

Legal Aid in the Jurisprudence of the ECtHR and CJEU

Anželika Banevičienė*

Introduction

Article 6(3)(c) of the European Convention on Human Rights (ECHR) guarantees the right of every individual charged with a criminal offence "to defend himself in person or through legal assistance of his own choosing." This provision is foundational to the concept of a fair trial under Article 6(1), particularly concerning equality of arms and effective participation in proceedings. The European Court of Human Rights (ECtHR) has developed robust jurisprudence interpreting the scope and content of this right, especially regarding the timing, nature, and effectiveness of access to legal counsel. Similarly, Article 47 of the Charter of Fundamental Rights of the European Union (CFR) guarantees the right to an effective remedy and to a fair trial. This provision embodies the principle that access to justice must be meaningful, which includes the right to legal representation and, when necessary, access to legal aid.

This paper presents the findings of the European Court of Human Rights (ECtHR) in 29 key cases.¹ It illustrates both the doctrinal evolution and practical implications of Article 6(3)(c). Additionally, it discusses how the Court of Justice of the European Union (CJEU) has interpreted and applied Article 47 of the CFR through its case law, focusing on three Grand Chamber cases and six decisions from various chambers, covering the period from 2009 to 2025.

DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Foundational Case: *Salduz v. Turkey*

In *Salduz v. Turkey* (GC, no. 36391/02), the Grand Chamber held that, as a rule, access to a lawyer should be provided from the first interrogation by police. The Court established a two-pronged test: (1) whether compelling reasons justified a restriction of access to counsel, and (2) whether the restriction irretrievably prejudiced the fairness of the proceedings. The Court emphasised that the use of statements made during police custody without legal assistance to secure a conviction breached Article 6(3)(c).

Reasserting timely legal counsel: *Simeonovi*, *Öcalan*, and *Averill*

The *Simeonovi v. Bulgaria* (GC, no. 21980/04) case reinforced the principle that access to a lawyer must be ensured from the earliest stage of police detention. Any delay must be justified with compelling reasons, and failure to meet this standard can render the entire proceedings unfair under Article 6 of the ECHR.

In *Öcalan v. Turkey* (GC, no. 46221/99), the Court reiterated that denial of access to a lawyer at the initial stages of police custody undermines trial fairness, even in terrorism-related cases. The Court emphasised

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¹ The phrase "key cases of the European Court of Human Rights (ECtHR)" refers to landmark judgments that have significantly influenced the interpretation and application of the European Convention on Human Rights (ECHR).

that procedural rights must remain effective, regardless of the seriousness of the charges, thereby reinforcing the *Salduz* doctrine.

In *Averill v. the United Kingdom* (no. 36408/97), the Court underscored the importance of timely legal counsel in criminal proceedings and the procedural safeguards necessary to ensure a fair trial. The Court held that the restriction on access to legal counsel during the initial 24-hour period was unjustified and irretrievably prejudiced the fairness of the trial. The combination of the applicant's isolation from legal advice and the subsequent drawing of adverse inferences from his silence amounted to a significant handicap in the exercise of his defence rights.

Legal assistance during police interrogation in terrorism-related cases: Magee v. The United Kingdom

In the case of *Magee v. The United Kingdom* (no. 28135/95), the Court highlighted the critical importance of having access to legal representation, especially during the early stages of police interrogation when suspects are most vulnerable. Mr. Magee was denied access to a solicitor for more than 48 hours. His requests for legal advice were delayed due to emergency legislation, and his solicitor was not permitted to be present during the interviews. The Court concluded that the combination of denial of legal access during the initial interrogations and the psychological pressure experienced in the holding center significantly compromised Mr. Magee's rights to a fair trial.

Late Access and Retroactive Validation: Bogdan and Csikós

In *Bogdan v. Ukraine* (no. 38816/10), the applicant was denied access to a lawyer for several days during investigative detention. The authorities sought to justify this delay retroactively by emphasizing subsequent legal aid and the fairness of the overall trial. The Court rejected this, reiterating that retroactive curative measures do not remedy violations of the core right to early access. Similarly, in *Csikós v. Hungary* (no. 37251/04, 28 June 2021), the Court found that the police's blanket refusal to grant a lawyer during interrogation—and the trial court's reliance on that confession—tainted the integrity of the proceedings, notwithstanding later access to legal counsel.

