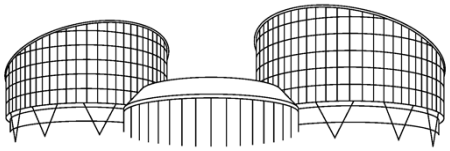

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF BÜLENT BEKDEMİR v. TÜRKİYE

(Application no. 42881/18)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Statutory restriction of the applicant's right of access to a lawyer in police custody • Domestic courts' reliance on statements obtained in the absence of a lawyer to convict him of attempting to overthrow the constitutional order and to impose a sentence of life imprisonment • No compelling reasons justifying impugned restriction • Domestic courts' failure to assess the impact the absence of a lawyer might have had on defence rights or the overall fairness of proceedings • Failure to exclude impugned statements as required by domestic law • Constitutional Court's failure to apply principles in the Court's case-law • Impugned statement carried significant probative value • Overall fairness of criminal proceedings irretrievably prejudiced

Prepared by the Registry. Does not bind the Court.

STRASBOURG

17 June 2025

FINAL

17/09/2025

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

In the case of Bülent Bekdemir v. Türkiye,

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

Arnfinn Bårdsen*, President*,
Saadet Yüksel,
Jovan Ilievski,
Anja Seibert-Fohr,
Davor Derenčinović,
Stéphane Pisani,
Juha Lavapuro*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 42881/18) against the Republic of Türkiye 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 Bülent Bekdemir ("the applicant"), on 29 August 2018;

the decision to give notice to the Turkish Government ("the Government") of the complaints concerning his inability to access legal assistance while in police custody and the use of statements he had made in the absence of a lawyer to convict him, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 27 May 2025,

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

INTRODUCTION

1. The case concerns the alleged unfairness of the criminal proceedings against the applicant, arising from a statutory prohibition that restricted his right of access to a lawyer. It further pertains to the domestic courts' reliance on statements obtained from the applicant in the absence of a lawyer to convict him of attempting to overthrow the constitutional order and to impose a sentence of life imprisonment. The applicant complains of a violation of his right under Article 6 §§1 and 3(c) of the Convention.

THE FACTS

2. The applicant was born in 1977 and lives in Hamburg. He was represented by Ms M. Hanbayat Yeşil and Mr Ü. Sisligün, lawyers practising in Istanbul.

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

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

5. On 13 March 1998 the applicant and a certain C.S. were stopped by police officers who considered their appearance to be suspicious. A search of the applicant and of a plastic bag in his possession revealed a 7.65 mm pistol, five cartridges in its magazine, "a donation receipt", part of a handwritten document, and a banner which read: "The Gazi Murderer[1] [is the] patron-master State [-] TKP-ML/TIKKO [Communist Party of Turkey/Marxist-Leninist/Turkish Workers and Peasants' Liberation Army]".

6. A police expert report dated 14 March 1998 concluded that four out of eight empty cartridges found at the scene of an incident which had taken place in Bağcılar on 31 January 1998 (where certain individuals had hung banners from a local coffee house and fired into the air with pistols) had been fired from the pistol found in the applicant's plastic bag.

7. According to a report issued by the criminal laboratory at the Istanbul Security Directorate on 16 March 2004, the handwriting on the two documents found in the applicant's possession matched his own.

8. A police expert report dated 17 March 1998 concluded that the applicant's fingerprints matched those found on a banner hung during the incident of 31 January 1998.

9. On 18 March 1998 the applicant made a statement to the police in the absence of a lawyer, stating that he adhered to the ideology of the TKP-ML/TIKKO, whose ultimate goal was to subvert the constitutional order by means of a people's armed struggle to bring about an administrative system based on communist ideals. The applicant further explained how he had joined the TKP-ML/TIKKO and acted within the Bağcılar branch of that organisation; he indicated the code name used by him and listed, one by one, the incidents in which he had participated and the (nine) other members who had acted with him in each of those incidents. In that connection, the applicant specified that he had taken part in an illegal demonstration held on 31 January 1998 and had thrown a Molotov cocktail onto the road and, along with certain other members, had prepared the banner hung during that incident. The applicant further stated that in February 1998 he had hung a banner (which read "Martyrs of the Revolution") from a shop in Esenler and had written the same phrase on a wall in a street in Yukarı Karabayır.

