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This factsheet does not bind the Court and is not exhaustive

## Police arrest and assistance of a lawyer

**Article 6 § 3 (c)** (right to legal assistance) of the **European Convention on Human Rights**: “Everyone charged with a criminal offence has the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”

“Certainly the primary purpose of Article 6 [of the Convention] as far as criminal matters are concerned is to ensure a fair trial by a tribunal competent to determine any criminal charge, but it does not follow that the Article has no application to pre-trial proceedings.” (*Imbriosca v. Switzerland*, judgment of 24 November 1993, § 36).

« [I]n order for the right to a fair trial to remain sufficiently “practical and effective” ..., Article 6 § 1 [of the Convention] requires that, as a rule, access to a lawyer should be provided as from the first interrogation of a suspect by the police, unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right. Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 ... The rights of the defence will in principle be irretrievably prejudiced when incriminating statements made during police interrogation without access to a lawyer are used for a conviction.” (*Salduz v. Turkey*, Grand Chamber judgment of 27 November 2008, § 55).

### Access to a lawyer

#### **Salduz v. Turkey**

27 November 2008 (Grand Chamber)

Charged with, and subsequently convicted of, participation in an unauthorised demonstration in support of the PKK (the Workers’ Party of Kurdistan, an illegal organisation), the applicant, in the absence of a lawyer, made a statement while in police custody admitting his guilt.

The European Court of Human Rights held that there had been a **violation of Article 6 § 3 (c)** (right to legal assistance) **taken together with Article 6 § 1** (right to a fair trial) of the European Convention on Human Rights. It found that even though the applicant had been able to contest the charges at his trial, the fact that he could not be assisted by a lawyer while in police custody had irretrievably affected his defence rights, especially as he was a minor.

#### **Pishchalnikov v. Russia**<sup>1</sup>

24 September 2009

Arrested on suspicion of aggravated robbery, the applicant was interrogated – both on the day of his arrest and immediately on the following day – in the absence of a lawyer, although he had clearly indicated a defence counsel he wanted to represent him. During these interrogations he confessed to having taken part in the activities of a criminal group which included among others a murder and kidnapping, crimes for which he was later convicted.

<sup>1</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights (“the Convention”).

The Court held that there had been a **violation of Article 6 § 3 (c) in conjunction with Article 6 § 1** of the Convention. It found that the lack of legal assistance to the applicant at the initial stages of police questioning had affected irreversibly his defence rights and undermined the possibility of him receiving a fair trial.

### **Dayanan v. Turkey**

13 October 2009

The applicant, who was charged with, and subsequently convicted of, being a Hezbollah member, did not have the assistance of a lawyer while he was in police custody.

The Court held that there had been a **violation of Article 6 § 3 (c) taken together with 6 § 1** of the Convention. It found that that restriction (which was systematic, as it was prescribed by the relevant provisions of Turkish law) of the right of an individual deprived of his liberty to have access to a lawyer was sufficient for it to be able to conclude that there had been a violation of Article 6 of the Convention, even though the applicant had remained silent while in police custody.

### **Yeşilkaya v. Turkey**

8 December 2009

The applicant was refused access to a lawyer while in police custody, although he had denied any involvement in the offences imputed to him by the interviewing officers.

The Court held that there had been a **violation of Article 6 § 3 (c) taken together with Article 6 § 1** of the Convention on account of the lack of legal assistance to the applicant while in police custody.

### **Boz v. Turkey**

9 February 2010

Arrested on suspicion of belonging to the PKK (Workers' Party of Kurdistan, an illegal organisation), the applicant was at the end of his trial sentenced to the death penalty for "membership of an armed gang", a sentence which was subsequently commuted to life imprisonment. He complained in particular of the fact that he did not have access to a lawyer while in police custody.

The Court reiterated that systematic restriction of access to a lawyer pursuant to the relevant legal provisions **breached Article 6** of the Convention.

### **Brusco v. France**

14 October 2010

The applicant, who was suspected of having masterminded an aggression, was taken into police custody and questioned as a witness, after being made to swear to tell the truth.

The Court held that there had been a **violation of Article 6 §§ 1 and 3** (right to remain silent and not to incriminate oneself) of the Convention. According to the Court, the applicant was not a mere witness but a person "charged with a criminal offence", and as such should have had the right to remain silent and not to incriminate himself, guaranteed by Article 6 §§ 1 and 3 of the Convention. The situation was aggravated by the fact that the applicant was not assisted by a lawyer until his 20th hour in police custody. Had a lawyer been present, he would have been able to inform the applicant of his right to remain silent.