Automatic Restrictions and Compelling Reasons: Beuze, Dikme and Ibrahim

In *Beuze v. Belgium* (GC, no. 71409/10), the Court forbade automatic or blanket restrictions on access to a lawyer. The Belgian practice of systematically delaying access failed both prongs of the *Salduz* test. Likewise, in *Dikme v. Turkey* (no. 20869/92), the applicant was denied legal counsel for 16 days while held incommunicado under anti-terror legislation. The Court held that such a restriction, being automatic and not justified by case-specific circumstances, violated Article 6(3)(c) and undermined the fairness of the proceedings.

In *Ibrahim and Others v. the United Kingdom* (GC, no. 50541/08 and others), the Court accepted that compelling reasons could, in exceptional circumstances, justify the temporary denial of access to legal assistance. The case involved terrorism suspects interviewed under the "safety interview" protocol. While acknowledging the public safety imperative, the Court emphasized the need for rigorous procedural safeguards, including documentation, review, and limits in scope and duration.

Effective legal representation: Geyseghem v. Belgium

In *Van Geyseghem v. Belgium* (GC, no. 26103/95), the Court clarified that a procedural rule preventing a lawyer from speaking in the defendant's absence must not infringe upon the essence of the defense rights.

Even in the context of proceedings for setting aside a conviction, the defense must be allowed to present arguments through counsel unless the restriction is necessary and proportionate. This judgment reinforced the principle that the right to legal assistance under Article 6 must be practical and effective, not theoretical or illusory.

Self-Representation and Choice of Counsel: Matos and Hermi

In *Correia de Matos v. Portugal* (GC, no. 56402/12), the applicant, a former lawyer, was prevented from defending himself in criminal proceedings and was forced to accept court-nominated legal representation. The Court acknowledged that certain limitations on self-representation could be justified by efficiency and public interest, but stressed that any restriction must pursue a legitimate aim and be proportionate. Similarly, in *Hermi v. Italy* (GC, no. 18114/02), the applicant's conviction in absentia despite his requests to be present and defend himself raised issues regarding the adequacy of legal representation. The Court found a violation due to a lack of an effective opportunity to participate in the trial.

Confidentiality and Presence of Counsel: Brennan v. United Kingdom

In *Brennan v. United Kingdom* (no. 39846/98), the applicant's right to confidential consultation with a solicitor was infringed when a police officer was present during their meeting. The Court ruled that the presence of a third party violated lawyer-client confidentiality, rendering the legal assistance ineffective. This breach, together with the subsequent use of the applicant's confession at trial, led to a finding of an Article 6(3)(c) violation.

Procedural Integrity and Legal Representation: Sannino and Somogyi v. Italy

In *Sannino v. Italy* (no. 30961/03), the applicant experienced numerous substitutions of court-appointed counsel without proper notification or the ability to effectively participate. The Court emphasized that formal appointment of counsel is insufficient; effective legal assistance must be practical and not theoretical. Similarly, in *Somogyi v. Italy* (no. 67972/01), the Court found a violation where the applicant had no effective knowledge of proceedings and no opportunity to instruct a lawyer.

Effective legal assistance: Medenica v. Switzerland

In *Medenica v. Switzerland* (no. 20491/92), the Court emphasized that the mere formal designation of legal counsel is not sufficient. The appointed lawyer must actively defend the accused's interests, particularly in a trial in absentia. That includes taking active steps in the defence, safeguarding the procedural rights of the accused, and engaging meaningfully with the proceedings. In this case, although the Swiss court ex officio appointed a lawyer to represent the applicant during his trial in absentia, that lawyer did not take any real steps to defend him.

Court of Cassation Proceedings and Restrictive Legal Aid: Meftah v. France

In *Meftah and Others v. France* (GC, nos. 32911/96, 35237/97, 34595/97), the applicants complained of limited access to legal aid and inability to address the Court of Cassation in person or through a freely chosen lawyer. Under French law at the time, only specially accredited lawyers (*avocats aux Conseils*) had the right to make oral submissions before the Court of Cassation. The lawyer's opinion was not systematically communicated to the parties. The Court held that procedural rules disproportionately restricted the applicants' access to counsel and thus contravened Article 6(3)(c), particularly since these limitations affected an essential stage of criminal proceedings.

