



Restriction on right of access to a lawyer during police interviews did not breach the right to a fair trial

In today's **Chamber** judgment¹ in the case of [Doyle v. Ireland](#) (application no. 51979/17) the European Court of Human Rights held, by a majority, that there had been:

no violation Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing) of the European Convention on Human Rights.

The case concerned the applicant's complaint that his right of access to a solicitor was restricted during questioning on suspicion of murder. Although the applicant could consult with his solicitor prior to the first interview and thereafter, police practice at the time meant solicitors were not permitted to be present during police questioning.

The Court found that very strict scrutiny had to be applied in cases where, as here, there had been no compelling reasons to justify restricting the applicant's right of access to a lawyer. However, when examining the proceedings as a whole, the Court held that the overall fairness of the trial had not been prejudiced.

Principal facts

The applicant, Barry Doyle, is an Irish national who was born in 1985 and lives in Dublin (Ireland). He is currently serving a life sentence in Mountjoy Prison, Dublin.

Mr Doyle was arrested in February 2009 in connection with the killing of a man, S.G., which had taken place in November 2008. The applicant was taken to a police station, where he was informed of his rights and given immediate access to a particular solicitor, with whom he consulted prior to the first police interview.

He was subsequently interviewed many times and had access to a solicitor, both in person and by telephone, between interviews and for as long as he or the solicitor requested. At the applicant's request, one interview was stopped to enable him to consult further with the solicitor. However, all of the interviews were conducted without the solicitor being physically present in the interview room.

He admitted killing S.G. in the fifteenth interview and gave a number of details about the crime. The police questioned him several more times after that.

After a jury failed to reach a verdict in 2011, he was again tried in February 2012. He sought to have his admissions excluded, arguing that he had been induced, threatened, and denied access to legal advice. The trial judge dismissed his objections and in February 2012 he was found guilty by the jury of murdering S.G. and given a life sentence. Appeals to the Court of Appeal and the Supreme Court were unsuccessful. The judges of the Supreme Court, which rejected his appeal by a six votes to one in January 2017, discussed in detail the right of access to a solicitor during questioning by the police.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), the applicant complained that he was not able to have a solicitor present during his interrogation, representing a failure by the respondent State to provide him a fair trial. In the absence of a solicitor, his right to silence and right not to incriminate himself had been eroded. The refusal to exclude his admissions had effectively deprived him of any defence at trial.

The application was lodged with the European Court of Human Rights on 12 July 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 6 §§ 1 and 3 (c)

The Court reiterated that the right of every accused to be effectively defended by a lawyer constituted one of the fundamental aspects of the right to a fair trial (*Beuze v. Belgium*). According to its case-law, the applicable test under Article 6 §§ 1 and 3 (c) consisted of two stages – first looking at whether or not there were compelling reasons to justify a restriction on the right of access to a lawyer and then examining the overall fairness of proceedings.

As regards the first stage, the Court observed that Mr Doyle had been entitled to and had been granted access to a lawyer after his arrest and prior to being interviewed by the police. After that first interview he had been able to request access to his lawyer at any time. However, in accordance with police practice at the time, his lawyer had not been permitted to be physically present during the interviews themselves. Therefore, the restriction on his right of access to a lawyer had been of a general nature and had not been justified by compelling reasons.

When looking at the second stage of the applicable test and assessing the overall fairness of the proceedings, the Court considered firstly that Mr Doyle, being an adult and a native speaker of the language in use, had not been particularly vulnerable. It did not see any reason to call into question the assessment of the domestic authorities, which had examined very carefully whether there had been any threat or inducement by the police during the interviews. All three domestic courts had established that his admissions had not been brought about by inducement or threat.

Mr Doyle had been able to challenge the admissibility of evidence and to oppose to its use at every stage of the proceedings, including a 10 day voir dire (a trial within a trial to determine the admissibility of evidence). Moreover, sound public-interest considerations had justified prosecuting Mr Doyle, who had been charged with murder. The trial had followed the killing of an innocent victim as a result of mistaken identity in the context of a feud between criminal gangs, which had required the respondent state to take appropriate measures. There had been other procedural safeguards, such as the fact that all police interviews had been recorded on video and had been made available to the judges and the jury. Lastly, the jury had received careful instructions from the trial judge in relation to their consideration of the evidence deemed admissible.

The Court observed that while the Supreme Court had engaged extensively with the Court's case-law on the right of access to a lawyer, the majority had wrongly concluded that that right did not extend to having a lawyer physically present during police interviews. It also noted that police practice in the respondent State had since changed. Having assessed the impact of the restriction on access at the pre-trial stage on the overall fairness of the criminal proceedings, the Court concluded that their overall fairness had not been irretrievably prejudiced.

There had accordingly been no violation of Article 6 §§ 1 and 3 (c).

Separate opinion

Judge Yudkivska expressed a dissenting opinion. This opinion is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.