10. The applicant further recounted seven instances in which he and another member of the organisation had visited three restaurants, three bars and a furniture store and asked the owners of those establishments to pay a certain sum of money to the TKP-ML/TIKKO in support of the organisation's donation campaign for the people's struggle. Lastly, the applicant admitted to having taken part in illegal marches held on 8 March 1998 for International Women's Day and on 12 March 1998 for the commemoration of the Gazi incidents.

[1] For further information about the Gazi incidents see *Şimşek and Others v. Turkey*, nos. 35072/97 and 37194/97, 26 July 2005.

11. The arrest of the applicant and C.S., the seizure of the documents found in the applicant's possession and the statements given by them prompted the police to carry out operations in respect of other members of the TKP-ML/TIKKO, leading to the arrest of three other members, which in turn led to the arrest of another three members and then another six members, as well as the seizure of weapons and documents linked to the organisation.

12. On l8 March 1998 seven suspects, E.A., C.Ş., Ö.K., A.H.A., B.Y., S.D. and Y.D., participated in a reconstruction of the incident that had taken place on 31 January l998, and provided explanations as to how they had carried out the acts attributed to them. In their statements, the suspects said that the applicant had blocked the road by throwing a Molotov cocktail.

13. On 20 March 1998 the applicant gave a statement to the public prosecutor in the absence of a lawyer and retracted the statement he had made to the police, arguing that he had only participated in the demonstration held on 8 March 1998 in Taksim Square for International Women's Day.

14. On the same day, the applicant gave evidence in the presence of a lawyer before an investigating judge and again retracted the statement he had given to the police, alleging that it had been extracted from him under torture. At the end of the hearing, the judge placed the applicant, along with other individuals, in pre-trial detention, finding that there were strong indications that they had committed the offence of being a member of an armed terrorist organisation, namely the TKP-ML/TIKKO.

15. Between 21 and 23 March 1998, after it had been revealed that the applicant had asked for money on behalf of the TKP-ML/TIKKO from the owners of certain restaurants and bars and a furniture store, the police took statements from some of the owners of those establishments and asked them to identify certain individuals, including the applicant, from photographs. M.K., A.K. and M.N. all stated that they had given the applicant money, while N.G. and H.Ş. said that they had not. All of them identified, from the photographs shown to them, the applicant and certain other individuals as the people who had asked them for money on behalf of the TKP-ML/TIKKO.

16. On 1 May 1998 the Istanbul Chief Public Prosecutor's Office filed a bill of indictment against the applicant together with twenty-four other individuals, charging him with being a member of an armed terrorist organisation under Article 168 § 2 of the former Criminal Code and with illegal possession of firearms, contrary to section 13 § 1 of Law no. 6136. The public prosecutor took the view that the acts admitted by the applicant in his statement to the police constituted the offence of being a member of an armed terrorist organisation, while the unauthorised possession of the pistol found on him gave rise to a breach of Law no. 6136. The public prosecutor further stated that a series of operations against members of the TKP-ML/TIKKO had been carried out following the arrest of the applicant and C.S. and the discovery of the items found in their possession. As a result, the police had arrested twenty-three other members and had found and seized, among other

things, numerous documents and publications concerning the organisation, a Molotov cocktail, a knife, a combat knife, six pistols and three Kalashnikov rifles.

17. At the first hearing held on 8 July 1998 before the Istanbul Fourth State Security Court, most of the defendants, including the applicant, gave evidence. The applicant retracted the statement he had made to the police, submitting that it had been extracted under duress, and further clarified that although it had been recorded in his statement to the public prosecutor that the banner and pistol had not been found in his possession, they had in fact been found in his possession but did not belong to him.

18. At a hearing held on 28 December 1998, certain witnesses, including some of the restaurant owners (namely M.K., A.K. and M.N.), gave evidence in person and reiterated the statements that they had made to the police, including their identification of the applicant.

19. On 31 July 2001 the Istanbul Fourth State Security Court ordered the applicant's release, noting that he had been diagnosed with Wernicke-Korsakoff syndrome (a thiamine deficiency–related neurological disorder, marked by confusion, ataxia, eye movement problems, and severe memory loss with confabulation) following a hunger strike he had undertaken and that the prison conditions posed a risk to his health.

20. At a hearing held on 6 February 2002, the public prosecutor taking part in the hearings noted that even though the case file and evidence suggested that the offence of robbery might have been committed by, among other individuals, the applicant, the bill of indictment had been based on the offence of membership of an armed terrorist organisation, considering the acts of robbery to be subsumed by that offence. The prosecutor therefore asked the trial court to send the case file to the Istanbul Chief Public Prosecutor's Office so that the latter could file an additional bill of indictment charging the relevant defendants with several counts of robbery. The trial court granted that request.

