



Turkish authorities failed to show that a suspect in police custody had validly waived her right to a lawyer

In today's **Chamber** judgment¹ in the case of **Akdağ v. Turkey** (application no. 75460/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 and 3 (c) (right to a fair trial/access to a lawyer) of the European Convention on Human Rights.

The case concerned access to a lawyer in police custody. The applicant alleged that she had confessed to being a member of an illegal organisation after being threatened and ill-treated by the police, without access to a lawyer.

Although the Court rejected as inadmissible the applicant's complaint about her conviction on the basis of police statements taken under duress because of lack of evidence of ill-treatment, it found that the Government had failed to show that a printed "X" next to "no lawyer sought" on her statement form had amounted to her validly waiving her right to a lawyer during custody. In point of fact, as soon as she had had access to a lawyer at the end of her custody, she had retracted her statements.

Nor was the Court satisfied with the national courts' response to the applicant's complaint. They had neither examined the validity of the waiver nor the statements she had made to the police in the absence of a lawyer. Such lack of scrutiny had not been remedied by any other procedural safeguards, and the overall fairness of the proceedings against her had therefore been prejudiced.

Principal facts

The applicant, Hamdiye Akdağ, is a Turkish national who was born in 1974. When bringing her application she was serving a sentence for being a member of an illegal organisation, the PKK/KADEK (the Workers' Party of Kurdistan).

Ms Akdağ was arrested near her home in November 2003 and was held in police custody for four days for questioning. During this time she admitted her membership of the PKK/KADEK, giving a detailed statement of her involvement and training in the illegal organisation. She was not assisted by a lawyer, having indicated "no lawyer sought" with a printed "X" on her statement form.

However, she immediately retracted her statements to the police when brought before the public prosecutor and investigating judge at the end of her custody and was given access to a lawyer. She was also examined by a doctor and told him that the police had hit her on the head, and had threatened to rape and kill her.

She maintained that position before the trial court, alleging that she had been forced into signing her statements to the police and was, in any case, illiterate. She was ultimately found guilty of membership of a terrorist organisation in 2009 and sentenced to six years and three months'

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

imprisonment. The court based its decision on her statements to the police. The Court of Cassation upheld the conviction in 2010.

In the meantime, Ms Akdağ had lodged a formal complaint about police ill-treatment, but the prosecuting authorities decided not to prosecute owing to lack of evidence.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial/access to a lawyer), Ms Akdağ complained that the proceedings against her had been unfair because she had been denied access to a lawyer in police custody. She further alleged that she had then been convicted on the basis of the statements she had made under duress and without the assistance of a lawyer.

The application was lodged with the European Court of Human Rights on 22 November 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Marko **Bošnjak** (Slovenia),
Julia **Laffranque** (Estonia),
Valeriu **Grițco** (the Republic of Moldova),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),
Saadet **Yüksel** (Turkey),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

The Government argued that at the time of Ms Akdağ's arrest there had no longer been a blanket restriction in Turkey on the right of access to a lawyer in police custody of those accused of an offence within the jurisdiction of State Security Courts. At the time it had therefore been possible for such suspects to have access to a lawyer if they had asked for one. However, Ms Akdağ had indicated on her statement form that she did not require legal assistance. The Government therefore submitted that she had validly waived her right to a lawyer when giving statements to the police.

The Court was of the view, on the other hand, that there had been weighty indications against the conclusion that she had waived her right to a lawyer. First, she had immediately retracted her statements to the police as soon as she had had access to a lawyer both before the public prosecutor and the investigating judge, and had maintained that position before the trial court.

Furthermore, there had been no handwritten note on her statement form, which just had a printed "X" next to the type-written "no lawyer sought". Nor had the trial court carried out an assessment of her allegation that she was illiterate.

Moreover, the Government had not shown that Ms Akdağ had specifically been informed about the consequences of not requesting the assistance of a lawyer.

The Court therefore considered that the Government had failed to demonstrate that Ms Akdağ had validly waived her right to a lawyer when giving statements to the police.

The Government had also failed to provide any compelling reasons to justify restricting Ms Akdağ's access to a lawyer during her custody, such as an imminent threat to life, liberty or physical integrity.

Lastly, despite the fact that Ms Akdağ had been represented by a lawyer throughout the trial, the Court was not convinced that she had been able to meaningfully challenge the evidence used to

convict and sentence her. In particular, the national courts had not conducted any examination at all of the validity of the waiver or of the statements she had made to the police in the absence of a lawyer. That lack of close scrutiny had not been remedied by any other procedural safeguards, making the applicant's trial as a whole unfair.

There had therefore been a violation of Article 6 §§ 1 and 3 (c).

The Court declared inadmissible the applicant's complaint concerning the use of her police statements taken under alleged duress. It considered that she had failed to submit evidence to prove that she had been subjected to ill-treatment in police custody. The two medical reports in her case file, which she had neither challenged before the national courts nor this Court, had not indicated any sign of ill-treatment on her body. Moreover, the prosecuting authorities had decided not to prosecute owing to lack of evidence.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant.

Separate opinion

Judge Bošnjak and Judge Yüksel expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.