Beuze v Belgium App. No 7149/10 (Grand Chamber)

Written comments of Fair Trials

Introduction

1. Fair Trials submits these written comments in accordance with the permission to intervene granted by the President of the Grand Chamber by letter of 22 September 2017 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) and (4) of the Rules of the Court. Fair Trials has been assisted in the preparation of these submissions by Alex Tinsley (Barrister, Church Court Chambers).

2. The case concerns the scope of the right of access to a lawyer under Article 6(1) and 6(3)(c) during the preliminary stages of criminal proceedings and the application of the principles derived from *Salduz v. Turkey* [i] and *Ibrahim and Others v. United Kingdom*.[ii] Fair Trials seeks to assist the Court by presenting the legislative and jurisprudential developments that have taken place across Europe in line with the standards established by the Court in *Salduz*, in particular, Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings (the "**Directive**")[iii] and comparative analysis of how the right to early access to a lawyer is protected in practice in various Member States of the EU. We address the Court on the backward step brought about by *Ibrahim* and the likely negative impact of this on the protection of defence rights across Europe, and suggest how the Court should proceed in the context of the opportunity presented by this case.

The reality pre-*Salduz*

3. Prior to the judgment in *Salduz*, many national legal systems in Europe did not provide for the possibility of a suspect being assisted by a lawyer in police interrogation. Examples include: Belgium, where the law as it stood at the time of the national proceedings in this case did not foresee the presence of the lawyer in questioning; France, where the previous version of Article 63-4 of the Criminal Procedure Code again did not foresee the lawyer's presence in police interrogation; Scotland, where the suspect could be questioned in the absence of a lawyer; the Netherlands, where the suspect did not have a right of access to counsel during (as opposed to before) questioning; Germany, where the presence of a lawyer was not guaranteed for police interrogation, as opposed to prosecutorial or judicial questioning; and Ireland, where the right of access to legal assistance was interpreted narrowly such as to allow only "reasonable" access which in practice watered down the right significantly. In the above jurisdictions, until domestic jurisprudence or legislative intervention in response to *Salduz*, nothing prevented convictions being based on statements made in the absence of a lawyer. A European Commission study of 2011 assessing the need for EU action to ensure compliance with the *Salduz* judgment identified a range of countries where the law did not provide for this right.[iv]

The decision in *Salduz*

4. In *Salduz*, the Court established that "as a rule", there should be access to a lawyer as from the first interrogation by police. The Court drew a link between a failure to abide by that requirement and a violation of Article 6: where "incriminating statements" made in the absence of a lawyer are

"used for a conviction", the rights of the defence would "in principle" be irretrievably prejudiced. Fair Trials wishes to highlight several issues concerning this decision and its aftermath.

The *Salduz* rule and the fairness of the proceedings as a whole

5. This apparently clear line did not amount to a departure from the general approach whereby Article 6(3) guarantees are not ends in themselves, but specific features of the right to a fair trial guarantee by Article 6(1). According to this approach, the Court may only assess a violation in light of the "fairness of the proceedings as a whole" and not consider a specific aspect in isolation.

6. It appears that the Court established that fairness under Article 6(1) would "in principle" be breached (overall) by a failure to abide by the specific defence rights guaranteed at the pre-trial stage, because of the importance of this phase for the proceedings as a whole. The Court's approach also preserved its own position as a subsidiary body which intervenes: (a) only after the national proceedings are over; and (b) when national remedies have failed to secure compliance with the Convention. In other words, the breach of Article 6 would not arise automatically from the absence of a lawyer but only when the restriction on defence rights "crystallised" at trial through the use of the evidence so obtained.

7. Fair Trials underlines this point because of the apparent conflation of the Court's search for this "crystallising" in cases before it, in order to establish a violation overall, and an inferred discretion to take into account evidence obtained in breach of the right to a lawyer in police interrogation (a possibility which appeared to have been ruled out until the *Ibrahim* judgment discussed further below).