21. On 19 September 2002 the public prosecutor who had filed the first bill of indictment filed an additional bill of indictment in respect of the applicant among other individuals, charging him with three counts of robbery (*gasp*) and four counts of attempted robbery. The prosecutor accepted that even though he had taken the view, in the first bill of indictment, that those acts had constituted the offence of being a member of an armed terrorist organisation, in the additional bill the applicant was indicted for robbery on the basis of the same acts.

22. On 11 December 2003 the trial court issued an arrest warrant in respect of the applicant.

23. On 8 April 2009 the trial court convicted the applicant, together with other individuals, of being a member of an armed terrorist organisation under Article 168 § 2 of the former Criminal Code and sentenced him to twelve years and six months' imprisonment. In so doing, the trial court attached

weight to (i) the statements made by the defendants to the police; (ii) other documents available in the case file; and (iii) the documents belonging to the organisation and the weapons that had been seized. The trial court held that the applicant had been a member of the Bağcılar district branch of the terrorist organisation; had taken part in hanging illegal banners on 29 January 1998; had carried out the same act and thrown a Molotov cocktail on 31 January 1998; and had taken part in illegal demonstrations held on 8 March 1998 in Taksim Square and on 12 March 1998 in the Gazi neighbourhood. The trial court further found that, in accordance with instructions given by a senior-level leader of the terrorist organisation, the applicant had collected money, by force, on behalf of the TKP-ML/TIKKO, and referred to the fact that he had been arrested in possession of a pistol and a banner prepared in the name of that organisation. It dismissed the charge of unlawful possession of firearms, holding that the prosecution of that offence had become time-barred.

24. On 18 June 2009 the public prosecutor lodged an appeal against the conviction, arguing, among other things, that the trial court should have disjoined the case against the applicant in so far as it concerned the acts of robbery, given that the applicant's defence submissions had not been sought in respect of those acts. Therefore, the trial court's decision that the acts of robbery should be subsumed by the offence of membership of an armed terrorist organisation had resulted in the imposition of a sentence that was lower than that sought by the prosecutor in the second bill of indictment had been erroneous and, as such, the judgment ought to be reversed.

25. On 8 June 2010 the Court of Cassation quashed, among other things, the applicant's conviction, holding that he had committed the offence of robbery against M.N., the owner of the furniture store, which ought to have been characterised as a "grave act" committed on behalf of the organisation and as the offence of attempting to disrupt or subvert the constitutional order and to undermine Parliament or prevent it, by the use of force, from carrying out its role (Article 146 of the former Criminal Code).

26. At a hearing held on 16 February 2011 the applicant gave evidence in person and asked the trial court not to follow the Court of Cassation's judgment. At the end of the hearing, the trial court did not place the applicant in pre-trial detention, nor did it impose any other judicial supervision measures on him.

27. On 30 April 2013 the trial court, having noted that the arrest warrants in respect of eight defendants, including the applicant, had not been executed, gave its judgment. It convicted the applicant and A.O. under Article 146 of the former Criminal Code in line with the reasoning of the Court of Cassation and sentenced him to life imprisonment. The trial court disjoined the cases of other defendants who were evading capture. The trial court took the view that the public prosecutor's office had initiated an operation following the arrest of the applicant and C.S. on 13 March 1998 during which a pistol and a

"donation receipt" drawn up on behalf of the TKP-ML/TIKKO had been found in their possession; this had led to the arrest of three other members of the terrorist organisation, which had progressively led to the arrest of numerous other members, as well as the discovery of certain weapons, a sum of money, documents and publications concerning the TKP-ML/TIKKO.

28. The trial court stated that it had assessed the applicant's position and his activities within the organisation in the light of (i) the Court of Cassation's decision to quash the defendants' previous conviction; (ii) the statements he had made to the police and the public prosecutor; (iii) other documents available in the case file; and (iv) the documents belonging to the organisation and the weapons that had been seized. In so doing the trial court held, in contrast to its finding when convicting the applicant on 8 April 2009, that he had not been an ordinary member of the TKP-ML/TIKKO, but instead a senior-level leader who had been capable of giving commands and instructions to its members and who was responsible for that organisation's Bağcılar branch and had carried out activities on behalf of the organisation. In that connection, the trial court referred to the hanging of an illegal banner on 29 January 1998 and again on 31 January 1998 when he had also thrown a Molotov cocktail; to the illegal demonstrations held on 8 and 12 March 1998; to the instances in which the applicant had either extorted or attempted to extort money on behalf of the TKP-ML/TIKKO; and to the banner and the pistol found on him at the time of his arrest. Consequently, the trial court concluded that the acts attributed to him had constituted, as a whole, the offence of attempting to subvert the constitutional order and convicted him accordingly.

