



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

SECOND SECTION

CASE OF HARUN GÜRBÜZ v. TURKEY

(Application no. 68556/10)

JUDGMENT

STRASBOURG

30 July 2019

FINAL

30/10/2019

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

In the case of Harun Gürbüz v. Turkey,

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

Robert Spano, *President*,

Marko Bošnjak,

Julia Laffranque,

Valeriu Grițco,

Arnfinn Bårdsen,

Darian Pavli,

Saadet Yüksel, *judges*,

and Stanley Naismith, *Section Registrar*,

Having deliberated in private on 9 July 2019,

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

PROCEDURE

1. The case originated in an application (no. 68556/10) against the Republic of Turkey lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr Harun Gürbüz (“the applicant”), on 12 October 2010.

2. The applicant was represented by Mr A. Yılmaz, a lawyer practising in Istanbul. The Turkish Government (“the Government”) were represented by their Agent.

3. The applicant alleged that his right to a fair trial had been prejudiced irretrievably, as he had been denied legal assistance when in police custody and as he had not been able to obtain the attendance of witnesses on his behalf at trial.

4. On 8 June 2017 notice of the application was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Investigation into the stabbing of F.B. and E.K. during attempted robberies

5. The applicant was born in 1988 and lives in Istanbul.

6. On 31 January 2007 a taxi driver, F.B., was stabbed and killed in Istanbul.

7. On 10 April 2007 another taxi driver, E.K., was stabbed in Istanbul at around 8.30 p.m.

8. On the same day at 10.30 p.m., the applicant and M.K. were arrested and taken into police custody on suspicion of murder, intentionally causing bodily harm and attempted robbery. While the police records stated that they had been detained during a police check, the applicant contested that fact, alleging that he and M.K. had attended the police station to surrender as they regretted being responsible for the stabbing incident that had occurred earlier that day.

9. The record of arrest and form of rights (*Yakalama ve Gözaltına Alma Tutanağı Şüpheli ve Sanık Hakları Formu*) was issued in respect of the accused on 10 April 2007 at 10.30 p.m., as a pre-printed form signed by the applicant, the relevant part of which had been filled in to indicate that the applicant was suspected of causing bodily harm to E.K. and of killing F.B. and that he had been reminded of his rights. On the form, there was also a pre-printed message stating, *inter alia*, that the person being questioned had the right to remain silent and the right to choose a lawyer, that the lawyer could be present during his police interview, and that if the applicant needed to have free legal assistance then the Bar Association could appoint a lawyer for him.

10. An incident report dated 11 April 2007 was drawn up by the police at 2 a.m. and signed by four police officers, the applicant and M.K. According to that report, the police had taken statements from the victim at the hospital after the incident and he had given them physical descriptions of the perpetrators. According to the report, the applicant and M.K. had been arrested on suspicion of stabbing taxi driver E.K. during a police check near the crime scene, and a knife had been found on M.K. The report further stated that the suspects had been taken to the hospital, where the victim E.K. had identified them as the perpetrators of the stabbing and attempted robbery, in the presence of the police but in the absence of their lawyers. The victim had stated that the applicant had requested money from him and attacked him, while M.K. had stabbed him. The report also stated that subsequently the applicants had been taken into police custody and that they had confessed to killing another taxi driver, namely F.B., in the course of another robbery attempt that had taken place two months previously on 31 January 2007 (see paragraph 6 above). The report lastly stated that photographs had been obtained from a CD found in the investigation file for the murder of F.B., and showed M.K. and the applicant.

11. At 4 p.m. on 11 April 2007 the police contacted the Istanbul Bar Association by telephone to request free legal aid for the police questioning of the two suspects. However, the Bar Association informed them that it was not appointing defence counsel unless the suspects were minors. A

record was made of that call. According to the applicant, the Bar Association had stopped the designation of officially appointed lawyers, owing to being on strike at the time.

12. According to another record, a pre-printed form entitled “Telephone notification record” (*Telefonla Haber Verme Tutanağı*), dated 11 April 2017, filled in by the police and signed by the applicant, the applicant made a telephone call to his mother on that day to inform her that he was in police custody. The time of that telephone conversation was not noted, although there was a section dedicated to that in the form. The applicant contested the validity of that form, claiming that he had not been able to inform his family of his arrest on that day.

