



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

SECOND SECTION

CASE OF ELİF NAZAN ŞEKER v. TURKEY

(Application no. 41954/10)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Applicant's defence rights adversely affected by trial court's decision overriding her wishes as to her choice of legal representation • Overall fairness of proceedings undermined

STRASBOURG

8 March 2022

FINAL

08/06/2022

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

In the case of Elif Nazan Şeker v. Turkey,

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Egidijus Kūris,

Branko Lubarda,

Gilberto Felici,

Saadet Yüksel,

Diana Sârcu, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 41954/10) 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, Ms Elif Nazan Şeker (“the applicant”), on 14 June 2010;

the decision to give notice to the Turkish Government (“the Government”) of the complaint concerning a breach of her right to legal assistance of a lawyer of her own choosing and to declare the remainder of the complaints inadmissible;

the parties’ observations;

Having deliberated in private on 8 February 2022,

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

INTRODUCTION

1. The application concerns the alleged unfairness of the criminal proceedings against the applicant owing to the domestic authorities’ alleged failure to respect her right to defend herself through legal assistance of her own choosing, as protected by Article 6 § 3 (c) of the Convention.

THE FACTS

2. The applicant was born in 1978 and was represented by Mr F.A. Tamer, a lawyer practising in Istanbul.

3. The Government were represented by their Agent, Mr Hacı Ali Açıkgül, Head of the Department of Human Rights of the Ministry of Justice of the Republic of Turkey.

4. The facts of the case may be summarised as follows.

5. On 14 August 1996 the applicant was arrested in İzmir on suspicion of her involvement in an illegal organisation, namely Ekim (October). It appears from the documents in the Court’s possession that the applicant made statements, in the absence of a defence lawyer, to police officers from the

Anti-Terrorist Branches of the İzmir and Kocaeli Security Directorates, on 15 August 1996 and 22 August 1996 respectively.

6. On 23 September 1996 the Istanbul public prosecutor filed a bill of indictment against the applicant and five other persons with the Istanbul State Security Court, accusing her under Article 168 § 1 of the former Criminal Code of assuming a special responsibility in forming an armed gang.

7. On 26 February 1998 the Istanbul State Security Court found the applicant guilty under section 7 (1) of the Prevention of Terrorism Act (Law no. 3713) of being a member of the illegal Ekim organisation, and sentenced her to two years and six months' imprisonment and a fine. On the same day, the trial court also ordered the applicant's release. In the course of the proceedings before that court, the applicant was represented by a defence lawyer of her own choosing, namely Mr İ.E.

8. On 19 April 1999 the Court of Cassation quashed the trial court's judgment, holding, *inter alia*, that the trial court should have considered the illegal organisation as an armed organisation and assessed the acts attributed to the applicant under Article 168 of the former Criminal Code (membership of an armed organisation or gang). The case was accordingly remitted to the trial court.

9. On 21 October 1999 İ.E. started acting as the defence lawyer for the co-defendants D.Z. and G.Y.

10. According to the record of the hearing held on 2 November 1999, at which both the applicant and İ.E. were present, the trial court took notice of a letter from İ.E. whereby he had withdrawn from representing the applicant. When the applicant was apprised of that letter during the same hearing, she stated that she had known of the withdrawal and informed the court that she would thereafter be represented by the defence lawyer P.S., who submitted a power of attorney to that effect. At the end of the hearing and at the request of P.S., the trial court dispensed the applicant from the obligation to attend hearings (*vareste tutmak*).

11. Between 2 March 2000 and 1 September 2005 the trial court held twenty-three hearings and decided to adjourn the majority of those hearings pending the execution of the arrest warrant issued in respect of D.S., with a view to bringing him before the court to obtain his submissions *vis-à-vis* the Court of Cassation's decision dated 19 April 1999.

12. No one other than the members of the trial court bench, the trial prosecutor and the court clerk was present at twelve of those hearings (dated 27 March 2001, 9 August 2001, 1 November 2001, 26 December 2002, 22 July 2003, 23 October 2003, 27 January 2004, 13 April 2004, 3 August 2004, 2 December 2004, 3 May 2005, and 1 September 2005).