The "systemic restriction" point

8. In cases that followed *Salduz*, the Court found violations of Article 6 where the law of the respondent government excluded access to a lawyer in the relevant interrogation, irrespective of the fact that the suspect exercised his right to silence and where no "incriminating statement" could accordingly be identified (e.g. *Dayanan v. Turkey*[v]).

9. In its intervention in *A.T. v. Luxembourg*,[vi] Fair Trials noted that the Court had not explained its approach. Fair Trials also notes that in that specific case, as in others, the Court, despite the finding of a systemic restriction, due to the provisions of domestic law, went on to assess whether the incriminating statements obtained were used for a conviction (i.e. looking at the fairness of the proceedings as a whole). We remain unclear as to why the Court decided to pursue this further assessment. Given that this case invites the Grand Chamber to rationalise the position, we make the following comments.

10. Fair Trials supported the strict "systemic restriction" line in *A.T. v. Luxembourg* and continues to do so. If national law did not correspond to the Convention, and national law was not breached, the domestic courts will in many cases not have assessed the Convention issue relating to access to a lawyer in police interrogation. It would be inappropriate for that argument to happen for the first time before the Court. Conversely, however, there are some cases (discussed below) where

national courts have at least considered applying remedies directly based on the Convention despite compliance with national law. In that scenario, the Convention issue has been assessed.

11. Accordingly, if the Court is minded to qualify the approach it has taken to "systemic restrictions", we would suggest the Court should only proceed to conduct its own assessment of the use made of the statements obtained, without a lawyer, if it is satisfied that compliance with the Convention had been assessed by the national courts in the specific case (and, crucially, by reference to the correct interpretation of the Convention) despite domestic law not being breached.

Incriminating statements

12. Fair Trials has previously argued that "incriminating statements" needs to be interpreted broadly to include any statement which later causes prejudice, and believes this to be uncontroversial. *A.T. v. Luxembourg* recognised that denials (not *per se* incriminatory) gave rise to such prejudice where they were used to undermine later denials in inconsistent terms. *Ibrahim* itself considered early statements deployed later to show a trial defence to be a recent fabrication. The remainder of these observations assume that "incriminating statements" include any statements made by the accused which have an adverse evidential effect at trial, extending far beyond a basic "confession".

The use of evidence at trial

13. Assuming a (non-systemic) restriction, or if the Court is minded to proceed to a fuller assessment despite the systemic restriction, as noted above the violation arises only if the requirements of Article 6 at the pre-trial stage "crystallise" at trial (typically through the admission of evidence).

14. In its *A.T. v. Luxembourg* intervention, Fair Trials drew attention to a number of cases in which apparently different tests had been applied to the issue of "use" of incriminating statements for a conviction, including:

    a. *Dvorski v. Croatia*,[vii] where the Chamber found no violation where the confession which was obtained in the presence of a lawyer appointed by police, contrary to the applicant's wishes, had been part of a complex of other evidence (which we considered "relaxed");

    b. *Khayrov v. Ukraine*[viii] in which the Court found violations even when the incriminating statement was not central to the conviction (which we considered more "rigorous"); and

    c. *Martin v. Estonia*[ix], where the Court found a violation based on the indirect reliance on a confession despite its formal exclusion, as the effects of the breach had not been "completely undone".

    The Grand Chamber subsequently reversed the Chamber judgment in *Dvorski* so that, prior to *Ibrahim*, we would be unable to point the Court to a decision in which a confession had any bearing on the conviction without leading to a violation. This is significant in so far as *Ibrahim* appears to have opened the door to that possibility, thus relaxing the position as opposed to simply clarifying it as discussed below.

The response to *Salduz*

15. The Court's decision in *Salduz* and subsequent cases had a radical impact on criminal justice

16. The Directive engthening procedural rights,[x] the EU proposed the Directive systems across Council of Europe member states. These developments overlap with implementation of the Directive, so the Directive is presented first below., the European Commission

17. As part of the EU Roadmap of 30 November 2009 on str recognising (three years after *Salduz*) that in several Member States there was still no entitlement for a suspect to see a lawyer before any police questioning and/or no entitlement to the assistance of a lawyer during police questioning.[xi]

18. The Directive is inspired by the Court's *Salduz* judgment, as stated in Recital 50: "Member States should ensure that in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer, or in cases where a derogation from that right was authorised in accordance with this Directive, the rights of the defence and the fairness of the proceedings are respected. In this context, regard should be had to the case-law of [the Court], which has established that the 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". In effect, the EU Member States are required to implement not only the Directive, but also the Court's case law in relation to access to a lawyer.

