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**La CEDU su rinuncia al diritto all'avvocato nel fermo di polizia**
**(CEDU, sez. II, sent. 17 settembre 2019, ric. n. 75460/10)**

La Cedu si pronuncia sul caso di una cittadina turca, arrestata nel novembre 2003 in quanto sospettata di appartenere ad un'organizzazione terroristica (il PKK / KADEK, Partito dei lavoratori del Kurdistan), appartenenza confessata dalla donna nel corso dell'interrogatorio cui era stata sottoposta durante il fermo di polizia. Tale confessione, tuttavia, era stata resa in assenza di un avvocato, essendo stata inserita una "X" accanto alla dicitura "nessun avvocato richiesto" stampata sul relativo modulo recante le dichiarazioni.
Tuttavia, al termine della custodia, la donna aveva immediatamente ritrattato le dichiarazioni rese alla polizia, chiedendo l'assistenza di un avvocato e sostenendo di essere stata costretta a firmare quei moduli dietro minacce e maltrattamenti da parte della polizia medesima.
Al termine del processo, nel 2009, la donna era stata giudicata colpevole di appartenenza alla suddetta organizzazione terroristica e condannata a sei anni e tre mesi di reclusione. Il giudice nazionale aveva fondato la sua decisione sulle dichiarazioni rese dalla sig.ra Akdağ alla polizia. La Corte di cassazione confermava la condanna nel 2010. Nel frattempo, la donna aveva anche presentato una denuncia formale per i maltrattamenti subiti dalla polizia, ma le autorità giudiziarie avevano deciso di non darvi seguito per mancanza di prove.
Di qui la decisione di adire la Corte Edu, invocando la violazione dell'articolo 6 §§ 1 e 3 (c) (diritto a un processo equo/accesso ad un avvocato), lamentando non solo l'ingiustizia del procedimento svolto nei suoi confronti, essendole stato negato l'accesso a un avvocato durante il fermo di polizia, ma anche di essere stata poi condannata sulla base di quelle dichiarazioni rese sotto coercizione e senza l'assistenza di un avvocato.
Pur avendo giudicato inammissibile la doglianza della ricorrente relativa al fatto che la sua condanna nel merito sarebbe stata conseguenza delle dichiarazioni rese alla polizia sotto coercizione, non avendo riscontrato alcuna prova di tali presunti maltrattamenti, la Corte ha, tuttavia, rilevato che il governo turco non era riuscito a dimostrare che la "X" stampata accanto alla dicitura "nessun avvocato richiesto", sul modulo recante le dichiarazioni della donna, potesse rappresentare una valida rinuncia al suo diritto ad essere assistita da un avvocato durante il fermo di polizia. Non a caso, infatti, al termine della custodia la donna aveva immediatamente chiesto l'assistenza di un avvocato ed aveva ritrattato tali dichiarazioni.
Né la Corte è stata soddisfatta della risposta dei tribunali nazionali alle denunce della ricorrente, non essendo stata adeguatamente esaminata dai giudici interni la validità sia della rinuncia, che delle dichiarazioni rese alla polizia in assenza di un avvocato, carenza di controllo non sanata da altre garanzie procedurali che, quindi, aveva inficiato irrimediabilmente l'equità generale del procedimento nei suoi confronti.

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

SECOND SECTION

**CASE OF AKDAĞ v. TURKEY**

*(Application no. 75460/10)*

JUDGMENT
STRASBOURG
17 September 2019

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Akdağ v. Turkey,**

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:
Robert Spano, President,
Marko Bošnjak,
Julia Laffranque,
Valeriu Griţco,
Arnfinn Bårdsen,
Darian Pavli,
Saadet Yüksel, judges,
and Stanley Naismith, Section Registrar,
Having deliberated in private on 9 July 2019,
Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 75460/10) 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 Hamdiye Akdağ ("the applicant"), on 22 November 2010.

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 she had not had a fair trial on account of the denial of access to a lawyer while in police custody and the use by the trial court of her statements allegedly obtained under duress and in the absence of a lawyer.

4. On 28 May 2015 the Government were given notice of the above-mentioned complaints and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

**THE FACTS**

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1974 and was serving a sentence in İzmit Prison at the time of lodging of the application.

