

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 21980/04

Simeonovi

Applicant

v.

Bulgaria

Respondent

WRITTEN COMMENTS BY THE ASSOCIATION FOR THE PREVENTION OF TORTURE (APT)

08 June 2016

By Mail and Fax

INTRODUCTION

1. These written comments are respectfully submitted by the Association for the Prevention of Torture (APT) pursuant to the leave granted by the President of the Grand Chamber by letter dated 25 May 2016 in accordance with Article 36(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) and Rule 44(3) of the Rules of Court.
2. The APT is an independent non-governmental organisation based in Geneva, Switzerland, established in 1977 to promote a world free from torture where the rights and dignity of all persons deprived of liberty are respected. To achieve this, the APT works globally to advocate for the adoption and implementation of legal norms, policies and practices that prohibit torture and ill-treatment, including the adoption of legal and procedural safeguards. One such safeguard is prompt access to a lawyer, which the European Committee for the Prevention of Torture recognises as a fundamental safeguard in the first hours of police detention.¹
3. As set out in the APT’s application to intervene dated 17 May 2016, these comments provide a review of national, regional and international standards on access to a lawyer in the early stages of detention as a fundamental safeguard to a fair trial.

A LAWYER AS A FUNDAMENTAL SAFEGUARD IN THE FIRST HOURS OF DETENTION

4. The practice of the European Court of Human Rights (“the Court”) has been to confirm that the right to access a lawyer is a fundamental fair trial safeguard, as provided in *Salduz v. Turkey*.² In its ruling, the Grand Chamber held:

“[T]he 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.”³

5. In *Salduz*, the Court further considered that even though the applicant had been able to challenge the charges and contest the evidence at trial, the fact that he had not been assisted by a lawyer while in police custody had irretrievably affected his defence rights, and undermined the possibility of him receiving a fair trial.⁴
6. The Court has also explained that this principle applies even in circumstances where an accused person does not confess and chooses to remain silent in police custody,⁵ or has given only statements of denial.⁶ In all these circumstances, the Court has found the prejudice of being refused access to a lawyer to be a violation of Article 6(3)(c) of the Convention, taken together with Article 6(1).
7. The practices of the Court have been followed by multiple UN bodies and in relevant standards, all of which emphasise the fundamental importance of the right to access a lawyer in the first hours of detention. Most recently, the UN Human Rights Council affirmed the critical role of lawyers as a fundamental safeguard in the first hours of detention in a Resolution adopted on 24 March 2016:

¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2015, § 36.

² *Salduz v. Turkey* [GC], no. 36391/02, 27 November 2008.

³ *Ibid*, § 55.

⁴ *Ibid*, § 62.

⁵ *Dayanan v. Turkey*, no. 7377/03, 13 October 2009.

⁶ *Yesilkaya v. Turkey*, no. 59780/00, 8 December 2009.

*"[The Council] Calls upon States in the context of criminal proceedings to ensure access to lawyers from the outset of custody and during all interrogations and judicial proceedings, and timely access of lawyers to appropriate information to enable them to provide effective legal assistance to their clients"*⁷

8. Such sentiment is also shared by the UN Human Rights Committee, a treaty body which acts as guardian over the International Covenant on Civil and Political Rights, that reported in its General Comment No. 32 that access to a lawyer is "an important element of the guarantee of a fair trial and an application of the principle of equality of arms."⁸

9. The Court's *Saldudz* principle recognises that effective access to a lawyer in the first hours of detention serves to redress the inherent power imbalance of custodial detention, and helps to reduce feelings of fear and helplessness that makes a person in detention particularly vulnerable to coercion and torture.⁹ As the Court examined in *Pishchalnikov v. Russia*:

*"[A]n accused often finds himself in a particularly vulnerable position at that stage of the proceedings, the effect of which is amplified by the fact that legislation on criminal procedure tends to become increasingly complex, notably with respect to the rules governing the gathering and use of evidence. In most cases this particular vulnerability can only be properly compensated for by the assistance of a lawyer whose task is, among other things, to help to ensure the right of an accused not to incriminate himself."*¹⁰

10. The principle is evidently more urgent if other minimum guarantees, such as the right to be notified of the charges (pursuant to Convention Article 6(3)(a)) are also lacking. Without knowing the charges against which a defence should be directed, the accused person is liable to give incriminating statements without realising it. Certainly, the Court has previously found that even the decision to remain silent in part due to the lack of legal advice has prejudiced the right to a fair trial.¹¹ Even a statement which would appear to be of a non-incriminating nature may later be used against an accused person, such that it would prejudice their defence. Again, this underlines the need for legal advice both prior to and during police interrogation. Even if the right to access to a lawyer is later afforded to an accused person, it will likely be too late to repair the prejudice caused to their defence.
11. The right to access a lawyer is not simply to safeguard the accused person's right not to incriminate themselves. The presence of a lawyer also greatly improves access to other basic rights for an accused person, such as the right to be brought before a court (pursuant to

⁷ UN Human Rights Council, Resolution 31/31 of 24 March 2016 on *Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention*, point 7 of the operative part, available http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/L.26/rev.1.

⁸ UN Human Rights Committee, General Comment No. 32, *Right to equality before the courts and tribunals and to a fair trial*, UN Doc. CCPR/C/GC/32, 23 August 2007, § 32.

⁹ It has been widely recognised by expert bodies, including the European CPT and the UN Subcommittee for Prevention of Torture (SPT), that the first hours of detention are the period when the risks of intimidation, ill-treatment and torture are greatest, where effective access to procedural safeguards such as access to a lawyer are most urgent. See *CPT Standards*, *supra* fn. 1, p. 8, and SPT visits reports, including the *SPT Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay*, CAT/OP/PRY/1, 7 June 2010, § 250.

¹⁰ *Pishchalnikov v. Russia*, no. 7025/04, § 69, 24 September 2009. See also *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 263, 21 April 2011.

¹¹ See *John Murray v. the United Kingdom* [GC], no. 18731/91, 8 February 1996.

Convention Article 5(3), and the right to challenge the legality of one's detention (*habeas corpus*) (Article 5(4)).¹²

12. The fundamental importance of the right to a lawyer in the first hours of detention implies that even if no statement results from police interrogation in the absence of a lawyer, a prejudicial impact likely results on the overall fair trial of an accused person.
13. The APT would propose two circumstances which may illustrate a greater risk to the fair trial of an accused person where the right to access a lawyer in the first hours of detention is more urgent.
14. First, access to a lawyer is particularly urgent in the case of particularly serious charges. The Court has consistently ruled that it is in circumstances where accused persons face the heaviest penalties that a failure to respect the right to a fair trial poses the greatest risk of error.¹³
15. And second, in circumstances where the CPT has made a report demonstrating serious risks to persons in places of police detention, national authorities are alerted to the likely vulnerability and risk of prejudice to ongoing criminal proceedings which must greatly elevate the duty to afford the right to access a lawyer in the first hours of detention as a fair trial safeguard. As a third party, we will not comment on the facts of the case, though we do note that the Chamber judgment recorded the observations of the CPT in relation to the respondent State and that this is the approach taken in previous judgments of the Court.¹⁴

WHAT DOES THE RIGHT TO ACCESS TO A LAWYER IMPLY?

16. The rights listed in Convention Article 6(3) are described as “minimum rights”. The APT therefore understands that they must not be interpreted in any way which reduces their quality as a minimum level of protection for fairness in criminal proceedings.
17. To ensure that it is not simply theoretical or illusory, the right to access a lawyer must fulfil particular requirements. In this part, our submission will focus on three related requirements which correspond to some of the most important ways in which the right to access a lawyer can be made effective in practice. This part also recognises that the right to access a lawyer may be delayed.