19. Article 3 of the Directive lays down the right of access to a lawyer. It requires that suspects or accused persons must have access to a lawyer without undue delay and in any case, 'before they are questioned by the police or by another law enforcement or judicial authority', upon the carrying out of an investigative act, and after deprivation of liberty. It specifies that the suspect must be able to meet in private with the lawyer prior to questioning by police or another authority; that the lawyer must be able to participate effectively in the context of questioning; and that the lawyer must be able to attend investigative and evidence-gathering acts.

20. Article 12(1) sets out a general rule requiring Member States to ensure that suspects or accused persons have an effective remedy in the event of a breach of the rights under the Directive. Article 12(2) sets out a specific rule in respect of statements made by the accused: 'without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in criminal proceedings, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of their right to a lawyer ... the rights of the defence and the fairness of the proceedings are respected'. The Directive does not specify the remedies in detail, which is left to the individual Member States, but like the case-law it draws the link between breach and remedies in the assessment of evidence in the rest of the procedure.

National implementation

21. From shortly after the *Salduz* judgment to as recently as this year, Council of Europe / EU Member States and their courts have taken measures to secure the right of access to a lawyer (as

articulated in both the Court's case-law and the Directive) through legal reforms of police custody proceedings and linked judicial responses to breaches of the right. Thus –

a. **Scotland** – In *Cadder v HM Lord Advocate*, the UK Supreme Court found the Scottish system of police custody permitting suspects to be questioned for six hours without access to a lawyer to be contrary to the *Salduz* principles.[xii] Following this decision, the Scottish Government legislated to recognize suspects' right to have a private consultation with a solicitor before any questioning begins and at any other time during such questioning, but did not specifically prescribe a right to have a lawyer present when questioned by the police. Subsequently, in response to the Directive, legislation was introduced to strengthen the role of the lawyer assisting during interrogations.[xiii]

b. **France** – The Conseil Constitutionnel, inspired by the *Salduz* judgment, issued the landmark ruling of 30 July 2010 in which it found unconstitutional the *garde à vue* regime, according to which lawyers could not attend interrogations despite the potential for suspects' statements to be used against them later.[xiv] Soon after, legislation was adopted which, for the first time, afforded suspects the right to be assisted by a lawyer when questioned by the police. Pending entry into force of that legislation, a provisional instruction was issued by the Prosecutor's office and (after initial decisions going in the other direction), the Court of Cassation enabled courts to invalidate police custody procedures done on the basis of the (still in force, but Convention-incompatible) legislation drawing directly on the Convention (a case where, in our analysis above, the existence of a systemic restriction would not be conclusive as the national courts would provide remedies anyway).

c. **Netherlands** – Until recently, suspects had the right to consult a lawyer prior to questioning, but there was no recognition of the right to be assisted by a lawyer *during* questioning (an entitlement which was quickly clarified as forming part of the *Salduz* right in *Navone v. Monaco*[xv]). Initially, judgments of the Supreme Court took account of, but failed to apply, the *Salduz* decision,[xvi] on the basis that only the legislator could prescribe a right to legal assistance during questioning. In December 2015, the Dutch Supreme Court changed its position, holding that from March 2016, all suspects should have the right to be assisted by a lawyer when they are being questioned by the police in line with the Directive.[xvii] On 15 November 2016, the Dutch Senate approved legislation transposing the Directive.

