CHAPTER 10

PRE-TRIAL PROCEDURE IN TURKEY: POST-*SALDUZ*

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ABSTRACT

The right to have an early access to legal assistance has a distinguishing feature among various jurisdictions as it receives varying responses depending on whether the system is predominantly inquisitorial or adversarial. At the same time, this feature renders the suspect's right to access to legal assistance in the pre-trial phase highly challenging. In this landmark case, *Salduz v. Turkey*, the European Court of Human Rights (the ECtHR), brought that problem up to surface and hit the different jurisdictions throughout Europe. Doubtless, the *Salduz* judgment does not answer all questions regarding defence lawyer in the pre-trial stage, but it stands as a cornerstone on the matter. Yet, this judgment is described as a cause of earthquake. Because it is the Turkish law that lays on its main line carrying that quake, the study aims to sketch Turkey's pathway to access to legal assistance particularly for the pre-trial after the *Salduz*. Restrictions on this right due to crimes against the State, *inter alia*, terror crimes, today still remains as a heated debate in Turkey, considering the very recent judgment of the Turkish Court of Constitution. To that end, the study begins with providing insights into facts and proceedings before domestic authorities as well as the assessments of the ECtHR in *Salduz*. Then, the study outlines the deficiencies in Turkish criminal procedure law that failed to meet fair trial standards and were brought to the case before the ECtHR. As such, the legal background in Turkish law that led the case to the ECtHR will be displayed. And finally, the study analyses whether the *Salduz*- generated reforms in Turkey came into existence or not.

Keywords: Defence lawyer, legal assistance, the suspect, pre-trial, the accused, Turkish criminal law

1. Introduction

A child is taken into police custody on suspicion of having participated in an unlawful demonstration in support of a terrorist organization and of hanging an illegal banner from a bridge in İzmir, Turkey.[1] The alleged crimes fall within the jurisdiction of State Security Court, yet he does not have access to a lawyer while he is interrogated by the police, the public prosecutor and the investigating judge respectively.[2] The child will be afforded this right during the trial and appeal. The child is convicted at trial and appeals, on the basis that by not allowing access to a lawyer at the pre-trail stage, Turkey is in violation of Article 6 of the European Convention on Human Rights (ECHR). [3]

In order to highlight the importance of the role of the lawyer at the pre-trial stage, Giannoulopoulos states that *"...*until *Salduz*, no one seemed to think that questioning the suspect without access to legal assistance could actually be breach of the right to fair trial*"*.[4] At the same time, as *De Hert* conveys, an argument that the right to have a legal assistance as spelled out in *Salduz* is limited to the less civilized countries within Europe, whereas countries with a developed criminal justice system use a defence lawyer in the pre-trial setting appears;[5] though even this is littered with issues.

Historically, the defence lawyer has been seen as an antagonist[6] against the truth seeking aim of inquisitorial criminal justice,[7] whereas the defence lawyer in England and Wales and other common law jurisdictions, plays an adversarial role.[8] Prior to *Salduz*, a resistance to recognition of the right to custodial legal assistance among some European countries, such as Belgium, France, Ireland, Scotland and the Netherlands did exist.[9] However, in this case, the ECtHR sets forth that the term, *"any criminal charge",* in Art. 6 encapsulates pre-trial

1 *Salduz v. Turkey,* App no 36391/02 (ECtHR, GC, 27 November 2008), para. 12.

2 *Ibid* para. 56.

3 *Ibid* para. 58.

4 Dimitrios Giannoulopoulos, 'Strasbourg Jurisprudence, Law Reform and Comparative Law: A Tale of the Right to Custodial Legal Assistance in Five Countries' (2016) 16 Human Rights Law Review 103, 110.

5 Paul De Hert, 'European Human Rights Law and the Regulation of European Criminal Law. Lessons Learned from the Salduz Saga' (2010) 1 (3) New Journal of European Criminal Law 289, 290.

6 Jacqueline Hodgson, 'Constructing the Pre-Trial Role of the Defence in French Criminal Procedure: An Adversarial Outsider in an Inquisitorial Process' (2002) 6 (1) International Journal of Evidence & Proof 1, 5.

7 Hodgson (n 6) 2- 3. The same perception is observed also in Turkey. See Murat Volkan Dülger, 'Ceza Muhakemesinde Müdafinin Konumu ve Uygulamada Karşılaşılan Sorunlar' (2012) 4 Ankara Barosu Dergisi 39, 53-43.

8 Hodgson (n 6) 7.

9 See Giannoulopoulos (n 4) 108-112.

procedure as well.[10] This thereby extended the importance of the role of the defence lawyer to include pre-trial proceedings. Indeed, in *Salduz* the deprivation of custodial legal assistance at the pre-trial stage implies an initial failure that seriously prejudiced the fairness of the trial.[11] Consequently, the Court concluded that "neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which had occurred during police custody."[12]

The suspect's right to access to legal assistance during the pre-trial stage has been one of the challenging issues in much of Europe, as the defence lawyer appears like *"the adversarial outsider in an inquisitorial process"*.[13] *Salduz v. Turkey* brings that problem more clearly and held ramifications for the different jurisdictions throughout Europe including France, Belgium, Scotland, the Netherlands, Ireland and Greece.[14] The early access to legal advice is one of the core safeguards throughout this process, a right which can have a significant impact on the statements made by suspects during the investigative stage. It has been 12 years after the echo of the *Salduz* judgment, even if it is argued that the ECtHR itself retreats from the standards set out in *Salduz* in subsequent case law such as *Ibrahim and Others v. UK*[15] and *Beuze v. Belgium*.[16] Indeed, regarding the position of the ECtHR in *Salduz* divergent opinions already existed among scholars. For example, De Hert argues that the judgment is quite clear as it displays the necessary requirements of a fair trial.[17] By contrast, Jackson and Summers assert that the ECtHR in *Salduz*, just as in *A and Others v. UK*,[18] does not articulate its rules clearly and does not provide reasons indicating the particular rule's interests on a fair trial, which prevents its implementation in national jurisdictions.[19] As for Turkey, this case has not remained unique and, in fact, it has been

10 *Salduz v. Turkey*, para. 50.

11 *Ibid*.

12 *Ibid* para. 58.

13 Hodgson (n 666) 7.

14 Giannoulopoulos (n 664) 104.

15 Ergül Çeliksoy, 'Ibrahim and Others v. UK: Watering down the Salduz Principles?' (2018) 9 (2) New Journal of European Criminal Law 229.

16 Ergül Çeliksoy, 'Overruling 'the Salduz Doctrine' in Beuze v Belgium: The ECtHR's further retreat from the Salduz principles on the right to access to lawyer' (2019) 10 (4) New Journal of European Criminal Law 342. See also Anneli Soo, 'Divergence of European Union and Strasbourg Standards on Defence Rights in Criminal Proceedings? Ibrahim and the others v. the UK (13th of September 2016)' (2017) 25 (4) European Journal of Crime, Criminal Law and Criminal Justice 327, 333-336.

17 De Hert (n 665) 289.

18 *A and Others v. UK,* App no 3455/05 (ECtHR, 19 February 2009).

19 John Jackson and Sarah Summers, 'Confrontation with Strasbourg: UK and Swiss Approaches to Criminal Evidence' (2013) 60 (2) Criminal Law Review 114, 130 and also 115. See also Giannoulopoulos (n 4) 121.

followed by the subsequent case law of the Court such as *Dayanan v. Turkey*[20], *Yaman and Others v. Turkey*[21] and in the recent *Ekinci v. Turkey* case.[22]

In the search of an ideal model in the pre-trial procedure through the comparison of European jurisdictions, the right to have early access to legal assistance is of particular significance, as it receives varying responses depending on whether the system is mainly inquisitorial or adversarial. In addition, considering that the *Salduz* judgment is described as *a cause of legal earthquake*[23], it is Turkish law that lays on the main fault line carrying that quake. Furthermore, restrictions on this right due to crimes against the State, *inter alia,* terror crimes, today still remains as a heated debate in Turkey.[24] Therefore, this chapter aims to explore Turkey's commitment to ensure a fair trial, as set out in Art. 6 of the ECHR in light of *Salduz v. Turkey*.[25]

At the outset, the chapter seeks to highlight the deficiencies in Turkish criminal procedure law that failed to meet the standards of a fair trial and were brought before the ECtHR. In doing so, the legal background in Turkish law that led the case to the ECtHR will be analysed. Following this, the extent to which the case led to *Salduz*- generated reforms[26] in Turkey will be assessed. In order to comprehend the effects of the case on Turkish criminal law, it is of significant importance to first provide an overview of its facts, the proceedings before domestic courts, as well as the opinions of the ECtHR.

2.The Facts and the Domestic Proceedings

The applicant, a child, was one of the people arrested during an unlawful demonstration, organized by HADEP (a Kurdish nationalist political party), pro PKK (a terror organization) and its imprisoned leader, Öcalan. After the examination by a physician[27], the applicant was taken into police custody from the anti-terrorism branch on suspicion of having participated in an unlawful demonstration in support of a criminal organization and of hanging an

20 *Dayanan v. Turkey,* App no 7377/03 (ECtHR, 13 October 2009).

21 *Yaman and Others v. Turkey*, App no 46851/07 (ECtHR, 15 May 2018).

22 *Ekinci v. Turkey,* App no 25148/07 (ECtHR, 12 May 2020).

23 Giannoulopoulos (n 664) 112.

24 Gülen Soyaslan, 'Limiting Procedural Rights During Police Interrogation in Terror Crimes: A Comparative Analysis of European and U.S. Laws and Suggestions to Turkish Law' (2020) 8 (1) Journal of Penal Law and Criminology 143, 149-150; Further see Yener Ünver and Hakan Hakeri, *Ceza Muhakemesi Hukuku I* (15th edn, Seçkin 2019) 479; Dülger (n 7) 71-72; Serhat Sinan Kocaoğlu, *Müdafi* (3rd edn, Seçkin 2017) 150-151.