29. On 2 May 2014 the applicant's lawyer filed his grounds of appeal, arguing, among other things, that the systemic restriction placed on his right of access to a lawyer and the use of the statements he had made without a lawyer being present had breached his right to a fair trial.

30. On 15 May 2014 the Court of Cassation upheld the trial court's above-mentioned judgment.

31. On 18 September 2014 the applicant lodged an individual application with the Constitutional Court, alleging, among other things, a violation of his right to a fair trial on account of his not having had access to a lawyer while in police custody, the use of the statements he had made in the absence of a lawyer to convict him and the domestic courts' failure to consider that issue, despite there being numerous judgments against Türkiye in which the Court had found violations of Article 6 §§ 1 and 3 (c) of the Convention on that account.

32. On 25 January 2018 the Constitutional Court gave its judgment in which it held, among other things, that there had been no violation of the applicant's right to a fair trial taken in conjunction with his right to legal assistance. The Constitutional Court's five-member panel observed that the

applicant's right to legal assistance had been restricted in accordance with the relevant legislation in force at the material time. It went on to hold as follows:

> "... In assessing the acts covered by the offences attributed to the applicant, it is noted that his statement, obtained in the absence of a lawyer while in police custody, was also admitted as evidence. However, in the subsequent stages of the proceedings the applicant benefited from the assistance of a lawyer. Moreover, it is understood that in relation to some of the acts attributed to the applicant, certain witnesses confirmed his identity at the trial, and that the medical reports [issued during the applicant's time in police custody] indicated no sign of ill-treatment or violence against him. [The trial] court based its conviction on the statements made by the defendants to the police and public prosecutor, the confrontation and identification reports, expert reports, and the seized weapons and documents concerning the [terrorist] organisation. It can therefore be understood that the applicant's statement to the police made in the absence of a lawyer was not the sole or decisive evidence [for his conviction], and that the legal assistance provided to him in the further stages of the proceedings, as well as the other procedural guarantees, offset the prejudice caused to his defence rights at the beginning of the investigation ..."

RELEVANT LEGAL FRAMEWORK

33. The relevant provisions of the former Code of Criminal Procedure (Law no. 1412), namely Articles 135, 136 and 138, as in force at the material time, provided that anyone suspected or accused of a criminal offence had a right of access to a lawyer from the moment when he or she was taken into police custody. In accordance with section 31 of Law no. 3842 of 18 November 1992, which amended the legislation on criminal procedure, the above-mentioned provisions were not applicable to persons accused of offences falling within the jurisdiction of the State Security Courts. On 15 July 2003, by virtue of Law no. 4928, the restriction on an accused's right of access to a lawyer in proceedings before the State Security Courts was lifted (see *Salduz v. Turkey* [GC], no. 36391/02, §§ 27-29, ECHR 2008).

34. Under Article 247 of the former Code of Criminal Procedure (in force until 1 June 2005), as interpreted by the Court of Cassation, any confessions made to the police or the public prosecutor's office had to be repeated before a judge if the record of the questioning containing them was to be admissible as evidence for the prosecution. If the confessions were not repeated, the records in question were not allowed to be read out as evidence in court and consequently could not be relied on to support a conviction. Nevertheless, even a confession repeated in court could not on its own be regarded as a decisive piece of evidence but had to be supported by additional evidence (see *Dikme v. Turkey*, no. 20869/92, § 38, ECHR 2000-VIII).

35. Article 148 of the new Code of Criminal Procedure (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 interferences capable of undermining [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 without a lawyer present shall not be relied on [for conviction] unless the suspect or the accused confirms them before a judge or a court.

..."

THE LAW

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

36. The applicant complained that the domestic courts' use of the statements he had made while in police custody, and in the absence of a lawyer, infringed his right to a fair trial, as provided in Article 6 §§ 1 and 3 (c) of the Convention, which reads as follows:

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

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

...