13. On 11 April 2007 between 7.40 p.m. and 8.30 p.m., the applicant’s statements were taken by the police in the absence of a lawyer, concerning the stabbing of E.K. According to the written interview record, the applicant was suspected of intentionally causing bodily harm and of attempted robbery that had taken place on 10 April 2007. On the first page of the record, there was a pre-printed message stating, *inter alia*, that the person being questioned had the right to remain silent and the right to choose a lawyer, that the lawyer could be present during his police interview, and that if he needed to have free legal assistance then the Bar Association could appoint a lawyer for him. It was also stated in the same paragraph that a person of the applicant’s choice would be immediately notified of the fact that the applicant was being held in police custody. The record further stated: “A defence counsel was requested from the Istanbul Bar Association to be present during the interview, but the Association declared that it was not possible to appoint a defence counsel for persons older than 18 years of age, following a decision it had taken”. The written interview record indicated that the applicant had stated that he had no lawyer of his own, and that he had been informed of his right to remain silent, but that he would nevertheless make statements to the police. Each page of the form was signed by the applicant with a note stating “I have read my statements and signed the form”.

14. According to that police interview record, the applicant admitted that he had attempted to rob a taxi driver with M.K., that he had wanted money from the taxi driver, and that M.K. had stabbed the driver, but he stated that they had run away afterwards without having been able to get any money from the taxi driver. The applicant added that they had surrendered to the police in the Beşiktaş District Security Directorate on the same day because they had regretted their actions, and that subsequently they had been taken to the hospital by the police, where they had been confronted with the injured taxi driver, who had identified them.

15. On the same day, between 9 p.m. and 9.40 p.m., the police questioned the applicant further, still in the absence of a lawyer. During that interview the applicant gave statements concerning the murder of a taxi

driver, F.B., that had occurred on 31 January 2007. Another written record was prepared by the police containing the applicant's statements. The relevant part of the record indicated that the applicant was suspected of murdering F.B. with a knife in order to commit a robbery. The first page of the record included the same pre-printed message stating, *inter alia*, that the person being questioned had the right to remain silent and the right to choose a lawyer, that a lawyer could be present during his police interview, and that if he needed to have free legal assistance then the Bar Association could appoint a lawyer for him. It was also stated in the same paragraph that the fact that the applicant was being held in police custody would be immediately notified to a person of the applicant's choice. According to the record, the applicant had stated that he had no lawyer and he had been informed that the Bar Association had refused to appoint a lawyer for any suspects over eighteen years of age. The record also stated that the applicant had been informed that he had the right to remain silent, but that he had indicated that he would nevertheless make statements to the police. Each page of the record was signed by the applicant, indicating "I have read my statements and signed the form".

16. According to the record of the second police interview, the applicant gave detailed information about the robbery and murder he had committed with the other accused, M.K., stating that their intention had been to rob the taxi driver and get his money. The applicant stated that at first they had wanted money from the driver but he had resisted. Subsequently, M.K. had stabbed various parts of the driver's body, the applicant had stabbed the driver's leg and they had both run away from the scene.

17. Still on the same day, after the applicant's second police interview, the applicant had a private meeting with a lawyer who had been hired by his family, between 10.25 and 10.50 p.m. A record was issued by a police officer with regard to the time, date and place of this meeting, which was signed by the applicant and his lawyer in addition to the police officer. According to the applicant, his family had learned of his arrest by their own means and had then hired a lawyer for him. The applicant alleged that his lawyer had obtained the information about where the applicant was being held from the authorities and had then come to the police station. The lawyer had been made to wait until the end of the police interview and when he had requested that the interview be redone in his presence the police had rejected that request.

18. On 12 April 2007, a medical examination of the applicant was conducted, which revealed no signs of ill-treatment on his body.

19. On the same day, the applicant was brought before the Istanbul public prosecutor, where he was questioned in the presence of his lawyer. The applicant partly confirmed and partly denied the content of the statements he had made to the police in the absence of a lawyer. The applicant confirmed the content of his statements regarding his involvement

in intentionally causing bodily harm and the attempted robbery of E.K., stressing that it was M.K. who had stabbed E.K. and that he had committed the crime on the incitement of M.K. However, the applicant denied the content of the statements made in the second police interview. The applicant stated that he had not had any connection with the acts of murder and attempted robbery that had taken place on 31 January 2007. He further stated that M.K. had told him that he had murdered a taxi driver during a robbery attempt, with the help of another person, two or three months before the incident of 10 April 2007. The applicant alleged that it was only M.K.'s statements that he had reported to the police during his interview.

20. On 12 April 2007, the applicant was brought before the investigating judge, where he confirmed the content of his statements to the prosecutor in the presence of his lawyer.

