

The Right of Access to a Lawyer in Criminal Proceedings: The Case-Law of The European Court of Human Rights¹

1. Introduction

The right to be assisted by legal counsel, often referred to as access to a lawyer, particularly in the context of criminal proceedings, constitutes a fundamental element of the right to a fair trial. The application and scope of this principle differ across jurisdictions, influenced not only by specific legal frameworks but also, regrettably, by political circumstances and by social and financial conditions.²

In Europe, broadly speaking, we are fortunate, albeit not uniformly so; our national constitutions, European Union (EU) law, and, as I discuss in more detail below, the case-law of the the European Court of Human Rights (ECtHR) under the European Convention on Human Rights (ECHR) guarantee that individuals accused of criminal offences are able to understand their rights, prepare a defence, and have their case effectively presented, even if they are unable to secure legal representation through their own means.³ Article 6 of the ECHR is indisputably one of the Convention's most vital provisions, encompassing both civil and criminal proceedings (with the focus in

¹ Parts of this article, originally prepared for publication in *Gdańsk Legal Studies*, were adapted and presented as the keynote address at the opening session of the European Criminal Bar Association (ECBA) Spring Meeting, Sorrento, 26 April 2025. The text was last revised on 9 May 2026.

² J.D. Jackson, "Cultural Barriers on the Road to Providing Suspects with Access to a Lawyer" [in:] *EU Criminal Justice and the Challenges of Diversity Legal Cultures in the Area of Freedom, Security and Justice*, eds. R. Colson, S. Field, Cambridge 2016, pp. 181–198.

³ The concept of access to a lawyer is, thus, used both by the ECtHR under the ECHR and the Court of Justice of the European Union (CJEU) under a number of EU rules (the main ones being Articles 47 and 48(2) of the EU Charter of Fundamental Rights). As indicated in the title, my article only addresses the jurisprudence of the ECtHR, to the judgments of which I therefore refer in the text with no further specifications. As for EU law, a landmark judgment has been the one in the case *Baraño* (C-530/23), delivered on 8 May 2025 by the CJEU with reference to Directive 2016/1919 on legal aid for suspects and accused persons in criminal proceedings, which supplemented Directive 2013/48 on the right of access to a lawyer in criminal proceedings. An interesting comment on this judgment is provided by A. Słowik in *Right of Access to a Lawyer and Legal Aid for Vulnerable Suspects or Defendants in Criminal Proceedings*, actualité n° 14/2025, publiée le 16 mai 2025, par le Centre d'études juridiques européennes, www.ceje.ch [accessed: 9.05.2026].

this article being on the latter). Yet, jurisprudence from the ECtHR demonstrates that, even within Europe, we cannot assume that the innocent are invariably shielded from wrongful convictions stemming from inadequate legal defence.

The ECtHR's case-law concerning criminal proceedings has led to important developments in guaranteeing lawyers the role they deserve; however, based on the Court's piecemeal approach (that is, deciding specific issues case by case), some fragmentation of approaches exists, which occasionally compromises the clarity needed in this important area of a fair trial.⁴ Therefore, I examine some subtopics under the umbrella of access to a lawyer. I address three in particular: the notion of so-called "early access" to counsel; the right to legal representation of one's own choosing; and legal aid. I do not discuss additional issues, such as: the right to effective and confidential communication with counsel, particularly in high-security detention settings; the use of metal cages or glass enclosures in courtrooms; the requirement for "adequate time and facilities" to prepare a defence; the scope of legal professional privilege, especially in the digital era; and the impact of media coverage.⁵

2. Early access to a lawyer

Access to legal counsel from the outset of police custody, and, indeed, also at any earlier stage, if investigative measures infringe upon the personal sphere of the accused without necessitating secrecy, is, in my view, a foundational guarantee underpinning the right to a fair trial. Generally, a suspect must be afforded access to legal representation from the moment a criminal charge arises within the autonomous meaning of the ECHR (as clarified, for example, in *Simeonovi v. Bulgaria* [GC], 2017, § 110). In this regard, the ECtHR has consistently held that such status is not determined by formal designation under domestic law, "but rather arises when the authorities possess plausible grounds for suspecting an individual's involvement in a criminal offence" (*Truten v. Ukraine*, 2016, § 66; *Knox v. Italy*, 2019, § 152).