### **Nechiporuk and Yonkalo v. Ukraine**

21 April 2011

The first applicant complained in particular about the unfairness of the proceedings against him, notably that his conviction for a number of offences, including premeditated murder for profit committed following a conspiracy with a group of persons, had been based on statements made without the assistance of a lawyer.

The Court held that there had been a **violation of Article 6 §§ 1 and 3 (c)** of the Convention. It was undisputed by the parties that the applicant had not become legally represented until having spent three days in detention. The applicant had confessed several times to murder at the early stage of his interrogation when he was not assisted

by counsel, and had undoubtedly been affected by the restrictions on his access to a lawyer in that his confessions to the police were used for his conviction.

### **Mader v. Croatia**

21 June 2011

Serving a prison sentence for murder, the applicant complained in particular of having been beaten by the police during his questioning at the Zagreb Police Department, of having been forced to sit on a chair and having been deprived of sleep and food during the three days that he was questioned. He also complained that the criminal proceedings against him had been unfair, in particular as he had lacked legal assistance during the police questioning.

The Court held that there had been a **violation of Article 6 § 3 in conjunction with Article 6 § 1** of the Convention, on account of the lack of legal assistance afforded to the applicant during his questioning by the police. While it was not for the Court to speculate on the impact which access to a lawyer during police custody would have had on the ensuing proceedings, it was clear that neither the assistance provided subsequently by a lawyer nor the adversarial nature of the proceedings could counteract the defects which had occurred during his initial questioning. The applicant had further not waived his right to legal assistance during his police questioning, as he had complained about the lack of that assistance from the initial stages of the proceedings. The Court also held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention both in respect of the applicant's treatment at the Zagreb Police Department and in respect of the failure to investigate his complaint.

### **Huseyn and Others v. Azerbaijan**

26 July 2011

This case concerned the complaint by opposition activists about the unfairness of criminal proceedings brought against them for allegedly inciting demonstrators to violence.

As to the applicants' legal assistance upon their arrest, the Court noted that three of them had been questioned without a lawyer, and without having expressly waived their right to legal assistance. Such a restriction had clearly infringed their defence rights at the initial stage of the proceedings, in **violation of Article 6 § 1 taken together with Article 6 § 3 (c)** of the Convention.

### **Bandaletov v. Ukraine**

31 October 2013

The applicant was summoned to a police station with several others for questioning as a witness in connection with an investigation into a double murder committed in his home. He confessed to the offence. The following day he was arrested as a suspect and a lawyer was appointed to assist him. The applicant at all times thereafter confirmed his confession. He was sentenced to life imprisonment. The applicant complained that at the initial stage of the investigation he had not been assisted by a lawyer, and that the domestic courts had failed to mitigate his sentence even though he had voluntarily surrendered to the police and confessed to the crime.

The Court held that there had been **no violation of Article 6 §§ 1 and 3** of the Convention, finding that the criminal proceedings against the applicant had been fair overall. The domestic authorities had changed the applicant's status from witness to suspect and provided him with a lawyer as soon as they had plausible reasons to suspect him. At his first interview as a suspect the applicant was legally represented and no investigative measures were taken after his initial confession before he had been assigned a lawyer. The applicant had maintained his confession throughout the pre-trial investigation and judicial proceedings, during which he was represented by several different lawyers. His initial confession could hardly be regarded as having been used to convict him, as the trial court had relied exclusively on the investigative measures conducted afterwards, when the applicant already had legal assistance. Lastly, the

applicant's request for mitigation of sentence on the ground of his voluntary surrender had been examined by the domestic courts.

### **Pakshayev v. Russia**<sup>2</sup>

13 March 2014

Convicted of murder and sentenced to ten years' imprisonment in January 2001 – the conviction being eventually upheld in October 2006 – the applicant complained that he had been denied access to a lawyer during his questioning and first few days of police custody in May 1997. He submitted that during the questioning he had been threatened by the investigator that if he did not confess he would be raped by his cellmates. The applicant then confessed to the murder but retracted his confession during the trial when represented by a lawyer. Before the Court, he complained that he had not had any legal assistance during the initial stage of the criminal proceedings and that the confession he had made was then used to convict him.

The Court held that there had been a **violation of Article 6 §§ 1 and 3** of the Convention, finding that the use of his confession statement made without the benefit of legal advice for the applicant's conviction undermined the fairness of the proceedings as a whole.