13. P.S. attended eight of the remaining eleven hearings (dated 2 March 2000, 9 May 2000, 18 July 2000, 5 June 2001, 14 February 2002, 2 May 2002, 18 July 2002, and 22 April 2003).

14. At the hearing held on 1 September 2005 the trial court decided to ask the Bar Association to appoint defence lawyers for those defendants who did not have one, and ordered that the defence lawyers who appeared to be acting on behalf of the other defendants be informed of the dates of the hearings.

15. On 14 September 2005 a summons was served on P.S. at his office address.

16. On 17 November 2005 the trial court held a hearing of its own motion following the arrest of D.S. and obtained his defence submissions without the presence of the other defendants or defence lawyers.

17. At a hearing held on 25 April 2006 the public prosecutor reiterated his opinion on the merits of the case dated 2 May 2002 and asked the trial court, *inter alia*, to find the applicant guilty of membership of an armed terrorist organisation pursuant to Article 314 § 2 of the Criminal Code (Law no. 5237). At the end of the hearing, the trial court decided to send a letter to the Bar Association asking it to appoint a defence lawyer for the applicant, after P.S.'s failure to appear at the hearings for three years. It appears from the record of the hearings that, following the appointment of M.B. as the applicant's officially appointed defence lawyer (*zorunlu müdafî*) on 6 July 2006, the trial court did not send any documents relating to the criminal proceedings to the applicant's chosen defence lawyer, P.S.

18. At the hearing held on 3 August 2006, the defence lawyer M.B. was present and asked for additional time to prepare defence submissions for the applicant in view of his fresh appointment to the case.

19. The defence lawyer M.B. attended the hearing held on 23 November 2006 and made the applicant's defence submissions on the merits of the case, submitting that the acts attributed to her could only form the basis of the offence of aiding and abetting an illegal organisation, but that that offence had become time-barred, without however submitting any points on the substance of the accusation. In the event that the court reached a different conclusion, he asked for the applicant's acquittal.

20. As no defendant or defence lawyer attended the hearings held on 28 June 2007, 11 December 2007 and 6 March 2008, the trial court ordered that letters be sent to, *inter alios*, M.B. to remind him of his legal obligation to attend the court hearings as an officially appointed defence lawyer.

21. At a hearing held on 29 May 2008, M.B. reiterated the defence submissions that he had previously made. At the end of the hearing, the Istanbul Assize Court convicted the applicant under Article 314 § 2 of the Criminal Code of being a member of an armed terrorist organisation and sentenced her to six years and three months' imprisonment.

22. On the same day M.B. lodged a one-page appeal against the judgment, which read as follows:

"There is insufficient evidence in the case file to show that my client committed the offence attributed to her. For this reason, the domestic court's decision is unlawful; [my client] ought to have been acquitted.

The legal characterisation of the offence is unlawful. The applicant's acts should be interpreted as aiding and abetting [an illegal organisation] and the proceedings ought to be discontinued as time-barred.

I therefore submit and request that the domestic court's decision be quashed in view of these grounds of unlawfulness which would also be taken into account by the Court of Cassation of its own motion."

23. On 14 December 2009 the Court of Cassation upheld the trial court's judgment.

24. On 15 March 2010 the applicant asked the public prosecutor at the Court of Cassation to have recourse to the extraordinary remedy provided for in Article 308 of the Code of Criminal Procedure, with a view to having the Court of Cassation's decision set aside, arguing that the trial court had appointed M.B. as her defence lawyer without informing her or P.S., in breach of Article 150 of the Code of Criminal Procedure.

25. On 29 September 2010 the public prosecutor at the Court of Cassation refused the applicant's request, holding that M.B. had been appointed as her defence lawyer following P.S.'s failure to pursue her case.

RELEVANT LEGAL FRAMEWORK

26. Article 150 of the Code of Criminal Procedure (Law no. 5271 of 4 December 2004), as in force at the material time, provided as follows:

"(1) In cases in which the suspect or accused states that he or she is unable to choose a defence lawyer, a defence lawyer shall be appointed on his or her behalf, if he or she so requests.

