change, cannot render "unnecessary" a complaint concerning the legality of the conviction.

B. Omission of the Legality Complaint from the Operative Provisions

27. In four decisions, the legality complaint was left unexamined without being named, among the "other alleged violations" or the "other guarantees of the right to a fair trial".⁸ In three of these decisions, the Commission had referred the case to the Section with express mention of the legality complaint.⁹ In Cengiz Çağlar Ayyıldız, the applicant had also raised the legality complaint at the appeal stage (§ 15), and the Ministry submitted observations on it (§ 19).

8 Sevgi Özdemir, 2020/22228, § 30; Bilge Sarıtaş Vural, 2021/53486, § 27; Cengiz Çağlar Ayyıldız, 2021/40443, § 31; Rauf Demirci, 2021/58592, § 46.

9 Sevgi Özdemir, § 15; Bilge Sarıtaş Vural, § 15; Rauf Demirci, § 26.

Nevertheless, a complaint that the Commission had referred to the Section for examination and on which the Ministry had submitted observations was not mentioned at all in the operative part of the decision.

28. The Bilge Sarıtaş Vural decision is the clearest example of this pattern. The Section examined the application solely "from the standpoint of the right to a reasoned decision" (§ 18), yet gave as the ground for the violation that the trial court had failed to demonstrate that the acts of organising religious conversation meetings and collecting money "bore an organisational character" (§§ 23–25). Whether an act bears an organisational character is the question whether the material element of the offence is present, and in substance it is a legality review. The prosecution had sought an acquittal (§ 12), and the Chief Public Prosecutor's Office at the Court of Cassation had likewise stated that the acts did not constitute the offence of membership (§ 13). Justice Selahaddin Menteş, in his concurring opinion, stated that the application ought to have been examined under Article 38 of the Constitution and that the conviction had been possible only by subjecting the offence to "an unforeseeably expansive interpretation", concluding that the principle of legality had been violated (Concurring Opinion, §§ 2, 7, 23–25). In this case, the Constitutional Court in fact answered the legality question, but gave its answer under the right to a reasoned decision rather than under the principle of legality.

C. Leaving the Legality Review to the Trial Court

29. In some decisions, the Constitutional Court justified its failure to examine the legality complaint by referring it to the trial court, stating that these complaints were not examined "since it is understood that the applicant's other complaints may be assessed by the relevant court in the retrial to be held".¹⁰
30. This reasoning amounts to entrusting the court that made the very interpretation complained of with reviewing the constitutionality of its own interpretation. The problem identified by the ECtHR in *Yalçınkaya* is precisely this interpretation by the trial courts, and having the same courts make the same interpretation again eliminates any review of the legality safeguard. The *raison d'être* of the individual application is the review, by an independent body, of trial court practices that give rise to violations of rights; sending the review back to the court under review is incompatible with that purpose.

D. Unreasoned Dismissal at the Commission Stage

31. In three decisions, the legality complaint was declared inadmissible at the Commission stage without any reasons being given, and in the same cases the Section subsequently found a violation of the right to a reasoned decision.¹¹ In cases where the Section found that the trial court's decisions lacked adequate reasoning, the fact that the complaint concerning the legality of the conviction was set aside by an unreasoned Commission decision shows that the legality review never entered the case at all.
32. The situation in these three cases is also internally inconsistent. The Section found the trial court's reasoning for the conviction to be so inadequate as to violate Article 36 of the Constitution. It is not possible to accept that a conviction with reasoning so inadequate established the elements of the offence on an individualised basis. It is all the more striking that a court safeguarding the

¹⁰ Rauf Demirci, § 46; Hasan Hüseyin Seyis, 2020/40266, § 33; Oktay Sayar, § 36.

¹¹ Hasan Hüseyin Koşar, 2019/1267, § 18; Muhammet Okumuş, 2019/15873, § 16; Hasan Hüseyin Seyis, 2020/40266, § 15.

right to a reasoned decision should dismiss the legality complaint directed against the same conviction by means of an unreasoned decision.

E. Non-Examination Itself Becoming a Precedent

33. In *Ayşegül Ünlü and Others*, the Constitutional Court based its failure to examine the legality complaint directly on the reason given for non-examination in *Ali Bayram İskender*: in *Ali Bayram İskender* "it was concluded that there was no need for a separate examination" of the legality complaints "... In the present application, too," the same conclusion was reached (§ 15). Thus, an examination left unreasoned in one decision was used as the reasoning in subsequent decisions.
34. A precedent shows subsequent decisions how a legal problem has been resolved. The *Ali Bayram İskender* decision, however, did not resolve the legality problem; it merely postponed it. Through the use of this decision as a precedent in later cases, leaving an unresolved problem unresolved has become settled case-law.

F. Failure to Examine Despite Detailed Reference to the *Yalçınkaya* Judgment

35. That the non-examination was not an unwitting choice is apparent from the decisions in which the Constitutional Court summarised *Yalçınkaya* in detail. In *Ali Bayram İskender*, the Plenary set out *Yalçınkaya*'s findings under Articles 7 and 6 with paragraph references (§§ 34–37), and itself wrote that the ECtHR had found that the national courts had imposed objective liability on ByLock users without separately establishing intent, transforming the offence of membership of an organisation into "an offence of strict liability" (§ 53). In *Ramazan Çakır*, too, *Yalçınkaya*'s Article 7 findings were summarised in detail (§§ 36–39, 52). In neither decision, however, was the legality complaint examined.¹² In *Alican Erkap*, although the applicant expressly requested that the *Yalçınkaya* principles be taken into account (2021/27339, § 13), the Constitutional Court did not respond to that request either.
36. In these decisions, the Constitutional Court refrained from examining the problem identified by the ECtHR despite being aware of it. This gap between summarising *Yalçınkaya* and applying it will also be seen in the following parts as a manifestation of the Constitutional Court's stance towards *Yalçınkaya*.

G. The Place of This Pattern in the Case-Law of the ECtHR

37. In *Yalçınkaya*, and in *Demirhan* and the follow-up judgments, the ECtHR examined Articles 7 and 6 separately and stated that the Article 7 finding concerned not the probative value of the ByLock evidence but the manner in which the elements of the offence had in fact been interpreted (*Yalçınkaya*, § 268). Consequently, when the Constitutional Court sends a case back for retrial without examining the legality complaint, it gives the trial court no guidance whatsoever on how intent is to be individualised.
38. The practical consequence of this pattern was seen in *Yalçınkaya*'s own case. At the retrial held on 12 September 2024, the Kayseri 2nd Assize Court imposed the same sentence on the applicant, and the applicant's appeal was dismissed. Even a conviction in respect of which the ECtHR had found a violation of Article 7 could thus be handed down again unchanged once the procedural shortcomings had been remedied. If this outcome is possible in a case where the ECtHR found a

12 Ali Bayram İskender, § 61; Ramazan Çakır, § 59.

legality violation, there is no reason to expect a different outcome in the cases the Constitutional Court sent back for retrial without examining the legality complaint at all.

H. The Constitutional Court's Choice in Light of Greene's Critique of "Allegation-Picking"

39. In his post published on the Strasbourg Observers website on 25 February 2025, "Allegation-Picking and the European Court of Human Rights: A Pervasive Court Practice Hiding in Plain Sight?",¹³ Alan Greene used the term "allegation-picking" to describe a court's practice of selecting one of the alleged violations in an application for examination while leaving the others aside on the ground that "no separate examination is necessary". As the title suggests, Greene argued that this practice is widespread in the judgments of the ECtHR but, precisely because of its prevalence, goes unnoticed as a problem.
40. At the heart of Greene's critique lies a lack of reasoning. According to the author, the formula "there is no need to examine" rests on circular reasoning that does not explain why the choice was made: the complaint was not examined because it was not considered necessary to examine it. Greene addressed one by one the possible justifications that might explain this practice, namely the court's tendency to decide only as much as is needed to resolve the dispute, workload, an implicit hierarchy of rights, the need to secure consensus within the bench, and the relationship between *lex specialis* and *lex generalis*, and observed that, apart from the relationship between special and general norms, these justifications generally do not appear in the texts of the judgments at all.
41. Greene also drew attention to Judge Serghides' partly dissenting opinions in *Adamčo v. Slovakia* (No. 2)¹⁴ and *Grande Oriente d'Italia v. Italy*.¹⁵ In *Adamčo* (No. 2), Judge Serghides stated that examining the complaints raised by the applicant was a duty of the ECtHR, that the failure to examine them was incompatible with the ECtHR's role as the guardian of human rights in Europe, and that the fact that this had become an established practice did not alter that conclusion (Partly Dissenting Opinion, §§ 4, 5, 7). Noting that in the same case the majority examined one Article 3 complaint while declaring another manifestly ill-founded, Greene emphasised that allegation-picking may be incompatible with the absolute prohibition of torture.
42. The Constitutional Court's practice is a more serious instance of what this critique describes, and none of the justifications listed by Greene explains the Court's choice. There is no *lex specialis*–*lex generalis* relationship, since Article 38 of the Constitution is not a particular aspect of Article 36 but a distinct safeguard protecting the substantive lawfulness of the conviction. The workload argument does not hold, since *Ali Bayram İskender* and *Ramazan Çakır* are Plenary decisions that summarise *Yalçınkaya* over several pages. Nor does the concern for consensus provide an explanation, since in these decisions one member dissented from the finding of a violation of the right to a reasoned decision, whereas the decision not to examine the legality complaint was taken unanimously. If there is an implicit hierarchy of rights, it has operated in reverse: the

13 Alan Greene, "Allegation-Picking and the European Court of Human Rights: A Pervasive Court Practice Hiding in Plain Sight?", Strasbourg Observers, 25 February 2025; <https://strasbourgobservers.com/2025/02/25/allegation-picking-and-the-european-court-of-human-rights-a-pervasive-court-practice-hiding-in-plain-sight/>

14 ECtHR, *Adamčo v. Slovakia* (No. 2), partly dissenting opinion of Judge Serghides; <https://hudoc.echr.coe.int/fre?i=001-238382>

15 ECtHR, *Grande Oriente d'Italia v. Italy*, partly dissenting opinion of Judge Serghides; <https://hudoc.echr.coe.int/eng?i=001-238566>

Constitutional Court chose the lighter, procedural complaint and left the weightier, substantive complaint unexamined.

43. The concern Greene voiced in relation to the prohibition of torture is even stronger in respect of the principle of legality. Article 15 § 2 of the Convention lists Article 7, and Article 15 § 2 of the Constitution lists the non-retroactivity of offences and penalties, among the guarantees that may not be suspended even in times of emergency. Holding, in an individual application decision delivered in ordinary times, that "there is no need to examine" a guarantee that cannot even be suspended has meant that the boundaries of that guarantee have never been drawn. Despite the large number of cases brought before the Constitutional Court, the question of which conduct does and which does not constitute the offence of membership has remained unanswered as regards ByLock.
44. The Constitutional Court's practice has also taken forms that go further than those described by Greene: the omission of the complaint from the operative provisions,¹⁶ the referral of the complaint to the trial court,¹⁷ the unreasoned dismissal of the complaint by the Commission,¹⁸ and the citation of non-examination itself as precedent.¹⁹ In the ECtHR practice criticised by Greene, the unexamined complaint is generally mentioned in the operative provisions by reference to the relevant Article, and the fact that it has not been examined is expressly recorded. In some decisions of the Constitutional Court, by contrast, the complaint does not enjoy even this minimal visibility.
45. Justice Selahaddin Menteş's concurring opinion in Bilge Sarıtaş Vural, as the Constitutional Court counterpart of Judge Serghides' critique within the ECtHR, showed that a legality review could be carried out and that refraining from it was a choice rather than a necessity. If, in the same case and on the same facts, one member was able to conclude that there had been a violation of the principle of legality, the majority's failure to ask that question stems not from the impossibility of a legality review but from a choice not to conduct one.

IV. PATTERNS OF REASONING USED TO REJECT LEGALITY COMPLAINTS

46. The Constitutional Court rejected the legality complaint in 30 decisions (Table 4). The facts underlying these decisions are of the same nature as those that led to violations in Yalçinkaya and Yasak: ByLock records, sequential or payphone call records, activities that were lawful at the material time, and labels such as "imam", "abi" (elder brother) and "mesul" (person in charge) attributed by witnesses. The grounds for rejection are discussed below under nine headings. In most decisions these patterns were used in combination, and the reasoning for rejection in a given decision generally consisted of several patterns set out one after another.

