



19 December 2017

On 20 December 2017, the Grand Chamber of the European Court of Human Rights will hear the case of *Beuze v Belgium* (no. 71409/10). Its decision in this case will have wide-ranging effects on the right to early access to a lawyer in criminal cases across Europe. The members of the *JUSTICIA* European Rights Network (a coalition of leading civil liberties organizations in Europe working on the right to a fair trial) believe that this case presents an opportunity for the Court to reinforce the protection of this fundamental human right. The *JUSTICIA* European Rights Network supports the [intervention](#) made by Fair Trials (the global criminal justice watchdog) in the case.

The case concerns a Belgian national, Philippe Beuze, sentenced to life imprisonment for intentional homicide. Mr Beuze was interrogated seven times by the police and twice by the investigating judge, and was denied the assistance of a lawyer each time. Without a lawyer, Mr. Beuze was unable to properly defend himself.

As Mr. Beuze's case shows, the right to access a lawyer lies at the very foundation of the right to a fair trial and the prohibition against torture and ill-treatment, protected by the European Convention of Human Rights. Without a lawyer, individuals cannot adequately defend themselves; cannot make effective use of the key procedural safeguards, which are provided to suspects and defendants in criminal proceedings, and are open to manipulation and coercion by the state, a fact that has been repeatedly recognized by the Court itself. The case raises important questions regarding the moment at which the duty to provide legal assistance during the initial phase of criminal proceedings arises, and the circumstances under which that duty may be limited.

Unfortunately, the Court's recent judgements have provided increasingly restrictive interpretations of the right to a lawyer under Article 6 of the Convention on the right to a fair trial. This appears to be a departure from its well-established standards set out in the 2008 case of *Salduz v Turkey* regarding the right to legal assistance in criminal proceedings, which was reinforced by numerous subsequent judgements, such as *Dayanan v. Turkey* and *Aras v. Turkey*

(No.2). In *Salduz*, the Court held that the right to a fair trial is breached if a lawyer is not provided from the first interrogation by police and if incriminating statements made in the absence of a lawyer are used for a conviction. In *Dayanan* and *Aras* the Court found violations of that right solely because the applicants were not allowed effective access to a lawyer during their pre-trial interrogations even though they did not make any incriminating statements.

Sadly, through a series of judgments in the past year – in the cases of *Ibrahim v the UK*, *Simeonovi v Bulgaria* and *Artur Parkhomenko v Ukraine* – the Court has effectively created the possibility that a conviction can be valid where the suspect is questioned without a lawyer (even in violation of the national law) and provides evidence in the course of the questioning, provided that the Court finds the proceedings “as a whole” are fair. This has provided a loophole through which criminal investigators can unlawfully deny a suspect a lawyer without any negative consequences, even when there are no compelling reasons to restrict access to legal assistance.

The Court’s recent case law has caused confusion across Europe. In the nine years since the *Salduz* decision, numerous criminal justice systems were reformed to guarantee a lawyer at the earliest stages and the European Union enacted a Directive inspired by it: the 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. Among other things, the Directive seeks to ensure that people are treated equally wherever they are within the EU, guaranteeing the right to a lawyer everywhere and requiring that effective remedies are provided where that right is violated. In addition, the Directive does not condition access to a lawyer on the “overall fairness” of the proceedings.

The more recent case law of the Court threatens fundamentally to undermine this positive progress and to return European criminal justice to the days when your rights differ depending on the country in which you are arrested. We have seen on numerous occasions that the lack of clear rules and the existence of arbitrary restrictions upon early access to legal assistance weaken procedural safeguards, and undermine the fairness of the entire criminal process and its outcomes.

The *Beuze* case provides an important opportunity for the Court to underline the importance of the right to a lawyer from the outset of police custody, and to align the standards under ECHR and EU law in order to create a comprehensive system of protection of this fundamental right.

Ahead of the hearing before the Grand Chamber, we hope the Court upholds its original approach, and to guarantee that individuals cannot be convicted if were unlawfully denied early access to a lawyer in criminal proceedings. To hold otherwise would, in effect, give license to criminal justice authorities to flout the law, deny access to lawyer to suspects whenever this is most convenient and would unravel nearly a decade’s worth of positive progress across Europe.