The right to early access to counsel has developed through the so-called *Salduz* and post-*Salduz* jurisprudence. The Grand Chamber laid important foundations in *Öcalan v. Turkey* (2005), in which it found that the denial of access to a lawyer for nearly seven days during custody, followed by restrictions on the number and length of consultations, and the lack of possibility for the detainee to speak with lawyers outwith the hearing of guards, amounted to a breach of Article 6. However, it was the landmark judgment

⁴ A recent relevant critical discussion of the Strasbourg jurisprudence, within the context of the notion of vulnerability of the suspect, can be found in A. Cusack, R. Dehaghani, "Navigating the Right to a Fair Trial for Vulnerable Suspects Pretrial: A Legal and Psychological Critique of the Strasbourg Jurisprudence," *Human Rights Law Review* 2025, vol. 25, no. 2, pp. 1–23.

⁵ The relationship between the use of technology, especially by way of virtual hearings, and a possible, positive improvement of access to a lawyer is explored, within a United States context, by M. Bender, "Unmuted: Solutions to Safeguard Constitutional Rights in Virtual Courtrooms and How Technology Can Expand Access to Quality Counsel and Transparency in the Criminal Justice System," *Villanova Law Review* 2021, vol. 66, no. 1, pp. 1–61.

in *Salduz v. Turkey* (2008) that definitively articulated the principle that access to legal advice constitutes a prerequisite for the effective exercise of the right to silence and the privilege against self-incrimination. In that case, the Court found a violation of Article 6 where a confession made by a minor during police interrogation, conducted without the presence of counsel, was subsequently used as evidence.

This judgment introduced a two-pronged test. The Court examines first whether the delay in access to legal representation was justified by compelling reasons. The second stage involves assessing whether the restriction prejudiced the rights of the defence, requiring an evaluation of the restriction's impact on the fairness of the proceedings as a whole.

The legacy of *Salduz* has been considerable. Among other effects, this seminal decision prompted numerous Contracting States to revise their domestic legislation and practices⁶ which had previously failed to provide effective legal assistance starting at the first police interview (for example, in France, under the system of *garde à vue*, suspects could be deprived of liberty for two periods of twenty-four hours with a very limited right of only a thirty-minute consultation). Eventually, it was based on the EU Commission's interpretation of *Salduz* that, in 2013, the EU Parliament and the Council adopted Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European Arrest Warrant (EAW) proceedings.⁷

Yet, as is often the case with legal standards forged in human rights adjudication, the principle established in *Salduz* has undergone an evolution (some would argue, a dilution) in the Court's subsequent case-law.⁸ Most notably, in *Ibrahim and Others v. the United Kingdom* (2016), the Grand Chamber revised the *Salduz* framework and ruled that the absence of compelling reasons to justify delayed access to a lawyer no longer automatically leads to a finding of a violation of Article 6.⁹ Instead, such absence

⁶ J.D. Jackson, "Responses to *Salduz*: Procedural Tradition, Change and the Need for Effective Defence," *The Modern Law Review* 2016, vol. 79, no. 6, pp. 987–1018.

⁷ The impact of *Salduz* on the Directive is examined by I. Anagnostopoulos, "The Right of Access to a Lawyer in Europe: A Long Road Ahead?," *European Criminal Law Review* 2014, vol. 4, no. 1, pp. 3–18; and N. Daminova, "The European Court of Human Rights on the 'Access to a Lawyer' Directive 2013/48/EU: The Quest for a Coherent Application of the Right to a Legal Assistance in Europe?," *European Criminal Law Review* 2021, vol. 11, no. 2, pp. 211–241.

