



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

Information Note on the Court's case-law 113

November 2008

Salduz v. Turkey [GC] - 36391/02

Judgment 27.11.2008 [GC]

Article 6

Article 6-3-c

Defence through legal assistance

Use in evidence of confession to police of a minor who had been denied access to a lawyer: *violation*

Facts – At the material time, Turkish law afforded suspected offenders a right of access to a lawyer from the moment they were taken into custody, unless they were accused of an offence falling within the jurisdiction of the state security courts. The applicant, a minor, was arrested on suspicion of aiding and abetting an illegal organisation, an offence triable by the state security courts. Without a lawyer being present, he gave a statement to the police admitting that he had taken part in an unlawful demonstration and written a slogan on a banner. Subsequently, on being brought before the prosecutor and the investigating judge, he sought to retract that statement, alleging it had been extracted under duress. The investigating judge remanded him in custody, at which point he was allowed to see a lawyer. He continued to deny his statement at trial, but the state security court found that his confession to the police was authentic and convicted him as charged. He was given a thirty-month prison sentence.

In its judgment of 26 April 2007, a Chamber of the European Court concluded that the fairness of the applicant's trial had not been prejudiced by his lack of legal assistance during his police custody.

Law – Article 6 § 3 (c): In order for the right to a fair trial under Article 6 § 1 to remain sufficiently practical and effective, access to a lawyer had to be provided, as a rule, from the first police interview of a suspect, unless it could be demonstrated that in the particular circumstances there were compelling reasons to restrict that right. Even where such compelling reasons did exist, the restriction should not unduly prejudice the rights of the defence, which would be the case where incriminating statements made during a police interview without access to a lawyer were used as a basis for a conviction. In the instant case, the justification given for denying the applicant access to a lawyer – namely that such access was by law systematically denied for offences falling within the jurisdiction of the state security courts – fell short of the requirements of Article 6. Moreover, the state security court had used the applicant's statement to the police as the main evidence on which to convict him, despite the fact that he denied its accuracy. Neither the assistance subsequently provided by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which had occurred during police custody. The applicant's age was also a material factor. As the significant number of relevant international law materials on the subject showed, access to a lawyer was of fundamental importance where the person in police custody was a minor. In sum, even though the applicant had had the opportunity to challenge the evidence against him at

his trial and subsequently on appeal, the absence of a lawyer during his period in police custody had irretrievably affected his defence rights.

Conclusion: violation (unanimously).

Article 41: EUR 2,000 in respect of non-pecuniary damage. Indication that retrial was most appropriate form of redress.

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This summary by the Registry does not bind the Court.

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