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

..."

A. Admissibility

1. Alleged failure of exhaustion of domestic remedies

37. The Government argued that, in his application to the Constitutional Court, the applicant had failed to raise his complaint concerning the absence of a lawyer while the investigative measures were being carried out, such as the reconstruction of events and confrontations. On that basis, the Government urged the Court to declare that part of the application inadmissible for non-exhaustion of domestic remedies.

38. The applicant contested the Government's plea of non-exhaustion, arguing that he had raised the essence of his complaints before the Court of Cassation and the Constitutional Court.

39. The Court observes that in his individual application to the Constitutional Court, the applicant complained solely of having been unable to have access to a lawyer when giving statements to the police and the public

prosecutor, with the result that the Constitutional Court's assessment was confined to that specific grievance. Accordingly, the applicant did not complain that he had been unable to have access to a lawyer while the other investigative measures were being carried out during the preliminary investigation stage of the proceedings. On that basis, the Court upholds the Government's non-exhaustion plea concerning the absence of a lawyer during these "other" investigative measures in question, given the applicant's failure to raise that matter before the Constitutional Court, and declares this part of the application inadmissible under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies and rejects it pursuant to Article 35 § 4 of the Convention.

2. Objection that the application was manifestly ill-founded

40. The Government submitted that the applicant's complaint concerning the alleged unfairness of the criminal proceedings before the Istanbul Assize Court as a result of the admission as evidence of the statement he had made in the absence of a lawyer was of a fourth-instance nature and should thus be declared inadmissible as being manifestly ill-founded. In that regard, the Government argued that no restrictions on the case file had been imposed, the applicant had had the possibility of accessing all the documents and evidence, had been represented by a lawyer throughout the proceedings and had been able to put forward his arguments. Indeed, the applicant had been able to submit the evidence he had considered relevant and had effectively challenged the admissibility and use of the evidence brought against him. Having examined the case file as a whole, the domestic courts had not found in his favour and their decisions were adequately reasoned and in line with the domestic law.

41. The Government argued that subsequently, the Constitutional Court had examined the applicant's complaints in line with the Court's case-law and the principles enunciated therein and had found no violation of his right to a fair trial, holding that the statement he had made to the police in the absence of a lawyer had not been the sole or decisive evidence in convicting him. According to the Constitutional Court, the legal assistance provided to the applicant during the trial, along with the other procedural guarantees, had remedied the prejudice caused to his defence rights during the initial stages of the proceedings. In the light of the foregoing, the Government contended that the complaints raised by the applicant essentially concerned the domestic courts' assessment of the evidence, which could not be regarded as arbitrary. Accordingly, they invited the Court to dismiss the application as manifestly ill-founded, arguing that there was no reason to depart from the findings of the domestic courts.

42. The applicant did not make any specific submissions in respect of this objection raised by the Government.

43. The Court notes that the applicant's complaint relates to a distinct procedural safeguard, namely the right to legal assistance under Article 6 § 3 (c) of the Convention, of which he was allegedly deprived when giving statements to the police and the public prosecutor at the investigation stage, as well as the domestic courts' subsequent use of those statements made in the absence of a lawyer. These complaints cannot thus be regarded as complaints of a fourth-instance nature. Therefore, the Government's objection must be dismissed. The complaints under consideration are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

44. The applicant complained of a breach of Article 6 § 3 (c) of the Convention, arguing that he been unable to have access to a lawyer when giving statements to the police and the public prosecutor at the investigation stage due to a statutory prohibition that restricted that right. In his view, the same violation had also occurred at the trial stage, because the statement he had made to the police and the information contained therein had left an impact on the trial and formed a central pillar of his conviction. Moreover, none of the domestic courts had assessed his objections to the evidence collected while he had been in police custody. Accordingly, the mere fact that he had been represented by a lawyer at the trial had neither changed the fact that the authorities had obtained the evidence in question as a direct result of the statements he had made in the absence of a lawyer, nor had it offset the impact of those statements on the proceedings. In the applicant's view, such circumstances had given rise to a violation of Article 6 § 3 (c) of the Convention taken in conjunction with Article 6 § 1 of the Convention.