6. On 13 November 2003 the applicant was arrested in the vicinity of her house on suspicion of membership of an illegal organisation, namely the PKK/KADEK (the Workers' Party of Kurdistan). She was in possession of a fake identity card at the time of her arrest.

7. Subsequently, police officers carried out a search of the house in which the applicant and the other co-accused, İ.A., lived. According to the search and seizure report drafted by the police and signed by the applicant and İ.A., the police searched the applicant's flat and found the following items; a book with the title Twenty-first Century Women Freedom Manifesto, five pieces of rubber band used for a tourniquet, fourteen pieces of elastic plaster, ten thermometers, five bandages, nine compression bandages, and a bag of cotton balls. İ.A., who was also at the house, was arrested by the police. A paper containing the number "0535 8.. .. .." , which was later found to have belonged to R.B. (who was the applicant in Ruşen Bayar v. Turkey, no. 25253/08, 19 February 2019), was found on the applicant along with other material.

8. Her first medical examination upon her arrest was carried out at 10.45 p.m. on the same day and the applicant told the doctor that she had been arrested at approximately 3.30 p.m. and that she had not been ill-treated other than having been yelled at by the police officers. According to the medical report issued in respect of the applicant, there were no signs of violence on the applicant's body.

9. The applicant was then taken to the anti-terrorism division of the Istanbul Security Directorate. On 14 November 2003 she was questioned by police officers in the absence of a lawyer. 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 carrying out activities within the PKK/KADEK. The same page also included a printed statement that, inter alia, the person being questioned had the right to remain silent and the right to choose a lawyer. It appears from the form that the applicant refused legal assistance, since the first page of the record includes a printed phrase stating "No lawyer sought" and a box next to it marked with a printed "X". Moreover, according to the record, the applicant also stated that she did not want a lawyer or to remain silent. She gave a statement of nine pages in length in which she admitted her membership of the PKK/KADEK and

gave a detailed account of her involvement and training in the illegal organisation, as well as how she had met R.B. and N.A., two of the co-accused. Every page of the statement form was signed by the applicant.

10. On 16 November 2003 İ.A. was questioned by the police, but by different police officers from the ones who had questioned the applicant. According to his statement form, which was in the same format as that of the applicant, he wished to be represented by a lawyer. A lawyer was accordingly assigned to him and İ.A. availed himself of his right to remain silent.

11. On 17 November 2003 at approximately 10.30 p.m., at the end of her police custody, the applicant was once again examined by a doctor. According to the report drawn up in respect of the applicant, she told the doctor that the police had hit her head, threatened to kill and rape her and had driven their car into her as a result of which she had lost consciousness. The doctor noted no signs of lesions while adding that the applicant had subjective pain in her back and on her left leg. The doctor accordingly concluded that there were no signs of violence on the applicant's body.

12. On the same day, the applicant was brought before the public prosecutor where she gave statements in the presence of her lawyer. Denying the content of her police statements, the applicant submitted that she had had to sign those statements as a result of violence and coercion by the police. The applicant further complained that she had been ill-treated by the police as described by her in the medical report. The applicant's lawyer stated that she had no connection with the PKK/KADEK.

13. Again on the same day, the applicant was brought before the investigating judge where she gave statements in the presence of her lawyer. She once again denied her police statements, alleging that they had been taken under duress and pressure. She complained of the alleged torture she had been subjected to while in police custody. After the questioning was over, the investigating judge remanded the applicant in custody, having regard to the nature of the offence and the state of the evidence.

14. On 4 December 2003 the public prosecutor at the Istanbul State Security Court filed a bill of indictment, accusing the applicant of being a member of an illegal terrorist organisation under Article 168 of the now defunct Criminal Code, Law no. 765.

15. On an unknown date the applicant lodged a formal complaint with the Fatih public prosecutor's office claiming that she had been ill-treated by the police while in custody between 13 and 17 November 2003. On 31 March 2004 Fatih public prosecutor's office delivered a decision not to prosecute the police officers for lack of evidence.

16. On 17 March 2004, at the first hearing in the case, the applicant gave evidence in person, submitting that she had not been a member of the illegal organisation and denying once again her police statements, alleging that she had been forced to sign them. She further maintained that she had been forcibly taken by the police to a graveyard and threatened with death. The applicant also mentioned that the police had hit her head against a wall several times and that she had been

stripped naked hourly in order to obtain a confession from her. She maintained that her signature under her police statement had been obtained in those circumstances and further alleged that she was illiterate. The applicant further stated that the reason why she had had the fake identity card found on her had been because she had been married to İ.A. and that her family had been against the marriage.

