



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

SECOND SECTION

CASE OF CANLI v. TURKEY

(Application no. 8211/10)

JUDGMENT

STRASBOURG

12 May 2020

This judgment is final but it may be subject to editorial revision.

In the case of Canlı v. Turkey,

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

Ivana Jelić, *President*,

Arnfinn Bårdsen,

Darian Pavli, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 24 March 2020,

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

PROCEDURE

1. The case originated in an application (no. 8211/10) 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 Mehmet Canlı (“the applicant”), on 28 December 2009.

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

3. The applicant alleged, in particular, that he had not had a fair trial on account of the absence of a lawyer when making statements to the police and the subsequent use by the trial court of those statements to convict him.

4. On 12 October 2015 notice of the above complaints were given to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Istanbul.

6. On 5 August 2004 D.T. was arrested and interviewed as a suspect. D.T. stated, *inter alia*, that on 5 or 6 July 2004 he had been sent to Istanbul to carry out acts of terrorism in line with his training by the PKK and its instructions to him. Ten or fifteen days following his arrival in Istanbul he had sent the applicant to the countryside as a courier. The applicant had gone back and forth to the countryside in July 2004, during which time he had communicated with D.T. through his mobile number, which had been saved as “Memiş” in his mobile telephone. The applicant had brought back eight electric detonators and a written note which had contained the terrorist organisation’s command to carry out an act between 14 July and 15 August 2004 at a military or police facility or a touristic site. He further stated that he had handed the electric detonators to another individual, Ş.K.

7. At 8.40 a.m. on 6 August 2004 the applicant was arrested in Antalya on suspicion of membership of an illegal organisation, namely the PKK, following statements given by another co-accused, D.T. Subsequently, at 9.20 a.m. the applicant was examined at the Antalya Forensic Medicine Institute by a doctor, who concluded that there were no signs of ill-treatment on the applicant's body.

8. On the same day the applicant was taken for questioning to the anti-terrorism branch of the Istanbul Security Directorate and at 7.30 p.m. he was examined at the head office of the Forensic Medicine Institute in Istanbul by a doctor, who concluded that there were no signs of ill-treatment on the applicant's body.

9. On 7 August 2004 the applicant's statements to the police were transcribed on printed forms, the first page of which was filled in to indicate, *inter alia*, that the applicant was suspected of aiding and abetting and acting as a "courier" to the members of the illegal organisation. The same page also included a printed message, which stated, *inter alia*, that the person being questioned had the right to remain silent and the right to have a lawyer present during questioning. It appears from the form that the applicant refused legal assistance, since the first page of the record included a printed phrase stating "No lawyer sought" and a box next to it that was marked with a printed "X". Moreover, according to the record, he also stated that he did not want a lawyer and waived his right to silence. In his statement, which was three pages long, the applicant stated that D.T. had asked him to collect things from a certain Murat in his village. Murat, accompanied by three PKK members, had threatened him with a gun so the applicant had felt obliged to carry 300 million Turkish liras (TRY) to D.T. in Istanbul. When the applicant had arrived at Elazığ bus station, another person unknown to him had handed him a packet of cigarettes after having confirmed his name and surname. When the applicant had arrived in Istanbul, D.T. had called him. The applicant had met D.T. at a bus stop, where he had handed D.T. the money and the packet of cigarettes. The applicant alleged that he had not known what had been inside the cigarette packet. Towards the end of his statements, the applicant also stated that he had told Murat that D.T., who had sent him to the countryside as a courier, had been harassing him by telephone in Istanbul.

10. On 9 August 2004 the applicant had another medical examination at the Beşiktaş branch of the Forensic Medicine Institute in Istanbul at 9.40 a.m. The doctor who examined the applicant noted that there were no new signs of ill-treatment on his body. The applicant told the doctor that he had been subjected to psychological pressure, but not to physical violence.

11. On 9 August 2004 the applicant was brought before the public prosecutor. He gave statements in the presence of his lawyer. The applicant partially accepted his police statements, stating, however, that they had included the notion that D.T. had sent him to the countryside as a courier,

which was incorrect. His statements to the public prosecutor were essentially the same as his police statements. The applicant's lawyer submitted that the *mens rea* elements of the offence had been missing as the applicant had simply carried out a request from his friend. In any event, the applicant had acted under threats from armed men.