(b) The Government

45. The Government submitted that the applicant's inability to have the assistance of a lawyer while in police custody had not caused any irretrievable prejudice to the overall fairness of the trial, for the following reasons. First and foremost, the Government pointed out that the applicant had been arrested in the context of an investigation into a terrorist organisation; the investigation had been in the public interest, given that the TKP-ML/TIKKO had been responsible for many incidents resulting in death and injury throughout the country. In fact, the search of the applicant at the time of his arrest had revealed a banner of the terrorist organisation, an undocumented pistol and five 7.65 mm cartridges in its magazine.

46. The Government further submitted that owing to the systemic restriction imposed at the time of the applicant's arrest, he had only been entitled to access a lawyer once he had been placed in pre-trial detention, and had done so on 20 March 1998. In their view, in considering whether there had been compelling reasons to restrict the applicant's right of access to a lawyer, it was necessary to review the proceedings as a whole to assess the impact of the statements taken in the absence of a lawyer and to measure their impact on the overall fairness of the proceedings. In that regard, the Government argued that prior to the applicant's police interview, three expert reports had been obtained which showed that (i) the pistol found in the applicant's possession had been used in the incident on 31 January 1998 (expert report dated 14 March 1998); (ii) the handwriting found on certain receipts drawn up on behalf of the terrorist organisation, which had been used to collect money from business owners, belonged to the applicant (expert report dated 16 March 1998); and (iii) the applicant's fingerprints had been found on the banner seized during the incident of 31 January 1998. The applicant had given his statement to the police only after the collection of the above-mentioned evidence. He had admitted to being a member of the TKP-ML/TIKKO and had given a detailed account of the activities he had carried out within that organisation. Although he had later retracted that statement before the investigating judge, alleging that it had been extracted under torture, the medical examinations that he had undergone during his time in police custody had not revealed any signs of ill-treatment.

47. In the Government's view, the applicant had had the benefit of adversarial proceedings during which he had been able to exercise his procedural rights with a view to effectively challenging the admissibility of the statements he had made in the absence of a lawyer and their use by the domestic courts. Moreover, and more importantly, the Government submitted that those statements had not served as the sole or decisive evidence for his conviction. That was because in convicting the applicant, the trial court had made use of the above-mentioned expert reports, the statements made by the business owners in which they had identified the applicant as the person who had asked them for money on behalf of the terrorist organisation, and the seized weapons and documents belonging to the organisation. Accordingly, the statements made by the applicant without a lawyer being present had not been of a nature which could affect his conviction, with the result that they had not caused any prejudice to the fairness of the criminal proceedings against him.

48. This was all the more so as the Constitutional Court had duly assessed the applicant's complaints concerning the use of his statements taken in the absence of a lawyer and had found no violation of his right to a fair trial. It had taken the view that any harm to the applicant's defence rights owing to the absence of a lawyer had been redressed by (i) the legal assistance provided to him in the subsequent stages of the proceedings and (ii) the other

guarantees associated with the criminal proceedings. In that connection, the Constitutional Court had observed that in convicting the applicant, the trial court had attached weight to the statements made by the defendants in the absence of a lawyer, expert reports, the identification of the applicant by the business owners and their statements, the pistol and the documents linked to the organisation that had been found in his possession. Moreover, some of the witnesses (business owners) had confirmed that they had identified the applicant, and the medical reports had revealed no signs of ill-treatment. Accordingly, the Constitutional Court had taken the view that the applicant's statement to the police had not been the sole or decisive evidence for his conviction.

49. Lastly, the Government asserted that the general principles adopted by the Constitutional Court in assessing complaints concerning the denial of access to a lawyer were consistent with the Court's approach, which placed the overall fairness of the proceedings at the heart of its assessment. In that regard, the Government referred to the Constitutional Court's judgment in *A.O.* (application no. 2014/15506, dated 12 June 2018), in which the defendant, who had been tried and convicted in the same set of criminal proceedings and for the same offence as the applicant, had also complained about the use of statements he had made in the absence of a lawyer. The Constitutional Court had found a violation of his right to a fair trial, holding that a medical report suggested that he had been ill-treated while in police custody and that his statements made to the police had been decisive for his conviction.

50. In view of the above, the Government urged the Court to find no violation of Article 6 §§ 1 and 3 (c) of the Convention.

2. The Court's assessment

51. The general principles with regard to the right of access to a lawyer may be found in the Grand Chamber judgments in *Beuze v. Belgium* ([GC], no. 71409/10, §§ 119-50, 9 November 2018), and *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08 and 3 others, §§ 249-74, 13 September 2016).