25 *Salduz v. Turkey,* App no 36391/02 (ECtHR, GC, 27 November 2008).

26 Giannoulopoulos (n 664) 103.

27 *Salduz v. Turkey*, para. 13.

illegal banner from a bridge in İzmir, Turkey.[28] The applicant, without any legal advice, was interrogated by the police, a public prosecutor and the investigating judge respectively.[29] In the police interrogation, he admitted his participation in the demonstration and hanging the banner. He also gave detailed information on his involvement in the youth branch of HADEP, his role as an assistant youth press and publication officer, etc.[30] Following this, before the public prosecutor and in front of the investigating judge, he denied his participation in the demonstration, manufacturing an illegal banner, and his involvement in HADEP. He claimed he was there to visit a friend. Furthermore, he claimed that what he said in police interrogation was extracted under duress as he was assaulted in police custody.[31] At the end of custody, he was re-examined by a physician who found no trace of ill treatment.[32] The judge decided to remand the applicant in custody, taking into account the nature of the crime (being a crimes against the State). It was only at this stage that the applicant was granted access to a lawyer.[33]

After the acceptance of the indictment by the İzmir State Security Court on 16 July 2001, the Court authorised the continued detention of the applicant and invited the him to prepare his defence submission.[34] The applicant attended all hearings with his lawyer and applied to the appeal with an assistance of his lawyer. In all hearings he repeatedly denied what he said during interrogation and alleged that his statements were extracted under duress and he was only present at the scene as he was visiting a friend.[35] In December 2001, the İzmir State Security Court delivered its judgment which convicted the applicant and sentenced him to two and-a-half years' imprisonment, this being a reduced the term of imprisonment as the applicant was a minor at the time of committing the crime. Five co-defendants were acquitted.[36]

In arriving at its conclusion, the Court gave a decisive regard to the statements the applicant made to authorities. It further took into consideration his co-defendants' evidence before the public prosecutor, notably that the applicant urged them to participate in that demonstration. The Court noted that co-defendants had also given evidence that the applicant had been in

28 *Ibid* para. 12.
29 *Ibid* para. 56.
30 *Ibid* para. 14.
31 *Ibid* para. 17.
32 *Ibid* para. 16.
33 *Ibid* para. 17.
34 *Ibid* para. 19.
35 *Ibid* para. 21.
36 *Ibid* para. 22.

charge of organizing the demonstration. The Court further stated the expert report comparing the applicant's handwriting to that on the banner.[37] A forensic analysis carried out by the Police Laboratory could not establish whether the writing was that of the applicant or not, but pointed out some similarities.[38] The Court said "in view of these material facts, the court does not accept the applicant's denial and finds that his confession to the police is substantiated."[39] Then, the applicant appealed against the judgment by arguing that the proceedings were unfair and the evidence was not properly assessed.[40] The Principal Public Prosecutor in the Turkish Court of Cassation *(Yargıtay)* lodged a written opinion for upholding the judgment, which was not served on the applicant or his representative.[41] On 10 June of 2002, the Court of Cassation dismissed the appeal.[42]

3. Dealing with the Case by the ECtHR

According to the applicant, his human rights were violated in two ways: (1) he had been denied access to a lawyer while in police custody, (2) the written opinion of the Principal Public Prosecutor at the Court of Cassation had not been communicated to him.[43] Accordingly, he brought that case before the ECtHR. The legal basis was the violation of fair trial rights, enshrined in Art. 6 of the Convention.

3.1. The Chamber's Approach

The ECtHR's Second Section held unanimously that (1) there had been a violation of Art. 6(1) of the Convention on account of the non-communication of the principle public prosecutor's written opinion and (2) there had been no violation of Art. 6 on account of the lack of legal assistance to the applicant while in police custody.[44] The arguments for non-violation were that the applicant had been represented during the trial and appeal proceedings by a lawyer and the applicant's statements to the police was not the sole basis for his conviction. According to the Chamber, the applicant had had the opportunity of challenging the prosecutor's allegations, meaning that he was not afforded a substantial disadvantage. The chamber noted that İzmir State Security Court had regard to circumstances in which the

37 *Ibid* para. 23.
38 *Ibid* para. 15.
39 *Ibid* para. 23.
40 *Ibid* para. 24.
41 *Ibid* para. 25.
42 *Ibid* para. 26.
43 *Ibid* para. 2.
44 *Ibid* para.. 5.

applicant was arrested, the expert report concerning the handwriting on the banner, and the witness statements. The Chamber, therefore, concluded that the fairness of the applicant's trial had not been prejudiced by the lack of legal assistance during his police custody.[45] This was in accordance with the test on *the overall fairness of the criminal proceedings* developed in the settled case law of the Court. Is that the overall fairness test absolute? Or could any specific situation that may affect the right to fair trial exist? The judgment of the Chamber did not respond these questions so that the case ended up before the Grand Chamber.

3.2. The Grand Chamber's Approach

In contrast to the Chamber's decision in the present case, the Grand Chamber held that the restriction to legal assistance in police custody constituted a violation of Art. 6 of the Convention. It took a position by recalling that the Convention was designed to guarantee *practical and effective rights,* not theoretical or illusory ones. Thus, providing the accused with a lawyer in itself is not sufficient to say that she or he enjoyed an effective legal assistance.[46] As a result of considering the rights from its practical and effective perspective, the innovation to the settled case law of the Court regarding fair trial in criminal proceedings begins with, above all, its remark reading as "even if the primary purpose of art 6 of the Convention, as far as criminal proceedings are concerned, is to ensure a fair trial by a 'tribunal' competent to determine 'any criminal charge', it does not follow that Article has no application to pre-trial proceedings."[47] In fact, to the Grand Chamber, the fairness of the trial is likely to be seriously prejudiced by an initial failure.[48] The applicant had a lawyer for the first time when the investigating judge decided his remand on detention. The Court held as below;

> "Neither the assistance provided subsequently by a lawyer nor the adversarial nature of the ensuing proceedings could cure the defects which had occurred during police custody".[49]

In this way, the Court unexpectedly purports that the overall fairness of criminal proceedings test is not absolute, even if the Court refrains from speculating the impact of deprivation of legal assistance during police custody on ensuing the proceedings.[50]

The Court noted that national law may attach consequences to the attitude of the accused at the initial stages of police interrogation which are pivotal for the prospects of the defence in

45 *Ibid* para. 46.

46 *Ibid* para. 52.

47 *Ibid* para. 50.

48 *Ibid* para. 50.

49 *Ibid* para. 58.

50 *Ibid* para. 58. See also Çeliksoy, 'Ibrahim and Others v. UK' (n 15) 231.

any subsequent criminal proceedings. It therefore follows that Art. 6 requires States to provide the accused with legal assistance at the initial stages of police interrogation to ensure the integrity and fairness of the entire criminal process.[51] In the present case, the Court considers that the national court did not check the admissibility of the statements, rather they did rely on the statements of the applicant during the police interrogation in the absence of a lawyer, notwithstanding the fact that the applicant consistently denied making these statements before the prosecutor, investigating judge and court.[52] In fact, co-defendants gave evidence that the applicant had been in charge of organizing the demonstration by which the national court found that the applicant's confession to the police was substantiated, they had denied their statement in police custody as well.[53]

Nevertheless, the Court noted that the right to legal advice is not absolute, highlighting that the right can be restricted. In other words, right to have a legal access may be subject to restriction for good cause in a manner of clearly circumscribing and putting its application with strict time limitation as long as it is justified in each concrete case in the light of entirety of the proceedings.[54] In the eyes of the Court, the applicant was deprived of this right because he was accused of committing a crime falling within the jurisdiction of State Security Court. Aside from this, no other justification was offered for denying the applicant access to a lawyer. Therefore the restriction was not *case- specific*, rather it was applied on *a systematic basis*, as a general exception as commission of crimes falling within the jurisdiction of State Security Court.[55] Besides, the applicant's age was not considered by national authorities, although legal assistance in custody is of much significance when the suspect is a minor.[56]

Ultimately, the Grand Chamber concluded that:

> "[T]he restrictions imposed on the right of access to a lawyer was systematic and applied to anyone held in police custody, regardless of his or her age, in connection with an offence falling under the jurisdiction of the State Security Courts."[57] "[E]ven though the applicant had the opportunity to challenge the evidence against him at the trial and subsequently on appeal, the absence of a lawyer while he was in police custody irretrievably affected his defence rights".[58]

51 *Ibid* para. 52.

52 *Ibid* para. 57.

53 *Ibid* para. 57.

54 *Ibid* paras. 52, 53 and 54.

55 *Ibid* para. 56.

56 *Ibid* para. 60.

57 *Ibid* para. 61.

58 *Ibid* para. 62.

4. From less to more: Legal Assistance in the Penal Procedure Code in Turkey

4.1. Historical Overview

The Turkish criminal procedure system is rooted in the continental European legal tradition, and thus it largely has the features of an inquisitorial system. This is because during the final period of the Ottoman Empire, the main codes were introduced by adopting the laws of the continental European States. As such, the Ottoman Penal Code of 1858 was based on the French Penal Code of 1810. Likewise, the Penal Procedure Code of 1879, which remained in force until 1929[59] was introduced by taking the French Penal Procedure Code of 1808 (*Code d'instruction criminelle de 1808*), which had been inquisitorial[60], as an example.[61] It is noteworthy that this code had a six-year implementation period in the Republic of Turkey, as Turkey was founded in 1923. Turkey maintained this reception period in the same way, by taking the Swiss Civil Code as model for the Turkish Civil Code of 1923, which represents the adoption of the Roman law legal tradition in an indirect way through the Swiss approach.[62] Further examples are the adoption of the Italian Penal Code, known as *Codice di Zanardelli*, of 1889 as the basis for the Turkish Penal Code of 1926, and of the German Penal Procedure Code as the basis for the Penal Procedure Code of 1929.[63] The Turkish doctrine in 1990s, however, was rather critical of the German Penal Procedure Code, pointing out it holds remnants of the medieval inquisitions and thus calling on a full- scale reform on the Turkish Penal Procedure Code. A reform in 1992 which also dealt largely with the right to have a defence lawyer was considered remarkable, but insufficient.[64]

Once Turkey had been acknowledged as an EU- candidate country in 1999,[65] modelling European legislation became an obligation, meaning that a comprehensive legislative reform process at the beginning of the 2000s in the frame of the EU accession was initiated. In 2005, a new penal procedure code along with a penal code, a penal execution code, administrative

59 Nurullah Kunter, *Ceza Muhakemesi Hukuku* (9th edn, Yaylacık Matbaası 1989) 255.

60 For the role of defence lawyer in that Code see Hodgson (n 6) 3.

61 Feridun Yenisey, *Uygulanan ve Olması Gereken Ceza Muhakemesi Hukuku- Hazırlık Soruşturması ve Polis* (3th edn, Beta 1993) 33.