12. On the same day the applicant was brought before the investigating judge, where he gave statements in the presence of his lawyer. The applicant essentially repeated his statements that he had given before the public prosecutor. When asked whether he accepted his statements made to the public prosecutor and the police, the applicant confirmed that he did, while mentioning once again that he had not stated to the police that D.T. had sent him to the countryside as a courier. At the end of the hearing, the investigating judge ordered the applicant's pre-trial detention.

13. On 1 September 2004 the public prosecutor prepared a bill of indictment, charging the applicant with aiding and abetting the PKK and providing explosives to that organization, under Articles 169 and 264 § 2 of the now defunct Criminal Code, Law no. 765.

14. On 2 December 2004 the Istanbul Assize Court held its first hearing, where the applicant gave evidence in the presence of his lawyer. The applicant essentially reiterated the content of his previous statements and submitted that he had absolutely not aided and abetted any illegal organisations knowingly and intentionally. The applicant further maintained that his sister had also witnessed three armed men threatening him. When asked whether he confirmed his statements to the public prosecutor and the investigating judge, the applicant stated that they had been accurate. When asked whether he confirmed his statements to the police, the applicant stated that they had been generally accurate although some parts had been written against his will. The applicant's lawyer stated that he had nothing to add to the applicant's submissions.

15. At a hearing held on 31 March 2005 the trial court heard evidence from the applicant's sister in her capacity as a witness. She stated, among other things, that the applicant had been threatened by three armed men. At the end of the hearing, the trial court ordered the applicant's release.

16. On 15 October 2009 the Istanbul Assize Court convicted the applicant as charged and sentenced him to three years and nine months' imprisonment for aiding and abetting the PKK and to two years and six months' imprisonment for possession of explosives. The applicant was also ordered to pay a fine of TRY 366 for providing explosives to the PKK. The Istanbul Assize Court referred to the statements made by D.T. to the police and part of the statements the applicant had made to the police when convicting him. The trial court held that, according to the detailed statements D.T. had given to the police, on 5 or 6 July 2004 – that is to say ten to fifteen days after his arrival in Istanbul – D.T. had contacted the applicant and sent him as a courier to the organisation member with the

code name “Murat”, who had been in the countryside at that time. The applicant had gone to the countryside and after that D.T. had met him to get the letter from “Murat” and eight electric detonators, following which he had handed over the detonators to another co-accused, Ş.T. After pointing out that D.T. had confirmed this part of his statements throughout the proceedings, the trial court stated that the applicant’s mobile number had been saved as “Memiş” in the mobile telephone found on D.T. and furthermore noted that electric detonators had been found in Ş.T.’s office.

Then, it went on to assess the content of the applicant’s police statements. It held that the applicant had stated that he had known D.T. for the last seven or eight years, that he had not seen him between 1998 and 2007, but that D.T. had come to his house one day and when he had learnt that the applicant would go to his home town. D.T. had told him that Murat would come and visit him. The applicant further stated that Murat had come to his village in a guerrilla uniform and had given him TRY 300 million in the name of D.T. and that another person, unknown to him, had given him a packet of cigarettes and told him to hand it over to the person who had sent him here and that he had given them to D.T. on arrival in Istanbul. The trial court also noted that before the public prosecutor, the applicant partially accepted his police statements while denying that D.T. had sent him to the countryside as a courier, stating that a person had given him the abovementioned items when he had been in his village so that he could give them to D.T. According to the court records, the applicant made similar statements in the rest of the criminal proceedings.

In the light of the statements made by D.T. throughout the proceedings, the police statements of the applicant which corroborated them and his other statements concerning this incident, the police reports establishing the ownership of the mobile-telephone numbers and the content of the case file as a whole, the trial court found it established that the applicant had acted as a courier between D.T. and Murat, carrying explosives, written orders and money.

17. On 22 December 2009 the applicant lodged an appeal against the trial court’s judgment, arguing, among other things, that his police statements had been taken without a lawyer present and that his conviction had been based “entirely” on the statements which he had made to the police officers.

18. On 15 June 2011 the Court of Cassation upheld the applicant’s conviction for aiding and abetting the PKK under Article 169 but quashed the conviction for providing explosives to the PKK under Article 264 § 2. The case was remitted to the Istanbul Assize Court in respect of the charge of providing explosives.

19. Following remittal, on 31 January 2012 the Istanbul Assize Court held that there was no separate issue to examine concerning whether the applicant had provided explosives or not because it was a means to aid and

abet the terrorist organisation, for which the applicant had already been convicted. Ultimately, the applicant was convicted only of aiding and abetting the PKK and sentenced to three years and nine months' imprisonment.