(a) Whether there was a restriction on the right of access to a lawyer

52. In the present case, the applicant was denied access to a lawyer from 13 March to 20 March 1998 as a result of the statutory ban laid down in section 31 of Law no. 3842. As a result, he was without legal assistance when he made his statements to the police and the public prosecutor. The Court has already examined the same legal problem and found violations of Article 6 §§ 1 and 3 (c) of the Convention in cases against Türkiye (see *Mehmet Zeki Çelebi v. Turkey*, no. 27582/07, § 52, 28 January 2020, with further

references). It will therefore be guided by the well-established case-law principles in the assessment of the present case.

(b) Whether there were compelling reasons for the restriction

53. The Court further notes that the Government did not argue that there were compelling reasons justifying the restriction placed on the applicant's right of access to a lawyer. Accordingly, the Court finds that no such reasons existed in the present case.

(c) Fairness of the proceedings as a whole

54. In the absence of any compelling reasons to restrict the applicant's right of access to a lawyer while in police custody, the Court must apply very strict scrutiny to its fairness assessment, especially as there were statutory restrictions of a general and mandatory nature (see *Beuze*, cited above, § 165). 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. The Court also reiterates that it is only in very exceptional circumstances that it can conclude that a given trial has not been prejudiced by the restriction of an applicant's right of access to a lawyer (see *Mehmet Zeki Çelebi*, cited above, § 57).

55. In that regard, the Court must first of all ascertain whether the prejudice caused by the systemic restriction on the applicant's right of access to a lawyer while in custody rendered the trial unfair in its entirety or was remedied by the operation of the necessary safeguards at the national level, which were moreover subsequently raised by the Government in the examination of the case before the Court (see ibid., § 59). In doing so, the Court now turns to the Government's arguments, in which they assert that the overall fairness of the trial was not irretrievably prejudiced by the restriction on the applicant's right of access to a lawyer during the pre-trial stage, on account of, among other things, the weight of the evidence other than the statements the applicant had made in the absence of a lawyer.

56. The Court firstly observes that neither the trial court nor the Court of Cassation carried out any assessment of the impact that the procedural shortcoming, namely the absence of a lawyer, might have had on the rights of the defence or on the overall fairness of the proceedings. The Court further observes that Article 148 § 4 of the Turkish Code of Criminal Procedure (Article 247 of the former Code of Criminal Procedure) expressly provides that a statement taken in the absence of a lawyer cannot form the basis of a conviction, unless the suspect or the accused confirms that statement before a judge or a court. In that connection, the Court stresses that the applicant had consistently retracted the statements he had made to the police when later giving statements to the public prosecutor and the investigating judge, and

when giving evidence during the trial (see paragraphs 13, 14 and 17 above, and compare *Mehmet Zeki Çelebi*, cited above, §§ 57-73). Moreover, the Court has previously held that the application of an exclusionary rule was a factor that makes it "particularly unlikely that the proceedings as a whole would be considered unfair" (see *Ibrahim and Others*, § 274, and *Beuze*, § 150, both cited above). Nevertheless, in the present case, the fact remains that the domestic courts failed to apply that rule and accordingly did not exclude the impugned statements.

57. Moreover, and contrary to the Government's assertion, the Constitutional Court failed to apply the principles set forth in the Court's case-law, specifically in *Salduz*, *Ibrahim and Others* and *Beuze* (all cited above) when it assessed the applicant's complaint, despite the fact that all of those judgments had been delivered prior to its decision in the applicant's case. Instead of adhering to the standards set out in that jurisprudence, the Constitutional Court concluded that the applicant's statement made in the absence of a lawyer did not constitute the sole nor the decisive basis for his conviction. This conclusion was reached on the grounds that (i) there was other evidence in the case file, (ii) some of the business owners had confirmed their identification of the applicant at the trial, and (iii) there was no indication of any sign of ill-treatment inflicted on the applicant while in police custody.

58. As regards the "strength of other evidence", a factor to be taken into account when assessing the impact of procedural shortcomings at the pre-trial stage on the overall fairness of the criminal proceedings (see *Ibrahim and Others*, cited above, § 274), and which was relied on by the Government in the present case to demonstrate that the criminal proceedings against the applicant had been fair, the Court makes the following observations.