### **Blaj v. Romania**

8 April 2014

The applicant, who was suspected of accepting a bribe, had been placed under police surveillance. A third party who had been cooperating with the police came to meet him and left an envelope containing money on his desk. The police officers intervened immediately and caught the applicant red handed. In accordance with domestic law, they drew up a report of the offence. Later that day the applicant was informed of the charges against him and of the fact that he had a right to remain silent and to see a lawyer. Subsequently he had the assistance of a lawyer during questioning. The applicant complained in particular that he had not been informed of his right to silence and legal representation at the time when he was "caught in the act".

The Court held that there had been **no violation of Article 6 §§ 1 and 3** of the Convention in respect of the lack of assistance from a lawyer during the applicant's questioning by the police under the *flagrante delicto* procedure. Observing that under Romanian law where a person is "caught in the act" of committing an offence, the investigating authorities must confine themselves to questions about the material evidence found at the scene of the *flagrante delicto* and must not question the person about his involvement in a criminal offence, it found that the investigating authorities had not overstepped the mark in the applicant's case. It also noted that when the applicant had been questioned by the anti-corruption prosecutor about the offence he had had access to a lawyer. In all his statements, the applicant had maintained his innocence and had never contested the statements contained in the procès-verbal. The Court therefore found that the use of those statements at trial could not be said to have prejudiced the fairness of his trial. The Court also noted in conclusion that the applicant had never alleged that his very first statements recorded in the procès-verbal had been the result of duress or ill treatment.

### **Carkçı (no. 2) v. Turkey**

14 October 2014

Serving a life sentence for participating in an armed robbery of a jewellery shop during which the shop owner was shot dead, the applicant complained in particular that the criminal proceedings against him had been unfair. Notably, he alleged that the statements taken from him without the assistance of a legal representative and not even bearing his signature had been used as evidence to convict him.

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<sup>2</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court held that there had been a **violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1** of the Convention, on account of the lack of legal assistance afforded to the applicant while in the custody of the gendarmerie.

**A.T. v. Luxembourg (no. 30460/13)**

9 April 2015

This case concerned the failure to provide the applicant with effective legal assistance after he was arrested under a European Arrest Warrant, during both his police interview and his first appearance before the investigating judge the next day.

The Court found in particular that, as regards the police interview, the statutory provisions then in force implicitly excluded the assistance of a lawyer for persons arrested under a European Arrest Warrant issued by Luxembourg. Since the domestic court had not remedied the consequences of that lack of assistance, by excluding from its reasoning the statements taken during that interview, the Court held that there had been a **violation of Article 6 § 3 (c) taken together with Article 6 § 1** of the Convention on account of the failure to provide legal assistance during the police interview. As further regards the applicant's first appearance before the investigating judge, the Court found that the lack of access to the file prior to that hearing had **not** constituted a **violation of Article 6 § 3 (c) taken together with Article 6 § 1**, as Article 6 of the Convention did not guarantee unlimited access to the file prior to such an appearance. However, the Court held that the possibility for the applicant to consult his lawyer before that hearing was not sufficiently guaranteed by Luxembourg law. In so far as the applicant had not been able to converse with his lawyer before the hearing in question, the Court thus found a **violation of Article 6 § 3 (c) taken together with Article 6 § 1** of the Convention.

**Turbylev v. Russia**<sup>3</sup>

6 October 2015

This case concerned the applicant's complaint of having been ill-treated in police custody and of the unfairness of the criminal trial against him, in which his statement of "surrender and confession", made as a result of his ill-treatment and in the absence of a lawyer, was used as evidence.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, both on account of the applicant's ill-treatment and on account of the ineffective investigation into the related complaints. It also held that there had been a **violation of Article 6 §§ 1 and 3 (c)** of the Convention, finding that the admission of the statement of "surrender and confession" as evidence had rendered the applicant's trial unfair. The Court observed in particular that the absence of a requirement, under Russian law, of access to a lawyer for such a statement had been used to circumvent the applicant's right as a *de facto* suspect to legal assistance. This situation had resulted from the systematic application of legal provisions, as interpreted by the domestic courts. Moreover, in failing to conduct an independent careful assessment of the "quality" of the statement as evidence, and instead relying on the investigative authority's findings, the domestic courts had legalised the police officers' use of a statement of "surrender and confession" to document the applicant's confession obtained as a result of his inhuman and degrading treatment after his apprehension on suspicion of having committed a crime.