20. This judgment became final in the absence of an appeal either by the applicant or the public prosecutor.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The relevant domestic law in force at the material time, as well as case-law of the Constitutional Court on the issue of waiver of the right to a lawyer, may be found in *Ruşen Bayar v. Turkey*, (no. 25253/08, §§ 41-6, 19 February 2019).

THE LAW

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

22. The applicant alleged that he had not had a fair trial on account of the denial of his right to a lawyer while in police custody and the fact that his conviction had rested entirely on his police statements taken without a lawyer present. The applicant also maintained that his right to remain silent had been breached.

23. The Court decides to examine the complaint under Article 6 §§ 1 and 3 (c) of the Convention, the relevant parts of which provide:

“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;

...”

24. The Government contested that argument.

A. Admissibility

25. The Court notes that this 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

26. The applicant maintained his allegations.

27. The Government contested that argument. First, they submitted that the present case was distinguishable from *Salduz v. Turkey* ([GC], no. 36391/02, ECHR 2008) as there had been no statutory restriction stemming from Law no. 3842 at the time the applicant had been arrested. Therefore, the applicant had been free to benefit from the assistance of a lawyer from the beginning of his questioning by the police. Moreover, before making statements to the police, the applicant signed a form setting out the rights of arrestees, including the right to remain silent and to have access to legal assistance. However, he decided not to avail himself of any of those rights and made statements to the police. Relying on that point and referring to the decisions in *Kaytan (v. Turkey)*, no. 27422/05, § 31, 15 September 2015), and *Şedal (v. Turkey (dec.))*, no. 38802/08, 13 May 2014), the Government invited the Court to declare this complaint inadmissible as being manifestly ill-founded.

28. Moreover, they also emphasised that the medical reports drawn up in respect of the applicant while in police custody had indicated no sign of battery or coercion on his body. In their view, it is also noteworthy that the content of the applicant's statements at all the stages of the proceedings was the same as the content of his police statements. Thus, his retraction of his police statements had not been convincing. The Government further asserted that the procedural safeguards applied during the criminal proceedings had been sufficient as, in particular, the applicant had been given the opportunity to challenge the authenticity of the evidence and oppose its use. In view of the above, the Government invited the Court to conclude that there had been no violation of the applicant's rights under Article 6 § 1 of the Convention.

2. The Court's assessment

(a) General principles

29. 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 the recent judgment in the case of *Simeonovi v. Bulgaria* ([GC], no. 21980/04, §§ 110-20, 12 May 2017; see also *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 117, 18 December 2018, and *Beuze v. Belgium* [GC], no. 71409/10, §§ 123-50, 9 November 2018).

30. The Court reiterates that the right to be assisted by a lawyer applies throughout and until the end of 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 that 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).

31. 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 or her conduct, waived an important right under Article 6, it must be shown that he or she could reasonably have foreseen what the consequences of her or his conduct would be. Moreover, the waiver must not run counter to any important public interest (see *Simeonovi*, cited above, § 115). It follows that a waiver of the right to a lawyer, a fundamental right among those listed in Article 6 § 3 which constitute the notion of a fair trial, must be strictly compliant with the above requirements (see, *mutatis mutandis*, *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 118, 18 December 2018).

32. The Court furthermore reiterates that compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be excluded that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 251, 13 September 2016). Those considerations also hold true for the validity of a waiver of the entitlement to the guarantees of a fair trial, as what constitutes a valid waiver cannot be the subject of a single unvarying fact but must depend on the individual circumstances of the particular case (see *Murtazaliyeva*, cited above, §§ 117-18).

(b) Application to the present case

33. The Court observes at the outset that the present case differs from the case of *Salduz* (cited above), where the restriction on the applicant's right of access to a lawyer stemmed from Law no. 3842 and was thus systemic. In other words, there was no blanket restriction on the applicant's right of access to a lawyer during his police custody since at the time of his arrest, Law no. 3842, which had provided for a systemic restriction on access to a lawyer in respect of people who had been accused of committing an offence falling within the jurisdiction of the State Security Courts, had already been amended. Thus, from 15 July 2003 onwards it was legally possible for such suspects to have access to a lawyer when giving statements to the police, the public prosecutor and the investigating judge, subject to the condition that they asked for one.

34. In the instant case, the legal question lying before the Court is whether the applicant validly waived his right to lawyer before making statements to the police on 7 August 2004 as it is not disputed between the parties that the applicant was represented by a lawyer when giving statements to the public prosecutor and the investigating judge. As such, the Court must ascertain whether the applicant's waiver was unequivocal, ran counter to any important public interest and was attended by minimum safeguards commensurate with its importance (see *Simeonovi*, cited above, § 115, and *Türk v. Turkey*, no. 22744/07, § 45, 5 September 2017).