(2) A defence lawyer shall be appointed without the request of the suspect or accused where [he or she] is a minor or deaf or mute or disabled to an extent of being incapable of conducting his or her own defence and if [he or she] does not have a defence lawyer.

(3) The second paragraph shall also be applied as regards investigations and prosecutions concerning an offence punishable by a maximum term of imprisonment of at least five years."

27. Article 150 was amended on 6 December 2006 and now reads as follows:

"(1) A suspect or accused shall be asked to choose a defence lawyer. In cases in which a suspect or accused states that he or she is unable to choose a defence lawyer, a defence lawyer shall be appointed on his or her behalf, if he or she so requests.

(2) A defence lawyer shall be appointed for a suspect or accused without a defence lawyer without his or her request where [he or she] is a minor or deaf or mute or disabled to an extent of being incapable of conducting his or her own defence.

(3) The second paragraph shall also be applied as regards investigations and prosecutions concerning an offence punishable by a minimum term of imprisonment of more than five years.

(4) Other aspects relating to mandatory legal representation shall be governed by a regulation that will be published [after] receiving the opinion of the Union of Bar Associations of Turkey.”

28. Article 151, as in force at the material time, provided as follows:

“(1) In cases in which the defence lawyer appointed in accordance with Article 150 is not present at or withdraws in an untimely manner from the hearing or fails to fulfil his or her duties, the judge or the court shall take the necessary action to immediately appoint another defence lawyer. In this case, the court may decide to suspend the session or adjourn it.

(2) If the defence lawyer states that he or she does not have sufficient time to prepare the defence, the session shall be adjourned.”

29. Article 156 of the Code of Criminal Procedure, entitled “the procedure for the appointment of a defence lawyer”, stipulates that in cases enumerated in Article 150 of the Code and during the trial, a defence lawyer will be appointed, at the trial court’s request to that effect, by the Bar Association. The third paragraph of the same Article provides that in cases in which a suspect or accused retains a private defence lawyer, the mandate of the defence lawyer appointed by the Bar shall be terminated.

30. Section 7 of the Regulation governing the principles and procedure regarding the appointment of and payments to be made to defence lawyers and representatives pursuant to the Code of Criminal Procedure (no. 26450, which entered into force on 2 March 2007), reads as follows.

Section 7 – End of mandate

“(1) The mandate of defence lawyers shall come to an end:

(a) at the investigation stage with the decision not to prosecute becoming final, with the delivery of the decision on lack of competence or jurisdiction, or in the case of a criminal case being brought, with the acceptance of the indictment [by the criminal court].

b) at the prosecution stage with the decision on lack of competence or jurisdiction, with the decision on the merits becoming final or with the decision to transfer the case [to another jurisdiction].

c) with the death of the defence lawyer or the suspect or the accused.

ç) with the voluntary appointment of another defence lawyer.

(2) Where assistance by a defence lawyer is mandatory, that defence lawyer may not be dismissed.”

THE LAW

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

31. The applicant complained that her right to legal assistance of her own choosing had been breached by virtue of the trial court’s decision to appoint

a defence lawyer for her without informing her or her privately retained defence lawyer. Article 6 of the Convention reads, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... 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;

...”

A. Admissibility

32. The Government argued that the application must be declared inadmissible as being manifestly ill-founded, because the fact that the applicant had not been represented by a lawyer of her own choosing did not irreversibly prejudice the overall fairness of the proceedings for the following reasons. Neither the applicant nor her privately retained lawyer P.S. had exhibited the requisite diligence in pursuing the case, which had resulted in the appointment of M.B. as her defence lawyer with the aim of protecting her rights of defence. As M.B. had consulted the case file, made defence submissions and lodged an appeal against the applicant’s conviction, the Government took the view that the applicant had not suffered any disadvantage.