Coercion and Uninformed Waiver: Pantea and Dvorski

In *Pantea v. Romania* (no. 33343/96), the Court noted the applicant was interrogated and detained without counsel despite his professional background as a former prosecutor. His lack of legal assistance during critical stages of the case prejudiced his defense. In *Dvorski v. Croatia* (GC, no. 25703/11), a waiver of counsel was found invalid as the applicant was denied access to the lawyer of his choice and misled about his right to representation. The Court ruled that waiver of legal assistance must be unequivocal, informed, and voluntary.

Military and Disciplinary Contexts: Morris v. United Kingdom

In *Morris v. United Kingdom* (no. 38784/97), the applicant was tried by court martial and represented by a military officer with no legal training. The Court found a violation of Article 6(3)(c), stressing that legal representation must be competent and independent, especially in proceedings with severe consequences such as dismissal or imprisonment.

State security interests: M v. The Netherlands

In *M v. The Netherlands* (no. 2156/10), while recognising state security interests, the Court emphasised that any restriction must be exceptional, necessary, proportionate, and accompanied by adequate safeguards. The Court stressed that access to a lawyer in itself is not sufficient; the communication must be meaningful. The applicant was barred from discussing substantive elements of his case, including material necessary for his defence. Despite the government's framing of these measures as protective of national security, the Court viewed them as a serious interference with the applicant's fundamental right to legal assistance. The applicant had to decide whether to share sensitive information with his lawyers under threat of prosecution for violating official secrecy. This legal uncertainty had a chilling effect on his ability to mount a defence.

Youth and Vulnerability Considerations: Blokhin and Güveç

The Court has stressed the heightened need for procedural guarantees when dealing with minors. In *Blokhin v. Russia* (GC, no. 47152/06), the 12-year-old applicant was held in detention and interrogated without a lawyer, psychologist, or guardian. The Court underscored the special vulnerability of minors and found multiple violations, including Article 6(3)(c). Similarly, in *Güveç v. Turkey* (no. 70337/01), the applicant, then aged 15, was tried in an adult State Security Court, denied legal aid during pre-trial detention, and faced intimidation. The Court emphasized the need for adapted procedures and early legal assistance for minors.

Quasi-criminal nature of the proceedings: Ezeh and Connors, and Galović

In *Ezeh and Connors v. the United Kingdom* (GC, nos. 39665/98 and 40086/98), the applicants faced prison disciplinary proceedings resulting in additional detention time. Despite the quasi-criminal nature of the proceedings, they were denied legal representation. The Grand Chamber held that the denial violated Article 6(3)(c), emphasizing that the seriousness of the potential penalty necessitated legal aid. In *Galović v. Croatia* (no. 45512/11), the Court noted that inconsistencies in access to legal counsel in psychiatric detention procedures revealed structural gaps in protection, undermining legal certainty and equality of arms.

JUDGMENTS OF THE EU COURT OF JUSTICE

Legal aid to legal persons – Case C-279/09 – DEB

In a landmark judgment, C-279/09, the Court ruled that legal persons (such as companies) may be entitled to legal aid under Article 47. Legal aid must be granted where its absence would render judicial access impossible due to financial constraints. The judgment set criteria for assessing the proportionality of aid denial, such as the complexity of proceedings, chances of success, and public interest considerations.

Legal Aid for Children in Criminal Proceedings – Case C-603/22 – M.S. and Others

Case C-603/22 exemplifies the Court's robust defence of legal safeguards for children. Under Directive 2016/800, Article 18, legal aid is to be guaranteed if necessary to ensure effective access to a lawyer. The Court insisted that children must be assisted by a lawyer from the first moment they are formally suspected, and not only once they are formally charged. Member States must ensure legal aid is available whenever the child or their guardians have not arranged private counsel, especially in detention or trial situations.

Vulnerable Adults and Legal Aid – Case C-530/23 – K.P.