17. At a hearing held on 22 November 2004 the case against the applicant and her co-accused was joined to another case brought against a number of other people charged with being members of the same illegal organisation and the killing of a certain M.Y. in 1999 on behalf of the organisation.

18. At the hearing on 5 June 2006 the Istanbul public prosecutor read out his observations on the merits of the case (esas hakkında mütalaa) to the trial court in the absence of the applicant. In his opinion, the public prosecutor advised that the court should find the applicant guilty as charged.

19. On 19 December 2008, at the eleventh hearing, the applicant's lawyer submitted that they reiterated their previous defence submissions.

20. On 13 February 2009, during the last hearing, the applicant's lawyer reiterated the previous submissions, requesting the applicant's acquittal and the application of provisions in favour of the applicant.

21. While the applicant's trial was pending before the Istanbul State Security Court, those courts were abolished in accordance with Law no. 5190 of 16 June 2004, published in the Official Gazette on 30 June 2004. Therefore, the Istanbul Assize Court acquired jurisdiction over the case.

22. On 13 February 2009 the Istanbul Assize Court found, inter alia, that on the basis of the applicant's statements to the police, the applicant had been a member of the PKK/KADEK, and sentenced her to six years and three months' imprisonment. The trial court listed the following items in the following order in its judgment: a summary of the indictment, the public prosecutor's observations on the merits of the case (esas hakkında mütalaa), the defence submissions of the defendants, the evidence, the evaluation of evidence and the sentences. The court did not rely on the case file as a whole and listed the evidence in its possession in respect of the accused in detail. It appears that the only relevant item of evidence in respect of the applicant listed in the "evidence" part of the judgment was "the statements of the accused throughout the proceedings". The relevant parts of the trial court's judgment in so far as it concerned the applicant read as follows:

"... [The court finds] that the [applicant] and İ.A. were members of the terrorist organisation, that they received military and political training in the organisation's camps abroad, that they came to Turkey with a view to carrying out organisational activities, that a fake identity card was found on [the applicant], that she had an organisational connection with R.B. and that she lived together with the organisation member İ.A. ..."

23. According to the reasoned judgment, seven out of fifteen of the accused who had admitted their guilt while giving police statements in the absence of a lawyer had denied those statements either before the public prosecutor or before the investigating judge. Moreover, fourteen of the accused had denied the accusations against them during the trial. However, the reasoned judgment did not contain any examination of the admissibility of those statements.

24. On 13 February 2009 the applicant's lawyer lodged an appeal against the decision. In that one-page-long document, it was argued that the applicant's conviction had been unlawful and "contrary to procedure". The lawyer further maintained in that appeal statement that the applicant would submit her detailed arguments following the service of the trial court's reasoned judgment.

25. On 27 April 2010 the Court of Cassation upheld the conviction. This decision was deposited with the registry of the first-instance court on 25 May 2010.

II. RELEVANT DOMESTIC LAW

26. A description of the relevant domestic law concerning the right to a lawyer may be found in Salduz v. Turkey ([GC] no. 36391/02, §§ 27-31, 27 November 2008).

27. Under Article 135/a of the Code of Criminal Procedure in force at the time of the applicant's arrest, statements were to be given by the accused of his or her own free will. Methods such as ill-treatment, torture, induced fatigue, the administration of drugs, torment and deception that "impairs the will of the accused" were proscribed. Statements that had been obtained through such methods could not be used in evidence, even if the accused had agreed to their use.

28. Article 238 of the same Code empowered the criminal courts to refuse to admit any unlawfully obtained evidence. Furthermore, Article 254 of the same Code explicitly stated that evidence that had been obtained unlawfully could not be used by the courts.

29. Article 148 of the new Code of Criminal Procedure ("the CCP") (Law no. 5271) in force as of 1 June 2005 reads as follows:

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

No benefit that is contrary to law shall be promised.

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

Statements taken by the police in the absence of a lawyer shall not be relied on [for conviction] unless the suspect or the accused verifies them before a judge or a court.

..."

