



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

SECOND SECTION

**CASE OF TAŞAR SU v. TURKEY**

*(Application no. 47628/11)*

JUDGMENT

STRASBOURG

15 May 2018

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



**In the case of Taşarsu v. Turkey,**

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

Ledi Bianku, *President*,

Nebojša Vučinić,

Jon Fridrik Kjølbro, *judges*,

and Hasan Bakırcı, *Deputy Section Registrar*,

Having deliberated in private on 10 April 2018,

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

## PROCEDURE

1. The case originated in an application (no. 47628/11) 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 Hacer Taşarsu (“the applicant”), on 23 June 2011.

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

3. On 11 March 2015 the complaint concerning the lack of legal assistance available to the applicant during the pre-trial stage was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

4. On 12 October 2016 the Vice-President of the Second Section invited the Government to submit further observations, if they wished, in the light of the judgment in *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, ECHR 2016).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Adana.

6. On 8 March 2002 the applicant was arrested and taken into custody on suspicion of membership of an illegal organisation.

7. On 9 March 2002 the applicant’s statements were taken by the police in the absence of a lawyer. During the interrogation, the applicant gave a detailed account of her acts within the illegal organisation PKK (the Kurdistan Workers’ Party).

8. On 11 March 2002 the applicant was heard by the public prosecutor and the investigating judge at the Istanbul State Security Court, again in the absence of a lawyer. Before the public prosecutor and the investigating judge, the applicant partially retracted her previous statements maintaining that she had given statements to the police under duress. On the same day, upon the order of the investigating judge, the applicant was placed in pre-trial detention.

9. On 18 March 2002 the public prosecutor at the Istanbul State Security Court filed an indictment accusing the applicant of membership of an illegal terrorist organisation under Article 168 of the former Criminal Code.

10. At a hearing held on 31 May 2002, the applicant gave evidence in person in the presence of her lawyer. She stated that she had left Turkey through her own means and that she went to Romania, Bulgaria, Greece and Iran with the help of the people whose names she could not remember anymore. She further stated that she had stayed in camps in Greece and Iran. While she was at the camp in Iran she was not involved in many activities owing to her young age. She further maintained that she had wanted to return to Turkey due to her health condition and for family reasons. She further stated that she had turned back to Turkey through the mountains with the help of people who knew the area well. While the applicant was staying at her elder sister's house, she was arrested by the police. The applicant also claimed that she did not know any of the other accused in the case and that she had not received any training in the camps. Lastly, she stated that she had been called the code name "Ariel" at the camp in Iran.

When asked about her statements to the police, the applicant denied them, claiming that they had been taken under duress. When asked about her statements to the public prosecutor, she denied them except for the parts concerning her travel. When asked about her statements to the investigating judge, she denied them claiming once again that the police had put pressure on her.

11. On 16 April 2008, relying on, *inter alia*, the applicant's statements to the police, the Istanbul Assize Court convicted the applicant under Article 314 § 2 of the new Turkish Criminal Code and sentenced her to six years and three months' imprisonment.

12. On 23 December 2010 the Court of Cassation upheld the judgment of the Istanbul Assize Court.

## II. RELEVANT DOMESTIC LAW

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

14. On 15 July 2003 Law no. 4928 repealed Section 31 of Law no. 3842, whereby the restriction on an accused's right of access to a lawyer in proceedings before the State Security Courts was lifted.

## THE LAW

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

15. The applicant complained that she had not had access to a lawyer during the preliminary investigation stage of the proceedings and that her statements to the police had been used in convicting her by the trial court. She relied on Articles 6 § 3 (b) and (c) and Article 13 of the Convention

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

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

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

...

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

...”

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

18. The applicant complained that she had been deprived of legal assistance pursuant to section 31 of Law no. 3842, as she was accused of committing an offence that fell within the jurisdiction of the State Security Courts.

19. The Government did not submit observations on the admissibility and the merits of the case.

20. The Court notes that the applicant's access to a lawyer was restricted by virtue of Law no. 3842 and was as such a systemic restriction applicable at the time of the applicant's arrest (see *Salduz v. Turkey* [GC], no. 36391/02, § 56, ECHR 2008). The Court does not consider it necessary to examine whether the systematic nature of the restriction on the applicant's right of access to a lawyer was, in itself, sufficient to find a violation of Article 6 §§ 1 and 3 (c) of the Convention, as, in any event, the Government have not offered any compelling reasons for the restriction or

demonstrated that the absence of legal assistance at the initial stage of the investigation did not irretrievably prejudice the applicant's defence rights (see *Salduz*, cited above, § 58, and *Ibrahim and Others v. the United Kingdom* ([GC], nos. 50541/08, 50571/08, 50573/08 and 40351/09, § 274, ECHR 2016). In that respect, the Court notes that in convicting the applicant, the first-instance court not only relied on the applicant's incriminatory statements before it, but also on her more detailed statements to the police. Moreover, it did not examine the admissibility of evidence at the trial. Likewise, the Court of Cassation dealt with this issue in a formalistic manner and failed to remedy this shortcoming (see *Bayram Koç v. Turkey*, no. 38907/09, § 23, 5 September 2017).

21. 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

22. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award her any sum on that account.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;

Done in English, and notified in writing on 15 May 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı  
Deputy Registrar

Ledi Bianku  
President