KEY THEME[1]
Article 6 §§ 1 and 3 (c)
Access to a lawyer

(Last updated: 31/08/2025)

Introduction

The right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (*Salduz v. Turkey* [GC], 2008, § 51; *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 255). As a rule, a suspect should be granted access to legal assistance from the moment there is a "criminal charge" against him or her within the autonomous meaning of the Convention (*Simeonovi v. Bulgaria* [GC], 2017, § 110; *Beuze v. Belgium* [GC], 2018, § 119; *Dubois v. France*, 2022, §§ 45-46 and 69-75).

In *Beuze v. Belgium* [GC], 2018, §§ 125-130, drawing from its previous case-law (in particular, *Salduz v. Turkey* [GC], 2008, §§ 53-54; *Ibrahim and Others v. the United Kingdom* [GC], 2016, § 255; *Simeonovi v. Bulgaria* [GC], 2017, § 112) the Court explained that the **aims pursued** by the right of access to a lawyer include the following:

- Prevention of a miscarriage of justice and, above all, the fulfilment of the aims of Article 6, notably equality of arms between the investigating or prosecuting authorities and the accused;
- Counterweight to the vulnerability of suspects in police custody;
- Fundamental safeguard against coercion and ill-treatment of suspects by the police;
- Ensuring respect for the right of an accused not to incriminate him/herself and to remain silent, which can – just as the right of access to a lawyer as such – be guaranteed only if he or she is properly notified of these rights (see also *Lalik v. Poland*, 2023, § 62). In this connection, immediate access to a lawyer able to provide information about procedural rights is likely to prevent unfairness arising from the lack of appropriate information on rights.

In *Beuze v. Belgium* [GC], 2018, §§ 133-134, the Court also elaborated on the **content of the right of access to a lawyer**. It distinguished two minimum requirements as being: (1) the right of contact and consultation with a lawyer prior to the interview, which also includes the right to give confidential instructions to the lawyer, and (2) physical presence of the lawyer at the initial police interview and any further questioning during the pre-trial proceedings. Such presence must ensure legal assistance that is effective and practical.

In connection with the latter minimum requirement, it should be noted that in *Soytemiz v. Turkey*, 2018, §§ 44-64, the Court stressed that the right to be assisted by a lawyer requires not only that the lawyer is permitted to be present, but also that he/she is allowed to actively assist the suspect during, *inter alia*, the questioning by the police and to intervene to ensure respect for the suspect's rights. The right to be assisted by a lawyer applies throughout and until the end of the questioning by the police, including when the statements taken are read out and the suspect is asked to confirm

[1] Prepared by the Registry. It does not bind the Court.

and sign them, as the assistance of a lawyer is equally important at this moment of the questioning. Thus, the police are, in principle, under an obligation to refrain from or to adjourn questioning in the event of a suspect invoking the right to be assisted by a lawyer during the interrogation until a lawyer is present and is able to assist the suspect. The same considerations also hold true if the lawyer has to – or is requested to – leave before the end of the questioning of the police and before the reading out and the signing of the statements taken.

However, in *Doyle v. Ireland*, 2019, §§ 81-103, where the applicant was allowed to be represented by a lawyer but his lawyer was not permitted in the police interview as a result of the relevant police practice applied at the time, the Court found no violation of Article 6 §§ 1 and 3 (c) of the Convention. It considered that, notwithstanding the impugned restriction on the applicant's right of access to a lawyer during the police questioning, in the circumstances of the case in issue the overall fairness of the proceedings had not been irretrievably prejudiced.

Further in *Beuze v. Belgium* [GC], 2018, § 135, the Court indicated, by way of example, that depending on the specific circumstances of each case and the legal system concerned, the following restrictions may also undermine the fairness of the proceedings: (1) a refusal or difficulties encountered by a lawyer in seeking access to the case file at the earliest stages of the criminal proceedings or during pre-trial investigation, and (2) the non-participation of the lawyer in investigative actions, such as identity parades or reconstructions. This may also include the necessity to have the lawyer present during the search and seizure operations (*Ayetullah Ay v. Turkey*, 2020, §§ 135 and 163).

In addition, the Court has indicated that account must be taken, on a case-by-case basis, in assessing the overall fairness of proceedings, of the whole range of services specifically associated with legal assistance: discussion of the case, organisation of the defence, collection of exculpatory evidence, preparation for questioning, support for an accused in distress, and verification of the conditions of detention (*Beuze v. Belgium* [GC], 2018, § 136).