16 Bilge Sarıtaş Vural.

17 Rauf Demirci; Hasan Hüseyin Seyis; Oktay Sayar.

18 Hasan Hüseyin Koşar; Muhammet Okumuş; Hasan Hüseyin Seyis.

19 Ayşegül Ünlü and Others.

Table 4. The 30 Decisions Rejecting the Legality Complaint

App. No.	Applicant	Date of Decision	Formation	Constitutional Court outcome
2019/30560	Ercan Yavuz	30/4/2024	First Section	Out of time
2021/43694	Yahya Turgut	9/10/2024	Plenary	No violation
2021/50390	Ramazan Fener	31/10/2024	First Section	Manifestly ill-founded
2021/55423	Burhan Bayram Şahin	31/10/2024	First Section	Manifestly ill-founded
2021/64199	Bünyamin Çevik	10/12/2024	First Section	Application rejected
2020/15945	Birol Ateş	4/2/2025	Second Section	Manifestly ill-founded
2020/16648	İbrahim Sağlam	4/2/2025	Second Section	Manifestly ill-founded
2020/29346	Tarık Çakır	27/2/2025	Second Section	Manifestly ill-founded
2021/38674	Hidayet Mete	27/2/2025	Second Section	No violation
2022/6991	Yasin Sönmez	15/4/2025	Second Section	Out of time
2021/34373	Kemal Büyükelyas	3/7/2025	First Section	Manifestly ill-founded
2022/2112	Arif Bekler	17/7/2025	Second Section	Manifestly ill-founded
2020/36986	Şerif Özmütlu	25/9/2025	Plenary	No violation
2022/15459	Yasin Palut	10/12/2025	Second Section	Manifestly ill-founded
2021/48319	Ahmet Karadavut (2)	14/1/2026	First Section	No violation
2021/52413	Mehmet Kılınç	29/1/2026	Second Section	No violation
2022/106461	Davut Atalay	29/1/2026	Second Section	No violation
2020/34408	Erkan Dinler	21/4/2026	First Section	No violation
2021/51434	M.T.	5/5/2026	Second Section	Out of time
2022/103409	Gökhan Kolukısa	5/5/2026	Second Section	Manifestly ill-founded
2020/22709	Ahmet Kahrıman and Ali Odabaşı	6/5/2026	First Section	No violation
2021/32085	Ayşe Büşra Gençali	20/5/2026	First Section	Manifestly ill-founded
2022/109556	Hannan Yılbaş (2)	20/5/2026	First Section	Manifestly ill-founded
2022/103543	Hakan Can	17/6/2026	First Section	Manifestly ill-founded
2023/25666	Derya Baş	17/6/2026	First Section	No violation
2020/27118	Mehmet Nas	18/6/2026	Second Section	Out of time
2023/28510	Selma Topal	22/7/2026	First Section	Manifestly ill-founded

App. No.	Applicant	Date of Decision	Formation	Constitutional Court outcome
2021/23584	Hakan Oruç	3/9/2026	Second Section	Out of time
2021/20275	Mustafa Kahraman	20/3/2024	First Section	Out of time / other complaints inadmissible
2020/22152	Selami Tunç	12/6/2024	Second Section	Non-exhaustion of remedies

A. One-Sentence Rejection by Reference to Pre-Yalçinkaya Case-Law

47. In one group of decisions, the legality complaint was rejected in a single sentence, without any connection being drawn to the facts of the case, merely by reference to a Constitutional Court decision delivered before Yalçinkaya.²⁰ The Adnan Şen decision was also relied upon in other rejection decisions.²¹
48. The Adnan Şen decision held that deriving all the elements of membership of an organisation from the use of ByLock did not breach the principle of legality. The Plenary of the Constitutional Court itself recorded that, in Yalçinkaya, the ECtHR had found this approach, adopted after the Ferhat Kara and Adnan Şen decisions, to be in breach of Article 7.²² Continuing to reject legality complaints by reference to case-law that the ECtHR has found incompatible with the Convention amounts, in effect, to a refusal to recognise the binding force of the Yalçinkaya judgment.
49. Once the Plenary had recorded that the ECtHR found the Adnan Şen line of case-law incompatible with the Convention, the Sections could have made that same decision the sole basis for rejection only by at least explaining why that case-law remained valid in the face of Yalçinkaya; yet no such explanation was given in any of the rejection decisions.

B. Reducing the Review to a "Not Groundless and Arbitrary" Threshold

50. In almost all of the rejection decisions examined on the merits, the Constitutional Court's review ended with the finding that the trial court's conclusion was "not groundless and arbitrary in the circumstances of the case".²³
51. This standard is markedly narrower than the ECtHR's approach. The ECtHR stated that its power of review under Article 7 is "necessarily wider" and that an unreasonable interpretation of the law may itself give rise to a violation (Yalçinkaya, §§ 255–256). The Constitutional Court, by contrast, reduced this question to an arbitrariness threshold and, rather than revisiting the trial court's finding of intent, confined itself to stating that the finding was not arbitrary.

20 Arif Bekler, 2022/2112, § 32 and Yasin Palut, 2022/15459, § 40, citing Adnan Şen [Plenary]; Selma Topal, 2023/28510, § 34, citing Mehmet Emin Karamahmet and Others; Selami Tunç, 2020/22152, § 30, citing Ayşe Zıraman and Cennet Yeşilyurt, on the ground of non-exhaustion of remedies.

21 Birol Ateş, 2020/15945, § 28; İbrahim Sağlam, 2020/16648, § 31; Ramazan Fener, 2021/50390, §§ 14, 16; Burhan Bayram Şahin, 2021/55423, §§ 13, 15; Tarkan Çakır, 2020/29346, §§ 15, 17; Hakan Can, 2022/103543, § 20; Hannan Yılbaş (2), 2022/109556, § 31.

22 Ali Bayram İskender, §§ 52–53; Şerif Özmutlu, §§ 79–80; Derya Baş, 2023/25666, § 34.

23 Şerif Özmutlu, §§ 84–85; Hidayet Mete, 2021/38674, § 46; Yahya Turgut [Plenary], 2021/43694, § 58; Ahmet Karadavut (2), 2021/48319, § 24; Mehmet Kılınc, 2021/52413, § 56; Davut Atalay, 2022/106461, § 38; Erkan Dinler, 2020/34408, § 32; Ahmet Kahrıman and Ali Odabaşı, 2020/22709, § 88; Kemal Büyükelias, 2021/34373, § 34; Burhan Bayram Şahin, § 26; Ayşe Büşra Gençali, 2021/32085, § 15; Gökhan Kolukisa, 2022/103409, § 13; Hakan Can, § 27; Hannan Yılbaş (2), § 94; Derya Baş, §§ 38, 40.

52. The arbitrariness standard is the traditional standard used by the Constitutional Court for fair trial complaints concerning the assessment of evidence. Transposing it to the legality review has resulted in two different forms of review being conflated. An interpretation may be unforeseeable without being arbitrary: the trial court may have acted according to a certain logic, yet that logic may have extended the elements of the offence in a way the person could not have anticipated. In Yalçinkaya, the trial courts had applied the settled case-law of the Court of Cassation, and the reason the ECtHR found a violation was not that the decisions were arbitrary but that this settled case-law derived all the elements of the offence from ByLock (§§ 262–272). A review that stops at the arbitrariness threshold cannot detect a violation of this kind.

C. The "Being in a Position to Know" Standard

53. A sentence repeated in the concluding paragraphs of the rejection decisions shows the standard by which the Constitutional Court reviews the element of knowledge. As it appears in the Hakan Can decision, the sentence reads:

"Accordingly, it cannot be said that the conclusion that, by reason of the applicant's above-mentioned acts, this structure had the aim of committing offences and that the applicant was in a position to know the elements of the offence of membership of an organisation with which he was charged, was groundless." (Hakan Can, § 28)

54. The same sentence was used almost verbatim in 13 decisions in which the legality complaint was rejected either on the merits or as manifestly ill-founded.²⁴
55. In the statement of principles in the same decisions, however, the Constitutional Court formulated the criterion of its own case-law differently. According to the Court, a person is deemed to have been able to foresee that he or she could incur criminal liability "where it is established that he or she knew the terrorist nature and aims of the organisation, wished to be part of the organisation and contributed, with a continuous will, to the survival of the organisation and the attainment of its aims".²⁵ What the statement of principles requires is that the person knew; what the conclusion deems sufficient is that the person was in a position to know.
56. The difference between these two formulations is of great importance in criminal law. Knowledge is an element of intent and concerns the knowledge the person actually possessed. Being in a position to know, by contrast, concerns what the person could have learned had he or she acted with care, and is a standard closer to negligence than to intent. The offence of membership under Article 314 § 2 of the Criminal Code, however, can only be committed intentionally. In Yalçinkaya, too, the ECtHR required separate proof that the person actually knew of the alleged terrorist nature of the structure (§§ 248, 263–264, 266). The concluding sentence in the Constitutional Court's rejection decisions substituted the possibility of knowledge for actual knowledge, and did so in contradiction with the Court's own statement of principles.

D. Selective Use of the Sentence "Proof of Guilt Falls outside the Constitutional Court's Remit"

57. In a significant number of rejection decisions, the Constitutional Court began its examination by recalling that whether the offence has been proven, or whether the evidence is sufficient, falls

24. Yahya Turgut, § 58; Ramazan Fener, § 26; Burhan Bayram Şahin, § 26; Tarık Çakır, § 27; Hidayet Mete, § 46; Kemal Büyükelias, § 34; Şerif Özmutlu, § 86; Ahmet Karadavut (2), § 24; Mehmet Kılınç, § 56; Erkan Dinler, § 33; Hannan Yılbaş (2), § 94; Hakan Can, § 28; Derya Baş, § 42.

25. Hakan Can, § 18; Erkan Dinler, § 27; Ahmet Karadavut (2), § 20; Davut Atalay, § 34; Hannan Yılbaş (2), § 89; Ahmet Kahrıman and Ali Odabaşı, § 81, citing Bilal Celalettin Şaşmaz, § 40.

outside its remit.²⁶ Yet the Article 7 problem in Yalçınkaya is precisely the question of how the court moved from the evidence to the elements of the offence. A legality review that does not examine whether intent was automatically inferred from an item of evidence has, from the outset, placed beyond review the very problem on which the ECtHR found a violation.

58. The function of this sentence in the Constitutional Court's case-law becomes clearer when compared with the decisions finding a legality violation. The same sentence, in the same form, also appears in decisions in which a legality violation was found (Abdulkadir Çelik, 2019/14427, § 26; B.G., 2020/29717, § 39; Ayten Karadağ, 2021/57189, § 33; Tülay Uç, 2023/11036, § 35). In those decisions, however, the sentence marked the beginning rather than the end of the examination. Immediately after setting it out, the Constitutional Court assessed in detail how the trial court had moved from the evidence to the elements of the offence, and found that the acts had not been examined in terms of place, time, context and the person's role (Ayten Karadağ, § 44); that acting as a "house mother" did not, without ByLock or Bank Asya evidence, demonstrate an organic link (Tülay Uç, § 42); and that, in a case where the applicant was held to be subject to intra-organisational assignment on the basis of working at a school, there were no additional facts comparable to those in Yahya Turgut (Abdulkadir Çelik, §§ 31–33).
59. Thus, while the same sentence was not regarded in violation decisions as an obstacle to reviewing the link between the evidence and the elements of the offence, in rejection decisions it was used as the reason for not conducting that review. The limits of a court's power of review cannot vary according to the outcome, and the Constitutional Court could have conducted in its rejection decisions the same examination it conducted in its violation decisions. Its failure to do so stems not from the limits of its power but from its non-exercise.

E. Substituting Activity after the Cut-Off Date for the Element of Knowledge

60. A paragraph common to the rejection decisions, citing the Yahya Turgut decision, reads as follows: the Constitutional Court has held that the principle of legality is not breached where organisational activity within the hierarchy has been established "even after the events through which the ultimate aim of the organisation became known to all". This paragraph was repeated almost verbatim in the rejection decisions,²⁷ and even appears as a general principle in some violation decisions.²⁸
61. Under this pattern, the continuation of activity after a certain date was treated as proof that the person knew of the structure's alleged terrorist and violent aims. In Mehmet Kılınç, for example, attending doctors' religious conversation groups until 2016 and making donations (himmət) at those meetings (§§ 53–54), and in Erkan Dinler, being in a religious conversation group between 2014 and 2016 and receiving calls from landlines (§§ 30–32), were deemed sufficient to prove the element of knowledge. The Yasak judgment, by contrast, required that the person's knowledge of the violent aims be demonstrated individually and in context, "with particular rigour" (§§ 202–206), and that particular care be taken with acts having no direct connection to violence (§ 207).

26 Şerif Özmutlu, § 75; Hidayet Mete, § 40; Yahya Turgut, § 54; Ramazan Fener, § 24; Mehmet Kılınç, § 49; Burhan Bayram Şahin, § 23; Tarık Çakır, § 25; Hakan Can, § 25; Hannan Yılbaş (2), § 85; Derya Baş, § 30.

27 Erkan Dinler, §§ 29, 32; Ahmet Karadavut (2), § 22; Davut Atalay, § 36; Ahmet Kahrıman and Ali Odabaşı, § 83; Mehmet Kılınç, § 56; Hidayet Mete, § 46; Burhan Bayram Şahin, § 26; Şerif Özmutlu, §§ 85, 98; Ayşe Büşra Gençali, §§ 15–16; Gökhan Kolukısa, § 13; Hakan Can, §§ 24, 28; Hannan Yılbaş (2), §§ 91, 93–94; Derya Baş, §§ 38, 40.

28 Gülcan Çelik, 2022/29963, § 30; Güneri Polat, 2022/53335, § 23; Hasan Hüseyin Özcan, 2022/103754, § 28.

62. The passing of a date does not show what a person knew on that date. The cut-off date approach rests on the assumption that, because certain events took place in public view, everyone drew the same conclusion from them. This assumption, however, replaces the individual establishment of intent with a general presumption. A person's continued participation in a religious conversation group or continued use of an account may show, at most, that he or she did not accept or did not attach importance to that allegation, not that he or she knew of the structure's alleged violent aim. Inferring the element of knowledge from this presumption is the equivalent, operating through the cut-off date, of the automatic inference from ByLock made in Yalçinkaya.

F. Aggregating Evidence under the Label of an Overall Assessment

63. In its rejection decisions, the Constitutional Court treated as sufficient the trial court's conclusion reached "by assessing all the evidence in the case file as a whole".²⁹ Under this pattern, once acts that the Constitutional Court itself accepts to be insufficient on their own (a Bank Asya account, trade union membership, attending religious conversation meetings, protest) were placed alongside a witness statement or a communication record, the legality review came to an end.
64. The Yasak judgment expressly rejected this approach: even where the conviction rests on several items of evidence, the question to be answered is whether the elements of the offence were established on an individualised basis (§§ 200–201), and merely listing the evidence and concluding that intent was present does not satisfy the obligation of individual assessment (§§ 211–213). In Yalçinkaya, too, the ECtHR did not accept the Government's argument that "there is other evidence as well" (§§ 342–343). The Constitutional Court itself applied the same criterion in its violation decisions. In Ayten Karadağ, for example, the finding that the acts "were not assessed by reference to any of the criteria such as place, time, context or the person's role in those acts, and that the conclusion was reached merely by listing the facts in question" formed the ground for the violation (2021/57189, § 44). The same criterion, however, was not required in the rejection decisions.
65. An overall assessment is a legitimate method where the items of evidence corroborate one another and each carries meaning in its own right. However, treating intent as proven as the number of acts that are not in themselves evidence of an offence increases is not an overall assessment but a numerical aggregation of evidence. In its rejection decisions, the Constitutional Court did not show which item of evidence proved which element of the offence, and substituted the mere coexistence of the items of evidence for a demonstration of the link between them.