62 See also Kurt Lipstein, 'The Reception of Western Law in Turkey' (1956) 5 (6) Annales de la Faculté de Droit d'Istanbul 11, 12-13 <https://dergipark.org.tr/en/download/article-file/6610> accessed 14 March 2020.

63 See Füsun Sokullu- Akıncı, 'Recent Attempts to Guarantee Human Rights in the Turkish Penal Procedure Law' (1998) 32 (48) Annales de la Faculté de Droit d'Istanbul 253, 256.

64 Faruk Erem, 'İnsan Hakları ve Ceza Muhakemeleri Usulü Kanunu Değişikliği' (1993) 19 (1-2) Yargıtay Dergisi 35, 35.

65 European Commission, 'Enlargement' <https://ec.europa.eu/environment/enlarg/candidates.htm> accessed 17 September 2019.

offences code and child protection code were introduced. It is noteworthy that it was the German approach that once again became prominent in criminal law related legislations, in particular, in the penal procedure code as well as the general part of the penal code,[66] even if Turkey's new codes after 2005 represent the country's own products.[67]

Turkey recognized the jurisdiction of the ECtHR in 1987.[68] Consequently, the case law of the ECtHR became another decisive factor that has profoundly shaped Turkish penal procedure code and its application. For example, torture is eradicated in the Turkish justice system after the remarkable amount of cases[69] in which the Court found violation of Art. 3 of the Convention. Today the matter of torture has all but left the Turkish legal discourse.[70] As a matter of fact, international conventions on human rights and freedoms ratified by Turkey, *inter alia,* the ECHR have direct applicability, thus being given a higher status than the Turkish codes in the hierarchy of norms following an amendment to the Constitution made in 2004.[71] This is the main reason why this chapter seeks a *Salduz*- generated reform in the Turkish law.

4.2. Provisions to Ensure Legal Assistance Prior to *Salduz*

The Turkish Constitution of 1982 ensures in Art. 36 that *"everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures"*.[72] The phrase, *the right to a fair trial,* was added

66 Fatih Selami Mahmutoğlu, 'Das neue türkische Strafgesetzbuch, Allgemeiner Teil' <http://fsmahmutoglu.av.tr/pdf/68b9dc04fd8938522613410d91910d794e7497267818090242.pdf> accessed 20 April 2020; Adem Sözüer, 'Reform of the Turkish Criminal Law' in Adem Sözüer (eds), Congress on the Criminal Law Reforms in the World and in Turkey (On İki Levha 2013) 107.

67 Bahri Öztürk *et. al.*, *Nazari ve Uygulamalı Ceza Muhakemesi Hukuku* (13 edn, Seçkin 2019) 33-34.

68 Turkey is one of the founder countries of the Council of Europe in 1950, ratified Convention for the Protection of Human Rights and Fundamental Freedoms. See Council of Europe, 'Treaty list for a specific State: Turkey' <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/TUR> accessed 11 March 2020. For the country profile of Turkey in terms of amount of case before the Court see ECtHR, 'Turkey' <https://www.echr.coe.int/Documents/CP_Turkey_ENG.pdf> accessed 20 April 2020.

69 *Aksoy v. Turkey,* App no 21987/93 (ECtHR, 18 December 1996); *Kurt v. Turkey,* App no 15/1997/799/1002(ECtHR, 25 May 1998); *Tekin v. Turkey,* App no 52/1997/836/1042 (ECtHR, 9 June 1998); *Abdülsamet Yaman v. Turkey,* App no 32446/96 (ECtHR, 2 November 2004); *Sadık Önder v. Turkey,* App no 28520/95 (ECtHR, 8 January 2004); *İlhan v. Turkey,* App no 22277/93 (ECtHR, 27 June 2000); *Tuncer and Durmuş v. Turkey,* App no 30494/96 (ECtHR, 2 February 2005).

70 In 2019, there is no case due to *torture* at all, but only 12 cases due to *inhuman or degrading treatment* (see ECtHR, 'Violations by Article and by State' <https://www.echr.coe.int/Documents/Stats_violation_2019_ENG.pdf> accessed 20 April 2020) whereas the statistics until 2011 shows that 407 of 2747 cases against Turkey were related to Article 3 of the Convention. See ECtHR, 'Overview 1959-2011' (February 2012) 7, <http://www.echr.coe.int/Documents/Overview_2011_ENG.pdf> accessed 20 April 2020.

71 By the Code no 5170 of 7 May 2004 (Official Gazette [Resmî Gazete], No 25469, 22 May 2004 <https://www.resmigazete.gov.tr/eskiler/2004/05/20040522.htm> accessed 20 April 2020).

72 The Grand National Assembly of Turkey (Türkiye Büyük Millet Meclisi), 'The Constitution of the Republic of Turkey'<https://global.tbmm.gov.tr/docs/constitution_en.pdf> accessed 24 April 2020).

in 2001.[73] However, the Constitution does not require the State to implement a mandatory legal assistance.[74] Furthermore, the right to legal assistance at the pre-trial phase, it was not considered as *a general right* in Turkey until 2005.[75]

The former Code did not include any case for a mandatory legal assistance. Under Art. 138, titled as *appointing lawyer by the court*, the court *can* decide to appoint a lawyer only in circumstances whereby the suspect/accused is a child under 15 years, hearing impaired, or vulnerable by virtue of health conditions which impedes their ability to defend themselves.[76] By contrast, the influencer of the former Code, the German Penal Procedure Code, did indicate these conditions by adding also that the suspect/accused is subject to be under observation due to mental health as a type of case where legal assistance is mandatory.[77] Besides, whilst the Italian Penal Procedure code mandated a legal assistance for almost every crime, even where it is rejected by the accused,[78] at that time, Turkey did not follow Italy either.[79] Although Italian criminal law system historically is one of the biggest influences[80] on the Turkish criminal law, indeed, whilst the Ottoman Penal Procedure Code of 1879 provided for mandatory legal advice, it was limited to only serious crimes.[81]

Despite this limitation, the case law was pro legal assistance for the suspect and the accused, because there was the possibility to have legal aid through the Bar Associations for those who cannot afford legal assistance in the Code of Legal Practitioners (lawyers)[82], in Art. 178. In Turkey, providing legal assistance to those who cannot afford it has been mainly tackled by the Code of Legal Practitioners (lawyers). Therefore, it has been the Bar

73 By the Code no 4709 of 3 October 2001 (Official Gazette [Resmî Gazete], No 24556, 17 October 2001 <https://www.resmigazete.gov.tr/eskiler/2001/10/20011017m1.htm> accessed 21 April 2020).

74 Nur Centel, *Ceza Muhakemesi Hukukunda Müdafi* (Kazancı 1984) 12-13; Hamide Zafer, 'Savunma Hakkı ve Sınırları' (2013) (2) Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi (Prof. Dr. Nur Centel'e Armağan) 507, 520.

75 For the same approach in the Netherlands see Chrisje Brants, 'The Reluctant Dutch Response to Salduz' (2011) 15 Edinburgh L Rev 298.

76 The first version of the former Penal Procedure Code no 1412 of 4 April 1929 (Official Gazette [Resmî Gazete], No 1172, 20 April 1929 < https://www.resmigazete.gov.tr/arsiv/1172.pdf > accessed 21 April 2020).

77 Kunter (n 719) 255.

78 Arturo Santoro, *Manuale di Diritto Processuale Penale* (Editrice Torinese 1954) 279, cited by Öztekin Tosun, *Türk Suç Muhakemesi Hukuku Dersleri Cilt I* (4th edn, İstanbul University 1984) 597.

79 Yekta Güngör Özden, 'İnsan Hakları Hukuk Devleti ve Savunma' (1984) (3) Ankara Barosu Dergisi 371, 385.

80 Durmuş Tezcan, 'Cezai Konularda Türk- İtalyan İlişkileri' (1994) 49 (1) Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi 365.

81 Kunter (n 719) 255.

82 The Code no 1136 of 19 March 1969 (Official Gazette [Resmî Gazete], No 13168, 7 April 1969 <https://www.resmigazete.gov.tr/arsiv/13168.pdf> accessed 21 April 2020).