Article 6 § 3 (c) encompasses particular aspects of the right to a fair trial within the meaning of Article 6 § 1 (*Dvorski v. Croatia* [GC], 2015, § 76), and the Court's task in each case is to examine the overall fairness of the proceedings, namely whether the proceedings as a whole were fair (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 257; *Beuze v. Belgium* [GC], 2018, §§ 120-122).

Principles drawn from the current case-law

- Early access to a lawyer guaranteed under Article 6 § 3 (c) may, exceptionally, be delayed. Whether such restriction on access to a lawyer is compatible with the overall fairness of the proceedings is assessed at two stages (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 257):
  - The Court evaluates whether there were compelling reasons for the restriction;
  - Then, the Court weighs the prejudice caused to the rights of the defence by the restriction in the case. In other words, the Court must examine the impact of the restriction on the overall fairness of the proceedings.
- The criterion of compelling reasons is a stringent one (*ibid.*, § 258; *Dimitar Mitev v. Bulgaria*, 2018, § 71). Thus, restrictions on access to legal advice are permitted: (i) only in exceptional circumstances; (ii) must be of a temporary nature; (iii) must be based on an individual assessment of the particular circumstances of the case; and (iv) must have a basis in domestic law, which must regulate the scope and content of any restrictions (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 258).
- In *Beuze v. Belgium* [GC], 2018, §§ 142-144 and 160-164, the Court explained that a general and mandatory (in that case statutory) restriction on access to a lawyer during the first questioning cannot amount to a compelling reason: such a restriction does not remove the

need for the national authorities to ascertain, through an individual and case-specific assessment, whether there are any compelling reasons. In any event, the onus is on the Government to demonstrate the existence of compelling reasons to restrict access to a lawyer, which may prove to be difficult in case of a mandatory restriction.

- However, the absence of compelling reasons does not lead in itself to a finding of a violation of Article 6 since the Court always needs to examine whether the proceedings as a whole were fair (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 262; *Simeonovi v. Bulgaria* [GC], 2017, § 118; *Beuze v. Belgium* [GC], 2018, § 144). Where, however, there are no compelling reasons for restricting access to legal advice, the Court applies a very strict scrutiny to its fairness assessment (*Ibrahim and Others v. the United Kingdom* [GC], 2016, §§ 264-265). Moreover, where access to a lawyer was delayed, and where the suspect was not notified of the right to legal assistance, the privilege against self-incrimination or the right to remain silent, it will be even more difficult for the Government to show that the proceedings as a whole were fair (*Beuze v. Belgium* [GC], 2018, § 146). In this context, an issue from the perspective of the privilege against self-incrimination arises not only in case of actual confessions or directly incriminating remarks but also with regard to statements which can be considered as "substantially affecting" the accused's position (*ibid.*, § 178).
- When examining the proceedings as a whole, the following non-exhaustive list of factors should, where appropriate, be taken into account to the extent it is appropriate in the circumstances of a particular case (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 274; *Beuze v. Belgium* [GC], 2018, § 150; *Sitnevskiy and Chaykovskiy v. Ukraine*, 2016, §§ 78-80):
  - Whether the applicant was particularly vulnerable, for example, by reason of his/her age or mental capacity;
  - The legal framework governing the pre-trial proceedings and the admissibility of evidence at trial, and whether it was complied with; where an exclusionary rule applied, it is particularly unlikely that the proceedings as a whole would be considered unfair;
  - Whether the applicant had the opportunity to challenge the authenticity of the evidence and oppose its use;
  - The quality of the evidence and whether the circumstances in which it was obtained cast doubt on its reliability or accuracy, taking into account the degree and nature of any compulsion;
  - Where evidence was obtained unlawfully, the unlawfulness in question and, where it stems from a violation of another Convention Article, the nature of the violation found;
  - In the case of a statement, the nature of the statement and whether it was promptly retracted or modified;
  - The use to which the evidence was put, and in particular whether the evidence formed an integral or significant part of the probative evidence upon which the conviction was based, and the strength of the other evidence in the case (see further *Brus v. Belgium*, 2021, §§ 34-36, where the Court did not accept that the reliance on the global sufficiency of evidence for the conviction could substitute for the overall fairness assessment relating to an unjustified restriction on the right of early access to a lawyer);
  - Whether the assessment of guilt was performed by professional judges or lay jurors, and in the case of the latter the content of any jury directions;