33. The applicant contested the Government’s submissions.

34. The Court considers that the application raises complex issues of facts and law which cannot be determined without an examination on the merits. It finds that the application is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties’ submissions

(a) The applicant

35. The applicant stated that, contrary to the Government’s allegations, the record of the hearing dated 2 November 1999 clearly showed that her former defence lawyer, İ.E., had withdrawn from representing her and that P.S. had started acting as her defence lawyer as of that hearing. There was thus no obligation on the part of İ.E. to inform her of any developments as regards her defence. The applicant further submitted that at the hearing on 2 November 1999 the trial court had dispensed her from her duty to attend

the hearings in accordance with the domestic legal provisions, which was the reason why she had not attended the hearings after that date. Moreover, the applicant had not wished to attend the trial, which had reminded her of the torture she had allegedly been subjected to during her twelve-day detention. In any event, the Government's contention that she had not followed the hearings was no more than an attempt to conceal their negligence and responsibility by focusing on her behaviour.

36. The applicant contended that, again contrary to the Government's allegations, P.S. had attended ten hearings until 22 April 2003 and from that date no defence lawyer or defendant had attended any of the hearings, which had been adjourned pending the execution of the arrest warrant issued against D.S., who had been arrested on 17 November 2005. Although the applicant admitted that P.S. had not shown the requisite diligence in pursuing her case after D.S.'s arrest, she criticised the trial court for appointing a defence lawyer on her behalf without informing either her or the defence lawyer of her own choosing. In the applicant's view, the Government's contention that there was no legal obligation to inform an accused who already had a defence lawyer of his or her own choosing of the appointment of a new defence lawyer was the basis of the problem in the instant case. In the applicant's view, this shortcoming was all the more disturbing since the trial court had had in its possession all the necessary information, including her address, to notify her of such an important event, and it had resulted in her being represented by a defence lawyer she had not chosen, despite the fact that she already had a defence lawyer of her own choosing.

37. Lastly, the applicant maintained that the defence submissions made by M.B. were superficial and contained no arguments as to the substance of the accusations against her, as can be seen from the submissions he made during the hearing dated 23 November 2006 in respect of the public prosecutor's opinion on the merits of the case. Furthermore, M.B. had appealed against the trial court's decision on the day it was delivered, and without waiting for its reasoned judgment. In any event, the appeal had consisted of three generic paragraphs, and no further appeal submissions had been submitted by M.B. More importantly, at no point during the proceedings had M.B. informed the applicant of his appointment, which had, in turn, prevented her from conducting an effective defence. In view of the above, the applicant contended that her right to a fair trial as protected under Article 6 §§ 1 and 3 (c) of the Convention had been breached.

(b) The Government

38. Maintaining their arguments relating to the admissibility of the application, the Government further submitted that P.S. had acted as the applicant's privately retained defence lawyer for the first time on 5 June 2001, and had only attended hearings twice until her conviction on 29 May 2008.

In fact, P.S. had not attended the trial for three years prior to the appointment of M.B. or for another two years after that appointment.

39. Similarly, the applicant had also failed for approximately ten years to fulfil her obligation to pursue her case. In those circumstances, the trial court had been obliged by virtue of Article 151 of the Code of Criminal Procedure to appoint a new defence lawyer for the applicant as a result of P.S.'s non-attendance at trial. The trial court's efforts aimed at ensuring that the applicant received effective legal assistance could therefore not be considered as the "removal" of P.S., who had remained free to pursue the case. In any event, M.B., the applicant's officially appointed defence lawyer, had attended the hearings, made statements on the merits of the case and lodged an appeal against the trial court's decision convicting the applicant.

40. The Government further argued that there was no legal requirement in Turkish criminal procedural law to inform an accused of the appointment of an officially appointed defence lawyer, which was due, in their view, to "the State's obligation not to interfere with the relationship between a client and a lawyer". That being the case, whether M.B. had contacted the applicant was an issue that had to be resolved by the applicant or P.S., and not by the Government. In any event, had the applicant been of the view that either P.S. or M.B. had been negligent in carrying out their duties, she could have had recourse to disciplinary, civil and criminal remedies, which she had failed to do, without any explanation.