Associations that shouldered this responsibility.[83] In particular, *the Turkish Court of Cassation (Yargıtay)* overruled the judgment of a court who denied a request for legal assistance to be provided by the Bar Association.[84] The same approach was followed by *the Turkish Military Court of Cassation (Askeri Yargıtay)*.[85] For that application period of the former Code, beginning in 1950s*,* in the Turkish doctrine, a reference to Art. 6 of Convention that requires legal assistance for those who cannot afford was already made by taking into account that Turkey had ratified the Convention in 1954.[86]

In 1973, an amendment to Art. 74 of the former Code introduced a unique mandatory legal assistance system which only applied during the taking of a decision by judge or court on whether the suspect or the accused is to be under medical observation.[87] Not to mention pre-trial, even for trial, no matter how severe the punishment for crimes (even if it was the death penalty (abolished in 2004)), mandatory legal assistance was not required. That regulation received an intense criticism, particularly by the Bar Associations.[88] However, reaching a judgment without providing defence rights was considered as one of the absolute reasons for overruling the judgment in the revision stage. For example, the Turkish Court of Cassation overturned a judgment, even when limited time such as from 11:30 a.m to 13:30 p.m was given for defence.[89] However, in 2007, the ECtHR, in the case of *Tunç v. Turkey,* held that the lack of a legal assistance where the accused may face a death penalty was a violation of Art. 6. In *Tunç*, the applicant was convicted for murder and first sentenced to death penalty in 1995. However the court accepted that he was acting under the effect of an unjust provocation by the victim, and also due to his confession of having committed the crime, his sentence was reduced to 30 years imprisonment.[90] In 2002, he benefitted from an amnesty law and he was thus freed.[91] In this case, the applicant, a farmer in a village, had no access to lawyer and he

83 İdil Elveriş, Serçin Kutucu and İmmihan Yaşar, 'Türkiye'de Adli Yardım Sisteminin Değerlendirilmesi', in İdil Elveriş (eds), Legal Aid in Turkey- Policy Issues and A Comparative Perspective (Bilgi University 2005) 39, 48.

84 Yargıtay 3. CD, Date: 14.01.1957, 269/273; Yargıtay 1. CD, Date:10. 02.1959, 258/955, retrieved from Muhtar Çağlayan, *Gerekçeli Notlu ve İçtihatlı Ceza Muhakemeleri Usulü Kanunu Cilt: I* (Güzel Sanatlar Matbaası 1966) 745-746 as cited in Tosun (n 738) 600.

85 Askeri Yargıtay, Date: 22. 08.1969, E. 380/K.436, retrieved from Mahmut Alicanoğlu, *Tarihçeli - İzahlı - İçtihatlı Ceza Muhakemeleri Usulü Kanunu ve Tatbikatı* (2nd edn, İsmail Akgün Matbaası 1971) 220- 221 as cited in Tosun (n 738) 600.

86 Tosun (n 738) 600-601.

87 Tosun (n 738) 599.

88 Faruk Erem, 'Savunmasız Ölüm Cezası' (1978) 6 Ankara Barosu Dergisi 925.

89 Yargıtay, 1.CD, Date: 07.06.1977, 1044/1962, retrieved from Erem, 'Savunmasız Ölüm Cezası' (n 88) 927.

90 *Tunç v. Turkey*, App no 32432/96 (ECtHR, 27 March 2007), paras. 52-54.

91 *Ibid* para. 51.

requested a lawyer for the first time in the revision phase (before the Court of Cassation)[92], although the right to request a lawyer was reminded to the applicant at every stage of the trial. The ECtHR held that *"it cannot be considered that the applicant, without professional training and from a modest background, could have reasonably assessed the consequences of his act of not seeking the assistance of a lawyer during the criminal proceedings where he risked his sentence of death penalty"*.[93]

This limited approach to mandatory legal assistance instance was considered insufficient for a proper protection of the right to defend oneself.[94] The call for extending access to legal assistance went heeded in 1992 and resulted in Code 3842.[95] Indeed, the 1992 amendments were outcomes of a reform[96] just as France introduced the reform on criminal procedure, known as the 1993 amendments.[97] But, the main issue noticed by scholars on legal assistance in pre-trial upon that reform was the uncertainty in terms of when this assistance should be provided for the first time.[98] Ultimately, the reform on the right to have a lawyer was conducted in two stages. The first stage was regarded as part of *a requirement of the interrogation of the suspect and the accused*. Art. 135 (3) states that:

> "The arrestee or the accused is informed that they are entitled to have a lawyer and thereof to request for a lawyer to be appointed by the Bar Associations in the case which they cannot afford, and to have a lawyer present during interrogation (by the police and the public prosecutor) and hearings in the court, based on their will and without seeking a power of attorney as long as the lawyer does not cause any delay in the investigation, lastly, are entitled to ask for informing their preferred relatives of arrest".

This, in the Turkish law in that time, was a new concept for the interrogation and legal assistance. That is to say, the existence of lawyer renders these processes lawful or prevents them from being unlawful. However, for the pre-trial stage, to have a legal assistance was not considered as *a general right*.

When it comes to the accused, to have a lawyer became a general right with Art. 135 and by doing so the lawyer appointed by the Bar Association was referred to as "official

92 *Ibid* para. 38.

93 *Ibid* para. 60.

94 Özden (n 739) 385.

95 The Code no 3842 of 18 November 1992 (Official Gazette [Resmî Gazete], No 21422, 1 December 1992 <https://www.resmigazete.gov.tr/arsiv/21422.pdf > accessed 21 April 2020). See Sokullu- Akıncı (n796) 258-268.

96 Yenisey (n 721) 251, n 32; Timur Demirbaş, 'Soruşturma Evresinde Şüphelinin İfadesinin Alınması ve Müdafilik' (2007) 2 (4) Ceza Hukuku Dergisi 79.

97 Hodgson (n 666) 4, n 16.

98 Yenisey (n 721) 97.

defence lawyer," which is coherent with the case law of the ECtHR.[99] As a matter of fact, the discussions on the right to have a lawyer were mainly trial oriented, and scholars assessed that the position of the defence in the procedure code was inadequately regulated.[100] Indeed, relatively little attention was given to the right to have a lawyer in the pre-trial phase. In that regard, the largely inquisitorial nature of the former Procedure Code played a profound role. Therefore, the reasons why the right to have a lawyer has not much improved in comparison with the adversarial countries applies to the Turkish law too.

As for the second stage, the scope of the defence was extended through Arts. 136 and 138 of the Penal Procedure Code. Accordingly, the arrestee and the accused can benefit from the assistance of one or more lawyers at both the pre-trial and trial stages. Art. 136 explicitly stipulated that:

> "…At every stage of the investigation including the investigative proceedings conducted by the police, defence lawyer cannot be hindered and restricted from talking with the arrestee and the accused, from being present during interrogation in both investigation and trial phase and giving legal aid".

Where the arrestee or the accused declares that she or he is not in a position to choose a lawyer, upon request, a lawyer is appointed by the Bar Association, pursuant to Art. 138. Furthermore, in case on which the arrestee or the accused is a child under 18 years, is hearing impaired, or is vulnerable by virtue of health conditions to defend themselves, they are provided with a lawyer without the need for their request. Here comes the concept of "duty lawyers".[101] Because in the former version of this Article[102], it relied upon *the court's discretion* to appoint a lawyer even in the aforementioned circumstances.

Although these provisions were considered insufficient for both pre- trial and trial phase[103], the 1992 amendments represent a cornerstone for defence rights at that time. With these amendments, the former Turkish Penal Procedure Code acquired an approach on the right to have a lawyer by one's choice. A mandatory legal assistance was regulated as an exception which applied only under certain circumstances (namely, where the suspect/accused a is child, deaf and dumb, or is vulnerable by virtue of health conditions to defence herself/himself, and as long as they do not have their own lawyer).

99 Erem, 'İnsan Hakları ve Ceza Muhakemeleri Usulü Kanunu Değişikliği' (n 64) 46.

100 Fatih Selami Mahmutoğlu and Selman Dursun, *Türk Hukuku'nda Müdafiin Yasaklılık Halleri* (Seçkin 2004) 24.

101 Brants (n 735) 303.

102 For a comparison between the former and revised version of this article see Erem, 'İnsan Hakları ve Ceza Muhakemeleri Usulü Kanunu Değişikliği' (n 64) 50.

103 Yenisey (n 721) 97.

4.3. The Core Legislative Problem in *Salduz*

Code 3842 that brought the 1992 amendments, also included provisions excluding the right to have a lawyer when it comes to the crimes against State security which are tried by the State Security Court[104], which was exactly the issue in the case of *Salduz v. Turkey* just as it was in *Yaman v. Turkey*.[105] Accordingly, Art. 31 of this Code stipulated that in this group of crimes, the suspect and the accused are subject to the regulations of the Penal Procedure Code without considering these amendments. Before the outcome of the *Salduz* case, that restriction had been already harshly criticized in the Turkish literature by stating that this approach was against the international conventions on human rights, in particular, Art. 6 of the ECHR[106]. For the Turkish Constitution, this exception violates *the principle of equality* ensured by the Constitution[107]. It also, some drew attention to the fact that torture was observed mostly in crimes falling within the jurisdiction of State Security Court.[108]

Yet, in *Salduz v. Turkey,* the core problem focuses on whether excluding the right to have a lawyer in crimes against State security is justifiable. In particular, the applicant in *Salduz v. Turkey* was also a child when he was deprived of his right to legal assistance. The ECtHR does not qualify the right to have a lawyer as *an absolute right*. Rather, the Court considers the probable restrictions as long as they exist for good cause in that they are clearly circumscribed and put into an application with strict time limitation. As such, the restrictions are justified in each concrete case in the light of entirety of the proceedings can be possible.[109]

To the Grand Chamber, Art. 31 of this Code excluding these defence rights for the crimes falling with the jurisdiction of State Security Court did not meet these conditions as therein the Grand Chamber had to explain that "the restrictions imposed on the right of access to a lawyer was systematic and applied to anyone held in police custody, regardless of his or her age, in connection with an offence falling under the jurisdiction of the State Security Courts".[110]

This point of the ECtHR is just the indicating the core problematic approach in the Turkish law that reads as *acting mainly from crime types*. As a matter of fact, the Turkish lawmaker acted on the basis of the nature of the crime, and ignored the specific circumstances of the

104 See See Sokullu- Akıncı (n 796) 261.

105 *Yaman and Others v. Turkey*, para. 26.

106 Recep Kibar, *Türk Hukukunda Sanık Hakları* (Yetkin Yayınları 1997) 72-73.

107 *Ibid* 72.

108 *Ibid*.