Notification of the right to access a lawyer

¹² In UN Resolution 34/178, the General Assembly “[c]onsiders that the use of those remedies may also forestall opportunities for persons exercising power over detainees to engage in torture or other cruel, inhuman or degrading treatment or punishment”, available at www.un.org/documents/ga/res/34/a34res178.pdf, § 2. “Those remedies” refers to amparo, habeas corpus or other legal remedies to the same effect (see § 1).

¹³ *Salduz*, *supra* fn. 2, § 54.

¹⁴ See *Magee v. the United Kingdom*, no. 28135/95, § 43, 6 June 2000: “Having regard to [reports of the CPT], the Court is of the opinion that the applicant, as a matter of procedural fairness, should have been given access to a solicitor at the initial stages of the interrogation as a counterweight to the intimidating atmosphere specifically devised to sap his will and make him confess to his interrogators.”

18. The duty to notify an accused person of the charges against him or her is an explicit right in Convention Article 6(3)(a). The right is also asserted by the European Prison Rules, which provide that “[u]ntried prisoners shall be informed explicitly of their right to legal advice”.¹⁵
19. In circumstances where the notification of rights is deficient, the role of a lawyer becomes even more critical to avoid further prejudice to the accused person’s defence. In the case of *Brusco v. France*, the Court noted that had a lawyer been present, he or she would have been able to inform the applicant of their right to remain silent.¹⁶ Legal advice is therefore important to enable the detainee to make an informed decision on whether to rely on the right to remain silent or give a statement to the police. Without either a notification of rights or legal advice, the detainee’s subsequent trial will likely be significantly prejudiced.
20. In response to concerns about how a number of European Union States were fulfilling the basic fair trial rights of criminal defendants, the EU has adopted a number of Directives setting out the rights of accused persons in some detail.¹⁷ Since the implementation of the EU Directive on right to information in 2010,¹⁸ Member States have been required to issue letters of rights to arrested persons. Such a requirement recognises that knowledge of defence rights is a critical step to their effective and practical fulfilment.

Prompt access to a lawyer

21. The Court has long recognised the right to access a lawyer applies from the moment of arrest,¹⁹ and in any case, before the first interrogation of the suspect by the police.²⁰
22. This is a position also shared among international experts. For instance, the UN Human Rights Committee has also found that a failure to allow a lawyer during the initial period of detention and during interrogations will constitute a breach of the minimum fair trial guarantees protected in the International Covenant on Civil and Political Rights.²¹
23. In the case *Lyashkevich v. Uzbekistan*, the UN Human Rights Committee heard that the accused was denied access to legal counsel of his choice for one day, while interrogations and other investigative acts continued at the same time. The Committee concluded that the delay had been a breach of the minimum fair trial rights guaranteed by the International Covenant on Civil and

¹⁵ See *Recommendation Rec(2006)2* of the Committee of Ministers on the *European Prison Rules* (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies), at 98.1, available at: <https://wcd.coe.int/ViewDoc.jsp?id=955747>.

¹⁶ *Brusco v. France*, no. 1466/07, § 54, 14 October 2010.

¹⁷ In 2009, the EU adopted a ‘Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings’ setting out a number of measures proposing for legislation to be adopted in Member States. Subsequently, Directive 2010/64/EU on interpretation and translation and Directive 2012/13/EU on the right to information were adopted on 20 October 2010 and on 22 May 2012 respectively. In October 2013, Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest was also adopted.

¹⁸ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1–10), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450448411428&uri=CELEX:32012L0013>.

¹⁹ See for instance, *John Murray v. the United Kingdom* [GC], no. 18731/91, § 66, 8 February 1996; and *Magee v. the United Kingdom*, no. 28135/95, § 39, 6 June 2000.

²⁰ *Salduz*, *supra* fn. 2, §§ 54-55.