**Dvorski v. Croatia**

20 October 2015 (Grand Chamber)

This case concerned the refusal by the police to allow a lawyer hired by the applicant's parents to represent him while he was being questioned at a police station on suspicion of multiple murder, armed robbery and arson. The applicant confessed to the offences after signing a power of attorney authorising another lawyer to represent him.

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<sup>3</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court held that there had been a **violation of Article 6 §§ 1 and 3** of the Convention. It found in particular that the police had not informed the applicant either of the availability of the lawyer hired by his family or of the lawyer's presence at the police station. During questioning the applicant had confessed to the offences with which he was charged, and his confession had been admitted in evidence at his trial. The Court observed that the national courts had not properly addressed that issue, and in particular had failed to take the necessary measures to ensure a fair trial.

### **Borg v. Malta**

12 January 2016

This case mainly concerned the complaint by a convicted offender of not having had any legal assistance during questioning in police custody, resulting from the absence of any provisions under Maltese law in force at the time allowing for legal assistance during pre-trial investigation and questioning by the police. Furthermore, the applicant complained that the Maltese Constitutional Court had changed its interpretation of the European Court's case-law concerning the right to legal assistance in police custody, which he alleged ran counter to the principle of legal certainty and was in breach of Article 6 of the Convention.

The Court held that there had been a **violation of Article 6 § 3 in conjunction with Article 6 § 1** of the Convention, finding in particular that the applicant had been denied the right to legal assistance at the pre-trial stage as a result of a systemic restriction applicable to all accused persons. This fell short of the requirement under Article 6 that the right to assistance of a lawyer at the initial stages of police interrogation might only be subject to restrictions if there were compelling reasons. The Court further held that there had been **no violation of Article 6 § 1** of the Convention in respect of an alleged lack of legal certainty concerning the constitutional proceedings.

### **Ibrahim and Others v. the United Kingdom**

13 September 2016 (Grand Chamber)

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene and a police investigation immediately commenced. The first three applicants were arrested on suspicion of having detonated three of the bombs. The fourth applicant was initially interviewed as a witness in respect of the attacks but it subsequently became apparent that he had assisted one of the bombers after the failed attack and, after he had made a written statement, he was also arrested. All four applicants were later convicted of criminal offences. The case concerned the temporary delay in providing the applicants with access to a lawyer, in respect of the first three applicants, after their arrests, and, as regards the fourth applicant, after the police had begun to suspect him of involvement in a criminal offence but prior to his arrest; and the admission at their subsequent trials of statements made in the absence of lawyers.

The Court held that there had been **no violation of Article 6 §§ 1 and 3 (c)** (right to a fair trial and right to legal assistance) of the Convention in respect of the three first applicants and that there had been a **breach of those provisions** in respect of the fourth applicant. In respect of the three first applicants the Court was convinced that, at the time of their initial police questioning, there had been an urgent need to avert serious adverse consequences for the life and physical integrity of the public, namely further suicide attacks. There had therefore been compelling reasons for the temporary restrictions on their right to legal advice. The Court was also satisfied that the proceedings as a whole in respect of each of the first three applicants had been fair. The position with regard to the fourth applicant, who also complained about the delay in access to a lawyer, was different. He was initially interviewed as a witness, and therefore without legal advice. However, it emerged during questioning that he had assisted a fourth bomber following the failed attack. At that point, according to the applicable code of practice, he should have been cautioned and offered legal advice. However, this was not done. After he had made a written witness statement, he was arrested, charged with, and subsequently convicted of, assisting the fourth bomber and failing to disclose

information after the attacks. In his case, the Court was not convinced that there had been compelling reasons for restricting his access to legal advice and for failing to inform him of his right to remain silent. It was significant that there was no basis in domestic law for the police to choose not to caution him at the point at which he had started to incriminate himself. The consequence was that he had been misled as to his procedural rights. Further, the police decision could not subsequently be reviewed as it had not been recorded and no evidence had been heard as to the reasons behind it. As there were no compelling reasons, it fell to the UK Government to show that the proceedings were nonetheless fair. In the Court's view they were unable to do this and it accordingly concluded that the overall fairness of the fourth applicant's trial had been prejudiced by the decision not to caution him and to restrict his access to legal advice.

### **Simeonovi v. Bulgaria**

12 May 2017 (Grand Chamber)

The applicant, who is currently serving a sentence in Sofia Prison, alleged in particular that he had not been assisted by a lawyer during the first days of his detention.

