



The fact that the prosecutor stood on a raised platform in the courtroom did not infringe the principle of equality of arms

In today's Chamber judgment in the case [Diriöz v. Turkey](#) (application no. 38560/04), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 6 §§ 1 and 3 (c) of the European Convention on Human Rights.

The case concerned the complaint by an accused that there had been an infringement of the principle of equality of arms in so far as the prosecutor stood on a raised platform whereas he and his lawyer had been placed, as was the rule, at a lower level in the courtroom. The Court considered that whilst this conferred a privileged physical position on the prosecutor in the courtroom, it did not place the accused in a disadvantageous position regarding the defence of his interests. The Court also reiterated that neither the letter nor the spirit of Article 6 of the Convention prevented a person from waiving of his or her own free will the right to legal assistance during police custody.

Principal facts

The applicant, Ümit Diriöz, is a Turkish national who was born in 1977 and is currently being held in Bayrampaşa Prison in Istanbul (Turkey). On 9 September 2000, during an altercation between several individuals, he fired a pistol several times. Four people were injured and a fifth, who had had nothing to do with the altercation, was hit by a stray bullet and subsequently died. On 12 October 2000 the public prosecutor issued an arrest warrant against Mr Diriöz, who had fled.

On 14 January 2001 Mr Diriöz was arrested while in possession of a forged identity card and placed in police custody. The custody report signed on that day indicated that he had been informed, among other things, of his right to legal assistance. In his statement drawn up on 16 January 2001 Mr Diriöz ticked the box "I do not wish to be assisted by a lawyer".

On 18 January 2001 Mr Diriöz appeared before the prosecutor and then before a magistrate, both of whom questioned him in the presence of his lawyer. From that date onwards his lawyer assisted him throughout the proceedings. Mr Diriöz repeated his initial statement and the magistrate decided to order his detention pending trial.

On 15 October 2001 Mr Diriöz was convicted by the Fatih Assize Court. The Court of Cassation set the conviction aside on procedural grounds and remitted the case to the trial court. On 30 January 2003 the Assize Court sentenced him to thirty years'

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

imprisonment and to a "heavy fine" for murder, attempted murder and causing injury with a firearm. Mr Diriöz appealed on points of law. The Court of Cassation upheld the Assize Court's judgment.

Complaints, procedure and composition of the Court

Mr Diriöz complained of a breach of the principle of equality of arms on the ground that the prosecutor had stood on a raised platform, whereas he and his lawyer had been placed, as was the rule, at a lower level in the courtroom. He also complained about the fact that the prosecutor and judges entered the courtroom by the same door, whereas the lawyer had to use the door for the public. Lastly, he alleged that he had not been assisted by a lawyer during police questioning, despite his request to that effect.

The application was lodged with the European Court of Human Rights on 6 July 2004.

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

Françoise **Tulkens** (Belgium), *President*,
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
Işıl **Karakaş** (Turkey),
Guido **Raimondi** (Italy),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland), *Judges*,

and also Françoise **Elens-Passos**, *Deputy Section Registrar*.

Decision of the Court

Article 6

The Government explained that the seating arrangements for judges and prosecutors in the courtroom was an established practice in Turkish procedural law which took account of the fact that the two professions followed the same training, that their members sat the same examinations and that it was possible to change from one profession to the other. The Government considered that the main idea was that the prosecutor, in so far as he or she represented the public interest had to respect both the interests of the defence and the rights of the victim. The prosecutor gathered evidence not only against the accused, but also in his or her favour. The physical position of the prosecutor, placed at a higher level than that of the defence and the victim, but at a distance from the judges, was symbolical.

The Court observed that, as it had already held in previous decisions, the seating arrangements complained of by Mr Diriöz conferred a privileged physical position on the prosecutor in the courtroom, but did not place the accused in a disadvantageous position regarding the defence of his or her interests. It could not be argued that there had been a breach of the principle of equality of arms. Accordingly, the Court declared Mr Diriöz's complaint inadmissible as manifestly ill-founded.

Mr Diriöz also claimed that he had requested the assistance of a lawyer in police custody but did not explain the fact that he had signed a statement refusing such assistance. The Court reiterated in that regard that, in order for the right to a fair trial to remain sufficiently practical and effective, access to a lawyer should be provided as from the first questioning of a suspect by the police, unless there were compelling reasons to restrict that right. The relevant legislation, namely, Article 144 of the Criminal Code, guaranteed the right to request the assistance of a lawyer.

The Court observed that neither the letter nor the spirit of Article 6 of the Convention prevented a person from waiving of his or her own free will the guarantees of a fair trial. That waiver had to be unequivocally established and attended by minimum safeguards commensurate with its gravity.

The Court noted that Mr Diriöz had been told of his right to be assisted by a lawyer while he was in police custody. The police had drawn up a police custody record setting out his rights. However, Mr Diriöz had ticked the box saying that he did not wish to be assisted by a lawyer and had signed the form. As that right had been unequivocally waived and was attended by the requisite minimum safeguards, the Court found that there were no grounds to suspect that Mr Diriöz had not freely or unequivocally waived his right to legal assistance during his police custody. Accordingly, there had not been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

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.