⁸ According to N. Daminova ("The European Court of Human Rights..."), the ECtHR – while avoiding a direct analysis of Directive 2013/48/EU – appears to have accepted, in *Ibrahim and Beuze*, the lower level of protection under EU law than the maximum guarantees articulated in *Salduz*: in other words, although *Salduz* prompted the adoption of the Directive, the Directive paradoxically, according to Daminova, has exerted a retroactive influence on Strasbourg case-law. For a partially different point of view, see: A. Soo, "Divergence of European Union and Strasbourg Standards on Defence Rights in Criminal Proceedings? *Ibrahim and Others v. the UK* (13 September 2016)," *European Journal of Crime, Criminal Law and Criminal Justice* 2017, vol. 25, no. 4, pp. 327–346. In my view, however, the oscillation between progress and retreat, to which I refer in my article, has much broader reasons than the mere possible consideration by the ECtHR of the position of EU law.

⁹ See: C. Macq, "Accès différé à l'assistance d'un avocat: la Cour confirme et précise sa jurisprudence (obs. on *Ibrahim and Others v. UK*, GC, 13 September 2016)," *Revue trimestrielle des droits de l'homme* 2017, vol. 28, no. 110, pp. 421–435; E. Celiksoy, "*Ibrahim and Others v. UK*: Watering Down the *Salduz* Principles?," *New Journal of European Criminal law* 2018, vol. 9, no. 2, pp. 229–246.

merely necessitates stricter scrutiny within the Court's holistic assessment of procedural fairness. In this more recent approach, the Court emphasises the requirement that the restriction must have "irretrievably prejudiced" the fairness of the proceedings. This introduces a degree of flexibility, arguably essential to accommodate the diversity of legal systems across Europe; however, it engenders legal uncertainty, as the concept of "irretrievable prejudice" remains ill-defined and open to interpretation.

In *Beuze v. Belgium* [GC] (2018, §§ 133–134), the Court further elaborated on the right of access to a lawyer.¹⁰ Two minimum core guarantees were articulated: first, the right to contact and consult with legal counsel prior to the initial police interview, which necessarily includes the right to provide confidential instructions; and second, the right to the physical presence of legal counsel during the initial interview and throughout any subsequent interrogations during the pre-trial phase. In the same judgment (§§ 125–130), the Grand Chamber re-articulated the purposes served by this procedural safeguard. These include: (a) the prevention of miscarriages of justice, which is self-evident, and more broadly, the realisation of the objectives inherent in Article 6, in particular the principle of equality of arms between the investigative authorities and the accused; (b) a counterbalance to the inherent vulnerability of suspects held in police custody, thereby serving as a vital safeguard against coercion, intimidation, and ill-treatment; and (c) the practical enforcement of the right not to incriminate oneself and the right to remain silent, protections which can only be rendered effective if the accused is properly informed of such rights.

In this connection, the notion of "notification" assumes substantive, not merely formal, importance. It does not suffice for the police to recite a checklist of rights. Rather, the immediate presence of a lawyer, capable of interpreting, explaining, and contextualising those rights, is indispensable to avoiding unfairness that might otherwise result from incomplete or misunderstood procedural information. While in *Ibrahim* the mere recitation of rights by police authorities was considered among the factors that could justify delaying legal access, *Beuze* marks a return to the *Salduz* emphasis on the effectiveness of access over procedural formalism.

An additional dimension of the right to legal assistance was highlighted in *Soytemiz v. Turkey* (2018, §§ 44–46, 27): the right to be assisted by a lawyer must apply throughout the entire course of police interrogation. This includes the reading aloud of the suspect's statements and the moment of confirmation and signature. Accordingly, law enforcement authorities are, as a general principle, under an obligation to adjourn the interrogation if legal counsel is unavailable or if the lawyer has had to, or has been requested to, depart before the questioning concludes. Legal assistance cannot be