The Grand Chamber held that there had been **no violation of Article 6 §§ 1 and 3 (c)** (right to a fair trial and right to legal assistance) of the Convention, finding that the Bulgarian Government had presented relevant and sufficient evidence to demonstrate that they had not irremediably infringed the fairness of the criminal proceedings taken as a whole on account of the lack of legal assistance during the first three days of the applicant's police custody. In particular, the Court noted that no evidence capable of being used against the applicant had been obtained and included in the criminal file during that period; that the applicant, assisted by a lawyer of his own choosing, had voluntarily confessed two weeks after being charged, when he had been informed of his procedural rights, including the privilege against self-incrimination; that the applicant had actively participated in all stages of the criminal proceedings; that his conviction had not been based solely on his confession but also on a whole body of consistent evidence; that the case had been assessed at three judicial levels and that the domestic courts had provided adequate reasons for their decisions in both factual and legal terms and had properly examined the issue of respect for procedural rights.

### **Beuze v. Belgium**

9 November 2018 (Grand Chamber)

The applicant, sentenced to life imprisonment for intentional homicide, complained that he had been denied access to a lawyer while in police custody, had been insufficiently informed of his right to remain silent and not to incriminate himself, and had also been deprived of legal assistance when he was questioned, or subjected to other investigative acts, during the judicial pre-trial investigation.

The Grand Chamber held that there had been a **violation of Article 6 §§ 1 and 3 (c)** (right to a fair trial and right to legal assistance) of the Convention. It found in particular that the criminal proceedings, when considered as a whole, had not remedied the procedural defects occurring at the pre-trial stage. The restrictions on the right of access to a lawyer had been particularly extensive and in those circumstances, without being sufficiently informed of his right to remain silent, the applicant had made detailed statements while in police custody. His statements had subsequently been included in the evidence before the Assize Court, which had failed to conduct an appropriate examination of how they had been obtained or to consider the impact of the lawyer's absence. The Court of Cassation had focused on the lack of legal assistance in police custody but had not assessed the consequences for the applicant's defence rights of the lawyer's absence during his subsequent police interviews, examinations by the investigating judge and other acts during the judicial investigation. In the Grand Chamber's view, the combination of these various factors had rendered the proceedings unfair as a whole.

See also: **Tonkov v. Belgium**, judgment of 8 March 2022.

### Doyle v. Ireland

23 May 2019

This case concerned the applicant's complaint that his right of access to a solicitor was restricted during questioning on suspicion of murder. Although the applicant could consult with his solicitor prior to the first interview and thereafter, police practice at the time meant solicitors were not permitted to be present during police questioning.

The Court held that there had been **no violation of Article 6 §§ 1 and 3 (c)** (right to a fair trial and right to legal assistance of own choosing) of the Convention. It noted in particular that very strict scrutiny had to be applied in cases where, as here, there had been no compelling reasons to justify restricting the applicant's right of access to a lawyer. However, when examining the proceedings as a whole, the Court found that the overall fairness of the trial had not been prejudiced.

### Olivieri v. France and Bloise v. France

11 July 2019

Both cases concerned periods spent in police custody prior to the legislative reform of April 2011<sup>4</sup>. The applicants alleged that their criminal convictions had been based on the confessions they made while in police custody, during which time they had not been notified of their right to remain silent and had not had the effective assistance of a lawyer.

The Court held that there had been a **violation of Article 6 §§ 1 (right to a fair trial) and 3 (c)** (right to be assisted by a lawyer) of the Convention in the first case and **no violation of Article 6 §§ 1 and 3 (c)** in the second case. In the case of the first applicant, and with regard to his right not to incriminate himself, the Court noted in particular the existence of statements and answers given to the investigators which had clearly affected his position in the proceedings. Firstly, he had been questioned by the police for around ten hours while in police custody, after which he had admitted responsibility. Secondly, there was nothing in the reasoning of the domestic decisions to suggest that other elements could be regarded as an integral and significant part of the evidence on which his conviction had been based. The Court therefore found that the criminal proceedings, considered as a whole, had not cured the procedural defects occurring during police custody. In the case of the second applicant the Court noted in particular that the trial and appeal courts had based their decisions on evidence other than the statements made in police custody, namely on the evidence established during the investigation, when the applicant had been assisted by a lawyer, on the hearings before the first-instance court, on the precise and detailed testimony of third parties directly connected with the applicant's activities, and on examination of the accounting and banking records. The Court found that in that case the criminal proceedings, considered as a whole, had cured the procedural defects occurring during police custody.