    - The weight of the public interest in the investigation and punishment of the particular offence in issue; and
    - Other relevant procedural safeguards afforded by domestic law and practice.
- The Court will have particular regard to the existence of an assessment of the restriction on the applicant's access to a lawyer by the domestic courts, or to a lack thereof, and will draw the necessary inferences from it (*Bjarki H. Diego v. Iceland*, 2022, §§ 59 *in fine* and 60; *Bülent Bekdemir v. Türkiye*, 2025, §§ 56-57). However, in the absence of any such assessment, the Court must make its own determination of the overall fairness of the proceedings. Furthermore, in carrying out that task, the Court should not act as a court of fourth instance by calling into question the outcome of the trial or engaging in an assessment of the facts and evidence or the sufficiency of the latter justifying a conviction. These matters, in line with the principle of subsidiarity, are the domain of domestic courts (*Kohen and Others v. Turkey*, 2022, § 59).
- Following the elaboration of the above-noted general principles on the right of access to a lawyer in *Ibrahim and Others v. the United Kingdom* [GC], 2016, §§ 249-274, in several subsequent cases concerning systemic restrictions on that right, the Court left the question open whether that was sufficient, in itself, to lead to a violation of Article 6 §§ 1 and 3 (c). It considered such restrictions not to be based on compelling reasons and thus, applying the very strict scrutiny test to its fairness assessment, found a violation of Article 6 §§ 1 and 3 (c) of the Convention (for instance, *Bayram Koç v. Turkey*, 2017, § 23; *İzzet Çelik v. Turkey*, 2018, § 38).
- However, in *Beuze v. Belgium* [GC], 2018, §§ 144, 160-165, the Court confirmed that the two-stage test, as elaborated in *Ibrahim and Others v. the United Kingdom* [GC], 2016, applied also to general and mandatory (in that case statutory) restrictions. In such circumstances, however, the Court applies very strict scrutiny to its fairness assessment, and the absence of compelling reasons weighs heavily in the balance which may thus be tipped towards finding a violation of Article 6 §§ 1 and 3 (c) of the Convention.

Noteworthy examples

- *Ibrahim and Others v. the United Kingdom* [GC], 2016 - restriction on access to a lawyer in the context of fight against terrorism;
- *Simeonovi v. Bulgaria* [GC], 2017 - Ibrahim and Others principles in the context of an ordinary crime (armed robbery and murder);
- *Beuze v. Belgium* [GC], 2018 - general and mandatory (statutory) restriction on access to a lawyer during the first police interview and impossibility for the suspect to be assisted by a lawyer during the questioning in subsequent pre-trial proceedings;
- *Artur Parkhomenko v. Ukraine*, 2017, §§ 83-91 - detailed assessment of the overall fairness of the proceedings where no compelling reasons for the restriction existed;
- *Dimitar Mitev v. Bulgaria*, 2018 - restriction on access to a lawyer during police questioning;
- *Dubois v. France*, 2022 - restriction on access to a lawyer during the first questioning of a person not deprived of liberty.

Recap of general principles

- *Simeonovi v. Bulgaria* [GC], 2017, §§ 110-120;
- *Sitnevskiy and Chaykovskiy v. Ukraine*, 2016, §§ 57-63;
- *Beuze v. Belgium* [GC], 2018, §§ 119-150.

Related (but different) topics

Waiver of guarantees under Article 6 of the Convention[2]:

- An issue often arising in the context of the right of access to a lawyer is the question of waiver of the guarantees of legal defence under Article 6. As a rule, when a waiver of the right of access to a lawyer satisfies the "knowing and intelligent waiver" standard in the Court's case-law, there will be no grounds for doubting the overall fairness of the criminal proceedings against the applicant (*Šarkienė v. Lithuania* (dec.), 2017, § 38; *Sklyar v. Russia*, 2017, § 26).

Lawyer of one's own choosing:

- In *Dvorski v. Croatia* [GC], 2015, § 78, the Court held that a person charged with a criminal offence who does not wish to defend him- or herself in person must be able to have recourse to legal assistance of his or her own choosing from the initial stages of the proceedings. When the right of access to a lawyer of one's own choosing has been restricted, the Court needs to examine first whether such a restriction was based on "relevant and sufficient" reasons. Where no such reasons existed, the Court proceeds to evaluate the overall fairness of the criminal proceedings (*ibid.*, §§ 81-82).
- The right of access to a lawyer of one's own choosing also accordingly applies at the trial stage of the proceedings (*Elif Nazan Şeker v. Turkey*, 2020, § 50).