¹⁰ See: M.-A. Beernaert, "Droit d'accès à un avocat et relativité toujours plus grande des garanties du droit à un procès équitable (obs. on ECtHR, GC, *Beuze v. Belgium*, 9 November 2018)," *Revue trimestrielle des droits de l'homme* 2019, vol. 30, no. 118, pp. 519–528; E. Celiksoy, "Overruling the *Salduz* Doctrine in *Beuze v. Belgium*: The ECtHR's Further Retreat from the *Salduz* Principles on the Right to Access to Lawyer," *New Journal of European Criminal Law* 2019, vol. 10, no. 4, pp. 342–362.

considered meaningful if the lawyer's presence is not ensured during all substantive stages of the interrogation process.¹¹

Yet again, however, the jurisprudence reveals an oscillation between progress and retreat. In *Doyle v. Ireland* (2019), although the applicant had formally been granted legal representation, his lawyer was not permitted to be present during the police interview because of then-prevailing police practice. Nonetheless, the Court found no violation of Article 6 §§ 1 and 3(c), reasoning that, despite the restriction on the applicant's right of access to legal assistance during interrogation, the overall fairness of the proceedings had not been "irretrievably prejudiced."

One interesting area is the access to lawyers of minors, which usually takes place by the intermediary of their parents: in the very recent case *E.H. v. Germany* (2026)¹² the Court dealt with a confession made by a juvenile during police questioning. He had been informed of his right to consult counsel, which he had waived, but he had not been informed of his right to consult his parents or been given an opportunity to privately consult with this mother prior to being questioned. The case raises the issue of the similarity or not of such a right with the right to access a lawyer, and/or the "instrumental" relationship of one consultation with the other.

There are, moreover, ongoing developments in this field regarding the use of remote legal assistance, including video-link and other technologically mediated forms of communication. These raise new questions of accessibility, confidentiality, and equality of arms, both within and beyond the context of the COVID-19 pandemic. However, a thorough treatment of these issues lies beyond the present discussion and must be reserved for future inquiry.

¹¹ There is no scope here to address further developments in the *Salduz* line of case-law, extending beyond the issues examined in this article. Some of these developments are insightfully analysed by M.-A. Beernaert, "Salduz n'a (toujours) pas dit son dernier mot: quelques nouveaux enseignements de la Cour européenne quant au droit à l'assistance d'un avocat lors de l'enquête pénale (obs. on ECtHR, *Tonkov v. Belgium*, 8 March 2022; *Dubois v. France* and *Wang v. France*, 28 April 2022)," *Revue trimestrielle des droits de l'homme* 2022, vol. 33, no. 132, pp. 977–986. Beernaert, comments on three judgments delivered by the Court within a few weeks of one another: in *Tonkov v. Belgium*, the Court addressed for the first time the possibility for an accused to rely on a breach of the right to legal assistance affecting a third party, specifically, a co-accused, who had made statements incriminating the applicant; in *Dubois v. France*, the Court confirmed that the right to legal assistance also applies to voluntary interviews, notwithstanding the fact that the suspect is free and may leave at any time; finally, in *Wang v. France*, the Court clarified that the principles developed in relation to access to a lawyer also extend to other Article 6 guarantees liable to be restricted during questioning at the pre-trial stage.

¹² The judgment was delivered by the Fourth Section of the ECtHR on 21 April 2026 and is not final at the time of the last revision of this text (9 May 2026), as it is still subject to a possible referral to the Grand Chamber; this justifies my inability to comment on it. The argument of the "the similarities between the right to consult one's parents and the right to consult defence counsel" appears explicitly among those raised in the case (see § 17, but also §§ 18 and 22) and the ECtHR deals with it (in § 54).

3. The right to a lawyer of one's own choosing

A second aspect to which we must devote consideration is the right to a lawyer of one's own choosing. This right is expressly enshrined in the wording of Article 6 § 3(c) of the Convention. It is generally recognised as a mechanism intended to secure an effective defence (*Dvorski v. Croatia* [GC], 2015, § 78); thus the ECtHR has, at times, adopted a commendably robust interpretation of this guarantee. For example, the mere fact that proceedings are conducted *in absentia* does not, in itself, justify the appointment of a legal aid lawyer in lieu of ensuring the right of defence through a lawyer freely chosen by the accused (*Lobzhanidze and Peradze v. Georgia*, 2020, §§ 83–91).