### Atristain Gorosabel v. Spain

18 January 2022

This case concerned the pre-trial detention incommunicado of the applicant, who was alleged to be part of the terrorist group ETA, and the fact that he was questioned by the police without a lawyer present, making self-incriminating statements. Those statements had formed part of the reasons for his conviction for terrorism offences.

The Court held that there had been a **violation of Article 6 §§ 1 (right to a fair trial) and 3 (c)** (right to legal assistance of own choosing) of the Convention in the present case. It found, in particular, that preventing the applicant from having access to counsel without giving individualised reasons had undermined the fairness of the subsequent criminal proceedings in so far as the applicant's incriminating initial statement was admitted in evidence. The absence of remedial measures during the trial had irretrievably prejudiced his defence rights. The Court further noted that the Code of Criminal Procedure had been amended by an Organic Law in October 2015 and currently

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<sup>4</sup>. The law in force at the relevant time made no provision for persons in police custody to be notified of their right to remain silent or for them to be assisted by a lawyer during questioning.



provided an individual assessment of the particular circumstances of individuals held incommunicado. That amendment had not however been applicable at the time in question.

### Cases concerning minors

#### Salduz v. Turkey

27 November 2008 (Grand Chamber)

Charged with, and subsequently convicted of, participation in an unauthorised demonstration in support of the PKK (the Workers' Party of Kurdistan, an illegal organisation), the applicant, in the absence of a lawyer, made a statement while in police custody admitting his guilt.

The Court held that there had been a **violation of Article 6 § 3 (c) taken together with Article 6 § 1** of the Convention. It noted in particular that one of the specific elements of the instant case was the age of the applicant – a minor at the time of the offence. Having regard to a significant number of relevant international law materials concerning legal assistance to minors in police custody, it stressed the fundamental importance of providing access to a lawyer where the person in custody is a minor (see paragraph 60 of the [judgment](#)).

#### Panovits v. Cyprus

11 December 2008

This case concerned in particular the failure to inform the applicant, who was a minor, of his right to consult a lawyer prior to first police questioning.

The Court held that there had been a **violation of Article 6 §§ 1 and 3 (c)** of the Convention. In view of the circumstances, and especially given the applicant's age and the fact that he had not assisted by his guardian during the questioning, it found that the lack of sufficient information on the applicant's right to consult a lawyer before his questioning by the police had constituted a breach of his defence rights.

See also: [Martin v. Estonia](#), judgment of 30 May 2013.

#### Güvec v. Turkey

20 January 2009

This case concerned in particular the inability of a minor defendant to participate effectively in his criminal trial and lack of adequate legal representation. When questioned by the police, and subsequently by the prosecutor and the judge, the applicant was not represented by a lawyer. During the retrial, both the applicant and his lawyer were absent from most of the hearings.

The Court held that there had been a **violation of Article 6 § 1 in conjunction with Article 6 § 3 (c)** of the Convention. It considered in particular that the applicant had not been able to effectively participate in the trial, given that he had not attended at least 14 of the 30 hearings both during the initial trial and at retrial. Having considered the entirety of the criminal proceedings against the applicant, and their shortcomings, in particular the lack of legal assistance for most of the proceedings, the Court concluded that there had been a violation of his defence rights.

#### Soykan v. Turkey

21 April 2009

At the age of 16 the applicant was arrested and eventually sentenced to two years and six months' imprisonment for assisting the illegal organisation "Revolutionary People's Liberation Party/Front" (Devrimci Halk Kurtuluş Cephesi Partisi – DHKP/C). He complained in particular of violations of his defence rights in the criminal proceedings against him.

The Court held that there had been a **violation of Article 6 § 3 c in conjunction with Article 6 § 1** of the Convention as the applicant had not had access to a lawyer while in police custody.

### Adamkiewicz v. Poland

2 March 2010

At the age of 15 the applicant was accused of murdering a 12-year-old boy. He was found guilty of the charges against him and placed in a reformatory for six years. The applicant complained in particular of the restrictions placed on the exercise of his defence rights during the investigation and the fact that statements made by him then had been admitted at the trial.