**THE LAW**

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

30. The applicant alleged, in particular, that she had not had a fair trial on account of the denial of access to a lawyer while in police custody and the use by the trial court of her statements allegedly obtained under duress and in the absence of a lawyer. The Court will examine her complaints under Article 6 §§ 1 and 3 (c), which, in so far as relevant, provides:

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

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

...

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

31. The Government contested that argument.

A. Use of the applicant's police statements taken under alleged duress

32. The Government raised a plea of non-exhaustion of domestic remedies in respect of the applicant's complaint that her statements allegedly taken under duress had been relied on by the trial court to convict her. In that connection, the Government maintained that the applicant had failed to raise that complaint either explicitly or at least in substance before the Court of Cassation. Consequently, the Government requested that the Court reject that complaint under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

33. In response, the applicant maintained that the Government's objection had been in contravention of the spirit and the settled case-law of the Court under Article 6 of the Convention. She accordingly invited the Court to dismiss the Government's objection.

34. The Court does not consider it necessary to examine the Government's objection of non-exhaustion of domestic remedies, given that this part of the application is in any event inadmissible for the following reasons.

35. The Court observes that the applicant has not submitted any evidence demonstrating that she was subjected to physical pressure while in custody. Nor did she argue that she had been unable to obtain, or had been prevented from obtaining, any such evidence. In this connection, the Court notes that the two medical reports included in the case file indicated no signs of ill-treatment on the

applicant's body and at no stage of the domestic proceedings or during the proceedings before the Court did the applicant challenge the veracity of these reports or allege that the doctors who had issued them had failed to examine her properly. Moreover, the Fatih public prosecutor's office issued a decision not to prosecute in respect of her complaints of ill-treatment while in police custody owing to lack of evidence. The Court therefore considers that the applicant has failed to lay the basis of an arguable claim in respect of her allegations that she was subjected to duress while giving statements to the police (see Kaytan v. Turkey, no. 27422/05, § 50, 15 September 2015).

36. It follows that this part of the application should be rejected as manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

B. Access to a lawyer during police custody

1. Admissibility

37. The applicant complained that she had been denied legal assistance while in police custody.

38. The Government contested that claim.

39. The Court notes that the application 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.

2. Merits

(a) The parties' submissions

40. The applicant reiterated her claims.

41. The Government pointed out that the present case was different from that of Salduz in that the applicant had been free to have legal assistance when giving statements to the police, as the statutory restriction on the right of access to a lawyer had already been lifted. The Government stated that although the applicant had promptly retracted her statements to the police, her retraction had not been convincing and consistent as, in their opinion, the medical reports issued in respect of her had been more important than her allegations. Moreover, there had been no element indicating that the applicant had not validly waived her right to legal assistance. To support that contention, the Government referred to Yoldaş v. Turkey, no. 27503/04, §§ 51-54, 23 February 2010, and argued that the applicant's statement form had indicated that no lawyer had been requested. Thus, the statement form, which the applicant had signed, should be sufficient to show that the applicant had validly waived her right to a lawyer when giving statements to the police. They further pointed out that İ.A., who had also been arrested during the same period with the applicant, had benefited from the assistance of a lawyer. In the view of the Government, this refuted the applicant's allegation that she had been denied the assistance of a lawyer.

42. As to the fairness of the criminal proceedings against the applicant, the Government submitted that the applicant's police statement had not been the sole evidence constituting the basis for her conviction. In that connection, they pointed out that the applicant, who had given detailed statements in relation to her connection with the PKK, had failed to provide a convincing explanation as to why she lived together with İ.A. and why she had a piece of paper with R.B.'s phone number on it. The applicant had had the opportunity to challenge the authenticity of the evidence and to oppose its use.

43. Furthermore, the domestic courts had examined the evidence in an objective manner and addressed the objections put forward by the applicant. The procedural guarantees had been sufficient in the instant case. Lastly, taking into account the proceedings as a whole, the fact that the applicant's lawyer had been absent during her custody had not seriously impaired her right to a fair trial. As such, the Government invited the Court to conclude that there had been no violation in the instant case.

(b) The Court's assessment

(i) General principles

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

45. The Court reiterates that the right to be assisted by a lawyer applies throughout and until the end of the questioning by the police, including when the statements taken are read out and the suspect is asked to confirm and sign them, as the assistance of a lawyer is equally important at this point of the interview. The lawyer's presence and active assistance during questioning by police is an important procedural safeguard aimed at, among other things, preventing the collection of evidence through methods of coercion or oppression in defiance of the will of the suspect and protecting the freedom of a suspected person to choose whether to speak or to remain silent when questioned by the police (see Soytemiz v. Turkey, no. 57837/09, § 45, 27 November 2018).