G. Substituting Position and Title for Intent

66. In the rejection decisions, the position identified by the trial court was treated as sufficient, rendering it unnecessary to demonstrate the elements of knowledge and intent separately. Examples include: "grand regional imam",³⁰ "5/5" status,³¹ "regional student supervisor",³² "regional high-school supervisor",³³ acting as "house abi" in a student house,³⁴ "abi of the

29 Yahya Turgut, § 58; Hidayet Mete, § 46; Ahmet Karadavut (2), § 24; Mehmet Kılınc, § 56; Davut Atalay, § 38; Ahmet Kahrıman and Ali Odabaşı, § 88; Kemal Büyükelyas, § 34; Burhan Bayram Şahin, § 26; Hakan Can, § 27; Hannan Yılbaş (2), § 94; Şerif Özmutlu, § 84.

30 Şerif Özmutlu, §§ 76, 85.

31 Davut Atalay, § 37.

32 Hakan Can, § 27.

33 Burhan Bayram Şahin, §§ 25–26.

34 Tark Çakır, § 26.

confidential services",³⁵ the position of trustee and school administrator,³⁶ and "a confidential person infiltrated" into the high judiciary.³⁷ In Şerif Özmütlu, the Plenary endorsed the Court of Cassation's case-law under which, for persons in senior positions, the position itself is regarded as sufficient for continuity, diversity and intensity "irrespective of whether or not they used the ByLock programme" (§ 82).

67. Yalçinkaya required that intent be separately demonstrated within a tiered structure and recalled that persons in the lower tiers might not have known the ultimate aim (§§ 263, 266). The Yasak judgment, for its part, required an inquiry into the person's place in the seven-tier hierarchy and into his or her link with the structure's strategic and military branches, together with an explanation of how the position demonstrated intent, and held that the courts' reliance in that case on the applicant's role in the field of education, without establishing any link with the strategic branches, breached Article 7 (§§ 208–210). Most of the labels treated as proof of intent in the rejection decisions relate to student houses, education and social assistance. In the decisions delivered after Yasak, too, these criteria were not mentioned at all.³⁸
68. Where the position consists of no more than a label attributed to the person by a witness, the finding of intent is in effect left to the witness's choice of words. Labels such as "house abi" or "student supervisor" describe roles within the structure's educational and student accommodation activities. Unless the questions of how these roles were connected to the structure's alleged violent aim, and of where and when the person who assumed the role learned of that aim, are answered, the label shows only that the person was within the structure. It is precisely the answering of these questions that Yasak requires.

H. The "ByLock plus Other Evidence of Significant Weight" Threshold

69. In Şerif Özmütlu and the decisions that followed it, the legality complaint was rejected where the conviction rested, in addition to ByLock, on other evidence "of significant weight".³⁹ In Kolukısa and Gençali, the Constitutional Court itself stated that the ByLock finding was based not on a Detection and Assessment Report but only on a query result report and CGNAT records, and that this was insufficient under the case-law of the Court of Cassation.⁴⁰ Nevertheless, both decisions declared the legality complaint manifestly ill-founded by reference to Şerif Özmütlu. The witness statements regarded as being "of significant weight" in Kolukısa included statements in which the witness said "I have no first-hand knowledge" and stated that the money had been collected "not as himmet, but to meet the needs of the house" (§ 5).
70. This threshold is a criterion expressly rejected by the Yasak judgment (§§ 200–201). The Kolukısa decision was delivered on the same day as Yasak. The Şerif Özmütlu decision is, moreover, internally inconsistent: the Plenary first stated that the trial courts had "made no distinction" between ByLock and the evidence showing a position within the hierarchy (§ 77), then that the conclusion was not arbitrary "even if" the ByLock finding was "disregarded" (§ 85), and finally that this evidence had been assessed as "independent of each other and of significant

35 Ramazan Fener, § 26.

36 Kemal Büyükelias, §§ 31–34.

37 Hannan Yılbaşı (2), § 93.

38 Gökhan Kolukısa, 5/5/2026; Hannan Yılbaşı (2), 20/5/2026; Ayşe Büşra Gençali, 20/5/2026; Hakan Can, 17/6/2026; Derya Baş, 17/6/2026.

39 Şerif Özmütlu, §§ 85, 98; Gökhan Kolukısa, §§ 13–14; Ayşe Büşra Gençali, §§ 15, 21; Derya Baş, § 38.

40 Gökhan Kolukısa, §§ 11–12; Ayşe Büşra Gençali, §§ 13–14.

weight" (§ 98). Evidence between which the trial courts had drawn no distinction was thus treated by the Constitutional Court as carrying independent weight.

71. In *Demirhan*, the ECtHR stated that it was for the national courts to assess, in the light of the *Yalçınkaya* principles, whether the other evidence would be sufficient without the decisive weight attributed to *ByLock* (§ 38 et seq.). The Constitutional Court did not leave this assessment to the trial court; it made the same assumption itself, and did so solely by reference to the arbitrariness standard. The Constitutional Court thus itself carried out, at the individual application stage, a separation of the evidence that the trial court had not made, yet expressed the result of that separation once again as a finding that the trial court's conclusion was not arbitrary. This method is also irreconcilable with the "proof of guilt falls outside our remit" pattern: although the Constitutional Court regards the assessment of evidence as falling outside its remit, here it attributed "significant weight" to evidence other than *ByLock*.

I. Treating the Exercise of Constitutional Rights as Evidence

72. In four decisions finding a legality violation, the Constitutional Court separately addressed the use of protest, trade union and association activities as evidence for the conviction. In these decisions the Court stated that "the use of activities of persons that fall within the scope of constitutional rights and freedoms as evidence in convictions may have a chilling effect on various rights and freedoms falling within the scope of the individual application. This matter falls within the remit of the Constitutional Court".⁴¹ In *Ayten Karadağ and Tülay Uç*, the use as evidence of participation in protests against the detention of *Zaman* newspaper columnists was assessed by reference to *Ramazan Düğer and Others*,⁴² in which it was held that the penalties imposed on those protesting against the detention of the newspaper's executives violated the right to hold meetings and demonstration marches.
73. In the rejection decisions, by contrast, activities of the same kind were accepted among the grounds for the conviction without this sentence being mentioned at all. In *Hakan Can*, the indictment stated that the applicant had taken part in press statements made in front of the courthouse against the measures taken in respect of *Samanyolu TV* and *Zaman* newspaper (§ 4); the Constitutional Court rejected the legality complaint, noting that participation in these protests and membership of an association "appear to have been taken into account with limited effect" in the conviction (§ 27). In *Yahya Turgut*, too, trade union membership, participation in meetings and demonstration marches, and organising a protest in front of the courthouse were listed among the evidence relied upon in rejecting the legality complaint (§ 57).
74. Participating in a protest was thus regarded in one case as an exercise of a constitutional right falling "within the remit" of the Court, and in another case was accepted, albeit "with limited effect", as evidence of the offence of membership. *Yalçınkaya* required an explanation of how such activities, lawful at the material time, came to be treated as evidence of an offence (§§ 342–343), and separately held that reliance on trade union and association membership violated Article 11 (§§ 390–396). The fact that the exercise of a constitutional right contributed to a conviction only "with limited effect" does not alter the fact that the exercise of that right produced a criminal consequence.

41 Ramazan Topuz, 2018/37949, § 44; Abdulkadir Çelik, § 36; Ayten Karadağ, § 39; Tülay Uç, § 37.

42 App. No. 2018/31211, 2/10/2024, § 90.

V. ASSESSMENT OF THE 13 VIOLATION FINDINGS UNDER THE PRINCIPLE OF LEGALITY

75. The 13 violations found by the Constitutional Court under the principle of legality after Yalçinkaya (Table 5) might at first sight appear to be evidence that the Court has moved closer to the case-law of the ECtHR. A detailed examination of the texts, however, reveals that these decisions do not apply Yalçinkaya and Yasak; on the contrary, they were delivered within a narrow area that leaves out the core issue on which the ECtHR found a violation. These decisions neither relied on the judgments of the ECtHR, nor were applied to ByLock cases, nor resulted in the quashing of the conviction.

Table 5. ByLock Status and Source of Reasoning in the 13 Violation Findings under the Principle of Legality

App. No.	Applicant	Date of Decision	ByLock regarding the applicant	§ relying on Court of Cassation practice
2018/37695	Hasan Sarıcı [Plenary]	9/10/2024	None (reference to another defendant's ByLock message, § 40)	34, 38, 43–44
2020/993	Nevzat Bakırhan	31/10/2024	None	38
2018/37949	Ramazan Topuz	19/11/2024	None	27, 34
2019/5316	Şenol Tataroğlu	27/11/2024	None	30, 33–34, 40
2020/22587	Burhan Bozbaş	27/11/2024	None	56, 59
2020/33058	Önder Arslan	4/2/2025	CGNAT only; deemed insufficient by the Constitutional Court (§§ 27–28)	24, 28
2020/29717	B.G.	27/2/2025	None (staying at the same hotel as ByLock users, § 16)	33, 41
2019/14427	Abdulkadir Çelik	30/4/2025	None (contact with ByLock users, § 3)	23, 29
2022/103754	Hasan Hüseyin Özan	27/5/2025	None	—
2021/57189	Ayten Karadağ	16/7/2025	None	30, 35, 37, 41, 43
2022/53335	Güneri Polat	2/10/2025	Report stating no record found (§ 7)	26, 29
2022/29963	Gülcan Çelik	6/1/2026	Report stating no record found (§§ 4, 12)	32–33, 35
2023/11036	Tülay Uç	7/1/2026	Report stating no record found (§ 11)	32, 39–40, 42

A. The Reasoning Derives Not from the ECtHR but from the Prior Case-Law of the Court of Cassation and the Constitutional Court

76. The same template appears in all 13 decisions. The reasoning relies on the Constitutional Court's pre-Yalçınkaya decisions in Bilal Celalettin Şaşmaz,⁴³ Metin Birdal [Plenary] and Ahmet Aslan, and on the Hasan Sarıcı [Plenary] decision, delivered in the same vein after Yalçınkaya. The concluding sentence is almost identical in all the decisions: the conviction "was made possible by subjecting [the offence] to an unforeseeably expansive interpretation to the detriment of the applicant".⁴⁴
77. None of these 13 decisions refers to any judgment of the ECtHR, and the term "ECtHR" does not even appear in their texts. By contrast, in 12 of the 13 decisions the Constitutional Court's assessment was based directly on the practice of the Court of Cassation.⁴⁵ In Güneri Polat, for example, the grounds for the violation were that "it is not possible to hand down a conviction on the basis of acts consisting of attending religious conversation meetings ... which did not continue after the dates identified as critical in the decisions of the Court of Cassation" (§ 26), and that "according to the practice of the Court of Cassation", in the absence of conclusive evidence that money was deposited in Bank Asya on instruction, any doubt must be resolved in favour of the accused (§ 29).
78. This picture shows that the violations found by the Constitutional Court under the principle of legality amount to no more than the correction of first-instance decisions that departed from the Court of Cassation's own case-law. In these decisions, the Constitutional Court did not lay down a single criterion going beyond the Court of Cassation, and it took the Court of Cassation's case-law as the yardstick for its legality review. Where the trial court had contented itself with less than the Court of Cassation required, a violation was found; where it had found the evidence the Court of Cassation required, no violation was found. Yet the ECtHR's finding in Yalçınkaya is that the very evidence required by the Court of Cassation, namely ByLock itself, cannot be regarded as automatic proof of all the elements of the offence. A review that takes the Court of Cassation's case-law as its yardstick cannot apply that finding.

B. None of These Decisions Involves a ByLock Finding against the Applicant

79. In none of the 13 violation decisions was the conviction based on a Detection and Assessment Report establishing that the applicant had used ByLock. In three decisions, a report stating that there was no ByLock record in the applicant's name was included in the case file.⁴⁶ In the other decisions, ByLock was mentioned either as the applicant's contact with persons who used ByLock,⁴⁷ as a reference to another defendant's ByLock message,⁴⁸ or in the Court of Cassation's

43 App. No. 2019/20791, 18/10/2022.

44 Hasan Sarıcı [Plenary], 2018/37695, § 51; Nevzat Bakırhan, 2020/993, § 47; Ramazan Topuz, 2018/37949, § 42; Şenol Tataroğlu, 2019/5316, § 48; Burhan Bozbaş, 2020/22587, § 66; Önder Arslan, 2020/33058, § 32; B.G., 2020/29717, § 46; Abdulkadir Çelik, 2019/14427, § 33; Hasan Hüseyin Özcan, 2022/103754, § 33; Ayten Karadağ, 2021/57189, § 45; Güneri Polat, 2022/53335, § 30; Gülcan Çelik, 2022/29963, § 37; Tülay Uç, 2023/11036, § 44.

45 Hasan Sarıcı, §§ 34, 38, 43–44; Ramazan Topuz, §§ 27, 34; Abdulkadir Çelik, §§ 23, 29; Şenol Tataroğlu, §§ 30, 33–34, 40; Burhan Bozbaş, §§ 56, 59; B.G., §§ 33, 41; Önder Arslan, §§ 24, 28; Nevzat Bakırhan, § 38; Ayten Karadağ, §§ 30, 35, 37, 41, 43; Gülcan Çelik, §§ 32–33, 35; Güneri Polat, §§ 26, 29; Tülay Uç, §§ 32, 39–40, 42.