109 *Salduz v. Turkey*, paras. 52, 53 and 54.

110 *Ibid* para. 61.

perpetrators. This is where the Turkish and the ECtHR approaches are in conflict. In *Salduz v. Turkey,* the applicant was a child at that time, but what was taken into account in Turkey was only that the charged crime falls under the jurisdiction of the State Security Courts. Acting on the basis of the type of the crime causes the Turkish law's restriction to be *an abstract and systematic one, a systematic statutory restriction*[111]*,* and by doing so, it prevents the Turkish law to justify the restriction as *a necessity in a democratic society*.

Indeed, in 2003, the exception was abolished by Code 4928 and thus, mandatory legal assistance covered the crimes against security under the conditions set out in Art.138.[112] Later, State Security Courts and all Special Courts were abolished in 2004 with the amendments aimed at the harmonization of Turkish law with the EU law.[113] However, this solution did not address this core problem in the Turkish criminal justice system. After all, it is a common among many jurisdictions for there to be exceptions to rules pertaining the pre-requisites of pre-trial, trial and even execution, when it comes to an individual's rights where they have committed crimes against the State, such as terror crimes[114]. However, this exception in Turkish law was not subject to a statutory revision for a large period of time considering that it was introduced in 1992 and abolished in 2003.

5. Ensuring Legal Assistance Post *Salduz*

The new Penal Procedure Code (no. 5271) was adopted in 2004 and came in force in 2005.[115] The ECtHR considered the provisions on legal assistance in the new Code as *"recent amendments"* in reaching its judgment in the year of 2008 by the Grand Chamber in *Salduz v. Turkey.*[116] This did not prevent the Court from finding a violation of Art. 6.

To begin with, the Code, in Art. 2, defines the person advocating the suspect and the accused as a lawyer *(Avukat)*, but specifically as a *defence lawyer*: the term used in the Code

111 Çeliksoy, 'Overruling 'the Salduz Doctrine' in Beuze v Belgium' (n 676) 434.

112 Ahmet Bozdağ, *Ceza Muhakemesi Hukukunda Müdafi* (Adalet 2014) 123.

113 Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs, *Political Reforms in Turkey* (2007) 5 < https://www.ab.gov.tr/files/pub/prt.pdf> accessed 22 April 2020.

114 One author presents two suggestions to justify the restriction in organized crime cases for Turkey as 'a public safety exception to the right to counsel' and 'the right to be informed of procedural rights'. The author states that *"the examination of the U.S. and ECtHR jurisdictions revealed that a public safety exception to the right to counsel and the right to be informed of procedural rights was lacking in the Turkish system. Turkish law may also recognize a public safety exception via a judgment by the Constitutional Court or a statutory amendment to the Criminal Procedure Code"* (Soyaslan (n 24) 154). Also for German law see Soyaslan (n 24) 157-158.

115 The Code no 5271 of 4 December 2004 (Official Gazette [Resmî Gazete], No 25673, 17 December 2004 <https://www.resmigazete.gov.tr/eskiler/2004/12/20041217.htm#1> accessed 24 April 2020).

116 *Salduz v. Turkey*, paras. 29, 30 and 31.

in Turkish, *müdafii,* originates from defence *(müdafa)*. This implies a special emphasis on the significance of defence in criminal procedure.[117] Thus, in criminal procedure, the term lawyer refers to the person advocating only for the victim or the other affected part (relatives of the victim and legal persons). This is a terminological distinction belongs only to criminal procedure, however, in civil procedure, where the term lawyer is used to describe those representing all participants. Lawyer and defence lawyer refers to one unique legal profession in terms of the Code of Legal Profession and Rules of Bar Associations. That is to say, there is no distinction between 'Lawyer' and 'defence lawyer' in the rules that regulate lawyers.

5.1. A New Era for Legal Assistance in Turkey after 2005

The new Code, a product of a harmonization processes with the EU law[118] and Turkey's intense history with the ECtHR was shaped with the idea that the lawyer is an obligatory component of the criminal procedure to reflect the dialectic relation in the courtroom. It is noticeable that the majority of the provisions of the new Code about defence lawyer are formulated equally for *"the suspect*" and *"the accused"*.

This is considered as one of the revolutionary aspects of the new Code[119], although there are diverging views.[120] By doing so, in contrast to the former Code, to have legal assistance during the pre-trial phase is now considered as *a general right* and equal to the accused's defence rights. Art. 154 reads:

> *"The suspect or the accused can meet her/his lawyer at any time and in an environment that others cannot hear, without seeking power of attorney. Correspondence of these persons with their lawyer cannot be subject to scrutinize"*.

Every single phase of the criminal process is almost surrounded with the right to have legal assistance by the new Code.[121] Should the suspect or the accused request legal assistance, interrogation in the absence of such assistance in both the pre-trial and trial stages are unacceptable (Art 147). Further, the statements made during interrogation by police officer without a lawyer cannot be a ground for conviction unless they are confirmed by the accused

117 Kunter (n 59) 252. This implies the legal qualification of the role of defence lawyer in criminal procedure. See Melik Kartal, 'Müdafiin Hukuki Niteliği Bağlamında Şüphelinin/ Sanığın ve Müdafiin İrade Çatışması Meselesi' (2020) 15 (42) Ceza Hukuku Dergisi 207.

118 Hakan Karakehya and Murat Arabacı, 'Ceza Muhakemesinde Müdafiin Önemi, Hukuki Statüsü ve Müdafiiliğe İlişkin Problemler' (2015), 6 (22) TAAD 59, 79.

119 Öztürk (n 727) 251.

120 Kocaoğlu (n 626) 135-136.

121 Erdener Yurtcan, *Ceza Yargılaması Hukuku* (16th edn, Seçkin 2019) 242; Hakan Karakehya, 'Ceza Muhakemesinde Zorunlu Müdafilik' in Mehmet Murat İnceoğlu (eds), Uğur Alacakaptan'a Armağan I (Bilgi University, 2008) 417, 419; Soyaslan (n 684) 149.

before the judge or the court (Art. 148). Even if there are restrictions on the right to legal assistance for crimes committed within a criminal organization, the suspect still cannot be interrogated at all(Art. 154/2).

In the new Code, *as a rule,* the suspect or the accused can have a lawyer by their choice and *at their own expense*. Under Art. 149/1, the suspect or the accused at all stages of investigation (pre-trial) and prosecution (trial) can benefit from one or more lawyers' assistance; if they have a legal representative, the representative can also choose a lawyer for the suspect or the accused. However, there is a restriction in terms of the number of lawyers. Up to the three lawyers can be allowed during the interrogation[122] in the pre-trial (Art. 149/2-1).[123]

Regarding the trial phase concerning organized crimes, a restriction was introduced during a state of emergency, in the aftermath of the attempted 2016 *coup d'état*. This restriction allowed up to three lawyers to be present at hearings where crimes committed were within a criminal organization (Art. 149/(2)-2).[124] This restriction on organized crime was challenged before the Constitutional Court *(Anayasa Mahkemesi)*. However in 2019, the Court held that this restriction was compatible with the Constitution.[125] In any case, "*at every stage of the investigation and prosecution phases, the lawyers can be neither hindered nor restricted from meeting with the suspect or the accused, being present during the interrogation, and providing their right to have a legal assistance"* (Art. 149/(3)). Should the suspect or the accused declare that she or he is not in a position to afford a lawyer, a lawyer is appointed at her/his request (Art. 150/(1)). Similar to the former code, mandatory legal assistance shall be provided where the suspect or the accused is a child (not having reached 18 years of age), disabled in such a way that she/he cannot defend himself, is hearing impaired. In that case, a lawyer is assigned without seeking her/his request (Art. 150 (2)).[126]

The novelty of the new Code is the introduction of mandatory legal assistance in both the pre-trial and trial phases for *crimes where the lower limit of the punishment is five years or*

122 It should be noted that the Turkish Code makes a terminological distinction on interrogating between the suspect and the accused in Art. 2. Interrogating the suspect is conceptualized as *"ifade alma",* whereas interrogating the accused refers to *"sorgu"*. This chapter uses the term "interrogation at the pre-trial" in order to refer to interrogating the suspect.

123 Ali Kemal Yıldız, 'Ceza Muhakemesi Hukukunda Yakalama ve Gözaltına Alma' (2006) 14 (1) Selçuk Üniversitesi Hukuk Fakültesi Dergisi 131, 196.

124 Initially by the decree with the force of law (KHK) no 676 of 3 October 2016 and then, in 2008, the decree was turned to be Code no 7070 of 1 February 2018 (Official Gazette [Resmî Gazete], No 30354, 8 March 2018 < https://www.resmigazete.gov.tr/eskiler/2018/03/20180308M1-3.htm > accessed 23 April 2020).

125 Anayasa Mahkemesi, , Date: 24/7/2019, E: 2018/73, K: 2019/65 (Official Gazette [Resmî Gazete], No 30963, 29 November 2019 <https://www.resmigazete.gov.tr/eskiler/2019/11/20191129-7.pdf> accessed 23 April 2020).

126 See Yıldız (n 124) 199.

where life imprisonment applies (Art. 150 (3)). In this case, without seeking their request, a defence lawyer is assigned to the suspect and the accused where they *do not have their own lawyer*. In the first version of the Code, before the 2006 amendments, mandatory legal assistance was broader than today as it was provided with regard to *crimes where the upper limit of the punishment was no less than five years (or life imprisonment).*[127] In the same vein, having already a lawyer by becomes a pre-condition for appointing a lawyer, thus, the caveat "*who do not have their own lawyer*" was added to that provision in 2006. Prior to this amendment, a duty lawyer was assigned to the suspect or accused without considering whether they already had their own lawyer.[128] Should the suspect and the accused appoint a lawyer later, the duty of the lawyer appointed by the Bar Association automatically ends (Art 156/3). This last point is of significance, because what the law-maker is looking for is not simply to appoint any lawyer, but rather enabling the suspect or the accused to have access to proper legal assistance.[129]

Again, in the new Code period, it is the Bar Associations that shoulder the responsibility to provide legal assistance. Therefore, the Code states that the issues related to the mandatory legal assistance will be dealt with through the regulations by taking into account the views of the Union of Turkish Bar Associations (Art. 150/4).