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

his conduct would be. Moreover, the waiver must not run counter to any important public interest (see Simeonovi, cited above, § 115). 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).

47. The Court further 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, cited above, § 251). 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).

(ii) Application to the present case

48. The Court observes at the outset that the present case differs from Salduz, 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 in police custody, as at the time of her 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 that fell within the jurisdiction of State Security Courts – had already been amended. For that reason, from 15 July 2003 onwards it had been legally possible for 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 had asked for one.

49. The legal question before the Court is whether the applicant validly waived her right of access to a lawyer before giving statements to the police on 14 November 2003, 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.

50. Turning to the particular circumstances of the case, the Court observes that according to the statement form dated 14 November 2003, which the applicant signed, she was informed of her rights, including her right to have legal assistance and her right to remain silent at the time her statements were taken. The first page of the same record where the applicant stated that she did not want a lawyer or to remain silent includes a printed phrase stating "No lawyer sought" and a box next to it is marked with a printed "X". Moreover, the Court notes that it was essential that the applicant be clearly informed about the consequences of not requesting the assistance of a lawyer. The Government have not demonstrated that the applicant received any specific information to that effect.

51. In that connection, the Government relied on the Yoldaş judgment (cited above) to support their argument that the applicant had validly waived her right to a lawyer when giving statements to the police. In their reading of that judgment, the Court considered the applicant's statement form, which had been signed by him and according to which he had not asked for a lawyer, as an unequivocal waiver. Therefore, the same approach should also be maintained in the instant case in view of the applicant's declaration to the effect that she had not asked for a lawyer on the statement form, which she had signed.

52. The Court takes note of the following factors in relation to its Yoldaş judgment (cited above, §§ 52-53). Firstly, it is important to reiterate that in Yoldaş the Court did not adjudicate the validity of the applicant's waiver on the basis of a single isolated element, namely the applicant's signature on the statement form explaining the rights of arrested persons, including the right to remain silent and the right to legal assistance. In fact, it was a combination of facts such as the applicant's undisputed signature on the statement form and on the form concerning the rights of suspects and accused (şüpheli sanık hakları formu), his handwritten note on another record that he would not wish to see his family while in custody, and more importantly the trial court's scrupulous examination of the applicant's police statements and its subsequent refusal to convict the applicant in respect of six offences that were based solely on his police statements. In the light of those factors, the Court, after carrying out a holistic assessment of the circumstances of that case, with an emphasis on the trial court's scrutiny of the applicant's allegation that he had been denied legal assistance when giving statements to the police, and after having observed that there had been nothing in the proceedings to suggest that the applicant's waiver of legal assistance while in police custody had not been free and unequivocal, concluded that the waiver had been valid and that there had been no violation of the applicant's rights under Article 6 §§ 1 and 3 (c) of the Convention.

53. In the view of the Court, the present case cannot be rejected on the basis of Yoldaş as it differs from it in certain important aspects. First of all, the applicant's statement form in the instant case did not bear a handwritten note by her (compare Sharkunov and Mezentsev v. Russia, no. 75330/01, § 104, 10 June 2010). Secondly, the applicant in Yoldaş retracted his police statements only during the course of the trial, whereas in the instant case the applicant immediately retracted her police statements as soon as she had access to a lawyer both before the public prosecutor and the investigating judge, and maintained that position before the trial court (see Dvorski v. Croatia [GC], no. 25703/11, § 102, ECHR 2015). Furthermore, as will be examined below, the trial court does not appear to have subjected the applicant's police statements to scrutiny when using those statements to convict her. As a result, the Court dismisses the Government's argument based on Yoldaş.

54. On that account, the applicant's situation appears to resemble that of the applicant in the case of Ruşen Bayar v. Turkey (no. 25253/08, 19 February 2019), who was tried and convicted in the same set of criminal proceedings as the applicant in the instant case. 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). The Court is mindful of the probative value of documents signed while in police custody. However, as with many other guarantees under Article 6 of the Convention, those signatures are not an end in themselves and they must be examined by the Court in the light of all the circumstances of the case (see Ruşen Bayar v. Turkey, cited above, § 121). In addition, the use of a printed waiver formula may represent a challenge as to ascertaining whether the text actually expresses an accused's free and informed decision to waive his or her right to be assisted by a lawyer.

