



February 2011

This factsheet does not bind the Court and is not exhaustive

## Police arrest / assistance of a lawyer

The Court has repeatedly held that the right of any person charged with a criminal offence to be effectively defended by a lawyer is a fundamental element of a fair trial

Article 6 § 1 3 (c) 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".

### [Imbrioscia v. Switzerland](#)

24.11.1993

Although the "primary purpose" of Article 6 in criminal proceedings is "to ensure a fair trial by a 'tribunal'", it does not follow that it has no application to "pre-trial proceedings".

- ✓ The Court has reiterated the above principle many times:

### [John Murray v. the United Kingdom](#)

25.01.1996

While accepting the possibility of restrictions (Although Article 6 "normally require[s] that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation", "this right, which is not explicitly set out in the Convention, may be subject to restrictions for **good cause.**"), the Court held that in this case, in the context of application of the 1987 Northern Ireland (Emergency Provisions) Act, it was "of paramount importance for the rights of the defence [for] an accused [to have] access to a lawyer at the initial stages of police interrogation".

- ✓ Elements taken into account by the Court:

- whether or not the applicant has made incriminating admissions in the absence of a lawyer. That was not the case in [Brennan v. the United Kingdom](#) (16.10.2001): **No violation of Article 6 §§ 1 or 3 (c)** because, unlike the situation in the John Murray case, no inference was drawn from what the applicant had said or declined to say during the first 24 hours of his detention when no lawyer was present.

- whether or not pressure was exerted on the applicant in the absence of a lawyer ([Magee v. the United Kingdom](#), 06.06.2000, §40). **Violation of Article 6 § 1 taken together with Article 6 § 3 (c)**: the applicant had not had the benefit of access to a lawyer who could play the customary role of "counterweight" to the intimidating atmosphere in which he had been held while in police custody, and the statements he had made at that time had been central to his conviction.

## Salduz and Dayanan v. Turkey and Brusco v. France judgments

### Salduz v. Turkey (Grand Chamber)

27.11.2008

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 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.

Violation of Article 6 § 3 (c) taken together with Article 6 § 1 (right to a fair trial).

"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."

### Dayanan v. Turkey

13.10.2009

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 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, even though the applicant had remained silent while in police custody.**

Violation of Article 6 § 3 (c).

Brusco v. France 14.10.2010: violation of Article 6 §§ 1 and 3 (right to remain silent and not to incriminate oneself). 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. According to the Court, however, he 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. **The situation was aggravated by the fact that Mr Brusco 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 Mr Brusco of his right to remain silent.**

See also

- ✓ Yeşilkaya v. Turkey 8.12.2009: 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. Violation of Article 6 § 3 (c) taken together with Article 6 § 1.
- ✓ Boz v. Turkey 9.02.2010: the Court reiterated that systematic restriction of access to a lawyer pursuant to the relevant legal provisions breached Article 6.
- ✓ Yoldas v. Turkey 23.02.2010: the applicant's waiver of the right to be assisted by a lawyer had been free and unambiguous: No violation of Article 6 §§ 1 and 3 (c).
- ✓ Dushka v. Ukraine 03.02.2011: 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): 2 violations of Article 3 (prohibition of inhuman and degrading treatment/lack of effective investigation)

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