41. Lastly, asserting that there was no information in the case file showing the termination of İ.E.'s mandate as the applicant's defence lawyer, the Government averred that İ.E. should have informed the applicant of the appointment of M.B. It was thus not possible to argue that the State had incurred any liability relating to the applicant's defence rights on this point.

2. *The Court's assessment*

(a) **General principles**

42. From the initial stages of the proceedings a person charged with a criminal offence who does not wish to defend himself in person must be able to have recourse to legal assistance of his own choosing (see *Dvorski v. Croatia* [GC], no. 25703/11, § 78, ECHR 2015; see also *Martin v. Estonia*, no. 35985/09, §§ 90 and 93, 30 May 2013). This follows from the very wording of Article 6 § 3 (c), which guarantees that "[e]veryone charged with a criminal offence has the following minimum rights: ... to defend himself ... through legal assistance of his own choosing ...", and is generally recognised in international human rights standards as a mechanism for securing an effective defence to the accused. The Court emphasises that the fairness of proceedings requires that an accused should be able to obtain the whole range of services specifically associated with legal assistance (see *Dvorski*, cited above, § 78). That being said, paragraph 3 (c) of Article 6 does not specify

the manner of exercising this right (see *Rybacki v. Poland*, no. 52479/99, § 54, 13 January 2009). It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being only to ascertain whether the method they have chosen is consistent with the requirements of a fair trial (see *Sejdovic v. Italy* [GC], no. 56581/00, § 83, ECHR 2006-II, and *Imbrioscia v. Switzerland*, 24 November 1993, § 38, Series A no. 275).

43. Notwithstanding the importance of the relationship of confidence between a lawyer and his client, this right is not absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them (see *Croissant v. Germany*, 25 September 1992, § 29, Series A no. 237-B). The Court has consistently held that the national authorities must have regard to the defendant's wishes as to his or her choice of legal representation, but may override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice (*ibid.*, § 29; see also *Meftah and Others v. France* [GC], nos. 32911/96 and 2 others, § 45, ECHR 2002-VII; *Mayzit v. Russia*, no. 63378/00, § 66, 20 January 2005; *Klimentyev v. Russia*, no. 46503/99, § 116, 16 November 2006; *Vitan v. Romania*, no. 42084/02, § 59, 25 March 2008; *Pavlenko v. Russia*, no. 42371/02, § 98, 1 April 2010; *Zagorodniy v. Ukraine*, no. 27004/06, § 52, 24 November 2011; and *Martin*, cited above, § 90). Where such grounds are lacking, a restriction on the free choice of defence counsel would entail a violation of Article 6 § 1 together with paragraph 3 (c) if it adversely affected the applicant's defence, regard being had to the proceedings as a whole (see *Croissant*, cited above, § 31; and *Dvorski*, cited above, § 79; see also *Meftah and Others*, cited above, §§ 46-47; *Vitan*, cited above, §§ 58-64; *Zagorodniy*, cited above, §§ 53-55; and *Martin*, cited above, §§ 90-97).

44. In contrast to the cases involving denial of access to a lawyer, which may be justified only in case of the existence of "compelling reasons" for such a restriction (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008; and *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, §§ 258-259, 13 September 2016), the more lenient requirement of "relevant and sufficient" reasons has been applied in situations raising the less serious issue of "denial of choice". In such cases the Court's task will be to assess whether, in the light of the proceedings as a whole, the rights of the defence have been "adversely affected" to such an extent as to undermine their overall fairness (see *Dvorski*, cited above, § 81; see also *Croissant*, cited above, § 31; *Klimentyev*, cited above, §§ 117-118; and *Martin*, cited above, §§ 96-97).