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

35. The Court notes that the applicant signed the police statement form dated 7 August 2004, according to which he had been reminded of his right to lawyer but had chosen not to ask for legal assistance. On the basis of that document and stating that the applicant largely accepted his police statements in the subsequent stages of the criminal proceedings, the Government argued that he had waived his right to a lawyer before giving statements to the police on 7 August 2004. In their view, this argument was further strengthened by the fact that the medical reports issued in respect of the applicant indicated no sign of ill-treatment.

36. In that connection, the Court reiterates that it is mindful of the probative value of the documents the applicant 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. Thus, it can be inferred from the foregoing that what constitutes a valid waiver of a right under Article 6 of the Convention cannot be the subject of a single unvarying rule, but must depend on the circumstance of the particular case (see *Simeonovi*, cited above, § 113; *Ibrahim and Others*,

cited above, §§ 250-51, ECHR 2016; and *Ruşen Bayar v. Turkey*, no. 25253/08, § 121, 19 February 2019).

37. The Court further observes that the applicant's situation appears to resemble that of the applicant in the case of *Ruşen Bayar v. Turkey* (cited above). In that case, the Court held, *inter alia*, that the Government were not able to show the validity of the applicant's waiver of his right to a lawyer on the basis of the documents he had signed while in police custody, given that the applicant had contested the content of his police statements first of all during his appearance before the public prosecutor and subsequently throughout the entire proceedings (see *Knox v. Italy*, no. 76577/13, § 126, 24 January 2019).

38. Turning to the circumstances of the present case, the Court notes that while the applicant reiterated an important part of his police statements before the public prosecutor, the investigating judge and the trial court in the presence of his lawyer, he consistently denied his police statements throughout the proceedings where they included the assertion that D.T. had sent him to the countryside as a courier. The present case is on those grounds distinguishable from *Gür* (cited above) and *Kaytan* (cited above, § 31, 15 September 2015), where the applicants changed their positions *vis-à-vis* their police statements as the criminal proceedings unfolded. In the view of the Court, the applicant's firm and consistent denial of a part of his police statements, which subsequently formed an integral part of his conviction, also weakens the knowing and unequivocal character of his waiver.

39. Moreover, the Court attaches further importance to the fact that the applicant took the first opportunity to tell the doctor who examined him at the end of his police custody on 9 August 2004 that he had been subjected to psychological pressure by the police. In the Court's opinion, this is another factor, albeit not conclusive of its own, which casts doubt on and stands against the contention that the applicant unequivocally waived his right to a lawyer before making statements to the police on 7 August 2004.

40. In the light of the above, the Court is unable to conclude that the applicant unequivocally, knowingly and intelligently waived his right to a lawyer by signing his statement form on 7 August 2004 (compare *Şedal*, cited above, where the applicant saw his lawyer both before and after giving statements to the police).

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

41. 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).

42. The Court notes that the Government have not offered any compelling reasons for the restriction of the applicant's access to a lawyer between 6 and 9 August 2004, during which time he was in police custody. Furthermore, it is not for the Court to undertake of its own motion this task and determine several years on from the events at issue whether there existed any compelling reasons to restrict the applicant's right of access to a lawyer. All the more so, since the domestic legislation in force at the material time did not provide for any reasons for such a restriction for suspects in police custody, let alone a compelling one.

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

43. The Court will now examine whether the overall fairness of the criminal proceedings against the applicant was prejudiced by the absence of a valid waiver of legal assistance when the applicant gave statements to the police and the subsequent admission by the trial court of those statements into evidence, evidence which was used to secure his conviction. As there were no compelling reasons to restrict the applicant's right of access to a lawyer when he was giving statements to the police, the Court must apply a very strict scrutiny to its fairness assessment (see *Dimitar Mitev v. Bulgaria*, no. 34779/09, § 71, 8 March 2018). 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).

44. 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 (see *Panovits v. Cyprus*, no. 4268/04, § 82, 11 December 2008). 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 *Pavlenko v. Russia*, no. 42371/02, § 116, 1 April 2010).

45. Furthermore, the Court reiterates 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 waivers of legal assistance had been voluntary

(see *Dvorski v. Croatia* [GC], no. 25703/11, § 109, ECHR 2015, and *Türk*, cited above, § 53).