d. **Belgium** – Prior to *Salduz*, legislation (at issue in this case) provided for legal assistance only after interrogation by the investigating judge. This meant that suspects were deprived of access to a lawyer for up to 24 hours, during which period the police could interrogate the suspect. Pending legal reform, as in France and the Netherlands, the courts recognised a possibility to apply remedies based directly on the Convention (see the Court of Cassation decision of 15 December 2010, referred to in the parties' pleadings). Thereafter, the Belgian Law of 13 August 2011 (known as the "loi Salduz") recognised

the right of a suspect held in custody to consult confidentially with a lawyer from the beginning of the interrogation and before the first questioning by the police as well as the right to be assisted by a lawyer during questioning. In November 2016, a second law known as "Salduz bis" came into force extending the right to a lawyer to all suspects.

e. **Malta** – In 2011, the Constitutional Court delivered judgements in three post-*Salduz* cases, declaring that the right to a fair trial had been breached by failing to allow suspects to seek legal advice prior to interrogation.[xviii] More recently, a first instance Constitutional judgment annulled a conviction in a case where a statement from an accused who was not given access to a lawyer prior to interrogation was used;[xix] and the Court of Criminal Appeal overturned a conviction due to the use of a statement given in the absence of a lawyer.[xx] Last year, the Criminal Code was amended in order to transpose the Directive.[xxi]

f. **Germany** – The presence of a lawyer was only expressly guaranteed when the suspect is questioned by a prosecutor or a judge. When questioned by the police, the presence of a lawyer was not required by the law; the suspect still had a right to remain silent, as well as the right to consult a lawyer, but only prior to the questioning. In September 2017, the German parliament passed legislation to ensure the effective implementation of the Directive and now interrogations by the police have been equated with those by prosecutors and judges, so that the lawyer can always be present and participate in the questioning. Under German case-law it is well established that evidence obtained in violation of the right on access to a lawyer cannot be used in trial[xxii] as this would constitute a violation of the right to fair trial (guaranteed in German law).[xxiii]

g. **Ireland** – Under Irish law, suspects under arrest did have the right to access legal assistance, but this was interpreted narrowly, to allow only 'reasonable' access. In 2014, however, in the case of *DPP v. Gormley*, the Supreme Court relied on *Salduz* and jurisprudence developed in common-law jurisdictions, including the United States of America, to recognise 'a right to early access to a lawyer after arrest' and a 'right not to be interrogated without having had an opportunity to obtain [legal] advice'.[xxiv] Ireland has yet to respond legislatively to ensure that its laws comply with *Salduz* and other international standards on the right to access a lawyer.

22. It should be noted that, despite the increasing clarity of the position regarding access to a lawyer in police interrogation, the same could not be said for the use of statements obtained in breach of that right. Thus, despite the Court's own case-law (until *Ibrahim*) not recognising a possibility of using statements obtained in breach of Article 6(3)(c), the Court itself noted in *Ibrahim* that some national systems favoured automatic exclusion and some favoured a broader assessment. Fair Trials refers to the examples set out in its *A.T. v. Luxembourg* intervention of ineffective national remedial systems permitting evidence obtained without a lawyer to be taken into account. Fair Trials is clear in its view that these practices existed because national law was still "catching up" with a standard which was still in the process of being clarified by the Court. However, instead of

continuing the consistent line evidenced in the Court's own case-law, *Ibrahim* watered down that approach and thereby weakened the Article 6(3)(c) safeguard recognised in *Salduz*.

***Ibrahim* and its likely impact**

23. *Ibrahim* confronted the Court with the first set of facts since *Salduz* involving a legitimate restriction on the right of access to a lawyer at the police interrogation stage, i.e. where there were "compelling reasons" to restrict the right. As noted above, until *Ibrahim*, we do not understand there to have been an example in the Court's case-law of incriminating statements obtained in the absence of a lawyer being used for a conviction to any degree, in an 'ordinary' case. *Ibrahim* required the Court to determine if this respected the right to a fair trial where there were "compelling reasons" for restricting the right of access to a lawyer.

24. Fair Trials proposed to the Court in its intervention in *Ibrahim* that the Court maintain the position that statements obtained in the absence of a lawyer (even as a result of a lawful derogation) should not be used for a conviction, to any degree. We argued that, where access to a lawyer is legitimately delayed, the evidence obtained should be used only for the preventive purposes which justified that derogation and not as evidence, accommodating the needs of law-enforcement without prejudicing the fairness of the proceedings as a whole.