21. Meanwhile, M.K. gave statements to the police, also in the absence of a lawyer. He admitted to having been involved in the stabbing of E.K. and the murder of F.B., and his version of events was corroborated by the applicant's statements set out in the interview records. M.K. confirmed the content of the statements made to the police before the public prosecutor and the investigating judge, each time in the absence of a lawyer.

22. On 12 April 2007 the applicant and M.K. were placed in detention on remand.

23. On 1 May 2007 and on 13 July 2007 respectively, the public prosecutor at the Istanbul Assize Court filed two bills of indictment against the applicant and M.K., the first one charging them with attempting to commit robbery with more than one person and intentionally causing serious bodily harm, and the second one charging them with murder and attempted robbery.

B. Criminal proceedings against the applicant

1. Proceedings on the charges related to the incident of 31 January 2007

24. The applicant was tried by the Istanbul Assize Court and twelve hearings were held in total. The applicant was represented by a lawyer during the trial.

25. During the hearings, the applicant alleged that he had been coerced into signing the written interview record in the absence of a lawyer while he was held in police custody, without having been able to read it first. The applicant and M.K. denied all the charges related to the robbery and murder of F.B. throughout the entire trial. The two accused further stated that their statements to the police had been taken under duress. M.K. also stated that he had confirmed his statements to the police before the public prosecutor because he had been threatened by the police.

26. On 26 September 2007, at the first hearing, the Istanbul Assize Court rendered an interim decision to ensure that F.S., a witness, would be present before the trial court for examination, once his address was found, on the basis that the police interview records indicated that the applicants had claimed that they had borrowed money from him right after the incident.

27. Although the investigation file referred to a CD containing security camera recordings taken from a hotel near the crime scene, which allegedly had footage of the last customers the victim had taken into his taxi, that CD was not included in the case file. At the hearing of 26 September 2007 a witness, namely S.İ., who had watched the video recordings of the security camera in question, was examined. The witness stated that he had seen the recordings with the police, that there were two people who had got into the victim's car, but that the video images were dark and not clear enough for identification.

28. Upon the request of the trial court, the hotel near the crime scene informed the domestic court, by a statement dated 30 October 2007, that they had already provided the police with recordings from their security cameras on two separate CDs, and that the recordings in their system had been automatically deleted afterwards.

29. By an application dated 23 November 2007, the applicant's lawyer requested that the applicant's uncle and father be examined as witnesses. At a hearing held on the same day, the trial court held that the applicant's witnesses would be examined when the applicant's lawyer had them ready before the trial court. It further rendered an interim decision to ensure the presence of the witness F.S. before the trial court, once the defendants' lawyers had advised the court of his address. However, those witnesses were never examined, as they never appeared before the trial court.

30. Upon a request made by the applicant dated 10 December 2007, the statements of the police officers who had issued the written interview record were consulted during the hearings. The police officers were asked why they had taken the applicant's statements in the absence of a lawyer, and whether they had coerced the applicant into signing the written interview record. The police officers denied the allegations of ill-treatment and coercion in their statements during the hearings. One of the police officers, O.Y., stated that the Bar Association had not appointed a lawyer for the applicant despite their request, owing to a strike at the Bar Association at that time, and that he did not remember the applicant informing them that he had a lawyer of his own choosing. The other police officer, H.D., stated that the applicant's statements had been taken in the presence of his lawyer as far as he remembered, and that his lawyer had been able to meet with the applicant on his arrival at the police station. He further stated that the applicant's lawyer had not requested the applicant to be questioned again in his presence.

31. At the hearing of 27 December 2007, another witness, E.Ö., was questioned about the video recordings of the security camera of the hotel near the crime scene. The witness stated that he had had two CDs prepared with the video footage at issue and had given them to the police but that he did not have any further knowledge of the recordings.

32. During the proceedings, voice recordings of the police interviews of the accused were transcribed by an expert. According to the expert report dated 30 May 2008, which was added to the case file during a hearing on 23 June 2008, the applicant had not admitted to committing any criminal act regarding the incident of 31 January 2007, whereas M.K. had stated that he and the applicant had murdered a taxi driver with the motive of robbery.

33. During the proceedings it was confirmed that the results of a forensics examination comparing the applicant's and M.K.'s DNA with sample tissue found on the victim's hands did not show a match.