In Case C-530/23, the Court addressed the intersection of legal aid and vulnerability. The suspect, showing signs of psychological instability, was questioned without a lawyer. The CJEU ruled that legal aid must be provided without undue delay, especially in cases involving potentially vulnerable suspects. There should be no presumption of vulnerability; instead, individual assessments are required. Admissibility of evidence obtained in breach of legal aid rights must be assessed in light of whether the rights of defence and fairness of proceedings were preserved.

Structural Barriers to Legal Aid – Case C-205/15 – Toma

The Court examined Romanian rules that exempt public authorities from legal fees in enforcement proceedings. It held that such exemptions may violate the principle of equality of arms under Article 47, especially when individuals face procedural costs that public bodies do not. The Court emphasised that legal aid systems must not be structured in ways that create a de facto denial of justice.

Legal Aid and irregular migration – Case C-249/13 – Boudjlida

In Case C-249/13, while primarily addressing the right to be heard in return procedures under immigration law, the CJEU acknowledged the procedural vulnerability of third-country nationals. The Court observed that legal aid may be crucial in ensuring the effective contestation of return decisions. Member States must ensure that the right to be heard and to an effective remedy is real, not formal.

Procedural rights– Case C-660/21 K.B. and F.S.

Case C-660/21 revolved around procedural rights in criminal matters. The Court underlined that suspects must be promptly informed of their right to legal aid. It criticised national rules that inhibit courts from addressing violations of procedural rights on their own motion, thereby undermining the effectiveness of Article 47.

Grand Chamber cases

In Case C-292/23, the Court stressed that procedural rights guaranteed under the Charter, including the right to legal assistance, must be protected throughout European Public Prosecutor's Office (EPPO) proceedings. The judgment affirmed that denying review of procedural acts where individuals' legal positions are

affected (e.g. potential self-incrimination during witness hearings without legal representation) risks breaching the right of access to a lawyer.

In Case C-29/22 P, applicants KS and KD brought a damages claim against EU institutions over Eulex Kosovo's alleged failures to investigate serious human rights violations, including torture and killings. They argued that the EU had failed to ensure access to legal assistance during non-judicial proceedings before the Human Rights Review Panel. The Court granted legal aid to the applicants at the appeal stage (under Article 146(3) of the Rules of Procedure), acknowledging that legal representation was necessary for effective access to court in such fundamental rights matters. The CJEU reiterated that the Charter applies fully to the EU institutions, particularly in cases where individuals allege serious breaches of rights protected under the Charter and the ECHR. The Court emphasised the importance of legal assistance in ensuring that access to justice is not illusory, even where the Treaties limit jurisdiction.

In Cases C-924/19 PPU and C-925/19 PPU, the Court ruled that the detention of asylum seekers in the transit zone was found to be *de facto* detention, requiring full judicial safeguards, including the right to legal assistance and legal aid. The Court ruled that detained applicants must be informed of their rights, including to free legal aid, and judicial review must be available and accessible, with the applicant having legal representation.

Conclusion

This paper has demonstrated that both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have progressively shaped a coherent and protective legal framework surrounding the right to legal aid as a core component of the right to a fair trial. Through Article 6(3)(c) of the ECHR and Article 47 of the Charter of Fundamental Rights of the EU, these courts have emphasised that legal assistance must be timely, effective, and adapted to individual circumstances—especially for vulnerable groups such as minors, persons with psychological impairments, and those facing quasi-criminal or administrative procedures.

The jurisprudence of the ECtHR has emphasised that legal assistance is not merely a formality, but a substantive safeguard, requiring meaningful participation and effective representation from the earliest stages of police custody through all critical stages of proceedings. Similarly, the CJEU has clarified that access to legal aid is indispensable to ensuring equality of arms and the effectiveness of judicial protection, even in contexts involving legal persons, administrative enforcement, and immigration procedures.

Both courts underscore that restrictions on access to legal counsel must be exceptional, justified by compelling reasons, and proportionate in nature. Moreover, procedural rules or systemic barriers that undermine the practical realisation of the right to legal aid are incompatible with the principles of justice upheld by European legal standards.

In essence, legal aid is not only a procedural right but a foundational element of democratic justice and the rule of law in Europe. The evolving case law reflects a growing commitment to ensuring justice is accessible, fair, and effective for all, regardless of status, means, or circumstances.