The aforementioned provisions for both mandatory and voluntary legal assistance are oriented to ensure defence rights. There are multiple occasions in the Code pertaining to pre-trial procedure, in particular regarding criminal coercive measures, which require the State to provide mandatory legal assistance. For example, the judge of instruction in the pre-trial and the court during the trial phase may decide to detain the accused following a request from the public prosecutor or *ex officio* (Art. 101/1). When delivering a decision for the pre-trial detention, the suspect or the accused shall benefit from the assistance of a lawyer who is chosen by themselves or assigned by the Bar Associations (Art. 101/3). In that regard, the case of *Salduz v. Turkey* is frequently cited by the Court of Cassation. The Court, emphasizes mandatory legal assistance for hearings where pre-trial detention is considered, often citing the case of *Salduz v. Turkey* as well as the case of *Tunç v. Turkey*.[130]

127 Adem Sözüer and Selman Dursun, 'TCK, CMK ve Kabahatler Kanunu'ndaki Son Değişiklikler Ne Getiriyor?'(2006) 9 HPD Akademi 203, 211.

128 *Ibid*.

129 Galma Jahic and İdil Elveriş, 'Müdafiliğe İlişkin Bir Değerlendirme: Değişen Kanunlar, Değişmeyen Sonuç'(2010), 23 (90) Türkiye Barolar Birliği Dergisi 165, 167. Also see Nur Centel and Hamide Zafer, *Ceza Muhakemesi Hukuku* (15th edn, Beta 2018) 204-205.

130 Yargıtay 16. CD, Date: 29.11.2017, E.2017/2257, K. 2017/5509; Yargıtay 16. CD, Date: 15.02.2018, E. 2017/3515, K. 2018/475; Yargıtay 16. CD, Date: 13.03.2018, E. 2017/3788, K. 2018/685.

Another example is being under medical observation. Under Art. 74, providing legal assistance during the process of deciding on whether the suspect or the accused is to be subject to medical observation is mandatory, which was the only criteria for mandatory legal assistance until 1973. These rules, in connection with the State's negative and positive obligations, aim to secure the lawfulness of certain types of criminal processes as well as to secure the right to defence. The existence of lawyer renders these processes lawful or prevents them from being unlawful just as with the former Code.

Consequently, providing the suspect with legal assistance became an *automatic application* in Turkey. That is to say, a lawyer is requested to Bar Associations by the criminal procedural authorities for each procedural activity. Only after the arrival of the lawyer, who is usually at the very beginning of their career as being a duty lawyer is not financially attractive,[131] these activities (such as interrogation) can be performed. Later, when another process such as detention is needed, again the authorities request a lawyer. In that regard, as the main aim is preventing these procedural activities from being performed unlawfully, the existence of a relationship based on trust and confidentiality between the suspect and lawyer is not sought as long as the lawyer does not breach the rules of the Code of Legal Profession.

5.2. Interrogation of the Suspect and the Accused

One of the key impacts of the case of *Salduz v. Turkey* is clear, it renders an interrogation without a defence lawyer unacceptable. In that regard, interrogation either in the pre-trial phase or during trial bares no difference. Art. 147/1 of the Code stipulates two interrelated rights for the defence - the *"right to be informed of the right to choose a lawyer"* and the *"right to have a lawyer"*- and[132] reads:

> "(1) The following rules shall be complied with in interrogation of the suspect and the accused; …c) She or he is informed that they have the right to choose a defence lawyer and that they can benefit from legal assistance and that the defence lawyer can be present during interrogation as a suspect and as a accused in the court. Where she or he is not in a position to afford a defence lawyer and requests to benefit from a legal assistance, she or he is provided with ones who is appointed by the bar association".

Remembering that, in the case of *Salduz v. Turkey*, just as in *Yaman v. Turkey*,[133] the national court reached the conviction by using statements made by the accused during the police interrogation in the absence of legal assistance, it is of not that to the ECtHR,

131 Öztürk (n 727) 251- 252. See also Kocaoğlu (n 24) 145-146.

132 Cumhur Şahin and Neslihan Göktürk, *Ceza Muhakemesi Hukuku I* (10th edn, Seçkin, Ankara 2019) 142.

133 *Yaman v. Turkey*, para. 28.

national law may attach consequences to the attitude of the accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent criminal proceedings. In order to prevent this outcome, the Code in Art. 148 stipulates that "*statements which are obtained during interrogation by police officer without a lawyer is present cannot be a ground for conviction unless they are confirmed in front of the judge or the court"*. This means that the police interrogation without a lawyer lacks any legal impact at the trial.[134] Further, if a contradiction between the accused's statements made at trial and her/his previous statements appears, the documents, including statements made before the public prosecutor or in police station can be read at the hearing (Art. 213), so long as legal assistance was provided. When the suspect wishes to have a certain lawyer during the police interrogation and reaching his lawyer takes too long or is impossible, that cannot be interpreted as the suspect not wanting to have a lawyer. Therefore, in these circumstances, the police should reschedule the time and place of the interrogation. Otherwise, pursuant to Articles 148 and 213, in order to regard to these statements in reaching judgment, the statements are to be repeated and re-read in hearing under Articles 148 and 213.[135] In contrast to the former Code[136], the new Code adopts the exclusionary rule regarding illegally obtained evidence.[137] Most importantly, the legal provisions on the admissibility of evidence are explicitly stipulated in the Constitution (Art. 38/6)[138] and in the new Penal Procedure Code (Arts. 206, 217, 230, and 289). As such, after the 2001 amendments, the Constitution ensures in Art. 38/6 that *"findings obtained through illegal methods shall not be considered evidence"*.[139] Therefore, if the suspect is deprived of her/his right to have legal assistance during the interrogation, the statements are regarded as illegally obtained evidence and thus cannot be used in any way.[140]

134 Demirbaş (n 756) 89.

135 Şahin and Göktürk (n 792) 142.

136 Sokullu- Akıncı (n 796) 264-268.

137 See Büşra Demiral Bakırman, 'Unlawfully Obtained Evidences in Turkish Criminal Procedure Law' (2015) 3 (1) Journal of Penal Law and Criminology 239, 240.

138 See F. Pınar Ölçer, 'Illegally Obtained Evidence in European Treaty of Human Rights (ETHR) Law' (2008) 40 (57) Annales de la Faculté de Droit d'Istanbul 65, 82, n 53.

139 The first version of the former Penal Procedure Code no 1412 of 4 April 1929 (Official Gazette [Resmî Gazete], No 1172, 20 April 1929 < https://www.resmigazete.gov.tr/arsiv/1172.pdf > accessed 21 April 2020).

140 See See Büşra Demiral Bakırman, 'Unlawfully Obtained Evidences in Turkish Criminal Procedure Law' (2015) 3 (1) Journal of Penal Law and Criminology 239, 240 242; Adem Sözüer and Öznur Sevdiren , 'Turkey: The Move to Categorical Exclusion of Illegally Gathered Evidence', in Stephan Thaman (eds), Exclusionary Rules in Comparative Law (Springer 2013) 306- 307.

5.3. Restrictions on the Basis of the Nature of the Crime: The Sphere of Organized Crime

In 2012, an amendment concerning the right to have a lawyer at the pre-trial and trial phases with regard to crimes committed within the criminal organizations was made to the Anti- Terror Code (no. 3713) through the Law 6352.[141] In terms of early access to lawyer, Art. 10 was re-formulated as "the suspect's right to access a lawyer in custody, upon the request of the public prosecutor, may be restricted by the judge for up to twenty-four hours; during this time the suspect cannot be interrogated". However,, this restriction was subsequently abolished in 2014 by Law 6526.

In July 2016, Turkey was faced with an attempted coup and consequently notified the Council of Europe of derogations in the context of Art. 15 of the Convention, following the declaration of a state of emergency.[142] In the aftermath, the law-maker rushed to adopt significant legislative changes through the decree with the force of law (KHK)[143] no. 676.[144] The earlier restriction was re-introduced by this Decree, but this time into Art. 154/2 of the Procedure Code, and by expanding the list of crimes to which the exception applied (the so-called "crime catalogue").

The catalogue includes crimes against state security (subsection 4 of the Penal Code), crimes against the constitutional order and its functioning (subsection 5), crimes against national defence (subsection 6), crimes against state secrets and espionage (subsection 7) crimes regulated in the Anti- Terror Code and drug-related crimes (production and trade) committed within criminal organizations. In these catalogue crimes, *the suspect's right to access a lawyer in custody, upon the request of the public prosecutor, may be restricted by the judge for up to twenty-four hours; during this time the suspect cannot be interrogated"*. The prohibition for an interrogation without legal assistance in catalogue crimes is considered as a significant momentum towards defence rights.[145]

141 See Rahime Erbaş, 'Organized Crime-Related Legislation in the Turkish Criminal Law' (2015) 3 (1) Journal of Penal Law and Criminology 275, 299 ff.

142 See Council of Europe, 'Statement: Measures taken under the state of emergency' in Turkey', Strasbourg 26 July 2016 <https://www.coe.int/en/web/commissioner/-/measures-taken-under-the-state-of-emergency-in-turkey> accessed 23 April 2020. See also R. Murat Önok, 'Avrupa İnsan Hakları Sözleşmesi Bağlamında Olağanüstü Hal Uygulamaları' in KHK'ler Türkiyesinde Savunma Hakkı Paneli (Türkiye Barolar Birliği 2016) 109 < http://tbbyayinlari.barobirlik.org.tr/TBBBooks/592.pdf> accessed 3 July 2020).