59. The applicant was initially convicted of, among other offences, membership of an armed terrorist organisation under Article 168 § 2 of the former Criminal Code. This conviction was based, among other evidence, on the items found in his possession and the statements that he had made to the police and the public prosecutor in the absence of a lawyer. The acts and activities underpinning his conviction corresponded to those he had described in his statement to the police, namely his participation in the hanging of illegal banners on 29 and 31 January 1998 and in two illegal marches held on 8 and 12 March 1998, and instances of extortion in the form of asking for (and in some incidents obtaining) money from certain business owners on behalf of the TKP-ML/TIKKO. However, the Court of Cassation quashed this conviction, holding that the applicant had committed an act of extortion against M.N. (the owner of the furniture store), which ought to be regarded as "a grave act" committed on behalf of the terrorist organisation. It held that this act satisfied the material element of the offence under Article 146 of the former Criminal Code, and concluded that the acts attributed to the applicant should, taken as a whole, be regarded as giving rise to the more serious offence of attempting to subvert the constitutional order. Subsequently, the

trial court decided to follow the Court of Cassation's judgment, convicting the applicant under Article 146 and sentencing him to life imprisonment, again relying, among other evidence, on the statements he had made to the police and the public prosecutor in the absence of a lawyer.

60. In view of the above, the Court notes that the crucial element of the offence of which the applicant was ultimately convicted, namely attempting to subvert the constitutional order, hinges on the acts of extortion that he was found to have committed by asking for money from certain business owners on behalf of the TKP-ML/TIKKO. On that basis, the evidence found in the applicant's possession at the time of his arrest, in so far as it concerned the incident which had taken place in Bağcılar on 31 January 1998 – namely the pistol and cartridges, and the banner – cannot remedy the procedural shortcoming identified in the present case with a view to ensuring the overall fairness of the criminal proceedings.

61. As regards the acts of extortion, the Court observes that the criminal investigation in respect of the applicant, and many other individuals alleged to be members of the TKP-ML/TIKKO, had begun with the applicant's arrest, as indicated in the first bill of indictment and the trial court's reasoned judgment. In fact, it was only after the applicant had made his statement to the police in the absence of a lawyer that the authorities arrested other members of the organisation, carried out searches of their persons and houses and discovered weapons and documents linked to the organisation.

62. Moreover, and more importantly, the first time the domestic authorities learnt of the numerous incidents in which the applicant had asked for money from the owners of bars, restaurants and a furniture store was when the applicant made his statement to the police in the absence of a lawyer. In fact, it was not until a couple of days after the applicant's police interview that the police officers took statements from the owners of those establishments, who made incriminating statements about the applicant and identified him from the photographs shown to them. That being the case, the expert report dated 16 March 1998, establishing that the handwriting on the "donation receipt" found in the applicant's possession had been his, does not alter that finding either.

63. Accordingly, the Court concludes that the statement obtained from the applicant in the absence of a lawyer carried significant probative value, as it provided the authorities with the narrative of what had happened and, in so far as the offence of attempting to subvert the constitutional order is concerned, appears to have framed the process of evidence-gathering in the criminal proceedings against him (contrast *Artur Parkhomenko v. Ukraine*, no. 40464/05, § 87, 16 February 2017, and *Kohen and Others v. Turkey*, nos. 66616/10 and 3 others, § 60, 7 June 2022). As a result, neither the further identification of the applicant by some of the business owners during the trial, nor the absence of any sign of ill-treatment of the applicant during his time in police custody could suffice to ensure the overall fairness of the proceedings.

64. In view of the above, the Court concludes that the overall fairness of the criminal proceedings against the applicant was irretrievably prejudiced by the statutory restriction placed on his right of access to a lawyer and the subsequent use of his statements in the absence of a lawyer.

65. The foregoing considerations are sufficient to enable the Court to conclude that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

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

69. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

70. The Court further considers that the most appropriate form of redress would be the retrial of the applicant, in accordance with the requirements of Article 6 of the Convention, should he so request.

B. Costs and expenses

71. The applicant also claimed 16,100 Turkish liras (TRY) in respect of legal fees, to be paid to his lawyers for legal representation, and TRY 485 for expenses relating to postage, stationery, photocopying and translation.

72. The Government called on the Court to reject those claims, arguing that they had neither been sufficiently itemised nor substantiated with any documentary evidence.

73. The Court rejects the claim for costs and expenses owing to the applicant's failure to submit any documents showing that he had actually incurred them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the systemic restriction placed on the applicant's right of access to a lawyer and the subsequent use made by the

domestic courts of the statements he had made in the absence of a lawyer 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*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı Registrar	Arnfinn Bårdsen President