



## **Access to a lawyer as a means of preventing ill-treatment**

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18. The possibility for persons taken into police custody to have access to a lawyer is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons. Further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs.

19. To be fully effective, the right of access to a lawyer should be guaranteed as from the very outset of a person's deprivation of liberty<sup>1</sup>. Indeed, the CPT has repeatedly found that the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Further, the right of access to a lawyer should apply as of the moment of deprivation of liberty, irrespective of the precise legal status of the person concerned; more specifically, enjoyment of the right should not be made dependent on the person having been formally declared to be a "suspect". For example, under many legal systems in Europe, persons can be obliged to attend – and stay at – a law enforcement establishment for a certain period of time in the capacity of a "witness" or for "informative talks"; the CPT knows from experience that the persons concerned can be at serious risk of ill-treatment.

20. The right of access to a lawyer should be enjoyed by everyone who is deprived of their liberty, no matter how "minor" the offence of which they are suspected. In numerous countries visited by the CPT, persons can be deprived of their liberty for several weeks for so-called "administrative" offences. The Committee can see no justification for depriving such persons of the right of access to a lawyer. Further, the Committee has frequently encountered the practice of persons who are in reality suspected of a criminal offence being formally detained in relation to an administrative offence, so as to avoid the application of the safeguards that apply to criminal suspects; to exclude certain offences from the scope of the right of access to a lawyer inevitably brings with it the risk of loopholes of this kind developing.

21. Similarly, the right of access to a lawyer should apply, no matter how "serious" the offence of which the person detained is suspected. Indeed, persons suspected of particularly serious offences can be among those most at risk of ill-treatment, and therefore most in need of access to a lawyer. Consequently, the CPT opposes measures which provide for the systematic denial for a given period of access to a lawyer for detained persons who are suspected of certain categories of offences (e.g. offences under anti-terrorism legislation). The question whether restrictions on the

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<sup>1</sup> Of course, depending on the circumstances of the case concerned, the right of access to a lawyer may become operative at an even earlier stage.

right of access to a lawyer are justified should be assessed on a case-by-case basis, not determined by the category of offence involved.<sup>2</sup>

22. The CPT fully recognises that it may exceptionally be necessary to delay for a certain period a detained person's access to a lawyer of his choice. However, this should not result in the right of access to a lawyer being totally denied during the period in question. In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be organised. It is perfectly feasible to make satisfactory arrangements in advance for this type of situation, in consultation with the local Bar Association or Law Society.

23. The right of access to a lawyer during police custody must include the right to meet him, and in private. Seen as a safeguard against ill-treatment (as distinct from a means of ensuring a fair trial), it is clearly essential for the lawyer to be in the direct physical presence of the detained person. This is the only way of being able to make an accurate assessment of the physical and psychological state of the person concerned. Likewise, if the meeting with the lawyer is not in private, the detained person may well not feel free to disclose the manner in which he is being treated. Once it has been accepted that exceptionally the lawyer in question may not be a lawyer chosen by the detained person but instead a replacement lawyer chosen following a procedure agreed upon in advance, the CPT fails to see any need for derogations to the confidentiality of meetings between the lawyer and the person concerned.

24. The right of access to a lawyer should also include the right to have the lawyer present during any questioning conducted by the police and the lawyer should be able to intervene in the course of the questioning. Naturally, this should not prevent the police from immediately starting to question a detained person who has exercised his right of access to a lawyer, even before the lawyer arrives, if this is warranted by the extreme urgency of the matter in hand; nor should it rule out the replacement of a lawyer who impedes the proper conduct of an interrogation. That said, if such situations arise, the police should subsequently be accountable for their action.

25. Finally, in order for the right of access to a lawyer during police custody to be fully effective in practice, appropriate provision should be made already at this early stage of the criminal procedure for persons who are not in a position to pay for a lawyer.

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<sup>2</sup> Reference might be made here to the judgment of the European Court of Human Rights in the case of *Salduz v. Turkey* (27 November 2008), in which the Court found that "... Article 6§1 [of the European Convention on Human Rights] requires that, as a rule, access to a lawyer should be provided..., unless it is demonstrated in the light of the particular circumstances of each case that there are compelling reasons to restrict this right." (paragraph 55).