



## Trial was unfair because witnesses for the prosecution, whose statements were relied on for a conviction, could not be examined by defence

In today's Chamber judgment<sup>1</sup> in the case of [Gökbulut v. Turkey](#) (application no. 7459/04) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 §§ 1 and 3 (c)** (right to legal assistance) of the European Convention on Human Rights, and

**a violation of Article 6 §§ 1 and 3 (d)** (right to examine witnesses)

The case concerned the inability of Mr Gökbulut, who was convicted of membership of an illegal organisation, to examine or have examined witnesses whose statements were relied on for his conviction, and the lack of legal assistance when he was held in police custody.

The Court found in particular that the proceedings had been unfair as a whole, since Mr Gökbulut had not had legal assistance while in police custody and had not had the possibility of examining or having examined witnesses against him, although their statements had been decisive for his conviction. The authorities had not given any serious reason to justify their failure to call the witnesses and had not taken any steps to counterbalance the admission in evidence of the absent witnesses' testimony.

### Principal facts

The applicant, Hasan Basri Gökbulut, is a Turkish national who was born in 1966; he was being held at Erzurum prison (Turkey) when he lodged his application.

On 19 May 2002 Mr Gökbulut was deported from Iran. On his arrival in Turkey the border guards noted that he was wanted for belonging to an illegal organisation, *Anadolu Federe İslam Devleti* (AFİD – meaning “Federative Islamic State of Anatolia”). He was taken into police custody and questioned by the police without a lawyer being present. During the interview Mr Gökbulut acknowledged that he was one of the main leaders of the AFİD; he subsequently confirmed his statement to the public prosecutor. He was remanded in custody and charged with belonging to, or aiding and abetting, an illegal armed organisation.

At a hearing of 27 August 2002 in the Security Court, assisted by his lawyer, he retracted his confessions, denying the charges against him and claiming that he had been tortured in police custody. The judges asked the public prosecutor for copies of the statements of six other accused which had been taken in November 1998 in criminal proceedings concerning the same organisation. Mr Gökbulut's lawyer asked the Security Court to call as witnesses four of those accused, as they had named Mr Gökbulut as one of the leaders of the organisation, but the court refused.

On 21 January 2003 Mr Gökbulut was sentenced to prison for 18 years and nine months. In its reasoning the Security Court took into account, among other evidence, the statements of the six accused who had named Mr Gökbulut.

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](http://www.coe.int/t/dghl/monitoring/execution).

Asserting that he had been deprived of his right to examine or have examined witnesses against him, Mr Gökbulut appealed on points of law, but the Court of Cassation upheld the judgment.

In the context of proceedings concerning the application of a law providing for the rehabilitation of members of terrorist organisations, Mr Gökbulut's prison sentence was reduced to 12 years and six months, on 28 June 2005.

Mr Gökbulut complained about the judges of the Security Court to the Ministry of Justice, but he was unsuccessful. He also filed a criminal complaint against the police officers who had questioned him in police custody, but the public prosecutor dropped the case.

## Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (c) and (d) (right to a fair trial / right to legal assistance / and right to examine witnesses) of the Convention, Mr Gökbulut complained about the lack of fairness in the proceedings on the ground that he had not been assisted by a lawyer during his police custody or when appearing before the public prosecutor and the criminal court judge. He also argued that he had been convicted without at any stage having been able to examine or have examined witnesses whose testimony was relied upon for his conviction. He also submitted other complaints under Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security) and 6 § 1 (right to a fair hearing) of the Convention.

The application was lodged with the European Court of Human Rights on 3 November 2003.

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

Julia Laffranque (Estonia), *President*,  
Işıl Karakaş (Turkey),  
Paul Lemmens (Belgium),  
Valeriu Griţco (the Republic of Moldova),  
Ksenija Turković (Croatia),  
Jon Fridrik Kjølbro (Denmark),  
Georges Ravarani (Luxembourg),

and also Stanley Naismith, *Section Registrar*.

## Decision of the Court

### [Article 6 §§ 1 and 3 \(c\) \(right to legal assistance\)](#)

The Court reiterated that the absence of a lawyer during investigatory acts constituted a breach of the requirements of Article 6 of the Convention. It found that Mr Gökbulut had not been able to consult a lawyer or receive legal assistance while he was held in police custody. Consequently, there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

### [Article 6 §§ 1 and 3 \(d\) \(right to examine witnesses\)](#)

The Court noted that Mr Gökbulut's lawyer had asked for six prosecution witnesses to be called, as they had named Mr Gökbulut as one of the leaders of the illegal organisation in question when they themselves had been questioned by the police. The request had been denied, however, as the State Security Court had taken the view that there was no need for them to give testimony in open court because copies of their statements had been admitted in evidence. The Court found that the State Security Court had not relied on any reason why evidence should not be taken from those witnesses in the presence of Mr Gökbulut; that it had not even examined them itself; and that it had not relied on any factual, procedural or legal grounds capable of precluding their appearance. The Court thus

concluded that the trial court had not given any serious reason to justify the failure to call the witnesses whilst their statements had been admitted in evidence.

The Court also noted that the domestic courts, in finding Mr Gökbulut guilty, had mainly relied on the statements of those witnesses for the prosecution, and that the testimony in question had played a decisive role, since no other evidence in the case file had directly proved that Mr Gökbulut had committed the offence with which he was charged. The Court found, therefore, that the testimony of the absent witnesses had been decisive, such as to determine the outcome of the case.

The Court also observed that the Security Court had not responded to Mr Gökbulut's allegation that the testimony of the prosecution witnesses had been taken by police officers under duress. Nor had that court taken account of the medical reports concerning those suspects or of the fact that they had retracted their statements and had denied the charges before the public prosecutor and the criminal court judge. In the Court's view, the domestic courts had failed to verify the procedural safeguards and the way in which the statements had been obtained; this evidence had in fact been gathered by the police without a lawyer being present. Consequently, the Security Court had not appropriately examined the credibility of the absent witnesses or the reliability of their statements, and had not taken any steps to compensate for Mr Gökbulut's inability to have the witnesses directly cross-examined at trial. As a result, the Court found that the proceedings had been unfair as a whole and that there had been a violation of Article 6 §§ 1 and 3 (d) of the Convention.

### Other Articles

The Court found that Mr Gökbulut's other complaints, under Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security) and 6 § 1 (right to a fair hearing) of the Convention, were manifestly ill-founded.

### Article 41 (just satisfaction)

As no claim had been made for just satisfaction, the Court found that it did not need to make any award on that basis.

*The judgment is available only in French.*

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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.