²¹ In particular, Article 14(3) of the ICCPR provides: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (d) [...] to defend himself in person or through legal assistance of his own choosing [...]” See UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

Political Rights, notwithstanding the fact that a State appointed lawyer had been present for the whole day.²²

24. Several regional standards also indicate that access to a lawyer must apply from the moment of detention. For instance, the *Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa* specifically provide for a right to access a lawyer “from the moment when [persons are] first deprived of their liberty”.²³ The Inter-American Commission on Human Rights adopted *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the America* in March 2008. Principle V requires access to legal counsel “from the time of their capture or arrest and necessarily before their first declaration to the competent authority.”²⁴
25. In the European Union context, the 2013 EU Directive on the right of access to a lawyer in criminal proceedings requires that access to a lawyer should be provided without delay, and as a minimum before an accused person is questioned by the police.²⁵ Even in circumstances of geographic remoteness, the Directive requires that questioning should be delayed until a lawyer can be arranged.²⁶
26. The APT recognises that the Court applies the law at the time of its judgment and therefore may take full account of the EU Directive’s enhanced protections, notwithstanding the earlier date of events in the current case.²⁷
27. At the national level both inside and outside of the European region, many laws provide for immediate access to a lawyer.²⁸ For instance, in the UK, the Police and Criminal Evidence Act 1984 provides: “A person arrested and held in custody in a police station or other premises shall be entitled, if he so requests, to consult a solicitor privately at any time.”²⁹ In Switzerland, the

²² Human Rights Committee, *Lyashkevich v. Uzbekistan*, Decision of 11 May 2010, UN Doc.CCPR/C/98/D/1552/2007, § 9.4. See also *Kasimov v. Uzbekistan*, Decision of 30 July 2009, UN Doc. CCPR/C/96/D/1378/2005, § 9.6.

²³ African Commission on Human and Peoples’ Rights, Resolution on *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)*, done in Banjul, The Gambia, 23rd October 2002, at Article 20.

²⁴ Inter-American Commission on Human Rights, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the America* (OEA/Ser/L/V/II.131 doc. 26), adopted in March 2008, at Principle V.

²⁵ EU Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, pp. 1–12), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1450449360102&uri=CELEX:32013L0048>, at Article 3(2). Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 27 November 2016.

²⁶ See Recital 30 and Article 3(5) of EU Directive 2013/48/EU, *Ibid*.

²⁷ See, for instance, in *Brusco v. France*, *supra* fn. 16, taking account of facts in 1999, and relying on the 2008 *Salduz* judgment.

²⁸ In addition to the laws described, other relevant legal Codes containing pertinent protections include: Code of Criminal Procedure of the Azerbaijan Republic (Article 85.2.3); Republika Srpska Criminal Procedure Code (Articles 47(1) and 201(5)); Criminal Procedure Code of Bulgaria (Article 97); Code of Criminal Procedure of Estonia (Article 45); Criminal Procedure Code of the Former Yugoslav Republic of Macedonia (Article 3); Criminal Procedure Code of the Republic of Moldova (Article 17); Criminal Procedure Code of Montenegro (Articles 5 and 13); Criminal Procedure Code of Norway (Articles 96-8 and 107); Criminal Procedure Code of Uzbekistan (Article 49, as amended in 1999). Unofficial translations of these laws are available at: <http://www.legislationline.org/documents/section/criminalcodes>. This list is a selection of legislative codes only and does not purport to be exhaustive.

²⁹ UK Police and Criminal Evidence Act 1984 (c.60), available at: http://www.opsi.gov.uk/acts/acts1984/pdf/ukpga_19840060_en.pdf, at s.58(1).