46 Gülcan Çelik, §§ 4, 12; Güneri Polat, § 7; Tülay Uç, § 11.

47 Abdulkadir Çelik, § 3.

48 Hasan Sarıcı, § 40.

assessment that staying at the same hotel as ByLock users could not constitute evidence.⁴⁹ In six decisions there is no allegation of ByLock use at all.⁵⁰

80. The only violation decision involving a ByLock allegation is Önder Arslan. Even there, the use of ByLock was alleged solely on the basis of a CGNAT record, there was no Detection and Assessment Report, and the Constitutional Court stated that, under the case-law of the Court of Cassation, a CGNAT record alone does not prove the use of ByLock (§§ 27–28). In other words, the Constitutional Court found a legality violation in the only case in which it treated the ByLock evidence as non-existent.
81. That this outcome is no coincidence is apparent from the Constitutional Court's own reasoning. In Tülay Uç, referring to the case-law of the Court of Cassation, the Court stated that "acting as a house mother on its own, without ByLock and Bank Asya evidence," would not prove joining the organisation's hierarchy through an organic link (§ 42). This statement shows that the ground for the violation depended on the absence of ByLock; were a ByLock record added to the same acts, the outcome would change. This is exactly the approach the ECtHR found contrary to Article 7 in Yalçinkaya, namely that the existence of a ByLock record dispenses with the need to demonstrate separately the elements of knowledge and intent.

C. These Decisions Fall outside the Issue on Which the ECtHR Found a Violation

82. The Article 7 violation in Yalçinkaya rests on the treatment of ByLock use as proving all the elements of the offence (§§ 262–272). Evidence such as a Bank Asya account and trade union and association membership remained corroborative in that case; the ECtHR separately criticised the failure to explain how this evidence came to be treated as evidence of an offence (§§ 342–343) and found a violation of Article 11 on account of the reliance on trade union and association membership (§§ 390–396). The Constitutional Court's 13 violation decisions concern only this second group of evidence, and moreover only situations in which there was no ByLock and this evidence stood alone.
83. The 13 violation decisions are therefore an application of neither Yalçinkaya's Article 7 finding nor its Article 6 finding. Since there were no ByLock data in these cases, it was in any event not possible to address the Yalçinkaya criteria such as access to the raw data, independent expert examination, the decrypted content and exclusive use. Without touching the substance of the systemic problem identified by the ECtHR, the Constitutional Court decided in favour of applicants in a group of cases lying at its periphery.

D. The Decisive Factor for the Violation Is Not Intent but the Cut-Off Date

84. In these decisions, the decisive ground for the violation is not so much the failure to establish intent individually as the fact that the acts pre-dated the cut-off date. The decisions emphasised that the religious conversation meetings, student house activities or labels "did not continue after the critical dates",⁵¹ and the same decisions recalled as a general principle, by reference to Yahya Turgut, that activity continuing after the cut-off date would exclude a legality violation.⁵² This is the other side of the cut-off date pattern in the rejection decisions (see paras. 60–62).

49 B.G., § 16.

50 Nevzat Bakırhan; Ramazan Topuz; Şenol Tataroğlu; Burhan Bozbaş; Hasan Hüseyin Özcan; Ayten Karadağ.

51 Güneri Polat, § 26; Gülcan Çelik, §§ 35–36; Burhan Bozbaş, § 63.

52 Gülcan Çelik, § 30; Güneri Polat, § 23; Hasan Hüseyin Özcan, § 28.

85. The fact that Gülcan Çelik obtained a violation finding, while the application of Hakan Can, who held a similar student house position, was rejected because a witness stated that this role had lasted "until 2016",⁵³ shows that the decisive factor was a witness's statement about a date. The Yasak judgment, by contrast, required not a cut-off date but an individual and contextual demonstration that the person knew of the structure's violent aims (§§ 202–206). Although the Constitutional Court's criterion yields results consistent with Yasak in some cases, it has taken the place of an individual examination of intent, since it treats every activity after the cut-off date as proof of knowledge. The Hakan Can decision is addressed separately because of its relationship with the Yasak judgment (see Part VII).

E. The Criteria of the Yasak Judgment Have Never Been Applied

86. In none of the 13 violation decisions were the criteria introduced by the Yasak judgment, namely the link with the strategic and military branches (§ 209) and the determination of the person's place in the seven-tier hierarchy (§ 210), made the subject of separate examination. The assessment of the organic link in terms of continuity, diversity and intensity, although mentioned as a criterion of the Court of Cassation, was not treated as the ECtHR's criterion of individualisation. Since the Yasak judgment of 5 May 2026, the Constitutional Court has not delivered a single violation decision under the principle of legality. All decisions delivered after that date in which the legality complaint was examined on the merits or as to whether it was manifestly ill-founded ended in rejection.⁵⁴

F. The Violation Findings Are Not Capable of Leading to the Quashing of the Conviction

87. A violation of the principle of legality is a finding that the conviction itself rests on an unforeseeable interpretation. Nevertheless, no award of non-pecuniary damages was made in any of the 13 decisions, and in four decisions the claim for compensation was expressly rejected.⁵⁵ Most of the decisions further emphasised that the violation finding should not be taken to mean that the Constitutional Court "has adopted a position as to the outcome of the case".⁵⁶
88. This caveat is irreconcilable with the nature of a legality violation. In these decisions, the Constitutional Court found that the acts for which the applicants were convicted did not constitute an offence under a foreseeable interpretation of the law. To accept that the court conducting the retrial on the same acts may reach a different conclusion notwithstanding this finding is to render the legality violation itself conditional. In this way, even a legality violation was treated as a procedural defect calling for reassessment rather than acquittal.

VI. THE PRINCIPLE OF LEGALITY IN BYLOCK CASES AND THE ABSENCE OF A SINGLE VIOLATION FINDING IN FORTY DECISIONS

A. Breakdown of the Forty Decisions

89. Among the 94 decisions involving a legality complaint, there are 40 decisions in which a ByLock finding against the applicant formed a basis for the conviction (Table 6). These cases are of the same nature as the facts underlying Yalçinkaya and the follow-up judgments. In 31 of these 40

53 Hakan Can, §§ 27–28.

54 Gökhan Kolukısa; Ahmet Kahrıman and Ali Odabaşı; Hannan Yılbaşı (2); Ayşe Büşra Gençali; Hakan Can; Derya Baş; Selma Topal.

55 Şenol Tataroğlu; Burhan Bozbaş; Ayten Karadağ; Güneri Polat.

56 Hasan Sarıcı, § 55; Abdulkadir Çelik, § 41; Önder Arslan, § 38; Ayten Karadağ, § 50; Hasan Hüseyin Özcan, § 39; Gülcan Çelik, § 41; Güneri Polat, § 35.

decisions, the Constitutional Court did not examine the legality complaint, finding instead a violation of the right to a fair trial; in 3 it dismissed the complaint without reasons at the Commission stage; and in 5 it rejected it. The only decision finding a violation is Önder Arslan, in which the ByLock finding was based on a CGNAT record that the Constitutional Court considered insufficient.

Table 6. The 40 Decisions in Which a ByLock Finding Formed a Basis for the Conviction and a Legality Complaint Was Raised

App. No.	Applicant	Date of Decision	Response to the legality complaint	Art. 36 outcome
2020/31370	Ali Bayram İskender [Plenary]	25/9/2025	Not examined (§ 61)	Violation: reasoned decision
2019/6030	Ramazan Çakır [Plenary]	24/2/2026	Not examined (§ 59)	Violation: reasoned decision
2020/29044	Mustafa Nazlı	28/11/2024	Not examined (§ 41)	Violation: examination of witnesses
2020/31577	Ömer Akgün	29/4/2025	Not examined (§ 24)	Violation: examination of witnesses
2022/105470	Erkut Bakıcı	17/7/2025	Not examined (§ 32)	Violation: equality of arms
2020/16156	Y.Y.	1/10/2025	Not examined (§ 32)	Violation: examination of witnesses
2021/58283	Mustafa Seyhan	1/10/2025	Not examined (§ 55)	Violation: reasoned decision
2023/68853	İsmail Duran and Others	24/12/2025	Not examined (§ 9)	Violation: reasoned decision
2020/12450	Ayşegül Ünlü and Others	18/2/2026	Not examined (§ 15)	Violation: reasoned decision
2023/34020	Ali Yalçın and Others	3/3/2026	Not examined (§ 14)	Violation: reasoned decision
2023/50524	Muharrem Kaya and Others	3/3/2026	Not examined (§ 12)	Violation: reasoned decision
2023/68916	Oğuzhan Demirbaş and Others	3/3/2026	Not examined (§ 14)	Violation: reasoned decision
2024/69117	Mesut Yaşar and Others	3/3/2026	Not examined (§ 13)	Violation: reasoned decision
2020/17391	Murat Keleş and Others	4/3/2026	Not examined (§ 11)	Violation: reasoned decision
2022/53474	Cihan Avdan and Others	4/3/2026	Not examined (§ 11)	Violation: reasoned decision
2023/108631	İsa Ozan and Others	4/3/2026	Not examined (§ 11)	Violation: reasoned decision
2023/17301	İbrahim Tunç and Others	4/3/2026	Not examined (§ 10)	Violation: reasoned decision

App. No.	Applicant	Date of Decision	Response to the legality complaint	Art. 36 outcome
2023/17489	Selahattin Karagöz and Others	4/3/2026	Not examined (§ 9)	Violation: reasoned decision
2023/28810	Oğuz Erdoğan and Others	4/3/2026	Not examined (§ 9)	Violation: reasoned decision
2023/39086	Mahmut Parçalı and Others	4/3/2026	Not examined (§ 9)	Violation: reasoned decision
2023/59775	Tahsin Toparlak and Others	4/3/2026	Not examined (§ 9)	Violation: reasoned decision
2018/12568	Ahmet Turan and Others	9/4/2026	Not examined (§ 13)	Violation: reasoned decision
2023/108273	Fatih Kuloğlu and Others	9/4/2026	Not examined (§ 10)	Violation: reasoned decision
2019/14262	Emre Yazkan and Others	5/5/2026	Not examined (§ 13)	Violation: reasoned decision
2019/42466	Gökhan Polat	17/6/2026	Not examined (§ 28)	Violation: examination of witnesses
2023/81727	Abdulkadir Boz and Others	17/6/2026	Not examined (§ 9)	Violation: reasoned decision
2023/88358	Ozan Çalışal and Others	18/6/2026	Not examined (§ 12)	Violation: reasoned decision
2024/31235	İsmail Kalay and Others	1/7/2026	Not examined (§ 10)	Violation: reasoned decision
2024/2326	Murat Taşdemir and Others	16/9/2026	Not examined (§ 11)	Violation: reasoned decision
2020/22228	Sevgi Özdemir	18/7/2024	Not examined, without being named (§ 30)	Violation: examination of witnesses
2021/58592	Rauf Demirci	7/1/2026	Not examined, without being named (§ 46)	Violation: equality of arms
2019/1267	Hasan Hüseyin Koşar	11/2/2026	Dismissed without reasons by the Commission (§ 18)	Violation: reasoned decision
2020/40266	Hasan Hüseyin Seyis	21/4/2026	Dismissed without reasons by the Commission (§ 15)	Violation: reasoned decision
2019/15873	Muhammet Okumuş	15/9/2026	Dismissed without reasons by the Commission (§ 16)	Violation: reasoned decision
2020/36986	Şerif Özmutlu [Plenary]	25/9/2025	No violation (§ 87)	Rejected (§ 101)
2023/25666	Derya Baş	17/6/2026	No violation	Rejected
2022/103409	Gökhan Kolukısa	5/5/2026	Manifestly ill-founded (§ 15)	Rejected (§ 16)
2021/32085	Ayşe Büşra Gençali	20/5/2026	Manifestly ill-founded	Rejected (§§ 20–21)

App. No.	Applicant	Date of Decision	Response to the legality complaint	Art. 36 outcome
2020/22152	Selami Tunç	12/6/2024	Non-exhaustion of remedies (§ 30)	Rejected
2020/33058	Önder Arslan	4/2/2025	Violation (CGNAT only; ByLock deemed not proven)	—

90. Accordingly, in no case in which the use of ByLock served as a ground for the conviction on the basis of a Detection and Assessment Report or a query result report did the Constitutional Court find a violation of the principle of legality. These include the Plenary decisions in Ali Bayram İskender and Ramazan Çakır, which summarise Yalçınkaya in detail, the joined decisions applying Ali Bayram İskender, and the Plenary decision in Şerif Özmutlu, which narrowed Yalçınkaya.

B. The Same Case File as Yalçınkaya: The Ramazan Çakır Case as an Example

91. In Ramazan Çakır, the trial court concluded, on the basis of the Detection and Assessment Report, that the applicant had used ByLock "intensively", but did not assess at all whether the correspondence was organisational in nature (§ 56). This is identical to the picture in Yalçınkaya. As noted above, the Plenary summarised Yalçınkaya's Article 7 findings in detail in the same decision (see para. 35). Nevertheless, the legality complaint was not examined (§ 59), and the violation was confined to the right to a reasoned decision.

92. In this case, the Constitutional Court had before it both the issues on which the ECtHR had found an Article 7 violation and a summary of the ECtHR judgment finding those issues incompatible with the Convention. The failure to examine the legality complaint in a case where the conviction rested on the intensity of ByLock use, the content of the messages was not assessed and intent was not separately demonstrated shows that the Constitutional Court's approach to legality complaints is determined not by the issues in the case file but by the type of complaint.