45. It is the latter test which is to be applied in cases concerning the restrictions on the right of access to a lawyer of one's own choosing. Against the above background, the Court considers that the first step should be to

assess whether it has been demonstrated in the light of the particular circumstances of each case that there were relevant and sufficient grounds for overriding or obstructing the defendant's wish as to his or her choice of legal representation. Where no such reasons exist, the Court should proceed to evaluate the overall fairness of the criminal proceedings (see *Dvorski*, cited above, § 82). In making its assessment, the Court may have regard to a variety of factors, including the nature of the proceedings and the application of certain professional requirements (see *Meftah and Others*, cited above, §§ 45-48; and *Martin*, cited above, § 90); the circumstances surrounding the designation of counsel and the existence of opportunities for challenging this (*ibid.*, §§ 90-97); the effectiveness of counsel's assistance (see *Croissant*, cited above § 31; and *Vitan*, cited above, §§ 58-64); whether the accused's privilege against self-incrimination has been respected (see *Martin*, cited above, § 90); the accused's age (*ibid.*, § 92); and the trial court's use of any statements given by the accused at the material time (see *Martin*, cited above, §§ 94-95). The Court is further mindful that the Convention is intended to guarantee rights that are practical and effective and not theoretical and illusory (see, among many other authorities, *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32; *Goddi v. Italy*, 9 April 1984, § 30, Series A no. 76; and *Salduz*, cited above, § 55) and that in determining Convention rights one must frequently look beyond appearances and concentrate on the realities of the situation (see, *inter alia*, *Delcourt v. Belgium*, 17 January 1970, § 31, Series A no. 11; *De Jong, Baljet and Van den Brink v. the Netherlands*, 22 May 1984, § 48, Series A no. 77; *Pavlenko*, cited above, § 112; and *Erkapić v. Croatia*, no. 51198/08, §§ 80-82, 25 April 2013).

(b) Application to the present case

(i) Preliminary comments

46. The Court notes that from the initial phase of the trial starting with the filing of the bill of indictment against the applicant on 23 September 1996 until the hearing dated 2 November 1999, İ.E. acted as the applicant's privately retained defence lawyer. At that last hearing, İ.E. withdrew from representing her, as reflected in the record of the hearing. On this basis, the Court holds that İ.E. bore no responsibility whatsoever *vis-à-vis* the applicant with regard to the further course of the proceedings and rejects the Government's argument to that effect.

47. At the same hearing the trial court dispensed the applicant from her duty to attend the hearings, in line with the legal provisions then in force. According to the documents in the Court's possession, that was the last hearing at which the applicant was present. From that time, and not from 5 June 2001, as alleged by the Government, P.S. was the defence lawyer of the applicant's own choosing. In the Court's view, the applicant exercised a right bestowed upon her by the domestic courts (the right not to attend

hearings) and retained a defence lawyer of her own choosing to pursue her case. In any event, the Court reiterates that it considers that the applicant's conduct could not of itself relieve the authorities of their obligation to take steps to guarantee the effectiveness of the accused's defence (see *Sannino v. Italy*, no. 30961/03, § 51, ECHR 2006-VI).

48. Moreover, and contrary to the Government's submission, P.S. attended nine hearings in total. As regards the twelve hearings at which no defendant or defence lawyer was present, the Court attaches decisive importance to the fact that the trial court did not reproach the defendants or their lawyers for their absence during that period, which was essentially devoted to the execution of the arrest warrant issued in respect of D.S.

49. Nevertheless, in view of the fact that even after D.S.'s arrest P.S. did not attend the hearings, without putting forward any valid reason or excuse for his absence, the trial court decided to remind P.S. of his duties in order to ensure his attendance at the hearings, with a view to securing the applicant's effective legal representation. Those efforts, however, proved futile and prompted the trial court – without informing the applicant – to ask the Bar Association to appoint a defence lawyer for her, as the offence imputed to her required mandatory legal representation pursuant to Article 150 § 3 of the Code of Criminal Procedure as in force at the material time (on the ground that it entailed a maximum term of imprisonment of at least five years). Thereafter, the trial court did not attempt to inform the applicant of its decision to appoint a defence lawyer on her behalf pursuant to Article 150 § 3 of the Code of Criminal Procedure. Nor did it resume its correspondence with P.S. following the appointment of M.B. as the applicant's defence lawyer.