Criminal Procedure Code requires that an accused has the right for a defence lawyer to be present in police interviews.³⁰ And the sixth and fourteenth amendments to the United States Constitution have also been held to guarantee a right to counsel at or after the time that judicial proceedings have been initiated against a person, which the US Supreme Court has interpreted to include arrest under a warrant and interrogation.³¹

Detainees must be able to access the full range of legal services

28. The Court has previously confirmed that the right to access a lawyer is not limited to the receipt of legal advice on arrest. It must extend to cover a range of legal services, such as: discussion of the case, organisation of the defence, collection of evidence, preparation for questioning, support of an accused in distress and checking the conditions of detention; all of which work together to ensure that the fair trial rights of an accused person is guaranteed.³²
29. This position is affirmed in the EU Directive on the right of access to a lawyer in criminal proceedings, which provides that the role of a lawyer in the first hours of detention is wider than offering legal advice. They must be able to meet the accused person in private and to communicate with them without hindrance. The lawyer should also participate in the interrogation, asking questions or requesting clarifications or make a statement on behalf of a suspected person.³³
30. The range of services demonstrates that the right to a lawyer extends beyond the preservation of the right to silence. This means that the Court may still find a Convention breach to Article 6(3)(c) notwithstanding the fact that no evidence is collected in the absence of a lawyer. The APT respectfully submits that the right to legal assistance should be understood as a self-standing broad right, and a violation may be seen when any of the services examined by the Court are not given practical effect due to hindrance by the national authority.

Qualified Right

31. The Grand Chamber is currently considering a temporary delay of access to a lawyer in the case of *Ibrahim and Others v. the United Kingdom*.³⁴ As the law currently stands, the Court recognises that the right to legal assistance may be subject to restrictions for good cause.³⁵ In *Salduz*, the Grand Chamber stated the right may be restricted where there are compelling reasons. However, “[e]ven 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.”³⁶
32. The APT does not deny that there are circumstances which require an accused person to be interrogated in the absence of a lawyer, and it is noted that the current approach taken by the Court is correct.³⁷ As the right to access a lawyer is fundamental, and as the refusal of the right can have such serious consequences for an accused person, such a restriction must be severely

³⁰ Switzerland, Criminal Procedure Code of 5 October 2007 (Status as of 1 January 2016), available at <https://www.admin.ch/opc/en/classified-compilation/20052319/index.html>, at Article 159.

³¹ See *Brewer v. Williams*, 430 US 387 (1977), unofficially available at: http://www.law.cornell.edu/supct/html/historics/USSC_CR_0430_0387_ZO.html, at pp. 398-9.

³² See the *Dayanan* case, *supra* fn. 5, § 32, and the *Brusco* case, *supra* fn. 16, §§ 44-45.

³³ See Recital 25 of the EU Directive on the right of access to a lawyer in criminal proceedings, *supra*.

³⁴ *Ibrahim and Others v. the United Kingdom*, nos. 50541/08, 50571/08, 50573/08 and 40351/09, 16 December 2014.

³⁵ *Ibid.*, § 193. See also, *John Murray*, § 63, and *Magee*, § 41, *supra* fn. 19.

³⁶ *Salduz*, *supra* fn. 2, § 55.

³⁷ See *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 263, 21 April 2011, and *Salduz*, *supra* fn. 2, § 54.

limited in scope, appropriately safeguarded, and should be recorded in writing. The Court should look to the particular circumstances of the case, and determine whether such a delay was reasoned and recorded at the time.

33. The EU Directive on the right of access to a lawyer in criminal proceedings provides that where restrictions are necessary, they must be authorised by a judicial or other competent authority, and open to review.³⁸ This is an important procedural safeguard which is also reflected in the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.³⁹ This requirement clearly excludes the possibility that access to a lawyer may be refused by a detaining authority without justification and supervision from the appropriate authority.

IS ACCESS TO A LAWYER NECESSARY TO GUARANTEE FAIRNESS?