C. The Likely Outcome in Light of the ECtHR's Follow-Up Judgments

93. The ECtHR has reached a settled conclusion in cases of this kind. In Demirhan, it stated that the treatment of a finding of ByLock use as conclusive proof of all the elements of the offence "irrespective of the content of the messages, the persons with whom the messages were exchanged or whether there was any other evidence in the file" persisted and was contrary to Article 7 (§ 38 et seq.), and it emphasised that this was a systemic problem, as also demonstrated by the communication of 5,000 applications to the Government (§ 38). According to the action plan, the follow-up judgments in Bozyokuş, Demirhan, Seyhan and Karşlı found violations of Articles 7 and 6 of the Convention in respect of 2,659 applicants,⁵⁷ and with subsequent follow-up judgments this number has reached 4,501.

94. In view of this settled approach of the ECtHR, it is highly likely that the same conclusion will be reached if the ByLock cases in which the Constitutional Court found no legality violation come before the ECtHR. In Demirhan, the ECtHR noted that the applicants' applications to the Constitutional Court had been declared inadmissible by a summary decision relying on the

⁵⁷ DH-DD(2026)1298, §§ 11–12.

leading case-law of the Court of Cassation (§ 17). In the decisions in Table 6, the Constitutional Court either did not examine the legality complaint at all or rejected it on the basis of pre-Yalçinkaya case-law. In either case, no decision answering the legality question at national level will come before the ECtHR.

D. Rejection Decisions Concerning the Issues Addressed in the Yasak Judgment

95. The same holds true for the facts addressed in the Yasak judgment. In Yasak, the ECtHR held that the courts' reliance on the applicant's role in the field of education, without establishing a link with the strategic branches or determining his place in the hierarchy, breached Article 7 (§§ 208–210). The Constitutional Court, however, continued after Yasak to reject applications concerning convictions based on roles in student houses and in the field of education (Hakan Can, §§ 27–28; Burhan Bayram Şahin, §§ 25–26; Tarık Çakır, § 26; Kemal Büyükelyas, §§ 31–34). In Hannan Yılbaş (2) and Ahmet Kahrıman and Ali Odabaşı, the legality complaints were rejected (Hannan Yılbaş (2), § 94; Ahmet Kahrıman and Ali Odabaşı, § 88) even though there was not even an allegation of ByLock use against the applicants (Hannan Yılbaş (2), § 15; Ahmet Kahrıman and Ali Odabaşı, § 25). Among these decisions, Hakan Can is examined separately below, since it concerns another conviction, resting on the same witnesses, handed down by the court that delivered the conviction at issue in Yasak (see Part VII).

E. The Resulting Distinction

96. This picture shows that the Constitutional Court's case-law on the principle of legality rests on a distinction: violations were found in a narrow group of cases without ByLock and with acts pre-dating the cut-off date, whereas in cases involving ByLock or acts continuing after the cut-off date the Court either declined to examine the complaint or rejected it. The issues on which the ECtHR found violations in Yalçinkaya, Demirhan and Yasak belong to the second group, and consequently the violation decisions of the Constitutional Court and those of the ECtHR hardly overlap at all.

VII. THE SAME ÇORUM CASE FILE: THE HAKAN CAN DECISION, DELIVERED FORTY-THREE DAYS AFTER THE YASAK JUDGMENT

A. The Same Prosecutor's Office, the Same Court and the Same Witnesses

97. The decision that shows most clearly the Constitutional Court's stance towards the Yasak judgment is Hakan Can.⁵⁸ In its Grand Chamber judgment of 5 May 2026 in Yasak v. Türkiye, the ECtHR held that the conviction for membership of an organisation handed down by the Çorum 2nd Assize Court violated Article 7 of the Convention. Forty-three days after that judgment, the First Section of the Constitutional Court unanimously declared manifestly ill-founded the legality complaint concerning another conviction handed down by the same court, in the course of the same investigation and on the basis of the statements of the same witnesses (Hakan Can, §§ 29–30). The decision, consisting of thirty paragraphs, refers neither to the Yasak judgment nor to any judgment of the ECtHR, and does not discuss at all the similarities or differences between the two cases.
98. What the two cases have in common goes beyond coincidental similarity. The indictments against the two applicants were drawn up by the Çorum Chief Public Prosecutor's Office one day apart

58 App. No. 2022/103543, 17/6/2026.

(4 August 2017 for Yasak and 3 August 2017 for Hakan Can (Hakan Can, § 3)). In both cases the trial was conducted by the Çorum 2nd Assize Court, and both applicants were accused of having assumed roles in the student house organisation while they were students at Hitit University in Çorum (Yasak, §§ 43, 46; Hakan Can, §§ 2, 4). Both convictions relied on the statements of the witnesses A.B. and Y.B. (Yasak, §§ 43–48; Hakan Can, §§ 5, 7), and it is apparent from the ECtHR judgment that these two witnesses sought to benefit from the effective repentance provisions during the investigation stage (Yasak, §§ 43, 46).

99. The accounts given by witness A.B. in the two cases are also almost identical. In the statement he gave by letters rogatory in the Yasak case, A.B. stated that he had studied business administration at university between 2008 and 2015, that he had stayed in the Movement's houses and that he had not stayed in the same house as the accused (Yasak, § 48). His statement as reproduced in the Hakan Can decision begins with the same account: "I studied business administration at İTÜ between 2008 and 2015 ... throughout my university life between 2008 and 2015 I stayed in the houses of the structure known at that time as the Movement; I did not stay in the same house as the accused" (Hakan Can, § 5). A comparison of the two cases is shown in Table 7.

Table 7. Comparison of the Yasak v. Türkiye and Hakan Can Cases

Issue	Yasak v. Türkiye (ECtHR, Grand Chamber, App. No. 17389/20)	Hakan Can (Constitutional Court, First Section, App. No. 2022/103543)
Investigation and trial	Çorum Chief Public Prosecutor's Office; Çorum 2nd Assize Court	Çorum Chief Public Prosecutor's Office; Çorum 2nd Assize Court (§§ 3, 8)
Date of indictment	4 August 2017	3 August 2017 (§ 3)
First-instance judgment	14 February 2018	6 years, 6 months and 22 days' imprisonment; final on 11/10/2022 (§§ 9–10)
Witnesses relied on for the conviction	A.B., Y.B. (witnesses seeking to benefit from effective repentance; §§ 43–48)	A.B., F.Z., Y.B. (§§ 5–7)
Alleged position	House imam, BTM, BBTM; in 2013–2014 a role responsible for 20–25 student houses (§ 46)	Small-region or regional student supervisor; organisation of 7–8 student houses (§§ 6–7)
Other evidence	Deposit at Bank Asya in January 2014, social security contributions paid by Çorum Eğitim Hizmetleri A.Ş., HTS analysis, code name "Recep"	Membership of the Ufuk Akademi Association, participation in press statements in front of the courthouse in December 2014, HTS analysis (§ 8)
Period of activity	2014 at the latest (§ 205)	Until 2016, according to a witness statement (§ 27)
Outcome	Violation of Article 7 (5/5/2026)	Manifestly ill-founded, unanimous (17/6/2026)

B. Reasoning Found Incompatible with the Convention in Yasak Deemed Sufficient in Hakan Can

100. In Yasak, the ECtHR addressed the trial court's finding that the applicant had "carried out activities at a level of responsibility" within the structure, and observed that, although the Court

of Cassation recognised a seven-tier hierarchy with different degrees of culpability for different tiers, the trial courts had never discussed in which tier of that hierarchy the applicant was placed (§ 210). The finding on which the Constitutional Court relied in Hakan Can in rejecting the legality complaint is the same: the trial court "established by means of witness statements that the applicant carried out activities at a level of responsibility within the organisation as regional student supervisor" (Hakan Can, § 27). The very formulation that the ECtHR found insufficient for establishing intent thus became, in the Constitutional Court's decision, a sufficient basis for intent.

101. The ECtHR further stated that all the acts attributed to the applicant related to the structure's activities in the field of education, that the structure had operated lawfully in that field for many years, and that this could have led many people to maintain links with it without knowing its alleged aim (§ 208); it found that the trial courts had relied on his role in the field of education instead of inquiring whether there was any actual link between the applicant and the structure's central or strategic units (§ 209). In the Hakan Can case, too, the roles attributed related entirely to the student house organisation, and the decision makes no mention of any link between the applicant and the structure's strategic units (Hakan Can, §§ 4–8, 27).
102. Moreover, the position attributed in the Yasak case was more senior than that in the Hakan Can case. According to witness A.B., Yasak had assumed a role responsible for 20 to 25 student houses in 2013–2014 (Yasak, § 46). As regards Hakan Can, by contrast, witness Y.B. stated that he was a "small-region student supervisor" and that this role consisted of organising 7–8 student houses (Hakan Can, § 7). That the Constitutional Court, after a case in which the ECtHR did not consider even a more senior role sufficient for intent, treated a more junior role as the basis for intent shows that what was applied was not the criteria of the Yasak judgment but the case-law that preceded it.

C. A "Manifestly Ill-Founded" Finding for a Conviction Based on Weaker Evidence

103. In addition to the witness statements, the conviction in the Yasak case also rested on evidence such as a deposit into a Bank Asya account in January 2014, the payment of social security contributions by an education company linked to the structure, HTS analysis and the code name "Recep" (see Table 7). Despite this broader body of evidence, the ECtHR concluded that the mental element had not been established on an individual basis (§§ 201, 212). None of this evidence is present in the Hakan Can case. The conviction rested on witness statements, membership of an association that had been closed down, participation in press statements made in front of the courthouse in December 2014, and an HTS analysis whose content is not explained in the decision (Hakan Can, § 8). The use of association membership and participation in press statements as evidence has been addressed separately above (see paras. 73–74).
104. Manifest ill-foundedness is a ground of inadmissibility designed for applications that, even on preliminary examination, are found to raise no serious issue on the merits. In the Hakan Can application, the Commission declared the complaints other than the legality complaint inadmissible and left the examination of the admissibility of the legality complaint to the Section (Hakan Can, § 12). A complaint that the Commission did not find manifestly ill-founded at that stage, and on which the Grand Chamber of the ECtHR had found a violation forty-three days earlier in respect of a conviction of the same kind resting on broader evidence, was declared manifestly ill-founded by the Section. This characterisation also made it unnecessary to discuss

the merits of the complaint and for the Constitutional Court to set out its own reasoning in the face of the Yasak judgment.

D. The Finding "Until 2016" Is Not Sufficient to Distinguish the Two Cases

105. The only difference that might be advanced in defence of the Hakan Can decision is the temporal element. Whereas the ECtHR found that the alleged membership in the Yasak case had ended in 2014 at the latest (§ 205), the Constitutional Court accepted in Hakan Can that, according to the witness statements, the applicant's position had continued "until 2016" and that the trial court had established the applicant's organisational activities "even after the events through which the ultimate aim of the organisation became known to all" (Hakan Can, §§ 27–28). This difference is not, however, decisive, for two reasons.
106. First, the ECtHR addressed precisely this approach. According to the Grand Chamber, the continuation of links with the structure after December 2013 may be a relevant factor in assessing criminal liability; but this general consideration does not relieve the courts of the obligation to establish intent through an individual and contextual examination (§ 206). In the Yasak case, too, the applicant's roles and the Bank Asya transaction extended into the period after December 2013 (Yasak, § 46; see Table 7). The ECtHR therefore did not regard even activity extending beyond December 2013 as proof of intent in itself. The cut-off date reasoning in the Hakan Can decision, by contrast, took the place of that individual examination (see paras. 60–62).
107. Second, the finding "until 2016" was itself not reviewed. It rests on the statement of witness F.Z., who said he had studied between 2010 and 2014, that "I last saw [the applicant] in February 2016; I know that at that date he was continuing his role within the Movement" (Hakan Can, § 6). Yet, according to the Constitutional Court's own account, the applicant graduated from university in 2015 and began working as an engineer in the Turkish Armed Forces in the same year (Hakan Can, § 2). The decision does not discuss how a person whose student days had ended and who had entered public service could have continued his role in the student house organisation, or how the witness came by this information. The only fact that might be assumed to distinguish the two cases is thus a single sentence of a witness, left unreviewed.

E. The Content of the Witness Statements and the Fact on Which Intent Was Based

108. The Constitutional Court accepted that the applicant's role as regional student supervisor had been established by witness statements (Hakan Can, § 27). However, the statements reproduced in the Constitutional Court's own decision show that witness A.B. said "I have no clear knowledge of whether the accused was a regional student supervisor; I only know that he acted as an abi ... he may have performed both roles" and stated that he had not witnessed himmet being collected at the religious conversation meetings (§ 5), and that witness Y.B. likewise said that students had not been asked for money in the name of himmet (§ 7). Furthermore, while witnesses A.B. and F.Z. said that the applicant had been a student at İTÜ (§§ 5–6), the applicant in fact studied at Hitit University in Çorum (§ 2). In his statement in the Yasak case, A.B. himself stated that he had studied not at İTÜ but at Hitit University in Çorum (Yasak, § 48).
109. The Constitutional Court did not assess these matters, on the ground that proof of guilt falls outside its remit (Hakan Can, § 25). The issue here, however, is not the assessment of evidence but the fact from which intent was inferred. In Yasak, the ECtHR held that the trial courts' failure to explain why the applicant's roles in the field of education led to the conclusion that he knew the nature and terrorist aims of the structure amounted to a fundamental breach of the obligation

of individual assessment (§ 212). Where the role on which intent is based is not stated with certainty even in the witness's own statement, this question must necessarily be asked in the legality review (see paras. 57–59).