55. In the instant case, the Court is of the view that the applicant's immediate statements to the doctor at the end of her police custody on 17 November 2003 that the police had hit her head, threatened to kill and rape her and had driven their car into her, as a result of which she had fallen unconscious, and her statements to the public prosecutor that she had had to sign the police statements as a result of the violence and coercion on their part, are weighty indications against the conclusion that she had waived her right to a lawyer in accordance with the Convention standards when giving statements to the police on 16 November 2003. This remains so despite the fact that the Court has already declared inadmissible the applicant's complaint that she was subjected to duress while in police custody as being manifestly ill-founded, because the absence of any element suggesting that the applicant was subjected to ill-treatment or was otherwise coerced into making incriminating statements is not, in itself, sufficient to conclude that the waiver in a given case is valid for the purposes of a fair trial under Article 6 of the Convention (see Bozkaya v. Turkey, no. 46661/09, § 45 in fine, 5 September 2017).

56. Furthermore, the Court observes that the first page of the applicant's statement form in the instant case also included the information that she was literate. That said, however, according to the third page of the same record the applicant stated that she had not attended school. Likewise, at the hearing held on 17 March 2004, the applicant stated before the trial court that she was illiterate and that she had been forced by the police to sign her statements.

57. In this context, the Court finds it useful to reiterate that additional protection should be provided for illiterate detainees with a view to ensuring that the voluntary nature of a waiver is reliably established and recorded (see Şaman v. Turkey, no. 35292/05, § 35, 5 April 2011). The Court also notes that the applicant was accused of being a member of an illegal organisation, which is a very serious charge, and faced a heavy penalty. Yet, the trial court did not take any reasonable steps to verify this crucial point, specifically whether the applicant was illiterate, despite the fact that the applicant had brought that matter to its attention at the hearing held on 17 March 2004.

58. While the Court notes that some of the documents found on the applicant included handwritten numbers which forensic experts concluded had been handwritten by the applicant, it is not entirely convinced that those factors were sufficient to establish that the applicant was not illiterate.

59. However, the fact remains that the trial court failed to carry out an assessment of the above-mentioned circumstances in relation to the validity of the applicant's waiver of her right to legal assistance (see Savaş v. Turkey, no. 9762/03, § 68, 8 December 2009).

60. Moreover, although the Government argued that the fact that İ.A., who had been arrested on the same day as the applicant, had been able to benefit from legal assistance and had refuted the applicant's allegations, the Court notes that their statements were taken on different dates and by different police officers. Under these circumstances, the mere fact of being in the same police station and having been arrested on the same day is not sufficient to refute the applicant's contention. Therefore, the Court is unable to subscribe to that argument (compare Imbras v. Lithuania (dec.), no. 22740/10, § 65, 10 July 2018).

61. In view of the conflicting circumstances as to the validity of the applicant's waiver of her right to legal assistance and several years on from the events in issue, the Court is not in a position to establish whether the applicant's waiver was a valid one, especially in view of the fact that it is in the first place the national authorities' duty to establish in a convincing manner whether the applicant's confessions and waivers of legal assistance were voluntary (see Türk v. Turkey, no. 22744/07, § 53, 5 September 2017). Therefore, it considers that the Government have failed to demonstrate that the applicant validly waived her right to a lawyer when giving statements to the police.

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

62. 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, § 117).

63. The Court notes that the Government have not offered any compelling reasons for the restriction of the applicant's access to a lawyer on 14 November 2003 when she gave statements to the police. It is not for the Court to undertake of its own motion to determine whether there had been any compelling reasons to restrict the applicant's right of access to a lawyer.

(d) Whether the overall fairness of the proceedings was ensured

64. 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 to secure her conviction. As there were no compelling reasons to restrict the applicant's right of access to a lawyer when she 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 Simeonovi, cited above, § 132, and Ibrahim and Others, cited above, § 265).

65. 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 Ibrahim and Others, cited above, § 274 for a 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, cited above, § 82). 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, cited above, § 116).