34. In written pleadings that were lodged on 19 November 2008, the applicant's lawyer argued that his client's statements had been taken by the police unlawfully in the absence of a lawyer, that the police interview record had been falsified, and that the expert report transcribing the recordings of the interview revealed that the applicant had not admitted committing the offence in question. The applicant's lawyer further submitted that the written arrest record had also been falsified, and that the applicant had not been arrested by the police during an identity check near the police station but had in fact surrendered himself to the police. The applicant's lawyer also submitted that his client and M.K. had given their statements to the police under duress. The applicant's lawyer lastly submitted, by means of a written application dated 23 November 2008, that the applicant's family had not been immediately informed of the applicant's arrest, alleging that this was so that the police could take the applicant's statements in the absence of a lawyer.

35. On 11 February 2009 the Istanbul Assize Court convicted the applicant and M.K. of attempted robbery and murder. The trial court sentenced them to five years' imprisonment for attempted robbery and life imprisonment for murder. The trial court based its decision, *inter alia*, on the accuseds' statements from all stages of the proceedings. The trial court held that the applicant's statements to the police, the public prosecutor and the investigating judge had been similar and that they had been corroborated by the statements given by M.K. at the preliminary investigation stage. The trial court lastly found that there was no evidence in the case file showing that the accused had been under pressure while giving their statements.

36. On 8 June 2010 the Court of Cassation upheld the Istanbul Assize Court's decision of 11 February 2009.

2. *Proceedings on the charges related to the incident of 10 April 2007*

37. The applicant was tried by the Istanbul Assize Court and eight hearings were held in total. The applicant was represented by a lawyer during the trial.

38. During the proceedings, the applicant and M.K. retracted their statements given at the pre-trial stage. They denied having committed attempted robbery and alleged that they had been threatened by the police to repeat the statements made to the police before the public prosecutor and the investigating judge. The applicant stated that he and M.K. had taken a taxi even though they had not had any money, and that M.K. had stabbed the taxi driver when a dispute had arisen because they had been unable to pay the fare.

39. At a hearing on 28 August 2007 the victim, E.K., was examined by the trial court. E.K. identified the two accused as the perpetrators of the stabbing. However, he modified the statements that he had given to the police and stated that the applicant and M.K. had not requested money from him.

40. In written pleadings that were lodged on 10 December 2007 and 24 March 2008, the applicant's lawyer argued that his client's statements had been taken by the police unlawfully in the absence of a lawyer.

41. During the proceedings, the applicant's lawyer requested on several occasions that the police officers who had issued the written interview records be examined by the trial court. However, this request was rejected by the trial court on the ground that an expansion in the scope of the investigation would have no effect on the outcome of the proceedings.

42. On 13 June 2008 the Istanbul Assize Court convicted the applicant of attempted robbery and of taking part in intentionally causing bodily harm. The applicant was sentenced to five years' imprisonment for attempted robbery and two years and one month's imprisonment for taking part in intentionally causing bodily harm. The Istanbul Assize Court based its decision, *inter alia*, on the statements made by the applicant, M.K. and the victim throughout the proceedings.

43. On 13 April 2010 the Court of Cassation upheld the Istanbul Assize Court's decision of 13 June 2008.

3. *Criminal investigations against the police officers*

44. On 9 June 2008 the applicant lodged two criminal complaints against police officers. The first complaint was against the police officers who had allegedly issued a false record of his arrest. The second concerned allegations of ill-treatment and coercion during police custody.

45. The public prosecutor initiated an investigation into the matter. He took statements from the applicant and seven police officers who had been on duty when the applicant's original statements had been taken. He further

examined an expert report transcribing the contents of the police interview recordings.

46. On 30 November 2010, on the basis of all the evidence, the public prosecutor issued a decision not to prosecute the police officers concerned.

47. On 21 March 2011 the applicant's objection against the decision not to prosecute was rejected by the Beyoğlu Assize Court.

II. RELEVANT DOMESTIC LAW

48. The relevant provisions of the Code of Criminal Procedure (Law no. 5271) in force as of 1 June 2005, provided as follows:

Article 148

“(1) The statement of the suspect and the accused should be based on his or her own free will. Physical or psychological interferences capable of undermining [free will] such as ill-treatment, torture, the administration of drugs, induced fatigue, torment and deception, duress, threat, or the use of other equipment shall be prohibited.

(2) No benefit that is contrary to law shall be promised.

(3) Statements that were obtained through such methods shall not be used in evidence even if consent has been given [by the accused or the suspect] for their use.

(4) Statements taken by the police without a lawyer present shall not be relied on [for conviction] unless the suspect or the accused confirms them before a judge or a court.

...”

Article 150

“(1) The suspect or the accused shall be asked to choose a defence counsel to act on his or her behalf. In cases where the suspect or accused declares that he or she is not able to choose a defence counsel, a defence counsel shall be appointed on his or her behalf, if he or she so requests.