50. In view of the above, the legal question in the instant case is related to the two following factors: on the one hand, the applicant's alleged inability to effectively defend herself through legal assistance of her own choosing and, on the other hand, the trial court's duty to ensure the proper administration of justice, in particular in the face of the unjustified absence of the applicant's privately retained lawyer P.S. from the trial. That being the case, the Court will apply the principles established in *Croissant* (cited above) and developed in *Dvorski* (cited above) to the legal question concerned, seeking to ascertain (i) whether there were relevant and sufficient grounds for overriding the applicant's wish as to her choice of legal representation, and (ii) whether the criminal proceedings against the applicant were fair overall.

51. Before embarking on its assessment, the Court notes that it is for the Contracting States to decide how they should comply with the fair hearing obligations arising under the Convention (see *Sialkowska v. Poland*, no. 8932/05, § 106 *in fine*, 22 March 2007) and that domestic courts, as the ultimate guardians of the fairness of proceedings, have a positive obligation to ensure practical and effective respect for defence rights as protected under Article 6 of the Convention (see *Vamvakas v. Greece (no. 2)*, no. 2870/11, § 43, 9 April 2015). In this respect, domestic courts' recourse to certain

procedural measures which may at first glance appear to be beneficial for the proper administration of justice, may not be exempted from the requirement of procedural safeguards, particularly in such instances as may potentially be detrimental to the rights of defence. In view of the above, the Court holds that domestic courts' decisions to override or obstruct a defendant's wish as to his or her choice of legal representation must be accompanied by procedural safeguards calculated to ensure that the right to legal assistance of one's own choosing remains practical and effective, and not theoretical and illusory (see *Perez v. France* [GC], no. 47287/99, § 80, ECHR 2004-I; and *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37).

(ii) *Whether there were relevant and sufficient grounds for overriding the applicant's wish as to her choice of legal representation*

52. In the present case, the Government argued that the trial court's decision to ask the Bar to appoint another defence lawyer on behalf of the applicant was based on Article 151 of the Code of Criminal Procedure. Nevertheless, the Court cannot but note that the scope of that provision appears to be limited to officially appointed lawyers (pursuant to Article 150 of the same Code), whereas P.S. was the applicant's chosen defence lawyer. The difference between "chosen" and "appointed" defence lawyers is also borne out by Article 156 § 3 of the same Code, and section 7(1) subparagraph (ç) of Regulation no. 26450 (which entered into force on 2 March 2007), which stipulate that the officially appointed defence lawyer's mandate will end if an accused retains a privately chosen defence lawyer. Be that as it may, the Court reiterates that it is primarily for the national courts to resolve problems of interpretation of domestic legislation and that its role is to verify whether the effects of such interpretation are compatible with the Convention (see, *mutatis mutandis*, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 49, 20 October 2011). Accordingly, the Court will focus on the reasons adduced by the trial court in appointing M.B. as the applicant's defence lawyer at a time when she was represented by P.S., the defence lawyer of her own choosing.

53. In that connection, the Court observes that the trial court's decision on that point did not contain any reasons. However, since the trial court sought a replacement for P.S. following his unjustified absence from the trial for a significant period of time, the Court is prepared to accept that there was a relevant factual ground for the appointment of M.B., having regard to the need to ensure the integrity of the proceedings, the proper administration of justice and the effective representation of the applicant in line with the guarantees of Article 6 of the Convention (see *Vitan*, cited above, §§ 60-63).

54. Notwithstanding the above, the fact remains that the trial court did not inform the applicant of M.B.'s appointment and, as the Government conceded, that was due to the absence of a legal provision requiring the courts to inform an accused of the appointment of an officially appointed defence

lawyer, which stripped the decision-making procedure of any procedural safeguard capable of guaranteeing that the applicant's wishes as to her choice of legal representation remained practical and effective. Such a state of affairs is also at odds with the Court's well-established case-law on the issue which requires the national authorities to have regard to a defendant's wishes as to his or her choice of legal representation (see *Dvorski*, cited above, § 79, with further references). It follows that the domestic courts failed to reason adequately that there were sufficient grounds, including whether a clear legal basis existed, for overriding the applicant's original wishes as to her choice of legal representation and for appointing M.B. as her new defence lawyer.