F. The Clearest Indication of the Constitutional Court's Non-Compliance with the ECtHR Judgment

- 110.** The Hakan Can decision brings together almost all of the patterns identified in this study: principles based on the Constitutional Court's own earlier decisions (§§ 16–20); the substitution of activity after the cut-off date for the element of knowledge (§§ 24, 28); the premise that proof of guilt falls outside the Court's remit (§ 25); the substitution of position for intent, the reasoning that the evidence was assessed as a whole, and the "not groundless and arbitrary" review (§ 27); and the substitution of a "being in a position to know" standard for the element of knowledge (§ 28). The status of these patterns in the light of the ECtHR's case-law has been discussed in detail above (see Part IV). What sets the Hakan Can decision apart is that these patterns were used after the Grand Chamber of the ECtHR had found incompatible with the Convention a judgment of the same court resting on the same witnesses, and moreover without that judgment even being mentioned.
- 111.** Under Article 46 of the Convention, the judgments of the ECtHR are binding primarily on the parties to the case. However, the Constitutional Court's obligation to apply Convention rights as interpreted by the ECtHR (see para. 3) requires that a Grand Chamber judgment concerning the same facts at least be discussed and that, if a different conclusion is to be reached, reasons be given for it. In *Yasak*, the ECtHR stated that the most appropriate means of redressing the violation would be the reopening of the proceedings, and this possibility arose only for that applicant. For other persons in the same situation, the domestic remedy through which the violation can be redressed without recourse to the ECtHR is the individual application to the Constitutional Court. The Hakan Can decision closed that avenue without addressing the merits of the complaint and without mentioning the *Yasak* judgment. For this reason, the decision is the most concrete and most obvious example identified in this study of the Constitutional Court's non-compliance with the judgments of the ECtHR.

VIII. VIOLATIONS FOUND UNDER THE RIGHT TO A FAIR TRIAL

- 112.** The fair trial violations found in 85 of the 118 decisions involving ByLock evidence (see para. 17) may at first sight give the impression that the Constitutional Court applied Yalçinkaya's Article 6 findings. However, both the sources on which these decisions relied and the redress they provided show that the violations are consistent not with the judgments of the ECtHR but with the earlier case-law of the Court of Cassation and of the Constitutional Court itself.

A. The Reasoning Derives Not from the ECtHR but from Earlier Decisions of the Court of Cassation and the Constitutional Court

- 113.** Of the 85 fair trial violation decisions involving ByLock, only 7 refer to any judgment of the ECtHR in their assessment section, and the only ECtHR judgment cited is *Yalçinkaya*. By contrast, 60 of these 85 decisions relied on decisions of the Court of Cassation, 30 on the Ali Bayram İskender decision, 5 on Esra Saraç Arslan [Plenary], 5 on Selçuk Arslan [Plenary], 5 on Ferhat Kara [Plenary] and 5 on Gürcan Balık. In short, in roughly nine out of ten fair trial violations in ByLock cases, no judgment of the ECtHR appeared in the reasoning.

114. The decisions cited also determined the content of the reasoning. In the joined decisions that took Ali Bayram İskender as their precedent, the ground for the violation, stated by brief reference, is the failure to apply the Court of Cassation's standards of inquiry (for example, Murat Keleş and Others, 2020/17391, § 6). The equality of arms violations relied on the pre-Yalçinkaya Esra Saraç Arslan decision, the violations concerning the examination of witnesses on the Selçuk Arslan decision, and the reasoned decision violations concerning Bank Asya on the Gürcan Balık decision. None of these decisions used as a criterion the five elements that formed Yalçinkaya's Article 6 violation (§§ 331–341).

B. The Court of Cassation's Standard of Inquiry Is Not Capable of Answering the Question Posed by the ECtHR

115. In Ali Bayram İskender and Ramazan Çakır, the decisive criterion is whether the inquiries developed by the Court of Cassation after Yalçinkaya were carried out: identification of the persons in the roster records, obtaining the investigations concerning those persons and their statements, a UYAP search, reading out under Article 217 of the Code of Criminal Procedure, and hearing the persons whose statements are decisive under Article 210 of the Code of Criminal Procedure.⁵⁹ These criteria are identical to the inquiries required by the 3rd Criminal Chamber of the Court of Cassation in its quashing decisions. In these decisions, the Constitutional Court repeated the Court of Cassation's procedural grounds for quashing at the level of the individual application, but added nothing to them.
116. More importantly, the purpose of these inquiries is not to resolve the problem identified by the ECtHR but to strengthen the ByLock evidence. According to the Constitutional Court, the inquiries serve "to determine that the persons joined the ByLock network on the instruction of the organisation and used ByLock for communication in order to ensure secrecy".⁶⁰ Once these inquiries have been completed and it has been determined that ByLock was used for organisational purposes, the conviction may be handed down again in accordance with the position adopted in the Ferhat Kara and Adnan Şen decisions. The ECtHR, however, while accepting that the use of ByLock might *prima facie* indicate a connection, required that the material and mental elements of the offence, in particular knowledge of the alleged terrorist nature and violent aim of the structure and joining the structure knowingly and wilfully, be demonstrated separately and individually (Yalçinkaya, §§ 259–260, 263–264). The Court of Cassation's standard offers no answer to these questions.
117. Consequently, even the full application of the Court of Cassation's standard does not produce an outcome consistent with Yalçinkaya. Roster records, witness statements and a UYAP search show, at best, that the person used ByLock for organisational communication; they do not show that the person knew of the structure's alleged violent aim and joined the hierarchy for that purpose. The gap on which the ECtHR found a violation in Yalçinkaya is the gap between the use of ByLock and intent. The Court of Cassation's standard, by contrast, seeks to fill the gap between the use of ByLock and an organisational purpose, and the two gaps are not the same.

C. Redress That Does Not Change the Outcome

118. In none of the 140 decisions finding a violation of the right to a fair trial was the applicant awarded non-pecuniary damages. In 77 decisions the claim for compensation was expressly

59 Ali Bayram İskender, §§ 54–57; Ramazan Çakır, §§ 53–57.

60 Ali Bayram İskender, § 57; Ramazan Çakır, § 57.

rejected and redress was confined to a retrial. In 102 decisions, it was emphasised that the violation finding should not be taken to mean that the Constitutional Court "has adopted a position as to the outcome of the case" and that the decision "does not mean that an acquittal or a conviction must be handed down".⁶¹

119. This form of redress has greatly limited the capacity of the violation decisions to produce effects. The case was sent back to the court that had handed down the conviction, and that court was able to hand down the same conviction again by completing the Court of Cassation's inquiries or expanding its reasoning, as Yalçinkaya's own retrial illustrates (see para. 38). Since the legality complaint was not examined, whether the reinstated conviction complied with the ECtHR's Article 7 criteria was never reviewed at any stage.
120. In this way, the violations found under the right to a fair trial took the place of the violations that ought to have been found under the principle of legality. These violations gave the applicant no assurance that the interpretation underlying the conviction would change; they merely allowed the case to be closed before the Constitutional Court with a violation decision. Recorded statistically as violation decisions, they have frequently marked, for the applicant's legal position, the beginning of a process that leads back to the same conviction.

D. The Right to a Reasoned Decision: Transposing the Court of Cassation's Standards of Inquiry to Individual Applications

121. The basis of the reasoned decision violations found in ByLock cases is the trial court's failure to carry out the inquiries listed above. This standard became the criterion for a violation in a large number of decisions, including the joined decisions.⁶²
122. This standard differs from Yalçinkaya's Article 6 criteria. The Court of Cassation's standard of inquiry seeks to verify, through witnesses and UYAP records, whether the ByLock record belongs to the person and whether it was used for organisational purposes, in other words to complete the evidence in favour of the prosecution. The safeguards required by Yalçinkaya, by contrast, are aimed at enabling the defence to challenge the evidence (see para. 12). None of these safeguards was made the basis of a violation in the Constitutional Court's violation decisions. In Ali Bayram İskender, the applicant's objections that the digital material had not been obtained and that no expert examination had been carried out were found "noteworthy", but were not examined (§ 61).

E. Equality of Arms: Applying the Constitutional Court's Earlier Decision Instead of Yalçinkaya

123. The small number of violations found in ByLock cases under the principles of equality of arms and adversarial proceedings relied not on Yalçinkaya but on the Esra Saraç Arslan [Plenary] decision,⁶³ delivered by the Constitutional Court before Yalçinkaya.⁶⁴ In these decisions, the violation was linked to obvious procedural shortcomings, such as the complete failure to respond

61 For example, Bilge Sarıtaş Vural, 2021/53486, § 30.

62 Gürsel Tabur, 2021/3032, § 26; Musa Kolay, 2020/13045, § 21; Ali Obi, 2020/24767, § 37; Oğuzhan Ömer Demir, 2020/35455, § 33; Mustafa Kemal Öztürk, 2020/38064, § 22; Ufuk Baştürk, 2021/13315, § 37; R.T. [Plenary], 2021/47924, § 30; Bayram Turhan, 2021/62793, § 23; Mehmet Eyyüp Gülgün, 2021/64274, § 32; Burak Büyükkaya, 2021/64346, § 20; F.Ç., 2021/65299, § 33; Üzeyir Yıldızoğlu, 2022/100969, § 26; Mustafa Türksoy, § 33; Ramazan Aysal, 2022/106446, § 27; Aziz Kalender, 2022/25347, § 24; İhsan Akçair, 2022/42474, § 33; K.B., 2022/50342, § 23; Hüseyin Altunköse, 2022/81816, § 31; Hakan Yağcı, 2022/88597, § 26; İ.K., § 30; Gökhan Dışdış, 2023/50081, § 28.

63 App. No. 2019/10514, 28/12/2022.

64 Erkut Bakıcı, § 24; Sinan Kızılaslan, 2021/20052, § 15; Ali Yıldız, 2021/8087, § 22.

to a request for an expert examination or the failure to read out the data examination report at the hearing.⁶⁵ Requests for access to the raw data and access to the decrypted content were not treated as an independent ground of violation in any of the violation decisions.

124. This difference is significant. A complete failure to respond to a request for an expert or a failure to read out a report are general procedural shortcomings capable of giving rise to a violation in respect of any item of evidence. Yalçinkaya's finding, by contrast, concerns the specific nature of the ByLock data: that the data were obtained through intelligence channels from a foreign server, that the defence never had access to the raw data, and that the integrity of the data could not be independently verified. The Constitutional Court's violation findings remained confined to general procedural shortcomings and never engaged with this ByLock-specific problem.

F. The Right to Examine Witnesses and CGNAT Records

125. In finding violations of the right to examine witnesses, the Constitutional Court applied the three-stage test set out in Selçuk Arslan [Plenary].⁶⁶ In some decisions, the reason the witness statement was regarded as "decisive" was that the ByLock record rested solely on CGNAT data, which the Constitutional Court found insufficient under the case-law of the Court of Cassation.⁶⁷ The insufficiency of the CGNAT record thus became a ground for a violation in the fair trial examination.
126. The same finding produced a different result in the legality examination. In Gökhan Kolukısa and Ayşe Büşra Gençali, the Constitutional Court stated that the ByLock finding rested solely on CGNAT and a query result report and that this was insufficient, yet did not regard this finding as an obstacle to rejecting the legality complaint.⁶⁸ That the same court treated insufficient evidence as a ground for a violation under Article 6 but as part of the absence of a violation under Article 7 is a clear indication of the inconsistency in the Constitutional Court's case-law.

G. Addressing the Question of Intent under Article 36

127. In a few decisions, the Constitutional Court touched upon the question of intent, but did so under the right to a fair hearing rather than the principle of legality. In Gürsel Tabur, it found that the trial court had not clearly established "that the applicant knew the aim of the terrorist organisation and the type and intensity of the violence it used, and that his acts went beyond the level of sympathy and affiliation", and held that the right to a fair hearing had been violated (2021/3032, § 29). In Mehmet Kevser, too, the Court examined whether the link between the evidence and the fact relied on "assumptions that cannot be rebutted and that render the conduct of a defence meaningless" (2021/26636, §§ 22–23).
128. These decisions show that the Constitutional Court is capable of asking Yalçinkaya's Article 7 question, but that it moved this question outside the principle of legality, into a fair trial examination tied to a "manifest arbitrariness" threshold. The finding in Gürsel Tabur, namely that it had not been established that the person knew of the structure's aim and the type of violence, is in substance identical to Yalçinkaya's Article 7 finding (§§ 263–264). Nevertheless, the

65 Erkan Demir, 2021/31045, § 31; Murat Dağdevir, 2020/26451.

66 App. No. 2020/19752, 6/2/2025.

67 Ömer Akgün, §§ 19–20; Mehmet Ayko, 2019/41322, § 20; Y.Y., § 27; Talha Altıntop, 2020/18170, § 27; Uğur Özçiftçi, 2021/43521, § 20; Atakan Yıldırım, 2021/8629, § 29.

68 Gökhan Kolukısa, §§ 11–14; Ayşe Büşra Gençali, §§ 13–15.

outcome was once again merely a violation of the right to a fair trial, and no finding was made as to the legality of the conviction. Yalçinkaya was not cited in these decisions either.

IX. PATTERNS OF REASONING USED TO REJECT FAIR TRIAL COMPLAINTS

A. The "Sole or Decisive Evidence" Threshold for Requests for Raw Data and Expert Examination

- 129.** In Şerif Özmütlu, the Plenary accepted that the findings in Yalçinkaya concerning raw data and expert examination related to a case in which ByLock was the "sole or decisive evidence", and held that, where other evidence "of significant weight" existed alongside ByLock, these objections were manifestly ill-founded (§§ 97–101). This line was applied unchanged in subsequent decisions.⁶⁹ In Derya Baş, the applicant's objections concerning discrepancies between the log records and the CGNAT records were characterised as objections "having no bearing on the merits" (§ 41).
- 130.** The ECtHR did not make these safeguards conditional on the evidence being "sole or decisive". In Yalçinkaya, the importance of the raw data and of an independent examination stemmed from the fact that, beyond the question whether the person had used the programme, they were necessary for the defence to be able to test the integrity and reliability of the evidence (§§ 328–333). In Demirhan, too, it was emphasised that the inclusion of detailed reports in the case file was not decisive for the question whether the rights of the defence had been respected (§ 38 et seq.). In Şerif Özmütlu, the Plenary stated that the applicant's objections "might be considered noteworthy" in light of Yalçinkaya (§ 97), and in Ali Bayram İskender it likewise found similar objections "noteworthy" (§ 61); yet in neither decision were these objections examined.
- 131.** The "sole or decisive evidence" criterion was developed in the ECtHR's case-law in relation to the right to examine witnesses, and serves to determine the weight in the proceedings of a statement by a witness who could not be examined. Applying this criterion to objections concerning the integrity of the ByLock data conflates two different safeguards. If the reliability of an item of evidence cannot be tested, this operates to the detriment of the defence whatever the weight of that evidence in the proceedings. Moreover, in cases where the Constitutional Court, in its legality review, found sufficient the trial court decisions treating ByLock as proof of intent, the same ByLock data were held in the fair trial review to be "not decisive".