The Court held that there had been a **violation of Article 6 § 3 (c) taken in conjunction with Article 6 § 1** of the Convention. It observed in particular that the applicant had not been informed by his lawyer of his right to remain silent until six weeks after the proceedings had begun and he had been placed in a children's home, after several unsuccessful attempts by his lawyer to meet him. The authorities had therefore obtained his incriminating admissions before he had even been informed of that right. Given his age, it could not be asserted that the applicant knew of his right to seek legal representation and of the consequences of his failure to do so, whereas it was crucial for him, isolated in a children's home as he had been during the decisive period of the investigation, to have broad access to a lawyer from the very beginning of the proceedings.

### Dushka v. Ukraine

3 February 2011

This case concerned the unlawful detention and questioning without a lawyer of a 17-year-old's. The applicant alleged that he was tortured in police custody in order to make him confess to a robbery.

The Court found that such practice, especially given the applicant's vulnerable age, qualified as inhuman and degrading treatment, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. In particular the fact that the confession had been made in a setting lacking such procedural guarantees as the presence of a lawyer, and had then been retracted upon release, pointed to the conclusion that it might not have been given freely.

### Blokhin v. Russia<sup>5</sup>

23 March 2016 (Grand Chamber)

This case concerned the detention for 30 days of a mentally disturbed 12-year old boy in a juvenile temporary detention centre. The applicant maintained notably that the proceedings against him had been unfair because he had allegedly been questioned by the police in the absence of his guardian, counsel or a teacher.

The Grand Chamber held that there had been a **violation of Article 6 §§ 1 and 3** of the Convention. It agreed with the Chamber judgment in the case that the proceedings concerning the boy's placement in the temporary detention centre were to be considered criminal proceedings for the purpose of Article 6, although they had not been classified as criminal under Russian law. In particular, the domestic courts had referred to the fact that the boy had committed a delinquent act as the main reason for his placement in the detention centre. His defence rights had been violated because he had been questioned by the police without legal assistance and the statements of two witnesses whom he was unable to question had served as a basis for his placement in temporary detention.

## Voluntary waiver of right to assistance of a lawyer

### Aleksandr Zaichenko v. Russia<sup>6</sup>

18 February 2010

Convicted of stealing diesel from the company for which he worked as a driver and sentenced to a suspended prison sentence, the applicant complained that his conviction

<sup>5</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

<sup>6</sup>. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

had been based on admissions he had made to police before the trial in the absence of a lawyer.

The Court held that there had been **no violation of Article 6 § 3 (c) taken together with Article 6 § 1** of the Convention. Although the applicant had not been free to leave when he was stopped on 21 February the circumstances of the case disclosed no significant curtailment of his freedom of action sufficient to activate a requirement for legal assistance at that stage. The police's role had been to draw up a record of inspection of the car and to hear the applicant's explanation as to the origin of the cans. That information had then been passed to an inquirer who had in turn compiled a report on the basis of which his superior had decided to open a criminal case against the applicant. At that stage (2 March 2001) the applicant was apprised of his right to legal assistance, but voluntarily and unequivocally agreed to sign the act of accusation and waived his right to legal assistance, indicating that he would defend himself at the trial.

### **Yoldas v. Turkey**

23 February 2010

Held in police custody on charges of membership of an illegal organisation, the applicant was at the end of his trial sentenced to life imprisonment. He complained in particular that he had not been assisted by a lawyer while in police custody.

The Court held that there had been **no violation of Article 6 §§ 1 and 3 (c)** of the Convention. Noting in particular that, despite having the right to be assisted by a lawyer while in police custody and having been reminded of that right, the applicant had refused assistance, it found that nothing in the proceedings gave grounds to suspect that the waiver by the applicant of his right to be assisted by a lawyer while in police custody had not been free and unequivocal.

### **Akdağ v. Turkey**

17 September 2019

The applicant alleged that she had confessed to being a member of an illegal organisation after being threatened and ill-treated by the police, without access to a lawyer in police custody.

The Court held that there had been a **violation of Article 6 §§ 1 and 3 (c)** of the Convention. Although it rejected as inadmissible the applicant's complaint about her conviction on the basis of police statements taken under duress because of lack of evidence of ill-treatment, it found that the Turkish Government had failed to show that a printed "X" next to "no lawyer sought" on her statement form had amounted to her validly waiving her right to a lawyer during custody. In point of fact, as soon as she had had access to a lawyer at the end of her custody, she had retracted her statements. Nor was the Court satisfied with the national courts' response to the applicant's complaint. They had neither examined the validity of the waiver nor the statements she had made to the police in the absence of a lawyer. Such lack of scrutiny had not been remedied by any other procedural safeguards, and the overall fairness of the proceedings against her had therefore been prejudiced.