(2) If the suspect or the accused who does not have a defence counsel is a minor, or an individual who is disabled to the extent that he or she cannot provide his own defence, or is deaf or mute, then a defence counsel shall be appointed whether or not he or she has requested representation.

(3) During the investigation or prosecution of offences entailing a sentence of more than five years' imprisonment, the provision in paragraph 2 shall also be applied.

...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (c) OF THE CONVENTION

49. The applicant complained that his right to a fair trial, guaranteed by Article 6 § 3 (c) of the Convention, had been infringed by the use of the statements given as a result of coercion by officers when he was in police custody, while he had been denied access to a lawyer. The Court will examine his complaints under Article 6 §§ 1 and 3 (c), which, in so far as relevant, provides:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ...”

50. The Government contested that argument.

A. Admissibility

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

B. Merits

1. The parties' submissions

52. The applicant complained that he had been deprived of legal assistance when in police custody despite the fact that it was mandatory under Article 150 of the Code of Criminal Procedure to appoint a lawyer for him as he had been accused of an offence that required mandatory legal representation.

53. Furthermore, he submitted that he had been coerced into signing the records of the police interviews which had contained statements that had subsequently been used by the trial court to convict him. He also maintained that his family had not been informed of his arrest, and that he had been deprived of his right to legal assistance, as the Bar Association's decision not to appoint a lawyer for him was the result of a dispute between the Bar

Association and the Ministry of Justice concerning the payment of legal fees to officially appointed lawyers.

54. The applicant lastly alleged that although the lawyer hired by his family to represent him had requested that the police redo the interview in his presence, that request had not been accepted.

55. The Government submitted that although the applicant had given his statements to the police in the absence of a lawyer, it was noted in the records of the police interviews that no lawyer had been requested and the applicant had signed those records. The Government considered the interview records with the applicant's signature to be an unequivocal waiver. They further submitted that the medical report issued in respect of the applicant after he had been held in police custody showed no signs of ill-treatment and that that therefore showed that the applicant had not been under duress while giving statements to the police.

56. The Government further argued that the applicant's statements to the police had not been the sole basis for his convictions, the applicant had been represented by a lawyer throughout the domestic proceedings, and he had been given the opportunity of challenging the authenticity of the evidence and of opposing its use. For the Government, the fact that the applicant's lawyer had not been present while he was held in custody had not seriously impaired his right to a fair trial under Article 6 of the Convention as he had been provided with sufficient guarantees during the proceedings.

2. *The Court's assessment*

(a) **General principles**

57. The general principles with regard to access to a lawyer, the right to remain silent, the privilege against self-incrimination, the waiver of the right to legal assistance and the relationship of those rights to the overall fairness of the proceedings under the criminal limb of Article 6 of the Convention can be found in *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, §§ 249-74, 13 September 2016); *Simeonovi v. Bulgaria* ([GC], no. 21980/04, §§ 110-20, 12 May 2017); and *Beuze v. Belgium* [GC] (no. 71409/10, §§ 119-50, 9 November 2018).

58. The Court reiterates that the right to be assisted by a lawyer applies throughout and until the end of the questioning by the police, including when the statements taken are read out and the suspect is asked to confirm and sign them, as the assistance of a lawyer is equally important at this point of the interview. The lawyer's presence and active assistance during questioning by police is an important procedural safeguard aimed at, among other things, preventing the collection of evidence through methods of coercion or oppression in defiance of the will of the suspect and protecting the freedom of a suspected person to choose whether to speak or to remain

silent when questioned by the police (see *Soytemiz v. Turkey*, no. 57837/09, § 45, 27 November 2018).

59. The Court also reiterates that neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. That also applies to the right to legal assistance. However, if it is to be effective for Convention purposes, such a waiver must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Such a waiver need not be explicit, but it must be voluntary and constitute a knowing and intelligent relinquishment of a right. Before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be. Moreover, the waiver must not run counter to any important public interest (see *Simeonovi*, cited above, § 115).

(b) Application of those principles to the instant case

60. The Court observes at the outset that the present case differs from *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008) where the restriction on the applicant's right of access to a lawyer stemmed from Law no. 3842 and was thus systemic. The case before the Court concerns the subsequent Code of Criminal Procedure which entered into force on 1 June 2005 and which does not provide for any statutory restriction on the right of access to a lawyer. Moreover, under Article 150 of the Code of Criminal Procedure, in force at the material time, it was mandatory that a lawyer be appointed for the applicant as he had been accused of an offence entailing more than five years of imprisonment.