34. Following the *Salduz* principle, fairness is likely to be irretrievably prejudiced if evidence collected in the absence to a lawyer is used for a conviction. However, the Court has previously distinguished cases in which the conviction is supported by other evidence. In *Dvorski v. Croatia*, for instance, the Court ruled that there was no violation to Article 6(1) on the basis that the national court had relied on a complex body of evidence in making its decision.⁴⁰ The Court appears to have considered the weight of the evidence to be a significant part in its consideration of whether, overall, the fairness of the criminal trial was prejudiced by the use of evidence obtained in the absence of a lawyer.⁴¹
35. However, the jurisprudence of the Court has not always supported this conclusion. In *Khayrov v. Ukraine*, a breach of Article 6(1) was found in the absence of any consideration by the Court on the weight of other evidence, where the evidence taken in the absence of a lawyer had had a bearing upon the final decision of the national court. In *Lazarenko v. Ukraine*, the government has asserted that a statement taken in the absence of a lawyer had not been decisive for his conviction, which had also been based on the statements of a co-defendant and a number of witnesses, as well as an expert forensic report. The Court considered that the effect of the evidence on the conviction was immaterial. It stated: "That it irretrievably prejudiced the right of defence is presumed once it is established that it had some bearing on the conviction."⁴²
36. Even where some indirect reliance was placed on statements obtained in the absence of the applicant's choice of lawyer, in circumstances where the statements were later ruled inadmissible, the Court has still found that the fair trial rights of the accused person had been prejudiced. In *Martin*, the Court ruled that the breach had not been completely undone by the removal of the statements, and a violation of Article 6 was found.⁴³

³⁸ EU Directive on the right of access to a lawyer in criminal proceedings, *supra*, at Article 8(2).

³⁹ Principle 18(3) provides: "The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order." *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, adopted by General Assembly resolution 43/173 of 9 December 1988, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>.

⁴⁰ *Dvorski v. Croatia*, no. 25703/11, 28 November 2013.

⁴¹ Note that there were two dissenting opinions in the *Dvorski* ruling, in which Judges Berro-Lefèvre and Laffranque considered the evidence to have still played a decisive role in the conviction.

⁴² *Leonid Lazarenko v. Ukraine*, no. 22313/04, § 57, 28 October 2010.

⁴³ *Martin v. Estonia*, no. 35985/09, § 96, 30 May 2013.

37. Following this line of reasoning, even where the weight of other evidence implies that the statements taken in breach of the right to a lawyer had only limited effect in the conviction against an accused person, it would be wrong to assert that the prejudice did not lead to unfairness overall. Any reliance placed on evidence obtained in the absence of a lawyer is likely to contaminate the national conviction which could lead the Court to find an Article 6(1) violation, in addition to a separate violation of Article 6(3)(c).
38. The APT respectfully submits that the approach of the Court in *Lazarenko* is the correct approach for the Grand Chamber to take. It is not relevant for the Court to consider the weight of corroborating evidence in circumstances where the defence rights of an accused person are prejudiced by a failure to afford access to a lawyer in the first hours of detention. This failure, in and of itself, may justify finding a violation to the right to a fair trial.

CONCLUSION

39. The APT respectfully submits that the right to access a lawyer serves multiple important purposes, including to remind the accused person of their right to silence, to help explain the charges, and to help an accused person understand the legal situation. It is only with the benefit of a lawyer that an accused person can become sufficiently aware to make an informed choice about how to defend him or herself in the context of criminal charges. Any denial of access to a lawyer without sufficiently compelling reasons justifying such a refusal is likely to significantly prejudice the right to a fair trial, even in circumstances where evidence taken in the absence of a lawyer is not presented at trial.
40. Even in circumstances where the Court considers that the overall fairness of the trial had not been prejudiced by the denial of the right to access a lawyer, it does not follow that the denial is not a breach of Article 6(3)(c). The denial to access a lawyer in the early hours of detention, at a time when a criminal suspect is most vulnerable, is a serious breach of minimum fair trial rights in its own right which, we would respectfully assert, should inform the Grand Chamber's approach on this issue.

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