25. The Court's alternative option would have been to create one rule, akin to practice to date following *Salduz*, for ordinary cases, and a separate rule allowing such evidence to be taken into account in other cases, such as terrorism cases. That appeared undesirable, as it would incentivise the Member States to seek to rely on derogations. Further, in the light of the Member States' recent introduction and extension of numerous terrorist-related offences, the scope of the derogation from *Salduz* may have become unacceptably extensive and have normalised the collection of evidence without a lawyer.

26. Instead, the Court interpreted its own case-law as implying that (whether or not there were "compelling reasons") the question of whether the use of evidence obtained in the absence of a lawyer could be used for a conviction depended on an "overall fairness assessment", characterised as a discretionary substantive assessment based on 10 non-exhaustive factors purportedly drawn from a review the Court's own case-law (notably excluding cases such as *A.T. v. Luxembourg* or *Martin v. Estonia*). The Court established that it is for the respondent government in the proceedings before the Court to establish there was no unfairness, and provided that the Court would apply a stricter standard of scrutiny where no compelling reasons for denial of access to a lawyer are established.

27. Fair Trials submits that this "overall fairness assessment" is based largely on other areas of the Court's case-law which do not concern access to a lawyer, which do not take account of the specific rule created in *Salduz*. The only common denominator of all those cases from that summary of principles which do concern access to a lawyer, is that they find violations where evidence obtained without a lawyer is used for a conviction (in whatever way). In those cases, the "overall fairness" assessment is simply the assessment of the "fairness of the proceedings as a

whole", i.e. the simple exercise of determining *whether* (not the extent to which) the early breach "crystallised" at trial.

28. The only case in that list suggesting otherwise is *Dvorski* (relied on in *Ibrahim* at para. 260), where the fact of evidence being used for a conviction was not treated as determinative and the Court considered other factors, suggesting (on one view) that it might have found no violation had there been counterbalancing factors. Fair Trials submits that given the case concerned the presence of an unwanted lawyer, and not the absence of a lawyer outright, it would be expected that the *Salduz* principle would not be approached in the same way. For the same reason, an implicit approach in *Dvorski* should not, in our view, have justified a new direction where *Salduz* did apply.

29. Fair Trials' position is that *Ibrahim* has effectively *created*, in ordinary cases, a possibility of validly securing a conviction on the basis of evidence obtained without a lawyer where there was none before, going against the grain of the developments across Europe described above. This standard will present significant challenges in implementation through the courts, is liable to misapplied and will establish the Court as a final instance of appeal which is inconsistent with its function.

Effect of *Ibrahim*

30. In *Parkhomenko v. Ukraine*,[xxv] a statement made in the absence of a lawyer was used for a conviction (together with other evidence), the Court finding that the statement "played a role in the applicant's conviction", but was not an "integral or significant part of the probative" evidence against him. Yet, no violation arose. Fair Trials points to previous cases prior to *Ibrahim*, e.g. *Dvorski* or *A.T. v. Luxembourg* in which the Court found violations despite the evidence not being central to the conviction. It is suggested that these are not simply different applications of a single rule that was there all along: *Parkhomenko* takes a normatively weaker approach, as a result of applying the *Ibrahim* test in an ordinary case.

31. Fair Trials emphasises that the impact of *Ibrahim* is to favour the inclusion of evidence obtained in breach of the right of access to a lawyer where the evidence is reliable, and where there was other evidence of guilt. Fair Trials shares the view of the [dissent] in *Simeonovi v. Bulgaria*,[xxvi] according to which the Court has thereby shifted its own role away from the assessment of compliance with the Convention to assessing the plausibility of the conviction, which is not the Court's function. The effect is ultimately that the Court will find a violation for the person it thinks may be innocent, while a conviction it considers more reliable will stand. That approach is not appropriate for a body which does consider the evidence (especially live witnesses) and is liable to cause injustice. It also fails to provide a uniform standard for all persons "charged" with an offence, as per Article 6.