See also: **Ruşen Bayar v. Turkey**, judgment of 19 February 2019; **Ekrem Can and Others v. Turkey**, judgment of 8 March 2022.

### **Bogdan v. Ukraine**

8 February 2024

This case concerned the applicant's allegation that his conviction in 2014 for burglary had been unfair because it had been based on a confession he had made at the initial stages of the investigation when he had been in unrecorded detention, suffering from drug withdrawal symptoms and had waived his right to a lawyer. He submitted in particular that the waiver had not been valid and his right of access to a lawyer had thus been breached.

The Court held that there had been a **violation of Article 6 §§ 1 and 3** of the Convention in respect of the applicant, finding that the Ukrainian Government had failed to demonstrate convincingly why, exceptionally and in the specific circumstances of the

case, the overall fairness of the trial had not been irretrievably prejudiced by the restriction on the applicant's access to legal advice. The Court noted in particular that the domestic courts' failure to question the waiver's validity had had very serious consequences for the overall fairness of the trial. Their assessment of the issue of his mental state during the reconstruction had been superficial and they had not sufficiently addressed his complaints concerning the breach of his right to a lawyer. The exclusionary rule in domestic law had not been applied. For that reason, applying strict scrutiny, the Court was not convinced that the criminal proceedings, when considered as a whole, had remedied the procedural defects which had occurred on the first days of the investigation.

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## Absence of an interpreter during police questioning

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### **Baytar v. Turkey**

14 October 2014

This 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 held that there had been a **violation of Article 6 § 3 (e)** (right to the assistance of an interpreter) **taken together with Article 6 § 1** of the Convention. It 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, the applicant 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.

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## Loss of "victim" status in case of acquittal

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### **Bouglame v. Belgium**

2 March 2010 (decision on the admissibility)

This case concerned the denial of legal assistance to the applicant while in police custody on charges relating to international drug trafficking. He was subsequently acquitted of the charges by the first instance court whose judgment was confirmed on appeal.

The Court declared the application **inadmissible** (manifestly ill-founded). Having been acquitted, the applicant could no longer claim to be a "victim" of a violation of Article 6 of the Convention.

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## Lawfulness of pre-trial detention in the absence of assistance of a lawyer

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### **Simons v. Belgium**

28 August 2012 (decision on the admissibility)

This case concerned a detention alleged to be unlawful on account of lack of legal representation during police custody and questioning by investigating judge. Relying on Articles 5 § 1 (right to liberty and security), 6 § 1 (right to a fair trial) and 6 § 3 (c) (right to be assisted by a lawyer) of the Convention, the applicant complained that on account of the inadequacy of Belgian law, she had not been assisted by a lawyer during her police custody or in her interview by the police, or her first examination by the investigating judge, and had not been notified of her right to remain silent.

As the case was still pending before the domestic courts, the Court considered that the application was premature from the standpoint of **Article 6** (right to a fair trial) of the Convention and, pursuant to Article 35 (admissibility criteria) of the Convention, it **rejected** this part of the application.

Under **Article 5** (right to liberty and security) of the Convention, the Court had to ascertain whether there was a "general principle" implicit in the Convention according to

which all persons deprived of their liberty had to have the possibility of being assisted by a lawyer from the beginning of their detention. The Court noted that, according to its case-law, accused persons had the right to be assisted by a lawyer from the start of their time in police custody or pre-trial detention, and when being questioned by the police or the investigating judge. While some restrictions on that right might be justified in certain conditions, the fact of being unable to obtain the assistance of a lawyer in such circumstances by virtue of a rule of domestic law was incompatible with the right to a fair trial. However, this was a principle inherent in the right to a fair trial, which was based specifically on Article 6 § 3 of the Convention concerning the right of any accused to be assisted by a lawyer of his or her choosing. It was not a “general principle” implicit in the Convention, such principles being by definition overarching in nature. Accordingly, although the impossibility in law for accused persons placed in detention to be assisted by a lawyer from the start of their detention had a bearing on the fairness of the criminal proceedings, this did not imply that the detention in question was in breach of **Article 5 § 1** (right to liberty and security) of the Convention. The applicant’s application was manifestly ill-founded from the standpoint of that provision, and the Court therefore declared it **inadmissible**.

## Texts and documents

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See in particular:

- **ECHR Knowledge Sharing platform** (ECHR-KS), [Article 6 Criminal - Right to a fair trial](#), and **Key theme** [“Access to a lawyer”](#)
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