61. Turning to the circumstances of the present case, the Court notes that it is undisputed that the applicant had access to a lawyer for the first time only after he had signed a protocol containing self-incriminating statements to the police on 11 April 2007 at 2.00 a.m. and in his subsequent police interviews which took place on the same day between 7.40 p.m. and 9.40 p.m. in the absence of a lawyer (see *Hakan Duman v. Turkey*, no. 28439/03, 23 March 2010; *Bozkaya v. Turkey*, no. 46661/09, 5 September 2017; and *Türk v. Turkey*, no. 22744/07, § 45, 5 September 2017). While the Government, relying on the two written interview records, maintained that the applicant had waived his right to legal assistance during the police interviews, the applicant alleged that he had been made to sign the interview records in the absence of a lawyer as a result of coercion from the police.

62. In these circumstances, the Court is called upon first to assess whether the applicant waived his right to be assisted by a lawyer when giving statements to the police on 11 April 2007.

(i) *Whether the applicant waived his right to legal assistance*

63. The applicant was arrested on 10 April 2007 on suspicion of having been involved in a murder, intentionally causing bodily harm and attempted robbery. During his police interviews, the applicant did not have a lawyer of his own choosing. Moreover, he did not have legal assistance from an officially appointed lawyer, even though it was mandatory under Article 150 § 3 of the Code of Criminal Procedure, as the criminal investigation against him concerned an offence entailing more than five years' imprisonment.

64. In that connection, the Court notes that the Government did not rely on any ground which could relieve the investigating authorities from their obligation to provide the applicant with legal assistance, in accordance with the requirements of domestic law. Likewise, the Government did not shed any light on the question whether it is possible in law and in fact for individuals to waive the mandatory legal representation provided for by Article 150 of the Code of Criminal Procedure. In the same vein, the Government did not put forward any explanation as to whether there were any statutory procedural safeguards in the case of a waiver of the right to a lawyer under the same provision. The Government only argued that no lawyer had been requested and merely relied on the applicant's signatures on the interview records to show that the applicant's waiver was valid.

65. The Court is mindful of the probative value of documents signed while in police custody. However, as with many other guarantees under Article 6 of the Convention, those signatures are not an end in themselves and they must be examined by the Court in the light of all the circumstances of the case (see *Ruşen Bayar v. Turkey*, no. 25253/08, § 121, 19 February 2019). Moreover, the Government did not put forward any explanation as to why the police officers had contacted the Istanbul Bar Association to have a lawyer appointed for the applicant, which belies the contention that the applicant had waived his right to a lawyer. Besides, the Court notes that the shortcomings in appointment of a lawyer for the applicant, arising from the police or the Bar Association's acts and decisions, do not absolve the authorities from their obligation to provide legal assistance to the applicant under Article 6 § 3 (c) of the Convention.

66. The Court further notes that according to the written records in its possession, the applicant was reminded of his rights in a general manner (see paragraphs 8, 12 and 14 above). However, there is nothing in the records showing that the applicant was informed that it was mandatory for a lawyer to be appointed for him under Article 150 § 3 of the Code of Criminal Procedure since he was suspected of a serious offence entailing more than five years' imprisonment. Accordingly, the Court does not consider that the authorities gave an explanation tailored to the application's situation and the special procedural rights associated with it (see, *mutatis mutandis*, *Rodionov v. Russia*, no. 9106/09, § 155, 11 December 2018).

67. Lastly, the Court observes that, contrary to the Government's submissions (set out at paragraph 55 above), neither of the two written interview records contained any statement showing that the applicant expressly waived his right to be assisted by a lawyer during the police interview (contrast *Yoldaş v. Turkey*, no. 27503/04, § 13, 23 February 2010; *Türk*, cited above, § 48; and *Bozkaya*, cited above, § 42). The interview records that were signed by the applicant at the police station stated, *inter alia*:

"A defence counsel was requested from the Istanbul Bar Association to be present during my interview, but the [Bar] Association declared that it was not possible to appoint a defence counsel for those older than 18 years following a decision they had taken. I have no lawyer of my own, I have been informed of my rights, as they were read to me. I was told that I had the right to remain silent. I would like to make statements and explanations about the incident."

68. Under these circumstances, the Court cannot conclude that the applicant waived his right to legal assistance under Article 6.

(ii) *Whether there were "compelling reasons" to restrict access to a lawyer*

69. The Court reiterates that restrictions on access to a lawyer for "compelling reasons" are permitted only in exceptional circumstances, must be of a temporary nature and must be based on an individual assessment of the particular circumstances of the case (see *Simeonovi*, cited above, § 129, and *Beuze*, cited above, § 142).