Consequences of *Ibrahim* in practice

32. The immediate consequence of *Ibrahim* is to legitimise the situation (described above at para. 19) whereby national remedies will tolerate reliance upon evidence obtained in the absence of a lawyer, and forestall continuation of the positive trajectory seen since *Salduz* described above.

33. Further, in light of this ruling there is a real possibility that states providing for automatic inadmissibility of evidence obtained in breach of the right of access to a lawyer (e.g. Greece) will *create* the possibility for its inclusion in order to reflect *Ibrahim* (Greek members of the Legal Experts Advisory Panel, "LEAP", have previously noted the creation of derogations where none existed before in response to the recognition of derogations under regional standards, in the context of access to the criminal case file, and we would suggest such a scenario is not unlikely).

34. In any case, the application of the discretionary test will create significant difficulty in practice:

    a. It has been a theme of countless LEAP meetings and discussions that discretionary assessments set out in the Court's case-law are applied broadly in stereotyped fashion at the expense of the defence so that exceptions become the norm, particularly in serious cases (most noticeably in the assessment of grounds for restricting pre-trial access to the case-file and grounds for pre-trial detention, resulting in serial violations of Article 5 of the Convention before the Court).[xxvii] *Ibrahim* provides a discretionary basis for including evidence obtained without a lawyer (and specifically places emphasis on the public interest at play) and is liable to give rise to systemic abuse in the same way, and the same systematic recourse to the Court as the only forum likely to apply those criteria as intended.

    b. The test is liable to lead to varying results. This is evidenced by the later case of *Simeonovi v. Bulgaria*,[xxviii] where four judges of the Court differed from the majority as to how the *Ibrahim* test was to be understood and applied. Across the Council of Europe, such differences of opinion will inevitably lead to injustice in individual cases and detract from the rule of law generally. The Court's case-law should not encourage such regression in the enforcement of fundamental rights.

    c. The emerging case-law will be forever tied up with specific features of the national system (since the procedural features of the system are part of the assessment), providing ample scope for confusion as to how they apply in other national systems.

    d. The principle in *Salduz* had, hitherto, been a relatively simple one to convey in practitioner training and resources. The *Ibrahim* test requires reference to previous unspecified case-law to be understood, requiring extensive time and resources typically unavailable in criminal practice.

    e. The possibility for argument as to the inclusion of evidence obtained in breach of the right of access to a lawyer will encourage investigations to proceed on the basis of such evidence, e.g. through the collection of other incriminating evidence rendering the

confession unnecessary even if it is later excluded, circumventing the Article 6(3)(c) guarantee.

What the Court should do now

35. Fair Trials submits that the Court should take the opportunity of this case to renew the former emphasis on the simple exercise of tracing a link between the absence of a lawyer and prejudice accruing at trial, as it had stood in the years following *Salduz* and before *Ibrahim*. If such a link can be established, then the early breach has crystallised and a violation should arise. This will, as it has previously, involve a careful assessment of the proceedings as a whole to assess *whether* that prejudice has accrued; but where it has there should not be residual discretion allowing a certain *extent* of permissible prejudice.

36. The Court should, it is submitted, take account of the key, undisputable significance of the Directive, which is that there is universal consensus that aside "compelling reasons" cases ("derogations" in the language of the Directive), *there should always be access to a lawyer in early questioning* (subject of course to the possibility of waiver). It is submitted that this is the clearest possible evidence that the EU Member States, at least, did not consider any limitation on the right to a fair trial to be justified, necessary or proportionate in that ordinary context. It is of considerable concerns that the Court's case-law should create such limitations by the back door, by allowing evidence obtained in breach of this clear unqualified rule to be used, in some cases, for a conviction?