On the other hand, more restrictive jurisprudential approaches have also emerged. The Court has acknowledged that the right to choose one's legal representative is not absolute: national courts may override this choice where there exist relevant and sufficient grounds demonstrating that a different choice is necessary in the interests of justice. In this context, the Court has drawn a clear distinction: unlike cases involving a "denial of access" to legal assistance, where the more stringent test of "compelling reasons" must be satisfied, cases concerning a "denial of choice" are subject only to the lower threshold of "relevant and sufficient" justification. Whether this represents a truly less serious interference, however, is open to question.

From a critical perspective, while the outcome in cases such as *Meftah and Others v. France* [GC] (2002, § 45) may be readily understood – where the Grand Chamber upheld the requirement that only specialist lawyers may appear in cassation proceedings because of their technical complexity – and while the Court's more deferential stance in the context of legal aid appointments may be justified on practical grounds, there remain case-law requirements that appear very burdensome for the accused: in *Stevan Petrović v. Serbia* (2021, §§ 171–172), despite the applicant's lack of access to a lawyer of his own choosing, the Court nonetheless required the applicant to demonstrate how the restriction had affected the overall fairness of the proceedings.

There is another dimension to the notion of freedom in choosing legal representation: what of situations in which, although a lawyer has been formally chosen by the accused, the quality of that representation is so deficient that it deprives the defendant of effective assistance? While the independence of the legal profession means that the conduct of the defence is, in principle, a matter solely between the client and his/her legal representative, nevertheless Contracting States are under a positive obligation to intervene when a failure by counsel to provide effective assistance becomes manifest: when this occurs, the Court exceptionally extends the standards developed for legal aid to apply also in cases involving privately retained counsel. In *Güveç v. Turkey* (2009, § 131), the Court held that the lawyer's failure to represent a juvenile offender adequately, made manifest by repeated non-attendance at multiple hearings, imposed a duty on the trial court to take urgent action to secure the applicant's effective legal representation. The domestic court's failure to intervene amounted to a breach of the State's obligations under the Convention.

4. The right to legal aid

The third and final subtopic to be briefly addressed is the right to legal aid, as enshrined in Article 6 § 3(c) of the Convention. This right is subject to two cumulative conditions.

First, the accused must demonstrate that he or she lacks sufficient means to pay for legal assistance. However, the applicant is not required to prove indigence “beyond all doubt;” it suffices to establish a “lack of clear indications to the contrary.” This standard is, in my view, a commendable one.

What is notable, however, is that the Court, on the basis of case-law that has remained relatively stable for some forty years, has at times adopted a restrictive interpretation of the second condition under Article 6, which provides that Contracting States are obliged to grant legal aid only “where the interests of justice so require” (*Quaranta v. Switzerland*, 1991, § 27). According to the Court’s jurisprudence, this assessment must be conducted in light of the circumstances of the case as a whole, taking into account not only the situation at the time when the legal aid application is decided, but also that obtaining at the time the domestic court rules on the merits of the application (*Granger v. the United Kingdom*, 1990, § 46).

In determining whether “the interests of justice” require legal aid, the Court considers a range of criteria, including the seriousness of the offence, the severity of the potential penalty, and the complexity of the proceedings. As a general principle, where deprivation of liberty is at stake, legal representation is deemed necessary in the interests of justice (*Benham v. the United Kingdom* [GC], 1996, § 61; *Quaranta v. Switzerland*, 1991, § 33; *Zdravko Stanev v. Bulgaria*, 2012, § 38).¹³ It is, however, worth asking whether, in a contemporary context where custodial sentences are increasingly replaced by alternative sanctions involving other forms of restriction of liberty, the notion of what the “interests of justice” require should evolve accordingly.

