

HUMAN RIGHTS BACKGROUND -KEY POINTS

EDITED BY
THEOKTI NIKOLAIDOU
JUDGE IN APPEAL COURT IN GREECE

The right to be advised, defended and represented in criminal proceedings

- The right to legal assistance
- 1) applies to the entire proceedings (police investigation, representation in court, conclusion of the appeal). Access to a lawyer in the early stages of proceedings is particularly important because adverse inferences may be drawn at any case from an accused or suspected person's silence especially when the case comes to the jury court. The ECtHR confirmed that, for the right to a fair trial to remain "practical and effective", access to a lawyer had to be provided from the first police interrogation. Suspects are particularly vulnerable at the investigation stage and that evidence gathered may determine the outcome of their case. Early access to a lawyer protects the privilege against self-incrimination and is a fundamental safeguard against ill-treatment. Any exception to this right must be clearly circumscribed and time-limited. Even where compelling reasons arise, restrictions must not unduly prejudice the rights of the accused. (Salduz v. Turkey).
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- 2) may be subject to restrictions, provided that the restrictions do not undermine the essence of the right.
- 3) requires the provision of effective representation and not just the mere presence of a lawyer.
- 4) is of such fundamental importance that the accused or suspected person may only waive it in limited circumstances.

The discretion

===States have discretion to choose how to secure the right to legal assistance in their judicial systems.

===Access to a lawyer has to be effective and practical

For instance, individuals in police custody have to be formally acquainted with their defence rights, including their right to free legal assistance subject to certain conditions, but the police also has to provide them with practical means of contacting and communicating with their defence counsel. Where laws systematically prevent persons charged with a criminal offence from accessing legal assistance in police custody, Article 6 is violated, even when persons charged with a criminal offence remain silent. The lawfulness of restrictions on the right to legal assistance during the initial stages of police interrogation should be considered in light of their overall impact on the right to a fair hearing.

===The right to speak to a lawyer in confidence

===The right to legal assistance is a right to effective assistance and representation

- **Example:** In *Aras v. Turkey*, the ECtHR stated that the “mere presence” of the lawyer was not sufficient to make effective the right under Article 6 (3) (c). The applicant should have had access to a lawyer from the first questioning. The applicant’s lawyer’s passive presence in the hearing room could not be considered to have been sufficient by ECHR standards.
- **Example:** In *Lagerblom v. Sweden*, the applicant, who was from Finland, requested a replacement for his legal aid lawyer. He wanted a lawyer who also spoke Finnish. The domestic courts rejected his request. He argued that this was a breach of Article 6 (3) (c) of the ECHR. The ECtHR noted that Article 6 (3) (c) entitles an accused to be defended by counsel “of his own choosing” but that the right cannot be considered absolute. When appointing defence counsel, courts must have regard to the accused’s wishes, but these can be overridden when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice. The applicant had sufficient proficiency in Swedish to communicate with his lawyer and was able to participate effectively in his trial. The courts were entitled to refuse him the lawyer of his choice. There was no violation of Article 6 of the ECHR.

===MINORS

- 1)Case ADAMKIEWICZ v. POLAND (2010)
 - The ECtHR found a violation of Article 6§3(c) of the ECHR in conjunction with Article 6§1 on account of the lack of adequate assistance by a lawyer during the preliminary investigation and in respect of the use of the child's confession, obtained in the absence of his lawyer, as a basis for the conviction.
- 2)Case PANOVITS v. CYPRUS (2008)
 - The ECtHR held that there had been a violation of Article 6§1 and 3 of the ECHR on account of the failure to inform the child of his right to consult a lawyer prior to the first police questioning. It also held that there had been a violation of Article 6§1 of the ECHR due to the use in trial of the child's confession, obtained in circumstances which breached his right to due process.
- 3)Case BLOKHIN v. RUSSIA
 - The ECtHR found a violation of Article 6§1 and 3 of the Convention in respect of the lack of adequate procedural guarantees in the proceeding leading to his placement. In particular, the police did not assist the child in obtaining legal representation and did not inform him of his right to have a lawyer (passive approach adopted by the police). The absence of legal assistance during the child's questioning by the police is contrary to the basic principles set out in international sources requiring minors to be guaranteed legal, or other appropriate, assistance. Also children under the age of criminal responsibility have the right to be assisted by a lawyer when interviewed by the police.
 - Furthermore, the ECtHR found a violation of Article 6 § 1 and 3 of the ECHR due to the use of the confession, made by the child in the absence of a lawyer, as the basis for his detention and also on account of the child's inability to cross-examine witnesses which was contrary to the principle of equality of arms.

PRESUMPTION OF INNOCENCE

- -A fundamental right and key element at the heart of fair trial rights protection.
- -Article 6 of the European Convention of Human Rights ('ECHR')
- -Article 48 of the European Charter of Fundamental Rights, as well as in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and a number of other international treaties and covenants.

WHEN IS THE PRESUMPTION OF INNOCENCE VIOLATED ?

- --- if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law.
- --- leading case of *Minelli v Switzerland* (ECtHR 1983)

The criteria set out by the ECtHR, establishes that a fundamental distinction must be made between statements that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question.

- ---*Allen v the United Kingdom* ECHR 2013

The ECtHR established that “even the use of some unfortunate language may not be decisive when regard is had to the nature and context of the particular proceedings”

--*Khuzhin and Others v Russia*, 2008

---*Case Borovský v Slovakia*, 2009

---The recent judgement of the Supreme Court of Greece in Plenary (4/2020) To the question if the presumption of innocence is violated when the accused is acquitted by a criminal court and yet is obliged by a civil court to pay damages based on the same facts, that constitute a tort and at the same time a criminal offence, the Court found no violation as the judgement of the criminal court is not binding for the civil court.

THANK YOU FOR YOUR ATTENTION