B. The Procedure for Obtaining the ByLock Data and Reference to the Özlem Yıldırım Decision

- 132.** Complaints that the ByLock data had been obtained without observing the safeguards of Article 134 of the Code of Criminal Procedure were declared manifestly ill-founded by reference to the Özlem Yıldırım [Plenary] decision,⁷⁰ delivered before Yalçinkaya.⁷¹ The ECtHR, however, counted the failure to respond to these objections among the elements of the Article 6 violation (Yalçinkaya, § 334). That these objections continue, after Yalçinkaya, to go unanswered on the basis of a pre-Yalçinkaya decision of the Constitutional Court shows that the shortcoming identified by the ECtHR persists unchanged.

⁶⁹ Ayşe Büşra Gençali, §§ 20–21; Veysel Demir, 2021/51332, §§ 32–33.

⁷⁰ App. No. 2022/73725, 28/12/2022.

⁷¹ Ali Bayram İskender, § 59; Ramazan Çakır, § 61; Gökhan Kolukısa, § 16; Derya Baş, § 44.

C. The Ferhat Kara Decision and the Characterisation as a "Fourth-Instance Complaint"

133. Objections concerning the use of ByLock as the sole or decisive evidence were met by reference to the characterisation as a "fourth-instance complaint" in the Ferhat Kara [Plenary] decision (Şerif Özmutlu, § 78; Derya Baş, § 32; Ali Bayram İskender, § 51; Ramazan Çakır, § 50). In other cases, too, objections concerning the assessment of evidence were treated as fourth-instance complaints and rejected on the ground that there was no "manifest error of assessment or manifest arbitrariness".⁷²
134. Yalçınkaya's Article 6 finding shows that objections concerning the manner in which the ByLock evidence was assessed are not a "fourth-instance complaint" but go to the very essence of the rights of the defence. The ECtHR found that the characterisation of ByLock as an exclusively organisational means of communication was not supported by adequate reasoning and that the "glaring gaps" in this respect had not been addressed (Yalçınkaya, §§ 337–341; Demirhan, § 38 et seq.). By declining to examine these objections on the ground that it is not a court of fourth instance, the Constitutional Court eliminated at the admissibility stage the very issue that formed the ground for the ECtHR's finding of a violation.

D. Treating Deficiencies as Cured by Relying on One Another

135. In rejecting fair trial complaints, deficiencies were covered over by relying on one another. In Şerif Özmutlu, the impossibility of reviewing the digital evidence was treated as insignificant on the ground of the position confirmed by witness statements (§§ 98, 100). In Birol Ateş and İbrahim Sağlam, it was accepted that no valid reason had been given for not hearing the witnesses even via SEGBİS (the audio-visual information system), yet no violation was found on the ground that the truly decisive evidence was the HTS report showing sequential calls.⁷³ Similarly, where ByLock or another item of evidence was present, the witness statement was not regarded as decisive alongside the other evidence "of significant weight".⁷⁴
136. In one case it was said that "the digital evidence could not be reviewed, but there is a witness", and in another that "the witness could not be examined, but there is a digital record"; in no case was a trial required in which both safeguards were secured. The Yalçınkaya judgment called for the proceedings to be viewed as a whole. That holistic view rests not on the assumption that deficiencies compensate for one another, but on a trial in which the defence is able to test each item of key evidence effectively. To accept that two items of evidence, neither of which can be tested, corroborate each other is to prove the reliability of untestable evidence by means of other untestable evidence.

E. Circular Reasoning in an Unpublished Commission Decision: The Esra Ataş Decision

137. Treating deficiencies as cured by relying on one another took an even clearer form in an unpublished Commission decision. In the Esra Ataş application,⁷⁵ the Second Commission of the First Section declared manifestly ill-founded all of the complaints concerning equality of arms, the right to a fair hearing, the right to a reasoned decision, legality and the right to examine witnesses. Since the decision has not been published, it is not among the 228 decisions examined.

72 Ersin Ceylan, 2022/74111, §§ 32, 37; Erol Şevik, 2022/74190, §§ 32, 37; Burhan Bakaç, 2020/9776, § 33; N.T., 2022/100931, §§ 19, 25.

73 Birol Ateş, §§ 20, 25–26; İbrahim Sağlam, §§ 23, 28–29.

74 Veynel Demir, § 33; S.O., 2020/27598, § 35; Ersin Ceylan, § 36.

75 App. No. 2025/42705, 22/10/2026.

It is nonetheless important in showing how decisions delivered at the Commission stage are reasoned (see para. 5).

138. The Commission rejected the complaint concerning the request for raw data and an expert examination by reference to Şerif Özmütlu, on the ground that the conviction rested, "in addition to" the ByLock evidence, "on other evidence of significant weight". In the part concerning the legality complaint, it did not refer to the applicant's case file at all, but merely reproduced a summary of the Şerif Özmütlu decision. According to that summary, in the case underlying that decision the judicial authorities had accepted, "relying also on evidence other than ByLock, even if the finding that he used the ByLock programme to ensure organisational communication is disregarded", that the applicant had been active within the organisation's hierarchy and, through his activities after the cut-off date, knew of the organisation's ultimate aim. The Commission decision does not indicate which of the applicant's acts were assessed in this context.
139. The complaint concerning the right to examine witnesses was rejected with the following sentence: "since it is understood that, in the present case, the sole or decisive evidence on which the conviction was based was not the statement of the witness who could not be examined, the application must be declared inadmissible as being manifestly ill-founded." Nowhere in the decision is it stated what the sole or decisive evidence on which the conviction was based actually was.
140. When these three grounds are read together, a vicious circle emerges. The impossibility of reviewing the ByLock data was treated as insignificant on the ground that the conviction also rested on evidence of significant weight other than ByLock, and, as regards legality, the other evidence was accepted as sufficient even if ByLock were disregarded. In the Şerif Özmütlu decision referred to, the evidence other than ByLock centred on the position or role established by witness statements (see para. 135). Yet the objection concerning the witness who could not be examined was rejected, this time, on the ground that the witness statement was not decisive, that is, that the conviction rested on other evidence. The objection to ByLock was thus met by pointing to the other evidence, and the objection to the witness by pointing to ByLock and the other evidence. The question of which evidence was decisive remained unanswered; none of the evidence that might have been decisive could be tested by the defence; and yet, taken together, this evidence was treated as the basis for the conviction.
141. The Yalçinkaya judgment called for the proceedings to be viewed as a whole (§§ 328–341). That holistic view rests not on curing the deficiency of one untestable item of evidence with another untestable item, but on a trial in which the defence is able to test effectively the evidence forming the basis of the conviction. The Esra Ataş decision shows that reasoning that disposes of the absence of two distinct safeguards by relying on each in turn is also used in unpublished Commission decisions. In that decision, the complaint concerning the right to a fair hearing was likewise rejected by reference to the pre-Yalçinkaya Ferhat Kara decision, and the Yalçinkaya and Yasak judgments were not mentioned at all.

X. SAME EVIDENCE, DIFFERENT OUTCOME: HOW THE PATTERNS OF REASONING OPERATE TOGETHER

142. How the patterns operate together can be seen in the fact that the same type of evidence led to different outcomes in different decisions (Table 8). In these pairings, the decisive factor is not

whether intent was individually demonstrated, but, in most cases, whether a witness placed the activity after the cut-off date and whether the evidence was presented within a body of evidence.

Table 8. Same Type of Evidence, Different Outcome

Type of evidence	Decisions finding a legality violation	Decisions rejecting the legality complaint
ByLock finding based on CGNAT records	Önder Arslan, §§ 27–28, 32	Gökhan Kolukısa, §§ 11–14; Ayşe Büşra Gençali, §§ 13–15, 21
Student house, acting as student supervisor	Gülcan Çelik, § 36; Burhan Bozbaş, §§ 63–65	Hakan Can, § 27; Burhan Bayram Şahin, §§ 25–26; Tarık Çakır, § 26
Religious conversation meetings and himmet	Güneri Polat, § 26; Gülcan Çelik, § 35; Nevzat Bakırhan, § 45	Mehmet Kılınç, §§ 53–54; Ahmet Karadavut (2), § 23; Erkan Dinler, § 30
Bank Asya account	Güneri Polat, §§ 28–29; Şenol Tataroğlu, §§ 41, 47; Ayten Karadağ, § 41	Yahya Turgut, §§ 55, 58; Hidayet Mete, §§ 41–42, 46; Mehmet Kılınç, § 53
Trade union, association, protest	Ramazan Topuz, §§ 30–34, 42; Tülay Uç, §§ 36–37, 42	Yahya Turgut, § 57; Hakan Can, §§ 4, 27
Working at a school, "intra-organisational assignment"	Abdulkadir Çelik, §§ 31–33	Yahya Turgut, § 57; Kemal Büyükelyas, §§ 31–34

A. ByLock Findings Based on CGNAT Records

- 143.** In all three cases, the ByLock evidence was considered insufficient by the Constitutional Court.⁷⁶ In Önder Arslan, this finding, together with the statements concerning religious conversation meetings, led to a finding of a legality violation (§ 32), whereas in the other two decisions the complaint was declared manifestly ill-founded on the ground that the witness statements were "of significant weight".⁷⁷ What determined the outcome was not an individual examination of whether the remaining evidence demonstrated intent, but the number and "weight" of the witness statements.

B. Student Houses and Acting as Student Supervisor

- 144.** In Gülcan Çelik, activity as regional student supervisor and grand regional student supervisor (§ 36), and in Burhan Bozbaş, acting as house abi in student houses (§§ 63–65), were held sufficient for a legality violation. In Hakan Can, by contrast, acting as regional student supervisor during his student years was treated as proof of intent because a witness said the position had lasted until 2016 (§ 27), as were acting as regional high-school supervisor in Burhan Bayram Şahin (§§ 25–26) and acting as house abi in Tarık Çakır (§ 26). The Yasak judgment, however, held that treating

⁷⁶ Önder Arslan, §§ 27–28; Gökhan Kolukısa, §§ 11–12; Ayşe Büşra Gençali, §§ 13–14.

⁷⁷ Gökhan Kolukısa, §§ 13–14; Ayşe Büşra Gençali, §§ 15, 21.

such roles in the field of education as proof of intent, without establishing a link with the strategic branches, breached Article 7 (see para. 95).

C. Religious Conversation Meetings (Sohbet) and Donations (Himmet)

145. In Güneri Polat and Gülcan Çelik, it was stated that acts consisting of attending religious conversation meetings whose "organisational" character could not be established could not serve as grounds for a conviction.⁷⁸ In Mehmet Kılınç, by contrast, attending religious conversation groups and giving himmet until 2016 was treated as "decisive, if not sole" evidence (§§ 53–54), and in Ahmet Karadavut (2) a witness account stating that the applicant had attended religious conversation meetings was highlighted as decisive evidence (§ 23). The reason why attending religious conversation meetings was treated in one case as an act not constituting an offence and in another as decisive evidence lies not in any difference in the nature of the act but in the date until which it continued.

D. Bank Asya Account

146. In Güneri Polat, Şenol Tataroğlu and Ayten Karadağ, it was emphasised that, in the absence of conclusive evidence that the Bank Asya transactions were carried out on instruction, any doubt must be resolved in favour of the accused.⁷⁹ In Yahya Turgut, the Constitutional Court noted that the Court of Cassation had stated that the applicant's ordinary Bank Asya transactions could not be regarded as organisational activity (§ 55), yet it considered the body of evidence that included those transactions sufficient to reject the legality complaint (§§ 57–58). In Hidayet Mete and Mehmet Kılınç, too, Bank Asya transactions formed part of the overall assessment.⁸⁰

E. Trade Unions, Associations and Protest

147. Trade union and association membership and participation in protests were regarded in violation decisions as an exercise of constitutional rights,⁸¹ while in rejection decisions they were accepted, albeit "with limited effect", among the grounds for the conviction.⁸² This contrast has been discussed in detail above (see paras. 72–74).

F. Working at a School and "Intra-Organisational Assignment"

148. In Abdulkadir Çelik, the Constitutional Court found a legality violation, stating that, in a case where the applicant was held to be "subject to intra-organisational assignment" on the basis of working at a school, there was no finding comparable to the facts in Yahya Turgut (§§ 31–33). The additional facts on which this distinction rested, namely arranging the collection of himmet, giving talks to students and organising a protest, are acts with no connection whatsoever to violence. In Yahya Turgut, by contrast, being a school administrator "subject to intra-organisational assignment" (§ 57), and in Kemal Büyükelias, holding managerial and trustee positions in an education company (§§ 31–34), were used as grounds for rejecting the legality complaint. The matters distinguishing the two cases are not capable of showing that the person knew of the structure's alleged violent aim; at most, they may show the intensity of the person's activity within the structure.