Another notable evolution pertains to the emerging trend, in many jurisdictions, of partially replacing traditional legal aid with third-party funding of litigation, as a means of overcoming financial barriers to access to justice. It is foreseeable that the future will bring further developments in this domain, and new legal questions will likely arise as individuals begin to rely on private financing for legal representation, often accompanied by repayment obligations. Issues such as transparency in funding mechanisms, adherence to ethical standards, and the possible need for regulatory

¹³ In the very recent judgment *Diacono and Lenchi v. Italy* (11 December 2025), the ECtHR first reiterated a strand of its case-law to the effect that legal aid must also be available in proceedings in which legal representation is mandatory. Of course, legal aid need not necessarily take the form of direct state remuneration of lawyers, since systems relying on pro bono obligations may also be compatible with the Convention. However, where a state has opted for a publicly funded legal-aid scheme, excessive and systematic delays in the payment of legal-aid fees, despite the lawyers’ claims having been definitively recognised by domestic courts, constitute a violation of Article 1 of Protocol No. 1 (right to the peaceful enjoyment of possessions). The Court found that such delays imposed an excessive individual burden on the applicants and emphasised that the timely payment of legal-aid remuneration is an essential component of effective access to justice.

oversight are likely to gain prominence. In this regard, the European Union, following an initiative by the European Parliament, is expected to legislate on this subject soon, at least within the sphere of civil justice.

5. Conclusions

My brief discussion illustrates that the ECtHR's case-law on access to a lawyer under Article 6 ECHR reflects at least two tensions.

First, while the Court has articulated, particularly through some landmark judgments, a set of robust procedural guarantees that are essential to the effective enjoyment of the right to a fair trial (legal assistance from the initial stages of police custody, the entitlement to a lawyer of one's own choosing, and the provision of legal aid where the interests of justice so require), the same Court has at times departed from clarity by introducing flexible and sometimes ambiguous concepts which open the door, potentially, to a dilution of protection. Of course, the justification for such flexibility often lies in the need for a context-sensitive, case-by-case assessment, a methodology consistent with the Court's broader adjudicative philosophy under the principle of subsidiarity.

Second, the Court's developing jurisprudence in areas such as delayed access to counsel, limitations on the choice of lawyer, and thresholds for legal aid eligibility suggests that the balance between flexibility and legal certainty must be continually re-evaluated considering contemporary challenges, while preserving the preventive and normative function of Article 6.

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Summary

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The Right of Access to a Lawyer in Criminal Proceedings: The Case-Law of The European Court of Human Rights

This article illustrates the ECtHR's case-law concerning the right of "access to a lawyer" under Article 6 ECHR. While some landmark judgments have set up robust procedural guarantees in at least three areas that I identify (legal assistance from the initial stages of police custody, the entitlement to a lawyer of one's own choosing, and the provision of legal aid), the ECtHR has at times departed from clarity by introducing flexible and sometimes ambiguous concepts.

Keywords: right to fair trial, access to lawyer, procedural guarantees, legal aid.

Streszczenie

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Prawo dostępu do adwokata w postępowaniu karnym w orzecznictwie Europejskiego Trybunału Praw Człowieka

W opracowaniu analizie poddano orzecznictwo ETPCz dotyczące prawa „dostępu do adwokata” zgodnie z art. 6 EKPCz. Wskazano, że o ile niektóre przełomowe orzeczenia ETPCz ustanowiły

solidne gwarancje proceduralne co najmniej w trzech obszarach identyfikowanych w tekście (pomoc prawna już na etapie zatrzymania przez policję, prawo do korzystania z wybranego przez siebie adwokata i pomoc prawna), o tyle orzecznictwo ETPCz nie zawsze jest przejrzyste ze względu na wprowadzanie elastycznych i niekiedy niejednoznacznych koncepcji.

Słowa kluczowe: prawo do rzetelnego postępowania sądowego, dostęp do adwokata, gwarancje proceduralne, pomoc prawna.