66. 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, cited above, § 109, and Türk, cited above, § 53). In that connection, the Court also notes that Turkish law sets out a very strong procedural safeguard in Article 148 § 4 of the Code of Criminal Procedure capable of remedying the procedural shortcomings in relation to the use of police statements taken without a lawyer being present irrespective of whether a suspect had waived his or her right to legal assistance or not. Pursuant to that provision, the police statements taken without a lawyer being present should not have been used by the trial court unless they had been confirmed before a court or a judge (see Ruşen Bayar, cited above, § 128).

67. In the view of the Court, the above-mentioned facts of the instant case were capable of raising at least a prima facie case in relation to the validity of the applicant's waiver of the right to have legal assistance when giving statements to the police, which was required to be addressed by the national authorities. With that in mind, the Court also observes that the applicant made very detailed self-incriminatory statements to the police and confessed to her crimes. According to the documents in the Court's possession, that was the only occasion on which the applicant made self-incriminatory statements. The applicant promptly retracted those statements as soon as she was represented by her lawyer on 17 November 2003 and retracted her police statements before the public prosecutor, the investigating judge and the trial court (see Ruşen Bayar, cited above, § 129, and Pishchalnikov v. Russia, no. 7025/04, § 88, 24 September 2009).

68. Nevertheless, as was mentioned above, the trial court did not conduct any examination as regards the validity of the applicant's waiver or the statements she had made to the police in the absence of a lawyer. 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 she 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).

69. Moreover, the trial court used the applicant's police statements when finding her guilty of membership of a terrorist organisation and eventually in sentencing her to six years and three months' imprisonment. As is apparent from the trial court's reasoned judgment, the Court considers that it cannot be ruled out that the applicant's statements formed an integral part of the evidence upon which her conviction was based.

70. Against such a background, the Court is of the view that the absence of a close scrutiny by the national courts of the circumstances surrounding the applicant's waiver and the fact that this flaw was not remedied by any other procedural safeguards during the proceedings rendered the trial as a whole unfair (see Bozkaya, cited above, § 53, and Türk, cited above, § 58).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. 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

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

74. The Government submitted that the applicant's claims were excessive.

75. 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, cited above § 29).

B. Costs and expenses

76. The applicant claimed 5,022 Turkish liras (TRY – approximately EUR 1,570), which constituted the legal fee inclusive of value-added tax for the proceedings before the Court.

77. She also claimed TRY 600 for expenses relating to postage, translation and stationery which she had incurred before the proceedings (approximately EUR 187). In support of her claims, the applicant submitted the scale of fees of the Union of Bar Associations of Turkey.

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

79. 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 that ground (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 only submitted the Union of Bar Associations of Turkey's scale of fees to support her claims, the Court decides not to any award under this head.

**FOR THESE REASONS, THE COURT, UNANIMOUSLY,**

1. Declares the complaint concerning the denial of legal assistance in police custody 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith — Registrar

Robert Spano — President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Bošnjak and Yüksel is annexed to this judgment.

R.S.
S.H.N.

**JOINT CONCURRING OPINION OF JUDGES BOŠNJAK AND YÜKSEL**

1. We agree with the other members of the Chamber that there has been a violation of Article 6 §§ 1 and 3 (c) in the present case. In our view, the main shortcoming at the domestic level was that the competent authorities had failed to examine properly the applicant's repeated claims of a violation of her right to be assisted by a lawyer during her interview in police custody. Equally, as the judgment rightly points it out in paragraph 50, it remains unclear whether the applicant was given any explanation, during her police interview, as to the consequences of her waiver, including whether any statement given could subsequently be admitted in evidence in the proceedings against her.

2. In paragraph 54 of the present judgment it is stated that the use of a printed waiver formula may represent a challenge as to ascertaining whether the text actually expressed an accused's free and informed decision to waive his or her right to be assisted by a lawyer. We believe that a printed text of any statement by an accused does not in itself undermine its validity or credibility, as long as it is accompanied by sufficient indications that it indeed reflects the accused's free and informed will (e.g. a signature). Where a suspect or an accused person subsequently casts doubt upon the circumstances in which such a statement has been taken, the competent authorities are under an obligation to thoroughly examine the claim. Therefore, in our opinion, the present judgment should not be interpreted to mean that any statement by an accused which is printed (and not, for example, handwritten or audio-recorded) would necessarily in itself be questionable as to its authenticity.