143 For the English translation of that Decree see Council of Europe, 'Decree with Force of Law' <https://rm.coe.int/168069661d > accessed 23 April 2020.

144 Initially by the decree with the force of law (KHK) no 676 of 3 October 2016 and then, in 2008, the decree was transformed into the Procedure Code's provisions by the Code no 7070 of 1 February 2018 (Official Gazette [Resmî Gazete], No 30354, 8 March 2018 < https://www.resmigazete.gov.tr/eskiler/2018/03/20180308M1-3.htm > accessed 23 April 2020).

145 Yurtcan (n 122) 237. See also Soyaslan (n 24) 149.

That exceptions apply to organized crime-related criminal investigations is common to many jurisdictions. In fact, the ECtHR's admits the justified restriction to the right to have a legal access where compelling reasons exist.[146] Turkish Law provides the prosecutor and judges with a detailed procedure even in these exceptional cases. As a matter of fact, the pre-requisites for a restriction comprise a judicial order, a time limit, allowing prohibition on interrogation during that time. These pre-requisites are intended to lead the judicial authorities to decide whether to restrict the right to have a lawyer for a concrete case, based upon its particular circumstances. By doing so, the lawmaker aims to prevent *an abstract and systematic restriction* like the one the for which the ECtHR criticized Turkey in *Salduz*. However this is where, in practice, a discretion on determining "compelling reasons" for a restriction exists. The Code does not regulate under which circumstances the prosecutor can request this from the judge, a matter which received criticism in the Turkish doctrine.[147] But still, it is the judge to decide on this restriction. Accordingly, the prosecutor retains an instrument to restrict this right by resorting to a neutral judge who can provide approve or deny an application. It is worth stating that the Turkish Constitutional Court has a competency to recognize these compelling reasons set out in *Salduz*.[148]

5.4. Access to, and Inspection of the Case File

As a rule, at the pre-trial stage the defence lawyer, as well as the lawyer for the victim, can inspect the contents of the case file and may take samples of the documents without any charge (Art. 153/1). However, regarding certain crimes, access to the case file in the pre-trial phase may be restricted by a judicial order at the request of the public prosecutor, if access to the case file in the pre-trial may jeopardize the purpose of the investigation (Art. 153/2).[149] Nevertheless, access to the documents of the statements of the arrestee or the suspect, to the expert reports and the other documents that are outcomes of the process which the people are entitled to be present cannot be restricted (Art. 153/3).

In any case, this restriction ends automatically exactly when the court declares the acceptance of the indictment submitted by the public prosecutor. After that moment, the defence lawyer can inspect the contents of the file and the evidence secured, and take samples of all records and documents without charge (Art 154/4).

146 *Salduz v. Turkey*, paras. 52, 54. See also Soyaslan (n 24) 152-154.

147 Sinem Top, 'Müdafi Yardımından Yararlanma Hakkına Uygulanan Sınırlamalar (2018) 137 TBB Dergisi 217, 234.

148 Gülen Soyaslan, 'Limiting Procedural Rights During Police Interrogation in Terror Crimes: A Comparative Analysis of European and U.S. Laws and Suggestions to Turkish Law' (2020) 8 (1) Journal of Penal Law and Criminology 143, 149-150155.

149 Yener Ünver and Hakan Hakeri, *Ceza Muhakemesi Hukuku I* (15th edn, Seçkin 2019) 468.

6. Conclusion

This chapter sketched Turkey's pathway to an early access to legal assistance particularly for the pre-trial phase following the *Salduz* case; a case which profoundly changed many European jurisdictions. In order to analyse Turkish law on the matter, the chapter used this landmark case as the central point. As such the legal provisions from both the former and the current Procedure Code as well as some important cases from national courts have been discussed.

In particular, in the frame of the EU- accession process, in designing the new Procedure Code in 2005, the right to have legal aid appears as one of the key points. In this context, Turkish law experienced a more comprehensive reform than the *Salduz*- generated reforms. In fact, in contrast to the former Code, the new Code gives almost equal attention to both the pre-trial and trial phases in terms of the right to legal advice. It can be observed that the trial stage-oriented focus on legal assistance is not sufficient to meet the requirements of Art 6 ECHR. The legal framework for the defence lawyer in Turkey become highly clear when they are compared with the former Code, a code which provided insufficient rights and gave rise to the *Salduz* as well as *Dayanan, Yaman and Others, Ekinci* cases[150], even if these judgments were delivered by the ECtHR during the period of the new Code.

Today, the lack of legislative framework on access to lawyer in the pre-trial is no longer an issue. However, providing an efficient legal assistance requires more than legal provisions of a procedure code such as the existence of a professional culture and a well-structured mechanism[151] that is attractive not only for those who are at the very early beginning of their criminal defence lawyer careers. As a matter of fact, even if the mainly inquisitorial nature of Turkish criminal procedure plays a key role, the approaches and the habits of the law enforcement authorities to the lawyer's involvement in the pre-trial processes hampers the suspect or the accused's chance to properly benefit from legal assistance. As such providing the suspect with legal assistance in the pre-trial stage turns to be an *automatic application* for the mere purpose of rendering the procedural activity lawful in Turkey.

Restrictions on access to legal assistance due to crimes against the State, *inter alia,* terror crimes, remains a heated debate in Turkey. There needs to be action towards preventing the restrictions from being applied in *abstract and systematic manner* as the ECtHR criticized

150 See *Dayanan v. Turkey,* App no 7377/03 (ECtHR, 13 October 2009), *Yaman and Others v. Turkey*, App no 46851/07 (ECtHR, 15 May 2018), *Ekinci v. Turkey,* App no 25148/07 (ECtHR, 12 May 2020).

151 Anna Ogorodova and Taru Spronken, 'Legal Advice in Police Custody: From Europe to a Local Police Station' (2014) (7) 4 Erasmus Law Review 191, 192.

Turkey in *Salduz*, noting that. "Compelling reasons" leading to a restriction of the right to legal assistance requires, as the ECtHR stresses, more than basing such decisions only on the nature of certain types of crimes. Case-specific factors such as the features of the perpetrators needs to be taken into account. Indeed, Turkish law provides the prosecutor and judges with a power to determine the meaning and scope of the compelling reasons. And above all, it is the judge who stands as a guarantee for ensuring rights at the pre-trial in deciding on these restrictions.

References

Bozdağ A, *Ceza Muhakemesi Hukukunda Müdafi* (Adalet 2014).

Brants C, 'The Reluctant Dutch Response to Salduz' (2011) 15 Edinburgh L Rev 298.

Centel N, *Ceza Muhakemesi Hukukunda Müdafi* (Kazancı 1984).

Centel N and Zafer H, *Ceza Muhakemesi Hukuku* (15th edn, Beta 2018).

Çeliksoy E, 'Ibrahim and Others v. UK: Watering down the Salduz Principles?' (2018) 9 (2) New Journal of European Criminal Law 229.

Çeliksoy E, 'Overruling 'the Salduz Doctrine' in Beuze v Belgium: The ECtHR's further retreat from the Salduz principles on the right to access to lawyer' (2019) 10 (4) New Journal of European Criminal Law 342.

De Hert P, 'European Human Rights Law and the Regulation of European Criminal Law. Lessons Learned from the Salduz Saga' (2010) 1 (3) New Journal of European Criminal Law 289.

Demiral Bakırman B, 'Unlawfully Obtained Evidences in Turkish Criminal Procedure Law' (2015) 3 (1) Journal of Penal Law and Criminology 239.

Demirbaş T, 'Soruşturma Evresinde Şüphelinin İfadesinin Alınması ve Müdafilik' (2007) 2 (4) Ceza Hukuku Dergisi 79.

Dülger MV, 'Ceza Muhakemesinde Müdafinin Konumu ve Uygulamada Karşılaşılan Sorunlar' (2012) 4 Ankara Barosu Dergisi 39.

Elveriş İ, Kutucu S and Yaşar İ, 'Türkiye'de Adli Yardım Sisteminin Değerlendirilmesi', in İdil Elveriş (eds), Legal Aid in Turkey- Policy Issues and A Comparative Perspective (Bilgi University 2005) 39.

Erbaş R, 'Organized Crime-Related Legislation in the Turkish Criminal Law' (2015) 3 (1) Journal of Penal Law and Criminology 275.

Erem F, 'İnsan Hakları ve Ceza Muhakemeleri Usulü Kanunu Değişikliği' (1993) 19 (1-2) Yargıtay Dergisi 35.

Erem F, 'Savunmasız Ölüm Cezası' (1978) 6 Ankara Barosu Dergisi 925.

Giannoulopoulos D, 'Strasbourg Jurisprudence, Law Reform and Comparative Law: A Tale of the Right to Custodial Legal Assistance in Five Countries' (2016) 16 Human Rights Law Review 103.

Hodgson J, 'Constructing the Pre-Trial Role of the Defence in French Criminal Procedure: An Adversarial Outsider in an Inquisitorial Process' (2002) 6 (1) International Journal of Evidence & Proof 1.

Jackson J and Summers S, 'Confrontation with Strasbourg: UK and Swiss Approaches to Criminal Evidence' (2013) 60 (2) Criminal Law Review 114.

Jahic G and Elveriş İ, 'Müdafiliğe İlişkin Bir Değerlendirme: Değişen Kanunlar, Değişmeyen Sonuç'(2010), 23 (90) Türkiye Barolar Birliği Dergisi 165.

Karakehya H and Arabacı M, 'Ceza Muhakemesinde Müdafiin Önemi, Hukuki Statüsü ve Müdafiiliğe İlişkin Problemler' (2015), 6 (22) TAAD 59.

Karakehya H, 'Ceza Muhakemesinde Zorunlu Müdafilik' in Mehmet Murat İnceoğlu (eds), Uğur Alacakaptan'a Armağan I (Bilgi University, 2008) 417.

Kartal M, 'Müdafiin Hukuki Niteliği Bağlamında Şüphelinin/ Sanığın ve Müdafiin İrade Çatışması Meselesi' (2020) 15 (42) Ceza Hukuku Dergisi 207.