37. It is submitted that by recognising this, the Court will revert to the rationale behind the principle of *Salduz*: persons not assisted by a lawyer are liable to make poor decisions that will undermine their trial defence, so that they must have that protection – in *all* cases. This will place the Court in a better position to deal with other issues arising in the case to which the *Ibrahim* test is ill-suited (e.g. the waiver of specialty protection, with the linked waiver of appeal rights in another jurisdiction). Fair Trials suggests that, just as the Court would trace the use made of evidential "statements" obtained in the absence of a lawyer to establish if these were "used" for a conviction, its approach should be to establish if the absence of a lawyer led to prejudice in the exercise of the accused's defence and *whether* that prejudice was identified and compensated for in the proceedings. *If* such prejudice accrued (and not depending on the *extent* of prejudice accruing), the Court should find a violation.

REFERENCES

[i] *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008

[ii] *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, ECHR 2016

[iii] 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 2013 L 290, p. 1).

[iv] Commission Staff Working Document Impact Assessment Accompanying the Proposal for a Directive of the European Parliament and of the Council on the Right of Access to a Lawyer and of Notification of Custody to a Third Person in Criminal Proceedings, COM(2011) 326, SEC(2011) 687, 2011, available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011SC0686&from=EN

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

[vi] Fair Trials, Third-Party Intervention, *A.T. v. Luxembourg*, no. 30460/13, 9 April 2015, available here: https://www.fairtrials.org/wp-content/uploads/AT-v-LUX-Intervention.pdf

[vii] *Dvorski v. Croatia* [GC], no. 25703/11, ECHR 2015.

[viii] *Khayrov v. Ukraine* App. No 19157/06 (Judgment of 15 November 2012),

[ix] *Martin v. Estonia*, no. 35985/09, 30 May 2013.

[x] Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected and accused persons in criminal proceedings (OJ 2009 C 295, p. 1), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:295:0001:0003:en:PDF.

[xi] European Commission, Impact Assessment Accompanying the Proposal for a Directive on the Right of Access to Lawyer, 8 June 2011, SEC (2011) 687 final, page 1.

[xii] Cadder v. HM Advocate [2010] UKSC 43

[xiii] (Section 15A(3) Criminal Procedure (Scotland) Act 1995, as inserted by Section 1(4) Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010).

[xiv] Decision No 2010−14/22 QPC of 30 July 2010.

[xv] *Navone and Others v. Monaco*, nos. 62880/11 and 2 others, 24 October 2013

[xvi] HR 1 april 2014, ECLI:NL:HR:2014:770, r.o. 2.5.2, NJ 2014/268 m.nt. TM Schalken

[xvii] HR 22 december 2015, ECLI:NL:HR:2015:3608, r.o. 6.3 and 6.4.3, NJ 2016/52 m.nt. AH Klip

[xviii] Il-Pulizija vs Mark Lombardi, Constitutional Court, Ref. 34/2009/1 (12 February 2011); Il-Pulizija vs Erson Pullicino, Constitutional Court, Ref. 63/2009/1 (12 February 2011); Il-Pulizija vs Alvin Privitera, Constitutional Court, Ref. 20/2009/1 (11 April 2011)).

[xix] Appl. 44/2016 (10 November 2016)

[xx] Il-Pulizija vs Jason Cortis, Court of Criminal Appeal (Inferior Jurisdiction) App. 224/2014 (6 October 2016).

[xxi] (Amendment No. 2) Act of 2016.

[xxii] Judgement of the German Federal Court (Bundesgerichtshof (BGH)) of 12.01.1996 – 5 StR 756/94 = BGHSt 42, 15 = BGH NJW 1996, 1547, 1548f.

[xxiii] Decisions of the German Constitutional Court of 08.10.1975 - 2 BvR 747/73 = NJW 1975, 103, 103 and of 28.03.1984 - 2 BvR 275/83 = NJW 1984, 2403, 2403.

[xxiv] [2014] IESC 17.

[xxv] *Artur Parkhomenko v. Ukraine*, no. 40464/05, 16 February 2017

[xxvi] *Simeonovi v. Bulgaria* [GC], no. 21980/04, ECHR 2017

[xxvii] PACE, Committee on Legal Affairs and Human Rights, Pedro Agramunt, "Abuse of pretrial detention in States Parties to the European Convention on Human Rights", Doc 13863 07 September 2015, para 29-32.

[xxviii] *Simeonovi v. Bulgaria*, mentioned above note 26.