



Assistance by an interpreter must be guaranteed from the investigation stage onwards

In today's Chamber judgment¹ in the case of [Baytar v. Turkey](#) (application no. 45440/04) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 3 e) (right to the assistance of an interpreter) taken together with Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned the questioning in police custody, without the assistance of an interpreter, of an individual who did not have a sufficient command of the national language.

The Court found in particular that, without the possibility of having the questions put to her interpreted and of forming as accurate an idea as possible of the alleged offences, Ms Baytar had not been put in a position to appreciate fully the consequences of waiving her right to keep silent and the right to legal assistance.

Principal facts

The applicant, Ms Gülüstan Baytar, is a Turkish national who was born in 1949 and lives in Van (Turkey).

On 30 April 2001 Ms Baytar paid a visit to her brother, who was being held in Muş Prison in connection with a case involving the PKK. The prison wardens responsible for searching her found a piece of paper, folded over and taped several times, which was unsigned and had been written by a member of the PKK. Ms Baytar was immediately placed in police custody, then questioned by gendarmes, in Turkish, on the following day. She stated that she had found the item in question by chance at the bus stop and had picked it up out of curiosity. On 27 September 2001 Ms Baytar was acquitted by the State Security Court, which found her version of events to be credible.

On 17 December 2001 Ms Baytar again visited her brother in prison and was arrested after the search. A 16-page document, written on onion-skin paper and protected by adhesive tape, had been found in her possession during the search. This document contained instructions with regard to the PKK's strategy inside prisons. She was questioned the following day, in Turkish, by two gendarmes and stated that she had found the document accidentally in the waiting room and picked it up. The record of the interview indicates that she was informed of her right to legal assistance but did not wish to use it.

In the course of a hearing before a judge, this time with the assistance of an interpreter, Ms Baytar submitted that the statement which she had just given to the gendarmes referred to the events of 30 April 2001 and that no document had been found in her possession on 17 December. At the close of this hearing on 18 December 2001, Ms Baytar was placed in pre-trial detention and criminal proceedings were brought before the State Security Court for membership of and support and assistance to an illegal armed organisation.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 29 May 2002 she was sentenced to three years and nine months' imprisonment. On 18 April 2003, after that judgment had been quashed on procedural grounds, the State Security Court re-imposed the same sentence on Ms Baytar; taking into account the period already spent in detention, however, it ordered her immediate release.

Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1 and 3 (e) (right to a fair hearing and to the assistance of an interpreter), Ms Baytar complained about the fact that no interpreter had been present when she was questioned in police custody.

The application was lodged with the European Court of Human Rights on 17 September 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 6 § 3 \(e\) taken together with Article 6 § 1](#)

The Court reiterated that defendants who do not have a command of the language used in court have the right to the free assistance of an interpreter, to enable them to have knowledge of the case against them and to defend themselves, notably by being able to put before the court their version of the events. The assistance of an interpreter must be guaranteed from the investigation stage onwards.

Ms Baytar's insufficient command of the Turkish language meant that the services of an interpreter were required, as was acknowledged by the judge deciding on her detention and by the trial judge. However, although Ms Baytar had been assisted by an interpreter during the hearing before the judge responsible for ruling on pre-trial detention, this had not been the case when she was questioned by the gendarmes; on that occasion, she stated that she had found the document in question on the floor of the prison waiting room and admitted that a document had indeed been found in her possession.

The Court had already emphasised the importance of the investigation stage for the preparation of the criminal proceedings, as the evidence obtained during this stage could be decisive for the subsequent stages of the proceedings. A person held in police custody had a number of rights, such as the right to remain silent or to have the assistance of a lawyer. However, the decision to use, or, on the contrary, to waive one's rights could only be taken if the right-holder in question clearly understood the charges against him or her, in order to be able to weigh up what was at stake in the proceedings and to assess the appropriateness of waiving those rights.

The Court considered that without the possibility of having the questions put to her interpreted and of forming as accurate an idea as possible of the alleged offences, Ms Baytar had not been put in a position to appreciate fully the consequences of waiving her right to keep silent and the right to legal assistance.

Just satisfaction (Article 41)

The Court held that Turkey was to pay the applicant 1,500 euros (EUR) in respect of non-pecuniary damage and EUR 1,300 in respect of costs and expenses.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.