Communication with one's lawyer:

- The right to effective legal assistance includes, *inter alia*, the accused's right to communicate with his/her lawyer in private. Limitations may be imposed on this right if a good cause exists, but such limitation should not deprive the accused of a fair hearing (*Öcalan v. Turkey* [GC], 2005, § 133). A "good cause" in this context would be equivalent of a compelling reason justifying that limitation (*Moroz v. Ukraine*, 2017, §§ 67-70). In each case, the Court must examine whether the proceedings as a whole were fair (*ibid.*, § 74).

[2] See the relevant Key Theme on "Waiver of the guarantees of a fair trial".

KEY CASE-LAW REFERENCES

Leading cases:

- *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008 (violation of Article 6 § 3 (c) in conjunction with Article 6 § 1, on account of the lack of legal assistance to the applicant while he was in police custody);
- *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, 13 September 2016 (no violation of Article 6 §§ 1 and 3 (c) in respect of the first three applicants; violation of Article 6 §§ 1 and 3 (c) in respect of the fourth applicant).

Other cases under Article 6 §§ 1 and 3 (c):

- *Sitnevskiy and Chaykovskiy v. Ukraine*, nos. 48016/06 and 7817/07, 10 November 2016 (violation of Article 6 §§ 1 and 3 (c) in respect of the first applicant);
- *Artur Parkhomenko v. Ukraine*, no. 40464/05, 16 February 2017 (no violation of Article 6 §§ 1 and 3 (c));
- *Simeonovi v. Bulgaria* [GC], no. 21980/04, 12 May 2017 (no violation of Article 6 §§ 1 and 3 (c));
- *Bayram Koç v. Turkey*, no. 38907/09, 5 September 2017 (violation of Article 6 §§ 1 and 3 (c));
- *İzzet Çelik v. Turkey*, no. 15185/05, 23 January 2018 (violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 on account of the lack of legal assistance available to the applicant during the preliminary investigation);
- *Dimitar Mitev v. Bulgaria*, no. 34779/09, 8 March 2018 (violation of Article 6 §§ 1 and 3 (c));
- *Beuze v. Belgium* [GC], no. 71409/10, 9 November 2018 (violation of Article 6 §§ 1 and 3 (c));
- *Soytemiz v. Turkey*, no. 57837/09, 27 November 2018 (violation of Articles 6 §§ 1 and 3 (c));
- *Doyle v. Ireland*, no°51979/17, 23 May 2019 (no violation of Article 6 §§ 1 and 3 (c));
- *Ayetullah Ay v. Turkey*, nos. 29084/07 and 1191/08, 27 October 2020 (violation of Article 6 §§ 1 and 3);
- *Brus v. Belgium*, no. 18779/15, 14 September 2021 (violation of Article 6 §§ 1 and 3 (c) as regards the fairness of the proceedings);
- *Bjarki H. Diego v. Iceland*, no. 30965/17, 15 March 2022 (violation of Article 6 §§ 1 and 3 (a) and (c));
- *Dubois v. France*, no. 52833/19, 28 April 2022 (no violation of Article 6 §§ 1 and 3 (c));
- *Kohen and Others v. Turkey*, no. 66616/10, 7 June 2022 (no violation of Article 6 §§ 1 and 3 (c) on account of the complaints concerning (i) the restrictions imposed on the first three applicants' right of access to a lawyer and the use of the statements that they made without a lawyer being present, (ii) the use of the statements made by certain other co-defendants in the absence of a lawyer in respect of all the applicants; and (iii) the use of the statements made by one of the applicants in respect of the other three applicants);
- *Hamdani v. Switzerland*, no. 10644/17, 28 March 2023 (no violation of Article 6 §§ 1 and 3 (c));
- *Lalik v. Poland*, no. 47834/19, 11 May 2023 (violation of Article 6 § 3 (c));
- *Krpelík v. the Czech Republic*, no. 23963/21, 12 June 2025 (violation of Article 6 §§ 1 and 3 (c));

- *Bülent Bekdemir v. Türkiye*, no. 42881/18, 17 June 2025 (violation of Article 6 §§ 1 and 3 (c));
- *Opalenko v. Ukraine**, no. 46673/18, 17 July 2025 (no violation of Article 6 §§ 1 and 3 (c)).