(iii) Whether the criminal proceedings against the applicant were fair overall

55. The above-mentioned procedural shortcomings, in particular the trial court's failure to inform the applicant of the appointment of the new lawyer, prevented her from expressing any wish and making an informed choice. In order to assess whether these shortcomings had an adverse impact on the overall fairness of the criminal proceedings against the applicant, the Court in the specific circumstances of the case needs to refer to the conduct of the officially appointed defence lawyer, M.B. In this regard, it notes that he consulted the case file, obtained copies from it and made a brief oral submission during the trial, as was demonstrated by the record of the hearing dated 23 November 2006 (see paragraph 19; see also *Ananyev v. Russia*, no. 20292/04, § 53, 30 July 2009). However, there is no indication that M.B. ever informed the applicant of his appointment as a defence lawyer, or otherwise contacted her to discuss her case and to prepare her defence (*ibid.*, § 54). Although the Government submitted that this was an issue that must be resolved by the applicant, arguing that the State was not supposed to interfere with the lawyer-client relationship, it is undisputed that the applicant was not informed of M.B.'s appointment, either by the lawyer himself or by the trial court. That being the case and having regard to the fact that the mere nomination of a defence lawyer does not ensure effective assistance (see *Artico*, cited above, § 33), the Court cannot accept the Government's proposition.

56. Furthermore, the Court gives prominence to the fact that at no stage of the proceedings before the trial court did M.B. meet with the applicant to discuss her case and provide legal advice. Likewise, he neither submitted any written submissions on the merits of the accusations levelled against the applicant nor substantiated the grounds of the two arguments that he had orally presented. More importantly, M.B. lodged his short appeal on the day the trial court's judgment was delivered, when it did not contain any reasons. Even though the trial court later served its reasoned judgment on M.B., and not on the applicant or P.S., he did not lodge any further appeal submissions on behalf of the applicant in response to the findings contained in the reasoned judgment. In other words, his appeal was devoid of any substantive factual or

legal arguments (see *Gabrielyan v. Armenia*, no. 8088/05, § 66 *in fine*, 10 April 2012). In the Court's view, those deficiencies are such as to have risked reducing M.B.'s appointment to a mere formality.

57. The above considerations, taken cumulatively, are sufficient for the Court to conclude that the defence rights of the applicant in the criminal proceedings against her were adversely affected by the trial court's decision to override her wishes as to her choice of legal representation to an extent as to undermine the overall fairness of the proceedings.

58. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

Article 41

"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. Non-pecuniary damage

60. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage, submitting that because she had not been informed of the appointment of M.B., she had been detained unexpectedly at her workplace for the execution of her sentence, which had resulted in her falling into a severe depression, and serving three years and twenty-two days in prison.

61. The Government contested that claim, arguing that it was excessive.

62. The Court finds that the applicant must have suffered non-pecuniary damage as a result of the violation of Article 6 §§ 1 and 3 (c) of the Convention, which cannot be compensated for solely by the finding of a violation. Ruling in equity, the Court thus awards the applicant EUR 6,000, plus any tax that may be chargeable.

B. Costs and expenses

63. The applicant also claimed EUR 1,950 for the costs and expenses incurred before the Court and submitted a time sheet showing that they corresponded to eight hours of legal work, preparation of correspondence with the Court, and expenses relating to postage, translation, stationery, and travel undertaken by her lawyer to visit her in prison.

64. The Government contested the claim, contending that the documents submitted in support thereof were not sufficient to show that the costs and expenses had actually been incurred.

65. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 1,000 covering costs under all heads for the proceedings before the Court, plus any tax that may be chargeable to the applicant (see *Soytemiz v. Turkey*, no. 57837/09, § 67, 27 November 2018, and the cases cited therein).

C. Default interest

66. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

ELİF NAZAN ŞEKER v. TURKEY JUDGMENT

Done in English, and notified in writing on 8 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Jon Fridrik Kjølbro
President