78 Güneri Polat, § 26; Gülcan Çelik, § 35.

79 Güneri Polat, §§ 28–29; Şenol Tataroğlu, §§ 41, 47; Ayten Karadağ, § 41.

80 Hidayet Mete, §§ 41–42, 46; Mehmet Kılınç, §§ 53, 56.

81 Ramazan Topuz, §§ 30–34, 42; Tülay Uç, §§ 36–37, 42.

82 Yahya Turgut, § 57; Hakan Can, §§ 4, 27.

XI. THE GAP BETWEEN CITING AND SUMMARISING THE YALÇINKAYA AND YASAK JUDGMENTS AND APPLYING THEM

149. Only 6 of the 228 decisions refer to the Yalçinkaya judgment.⁸³ In two of these, Yalçinkaya was mentioned only in setting out the applicant's complaint or was referred to briefly. In 113 of the 118 decisions involving ByLock evidence, Yalçinkaya was not mentioned at all. In none of the three Plenary decisions that summarise Yalçinkaya in detail was that judgment made the basis of a violation: in two of them the legality complaint was not examined, and in the third Yalçinkaya was reduced to the "sole or decisive evidence" scenario.
150. The *Yasak v. Türkiye* judgment, for its part, is not mentioned in any decision of the Constitutional Court. The *Demirhan and Others* judgment is mentioned in only 3 decisions, briefly, as a sequel to Yalçinkaya.
151. A small number of citations may not in itself indicate non-compliance, and a court may apply the ECtHR's criteria without citing it. In the decisions examined in this study, however, the opposite is the case. Even in the decisions that refer to Yalçinkaya in detail its criteria were not applied, while in those that do not cite the ECtHR the reasoning was built on the pre-Yalçinkaya case-law of the Court of Cassation and the Constitutional Court. The *Yasak* judgment does not appear at all, even in decisions delivered by the Constitutional Court after that judgment and concerning facts of the same nature as those in *Yasak*. The clearest example is the *Hakan Can* decision, which concerns a conviction, resting on the same witnesses, handed down by the court that delivered the conviction at issue in *Yasak* (see Part VII).

XII. INCONSISTENCIES IN THE CONSTITUTIONAL COURT'S CASE-LAW

152. When the patterns addressed one by one in the preceding parts are read together, it becomes apparent that the Constitutional Court's case-law is inconsistent not only with the ECtHR's criteria but also with itself. These inconsistencies are set out below, each illustrated by contrasting examples taken from the Constitutional Court's own decisions.

A. The Court That Wrote Yalçinkaya's Finding into Its Own Decisions Does Not Apply It

153. In *Ali Bayram İskender*, the Plenary itself wrote that the ECtHR had found that the offence of membership had been transformed into "an offence of strict liability" (§ 53), yet in the same decision it did not ask whether the applicant's conviction was of that nature (§ 61; see paras. 35–36).

B. "Knowledge" in the Statement of Principles, "Being in a Position to Know" in the Conclusion

154. In the statement of principles of the rejection decisions, it is required that the person be shown to have "known" the terrorist nature and aims of the structure, whereas in the conclusion it is deemed sufficient that the person was "in a position to know" the elements of the offence. Within the same decision, the principle and the conclusion rest on different standards (see paras. 53–56).

C. The Same Sentence, a Different Function

155. The sentence stating that proof of guilt and the sufficiency of the evidence fall outside the Constitutional Court's remit marked the beginning of the assessment of evidence in violation

83 Ali Bayram İskender, §§ 34–37, 53; Ramazan Çakır, §§ 36–39, 52; Şerif Özmutlu, §§ 52–59, 80; Derya Baş, §§ 34–35; Oğuzhan Ömer Demir, § 32; Alican Erkap, § 13.

decisions and its end in rejection decisions. In the rejection decisions in which it used this sentence, the Constitutional Court in fact also assessed the evidence, attributing "significant weight" to evidence other than ByLock (see paras. 57–59, 71).

D. A Flaw in Violation Decisions, a Method in Rejection Decisions

156. Listing the evidence without assessing it in terms of place, time, context and the person's role was made the ground for a legality violation in Ayten Karadağ (§ 44), whereas in rejection decisions the same method was deemed sufficient as an "overall assessment". The Yasak judgment expressly found this second method incompatible with the Convention (§§ 211–213; see paras. 63–65).

E. CGNAT Records: A Ground for a Fair Trial Violation, yet Part of the Reasoning for Rejecting the Legality Complaint

157. The fact that a ByLock finding rested solely on a CGNAT record was regarded as a shortcoming giving rise to a violation in decisions concerning the right to examine witnesses, contributed to a legality violation in Önder Arslan, yet was not considered an obstacle to rejecting the legality complaint in Gökhan Kolukısa and Ayşe Büşra Gençali (see paras. 125–126, 143).

F. The Exercise of Constitutional Rights

158. Protesting against measures taken in respect of newspapers was regarded in Ayten Karadağ and Tülay Uç as an exercise of a constitutional right "within the remit of the Constitutional Court", whereas in Hakan Can it was accepted, albeit "with limited effect", among the grounds for the conviction (see paras. 72–74).

G. The Cut-Off Date

159. The fact that the acts "did not continue after the critical dates" was the ground for the violation in violation decisions, whereas in rejection decisions every activity continuing after the cut-off date was treated as proof of the element of knowledge. Under this approach, intent was determined not by what the person knew but by the date on which the act was performed (see paras. 60–62, 84–85).

H. Findings with Legality Content Made under Other Rights

160. In Bilge Sarıtaş Vural and Gürsel Tabur, findings that are in substance identical to Yalçınkaya's Article 7 finding were made under the right to a reasoned decision and the right to a fair hearing. Even in cases where it was able to answer the legality question, the Constitutional Court avoided giving its answer under the principle of legality (see paras. 28, 127–128).

I. Leaving the Outcome Open Where a Legality Violation Is Found

161. In decisions finding that the conviction rested on an unforeseeable interpretation, the Constitutional Court emphasised that the violation finding should not be taken to mean that it "has adopted a position as to the outcome of the case". A decision finding that the acts did not constitute an offence and this caveat are irreconcilable (see paras. 87–88).

J. The Internal Inconsistency of the Şerif Özmutlu Decision

162. In Şerif Özmutlu, the Plenary treated evidence between which the trial courts had drawn no distinction as independent and of significant weight, and declared the applicant's objections

concerning raw data and expert examination manifestly ill-founded even though it had found them "noteworthy". This decision became the basis for the "ByLock plus other evidence of significant weight" threshold in subsequent rejection decisions (see paras. 70, 130).

K. The Same Çorum Case File: A Violation in Strasbourg, Manifestly Ill-Founded in Ankara

163. In the conviction of Yasak by the Çorum 2nd Assize Court, the Grand Chamber of the ECtHR found the finding that the applicant had "carried out activities at a level of responsibility" insufficient to establish intent. Forty-three days later, the Constitutional Court deemed the same finding sufficient in the conviction of Hakan Can handed down by the same court on the basis of the same witnesses, and declared the complaint manifestly ill-founded (see paras. 100–104).

L. ByLock and Witness Statements Used to Corroborate Each Other

164. In Esra Ataş, the objection to the ByLock data was rejected by pointing to the weight of the other evidence, and the objection concerning the witness who could not be examined was rejected by stating that the witness statement was not decisive; nowhere was it stated which evidence was decisive (see para. 140).

M. The Common Thread of the Inconsistencies

165. The common thread of these inconsistencies is that the Constitutional Court applies the same criterion differently depending on the outcome. The criteria used in violation decisions were not required in rejection decisions, and the general principles used in rejection decisions did not affect the outcome in violation decisions. This gives the impression that the decisions were constructed not by proceeding from a legal criterion to an outcome, but in order to produce reasoning for an outcome predetermined for a particular group of cases. To dispel this impression, the Constitutional Court would have had to examine the legality complaint on the merits in ByLock cases and apply the criteria of Yalçinkaya and Yasak with the same rigour it itself displays in its violation decisions.

CONCLUSION

166. The examination of 228 decisions shows that, after the Yalçinkaya judgment, the Constitutional Court has decided convictions for membership of an organisation in conformity with the ECtHR's Yalçinkaya and Yasak judgments neither under the right to a fair trial nor under the principle of legality in criminal law. This conclusion has been confirmed separately for violation decisions, rejection decisions and decisions in which the legality complaint was not examined.
167. The violations found under the principle of legality fall outside the ECtHR's finding. In none of the 13 violation decisions delivered by the Constitutional Court under the principle of legality is there a ByLock Detection and Assessment Report concerning the applicant. In three there is a report stating that no ByLock record was found, and in the only case involving a ByLock allegation the Constitutional Court regarded that allegation as unproven. None of these decisions refers to the judgments of the ECtHR, and in 12 of them the reasoning rests directly on the practice of the Court of Cassation. The decisions went no further than correcting convictions based on evidence that even the Court of Cassation itself did not consider sufficient, and did not address at all the criticism the ECtHR directed at the Court of Cassation's case-law in Yalçinkaya. Since the Yasak judgment, not a single violation has been found under the principle of legality.

168. There is no legality violation in ByLock cases. In none of the 40 decisions in which a legality complaint was raised and the conviction rested on a ByLock finding did the Constitutional Court find a violation of the principle of legality, save for the single case in which it treated ByLock as non-existent. In 31 decisions it did not examine the complaint, in 3 it dismissed it without reasons at the Commission stage, and in 5 it rejected it. The ECtHR, by contrast, has found violations of Articles 7 and 6 on the same issues in respect of 4,501 applicants in its follow-up judgments. In view of this settled approach, it is highly likely that a violation of Article 7 will be found if the cases in which the Constitutional Court found no legality violation come before the ECtHR. In convictions based on roles in the field of education, too, the Constitutional Court continued to reject applications even after *Yasak*.
169. The most concrete example of this stance is the *Hakan Can* decision. The legality complaint concerning another conviction handed down by the Çorum 2nd Assize Court, the court whose conviction the Grand Chamber of the ECtHR found in *Yasak* to violate Article 7, and resting on an indictment drawn up one day apart by the same Chief Public Prosecutor's Office and on the statements of the same witnesses, was declared manifestly ill-founded forty-three days after the *Yasak* judgment, without that judgment even being mentioned. The finding of "activities at a level of responsibility", which the ECtHR had found insufficient for intent, was treated in the Constitutional Court's decision as the basis for intent, and a conviction resting on weaker evidence than in the *Yasak* case was not even considered worthy of discussion.
170. Legality complaints have been disposed of through fair trial violations that do not change the outcome. In 51 of the 94 decisions involving a legality complaint, the Constitutional Court did not examine the complaint at all, doing so by means of the "conclusion reached and redress deemed appropriate" formula, without naming the complaint, by referring it to the trial court, or by dismissing it without reasons at the Commission stage. Non-examination itself has been turned into a precedent. This practice is a more serious form of the allegation-picking that Greene criticised in relation to the ECtHR, applied to a guarantee that cannot be suspended even in a state of emergency. In none of the fair trial violations substituted for the legality complaint was compensation awarded, and the cases were sent back to courts able to hand down the same conviction again once the Court of Cassation's inquiries had been completed.
171. The fair trial violations rested not on the ECtHR but on the Court of Cassation and on the Constitutional Court's own earlier decisions. Of the 85 fair trial violation decisions involving ByLock, only 7 refer to a judgment of the ECtHR, while 60 rely on decisions of the Court of Cassation. The criterion for the reasoned decision violations is the procedural grounds for quashing used by the 3rd Criminal Chamber of the Court of Cassation. These grounds are aimed at strengthening the ByLock evidence and do not answer the question posed by the ECtHR, namely how the elements of knowledge and intent were inferred from the use of ByLock. The equality of arms violations relied on the pre-*Yalçinkaya* *Esra Saraç Arslan* decision, and the violations concerning the examination of witnesses on the *Selçuk Arslan* decision. None of *Yalçinkaya*'s criteria concerning raw data, independent examination, access to content, data integrity and exclusive use served as the basis for any violation decision.
172. The rejection decisions directly contradict the ECtHR's criteria. In rejecting legality complaints, the Constitutional Court used the following patterns: one-sentence rejections by reference to the *Adnan Şen* decision, which the ECtHR found incompatible with the Convention; the "not groundless and arbitrary" review; the substitution of a "being in a position to know" standard for

the element of knowledge; the selective use of the premise that proof of guilt falls outside its remit; the substitution of activity after the cut-off date for the element of knowledge; the aggregation of evidence under the label of an overall assessment; the substitution of position for intent; the "ByLock plus other evidence of significant weight" threshold; and the treatment of the exercise of constitutional rights as evidence. In rejecting fair trial complaints, it met requests for raw data and expert examination with the "sole or decisive evidence" threshold, objections concerning the procedure for obtaining the data with the pre-Yalçinkaya Özlem Yıldırım decision, and objections concerning the assessment of ByLock with the characterisation as a "fourth-instance complaint", and it adopted an approach to the assessment of evidence that treats deficiencies as cured by relying on one another.

173. The Constitutional Court's case-law is not internally consistent either. It did not require in its rejection decisions the criteria it used in its violation decisions; it reduced the element of knowledge required in its statement of principles to being in a position to know in its conclusions; and it treated the same CGNAT record as a ground for a violation in one case and as part of the reasoning for rejection in another (see Part XII).
174. The unpublished Esra Ataş Commission decision, delivered on the last day of the period under review, displays the same picture. In that decision, the objection to the ByLock data was rejected by relying on the weight of the other evidence, and the objection concerning the witness who could not be examined by relying on the witness not being decisive; without it being shown which evidence was decisive, items of evidence none of which the defence was able to test were, taken together, treated as the basis for the conviction.
175. Yalçinkaya is mentioned in only 6 of the 228 decisions, and in none of them was it made the basis of a violation. Yasak is not cited in any decision. This picture shows that the Constitutional Court has not complied with the requirements of the Yalçinkaya group of judgments, that the problem the ECtHR regarded as systemic persists unchanged even before the highest body of constitutional review, and that the individual application to the Constitutional Court does not function as an effective domestic remedy in respect of these complaints.