70. The Court notes that the Government have not offered any compelling reasons for the restriction of the applicant's access to a lawyer for the period from 10 April 2007 until 11 April 2007 at 10.25 p.m., during which time he was held in police custody and gave statements to the police. It is not for the Court to undertake of its own motion to determine whether there had been any compelling reasons to restrict the applicant's right of access to a lawyer.

(iii) *Whether the overall fairness of the proceedings was ensured*

71. The Court must seek to ascertain whether the absence of a lawyer while the applicant was in police custody had the effect of irretrievably prejudicing the overall fairness of the criminal proceedings against him. The lack of "compelling reasons" in the present case requires the Court to conduct a very strict scrutiny of the fairness of the proceedings. More importantly, the onus will be on the Government to demonstrate convincingly why, exceptionally and in the specific circumstances of the case, the overall fairness of the trial was not irretrievably prejudiced by the restriction on access to legal advice (see *Beuze*, cited above, § 145; *Simeonovi*, cited above, § 132; and *Ibrahim and Others*, cited above, § 265).

72. The Court reiterates that in determining whether the proceedings as a whole were fair, regard must be had to whether the rights of the defence

have been respected (see *Beuze*, cited above, § 150; *Simeonovi*, cited above, § 120; and *Ibrahim and Others*, cited above, § 274 for a list of non-exhaustive list of factors when assessing the impact of procedural failings at the pre-trial stage on the overall fairness of the criminal proceedings), in particular whether the applicant was given the opportunity of challenging the admissibility and authenticity of the evidence and of opposing its use. In addition, the quality of the evidence must be taken into consideration, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy. Indeed, where the reliability of evidence is in dispute the existence of fair procedures to examine the admissibility of the evidence takes on an even greater importance (see *Ruşen Bayar*, cited above, § 127).

73. The Court notes in the first place that, according to the written interview records, the applicant made self-incriminating statements in the absence of a lawyer during the police interviews and allegedly confessed to the crimes. Notably, he admitted having attempted robbery and having been involved in the murder of F.B. in respect of the first set of criminal proceedings. He also admitted having attempted robbery and having been involved in the stabbing of E.K. in respect of the second set of criminal proceedings.

74. The Court further notes that after the police interview, the applicant met with a lawyer who had been hired by his family. Subsequently, he benefited from legal assistance during the ensuing preliminary investigation stage, and made statements to the prosecutor and the investigating judge in the presence of his lawyer.

75. In relation to the first set of criminal proceedings, once the applicant was able to benefit from legal assistance, he retracted his statements to the police, and stated before the prosecutor and the investigating judge that he had been coerced into signing the written interview record (see *Dvorski*, § 102).

76. In respect of the second set of criminal proceedings, while the applicant gave self-incriminating statements to the police in the absence of a lawyer, he later confirmed those statements before the public prosecutor and the investigating judge in the presence of his lawyer (see paragraph 18 above). However, the applicant changed his version of events during the hearing before the trial court, maintaining that M.K. had stabbed E.K. following a fight caused by their inability to pay the taxi fare, but that they had not attempted robbery.

77. Finally, in both sets of criminal proceedings, the trial courts listed the applicant's statements as evidence and relied on those statements when convicting the applicant for the charges of attempted robbery, causing intentional bodily harm and murder.

78. As to the overall fairness of the criminal proceedings against the applicant, the Government referred to the following circumstances: the

medical reports issued in respect of the applicant after being in police custody had shown no signs of ill-treatment; the applicant had been represented by a lawyer throughout the domestic proceedings; the applicant had been given the opportunity of challenging the authenticity of the evidence and of opposing its use; the applicant's statements to the police had not been the sole basis for his convictions; the applicant had benefited from sufficient guarantees during the proceedings.

79. The Court agrees with the Government that these are factors to take into account. However, the Court does not agree with the Government that they, as this case stood, were sufficient to render the criminal proceedings against the applicant fair, despite his lack of legal assistance during the police interview.

80. The Court reiterates in this respect that it was in the first place the trial court's duty to establish in a convincing manner whether or not the applicant's confessions and waiver of legal assistance had been voluntary (see *Ogorodnik v. Ukraine*, no. 29644/10, § 108, 5 February 2015; *Türk*, cited above, § 53; and *Ruşen Bayar*, cited above, § 128).