46. Nevertheless, the trial court did not conduct any examination as regards the admissibility of the statements the applicant had made to the police without a lawyer present. Neither did the Court of Cassation, before which the applicant raised the issue of legal assistance for the first time, carry out any assessment concerning the conditions of his alleged waiver of the right to a lawyer when making statements to the police on 7 August 2004 or the use made of those statements by the trial court without examining their admissibility (compare *Saranchov v. Ukraine*, no. 2308/06, § 47, 9 June 2016). In the absence of any such assessment, the Court is unable to conclude that the applicant had the opportunity to meaningfully challenge the authenticity of the evidence and to oppose its use despite the fact that he was represented by a lawyer throughout the trial (compare *Sitnevskiy and Chaykovskiy v. Ukraine*, nos. 48016/06 and 7817/07, § 131, 10 November 2016). Hence, the Court is not satisfied that the applicant's complaint received an appropriate response from the national courts and considers that fair procedures for making an assessment of the issue of legal assistance proved non-existent in the present case (see *Rodionov v. Russia*, no. 9106/09, § 167 *in fine*, 11 December 2018).

47. Moreover, the trial court used the applicant's police statements when finding him guilty of aiding and abetting a terrorist organisation and eventually in sentencing him to three years and nine months' imprisonment. As is apparent from the trial court's reasoned judgment, the court found it established in the light of the statements of the applicant and D.T. that the applicant had acted as a courier for the PKK, a point which he had contested throughout the criminal proceedings. Therefore, and contrary to the Government's assertion that the applicant reiterated his police statements during the whole of the proceedings, this point caused a prejudice to the rights of the defence, which was moreover not addressed and remedied by the national courts. Thus, it cannot be ruled out that the applicant's statements formed an integral part of the evidence upon which his conviction was based.

48. Against such a background, the Court concludes that the domestic courts' failure to examine the conditions surrounding the applicant's alleged waiver of his right to a lawyer on 7 August 2004 when making statements to the police and their use of his police statements without operating the necessary procedural safeguards when finding him guilty of acting as a courier, despite the fact that it was precisely that part of his police statements that he had consistently denied throughout the criminal proceedings, rendered the trial as a whole unfair (see *Bayar*, cited above, § 135; *Bozkaya v. Turkey*, no. 46661/09, § 53, 5 September 2017; and *Türk*, cited above, § 58).

49. There has therefore been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. Lastly, the applicant complained under Article 13 of the lack of an effective domestic remedy in conjunction with the above mentioned Articles.

51. The Court finds that these complaints should be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention (see *Canşad and Others v. Turkey*, no. 7851/05, § 70, 13 March 2018).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed a total of 50,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government asserted that the amount was excessive and thus did not correspond to the amounts set out in the case-law of the Court.

55. As for non-pecuniary damage, the Court considers that the finding of a violation of Article 6 §§ 1 and 3 (c) of the Convention in the instant case constitutes sufficient just satisfaction. Given the possibility under Article 311 of the Code of Criminal Procedure to have the domestic proceedings reopened in the event that the Court finds a violation of the Convention, the Court makes no award under this head (see *Bayram Koç v. Turkey*, no. 38907/09, § 29, 5 September 2017).

B. Costs and expenses

56. Referring to the scale of fees of the Union of Bar Associations of Turkey, the applicant claimed 6,195 Turkish liras (TRY – approximately EUR 2,669), which constitutes the legal fee inclusive of value-added tax for the proceedings before the Court.

57. The applicant further claimed reimbursement of the costs and expenses he had incurred in the proceedings before the Court: postal, translation and stationery expenses amounting to TRY 600 (approximately EUR 259).

58. The Government invited the Court to dismiss the applicant's claims under costs and expenses due to his failure to submit any documents to support those claims.

59. The Court reiterates that it has already held that mere reference to the Bar Associations' scale of fees without submitting any other document was not sufficient to comply with Rule 60 § 2 and 3 of its Rules and dismissed the claims relating to costs and expenses on those grounds (see *Hülya Ebru Demirel v. Turkey*, no. 30733/08, § 61, 19 June 2018).

In the instant case, regard being had to the fact that the applicant submitted only the Union of Bar Associations of Turkey's scale of fees to support his claims, the Court decides not to make any award under this head.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the validity of the waiver of the applicant's right to a lawyer before making statements to the police on 7 August 2004 and the use of those statements by the trial court to convict him admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
4. *Dismisses* the remainder of the applicant claim for just satisfaction.

Done in English, and notified in writing on 12 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Ivana Jelić
President