Kibar R, *Türk Hukukunda Sanık Hakları* (Yetkin Yayınları 1997).

Kocaoğlu SS, *Müdafi* (3rd edn, Seçkin 2017).

Kunter N, *Ceza Muhakemesi Hukuku* (9th edn, Yaylacık Matbaası 1989).

Lipstein K, 'The Reception of Western Law in Turkey' (1956) 5 (6) Annales de la Faculté de Droit d'Istanbul 11 <https://dergipark.org.tr/en/download/article-file/6610> accessed 14 March 2020.

Mahmutoğlu FS and Dursun S, *Türk Hukuku'nda Müdafiin Yasaklılık Halleri* (Seçkin 2004).

Mahmutoğlu FS, 'Das neue türkische Strafgesetzbuch, Allgemeiner Teil' <http://fsmahmutoglu.av.tr/pdf/68b9dc04fd8938522613410d91910d794e7497267818090242.pdf> accessed 20 April 2020.

Ogorodova A and Spronken T, 'Legal Advice in Police Custody: From Europe to a Local Police Station' (2014) (7) 4 Erasmus Law Review 191.

Ölçer FP, 'Illegally Obtained Evidence in European Treaty of Human Rights (ETHR) Law' (2008) 40 (57) Annales de la Faculté de Droit d'Istanbul 65.

Önok RM, 'Avrupa İnsan Hakları Sözleşmesi Bağlamında Olağanüstü Hal Uygulamaları' in KHK'ler Türkiyesinde Savunma Hakkı Paneli (Türkiye Barolar Birliği 2016) 109 < http://tbbyayinlari.barobirlik.org.tr/TBBBooks/592.pdf> accessed 3 July 2020).

Öztürk B, Tezcan D, Erdem MR, Gezer ÖS, Saygılar Kırıt YF, Akcan EA, Özaydın Ö, Erden Tütüncü E, Altınok Villemin D and Tok MC, *Nazari ve Uygulamalı Ceza Muhakemesi Hukuku* (13 edn, Seçkin 2019).

Özden YG, 'İnsan Hakları Hukuk Devleti ve Savunma' (1984) (3) Ankara Barosu Dergisi 371.

Sokullu- Akıncı F, 'Recent Attempts to Guarantee Human Rights in the Turkish Penal Procedure Law' (1998) 32 (48) Annales de la Faculté de Droit d'Istanbul 253.

Soo A, 'Divergence of European Union and Strasbourg Standards on Defence Rights in Criminal Proceedings? Ibrahim and the others v. the UK (13th of September 2016)' (2017) 25 (4) European Journal of Crime, Criminal Law and Criminal Justice 327.

Soyaslan G, 'Limiting Procedural Rights During Police Interrogation in Terror Crimes: A Comparative Analysis of European and U.S. Laws and Suggestions to Turkish Law' (2020) 8 (1) Journal of Penal Law and Criminology 143, 149-150.

Sözüer A and Sevdiren Ö, 'Turkey: The Move to Categorical Exclusion of Illegally Gathered Evidence', in Stephan Thaman (eds), Exclusionary Rules in Comparative Law (Springer 2013) 287.

Sözüer A, 'Reform of the Turkish Criminal Law' in Adem Sözüer (eds), Congress on the Criminal Law Reforms in the World and in Turkey (On İki Levha 2013) 107.

Sözüer A and Dursun S, 'TCK, CMK ve Kabahatler Kanunu'ndaki Son Değişiklikler Ne Getiriyor?'(2006) 9 HPD Akademi 203.

Şahin C and Göktürk N, *Ceza Muhakemesi Hukuku I* (10th edn, Seçkin, Ankara 2019).

Tezcan D, 'Cezai Konularda Türk- İtalyan İlişkileri' (1994) 49 (1) Ankara Üniversitesi Siyasal Bilgiler Fakültesi Dergisi 365.

Top S, 'Müdafi Yardımından Yararlanma Hakkına Uygulanan Sınırlamalar (2018) 137 TBB Dergisi 217.

Tosun Ö, *Türk Suç Muhakemesi Hukuku Dersleri Cilt I* (4th edn, İstanbul University 1984).

Ünver Y and Hakeri H, *Ceza Muhakemesi Hukuku I* (15th edn, Seçkin 2019).

Yenisey F, *Uygulanan ve Olması Gereken Ceza Muhakemesi Hukuku- Hazırlık Soruşturması ve Polis* (3th edn, Beta 1993).

Yıldız AK, 'Ceza Muhakemesi Hukukunda Yakalama ve Gözaltına Alma' (2006) 14 (1) Selçuk Üniversitesi Hukuk Fakültesi Dergisi 131.

Yurtcan E, *Ceza Yargılaması Hukuku* (16th edn, Seçkin 2019).

Zafer H, 'Savunma Hakkı ve Sınırları' (2013) (2) Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi (Prof. Dr. Nur Centel'e Armağan) 507.

Internet Resources

Council of Europe, 'Decree with Force of Law' <https://rm.coe.int/168069661d > accessed 23 April 2020).

Council of Europe, 'Treaty list for a specific State: Turkey' <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/TUR> accessed 11 March 2020.

Council of Europe, 'Statement: Measures taken under the state of emergency' in Turkey', Strasbourg 26 July 2016 <https://www.coe.int/en/web/commissioner/-/measures-taken-under-the-state-of-emergency-in-turkey> accessed 23 April 2020.

European Commission, 'Enlargement' <https://ec.europa.eu/environment/enlarg/candidates.htm> accessed 17 September 2019.

ECtHR, 'Turkey' <https://www.echr.coe.int/Documents/CP_Turkey_ENG.pdf> accessed 20 April 2020.

ECtHR, 'Overview 1959-2011' (February 2012) 7, <http://www.echr.coe.int/Documents/Overview_2011_ENG.pdf> accessed 20 April 2020.

ECtHR, 'Violations by Article and by State' <https://www.echr.coe.int/Documents/Stats_violation_2019_ENG.pdf> accessed 20 April 2020)

Official Gazette [Resmî Gazete], No 1172, 20 April 1929 < https://www.resmigazete.gov.tr/arsiv/1172.pdf > accessed 21 April 2020.

Official Gazette [Resmî Gazete], No 13168, 7 April 1969 <https://www.resmigazete.gov.tr/arsiv/13168.pdf> accessed 21 April 2020.

Official Gazette [Resmî Gazete], No 21422, 1 December 1992 <https://www.resmigazete.gov.tr/arsiv/21422.pdf > accessed 21 April 2020.

Official Gazette [Resmî Gazete], No 24556, 17 October 2001 <https://www.resmigazete.gov.tr/eskiler/2001/10/20011017m1.htm> accessed 21 April 2020.

Official Gazette [Resmî Gazete], No 25469, 22 May 2004 <https://www.resmigazete.gov.tr/eskiler/2004/05/20040522.htm> accessed 20 April 2020.

Official Gazette [Resmî Gazete], No 25673, 17 December 2004 <https://www.resmigazete.gov.tr/eskiler/2004/12/20041217.htm#1> accessed 24 April 2020.

Official Gazette [Resmî Gazete], No 30354, 8 March 2018 < https://www.resmigazete.gov.tr/eskiler/2018/03/20180308M1-3.htm > accessed 23 April 2020.

Official Gazette [Resmî Gazete], No 30963, 29 November 2019 <https://www.resmigazete.gov.tr/eskiler/2019/11/20191129-7.pdf> accessed 23 April 2020.

Republic of Turkey Ministry of Foreign Affairs Directorate for EU Affairs, *Political Reforms in Turkey* (2007) 5 < https://www.ab.gov.tr/files/pub/prt.pdf> accessed 22 April 2020.

The Grand National Assembly of Turkey (Türkiye Büyük Millet Meclisi), 'The Constitution of the Republic of Turkey'<https://global.tbmm.gov.tr/docs/constitution_en.pdf> accessed 24 April 2020).

Cases

A and Others v. UK, App no 3455/05 (ECtHR, 19 February 2009).

Abdülsamet Yaman v. Turkey, App no 32446/96 (ECtHR, 2 November 2004);

Aksoy v. Turkey, App no 21987/93 (ECtHR, 18 December 1996);
Dayanan v. Turkey, App no 7377/03 (ECtHR, 13 October 2009).
Ekinci v. Turkey, App no 25148/07 (ECtHR, 12 May 2020).
İlhan v. Turkey, App no 22277/93 (ECtHR, 27 June 2000);
Kurt v. Turkey, App no 15/1997/799/1002(ECtHR, 25 May 1998);
Sadık Önder v. Turkey, App no 28520/95 (ECtHR, 8 January 2004);
Salduz v. Turkey, App no 36391/02 (ECtHR, GC, 27 November 2008).
Tekin v. Turkey, App no 52/1997/836/1042 (ECtHR, 9 June 1998);
Tuncer and Durmuş v. Turkey, App no 30494/96 (ECtHR, 2 February 2005).
Tunç v. Turkey, App no 32432/96 (ECtHR, 27 March 2007).
Yaman and Others v. Turkey, App no 46851/07 (ECtHR, 15 May 2018).
Askeri Yargıtay, Date: 22. 08.1969, E. 380/K.436.
Anayasa Mahkemesi, E: 2018/73, K: 2019/65, Date: 24/7/2019.
Yargıtay 1. CD, Date:10. 02.1959, 258/955.
Yargıtay, 1.CD, Date: 07.06.1977, 1044/1962.
Yargıtay 3. CD, Date: 14.01. 1957, 269/273.
Yargıtay 16. CD, Date: 29.11.2017, E.2017/2257, K. 2017/5509.
Yargıtay 16. CD, Date: 15.02.2018, E. 2017/3515, K. 2018/475.
Yargıtay 16. CD, Date: 13.03.2018, E. 2017/3788, K. 2018/685.