81. The Court notes that the applicant was represented by a lawyer throughout the domestic proceedings and as such had the opportunity to present his arguments and challenge those put forward by the prosecution. More specifically, the applicant denied that he had waived his right to legal assistance and claimed that he had been coerced into signing all the records. However, despite the fact that the applicant denied the accuracy of the contents of the statements taken from him in the absence of legal assistance concerning both of sets of criminal proceedings, the Istanbul Assize Court did not take any steps to examine whether the circumstances surrounding the applicant's waiver had been compatible with the requirements of the Convention (see, *mutatis mutandis*, *Bozkaya*, cited above, § 50).

82. Although the trial court in the first set of criminal proceedings examined whether the applicant had been subjected to alleged ill-treatment by the police while in custody, the court failed to make any assessment of the consequences for the applicant's defence rights of the lawyer's absence during the police interviews with regard to either set of criminal proceedings (see *Beuze*, cited above, § 193).

83. In that connection, the Court also notes that Turkish law sets out a very strong procedural safeguard in Article 148 § 4 of the Code of Criminal Procedure (see paragraph 47 above) capable of remedying the procedural shortcomings in relation to the use of police statements taken without a lawyer present, irrespective of whether a suspect had waived his right to legal assistance or not (see *Ruşen Bayar*, cited above, § 128). Despite that provision, the Istanbul Assize Court failed to carry out an examination of the admissibility of the applicant's statements made to the police before relying on those statements when convicting the applicant of all the charges

in both sets of criminal proceedings (see *mutatis mutandis*, *Türk*, cited above, § 55; and *Bozkaya*, cited above, § 51).

84. Furthermore, in so far as it concerns the first set of criminal proceedings, the Court observes that according to the expert report of 30 May 2008 issued during the proceedings, the voice recordings of the applicant's police interviews did not include any confession from the applicant regarding the crime committed on 31 January 2007. Although the applicant also challenged the reliability of the interview record in the light of that expert report, the trial court failed to make any assessment regarding the accuracy and veracity of such evidence before relying on it to convict the applicant.

85. Likewise, the Court of Cassation dealt with the applicant's complaints about the violation of his procedural rights in a formalistic manner in respect of both sets of proceedings (see, *mutatis mutandis*, *Türk*, cited above, § 55, and *Bozkaya*, cited above, § 50).

86. In view of the above, the Court considers that the restriction of the applicant's access to a lawyer from 10 April 2007 until 11 April 2007 at 10.25 p.m. prejudiced the applicant's defence rights as the domestic courts relied on his statements to the police, taken in the absence of a lawyer (contrast *Simeonovi*, cited above, § 136) without subjecting them to close scrutiny or operating the statutory safeguards.

87. In the light of the foregoing considerations, the Court considers that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention in respect of the criminal proceedings against the applicant.

II. ALLEGED VIOLATION OF ARTICLE 6 § 3 (d) OF THE CONVENTION

88. The applicant further complained that he had been unable to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him, as required by Article 6 § 3 (d) of the Convention.

89. In light of the Court's conclusion above as to the overall fairness of the criminal proceedings against the applicant, and referring also to paragraph 89 below regarding retrial in accordance with the requirements of Article 6 being the most appropriate form of redress, the Court considers that there is no need to give a separate ruling on the merits of the applicant's complaints under this head (see *mutatis mutandis*, *Abdulgafur Batmaz v. Turkey*, no. 44023/09, § 54, 24 May 2016).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. Article 41 of the Convention provides:

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

A. Damage

91. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. The Government contested the applicant’s claim, submitting that the amount was excessive and did not correspond to the case-law of the Court.

92. The Court considers that in this case the finding of a violation constitutes sufficient just satisfaction (see *Dvorski*, cited above, § 117). It considers that the most appropriate form of redress would be the retrial of the cases against the applicant in accordance with the requirements of Article 6 of the Convention, should he so request (see *Salduz*, cited above, § 72). It therefore rejects the applicant’s claim in respect of non-pecuniary damage.

B. Costs and expenses

93. The applicant also claimed EUR 4,108 for costs and expenses incurred before the domestic courts and EUR 3,275 for those incurred before the Court. In support of his claim, he produced a contract signed with his lawyer, Mr Abdulhalim Yılmaz. He also submitted a breakdown of the number of hours of work for which his lawyer needed to be paid.

94. The Government contested the applicant’s claims, submitting that the amounts requested were unsubstantiated and not supported by adequate documentary evidence.

95. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,500 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention admissible;
2. *Holds* that there has been a violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 6 § 3 (d) of the Convention;
4. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 July 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Robert Spano
President