



Restrictions on right of access to a lawyer in pre-trial proceedings breached the applicant's right to a fair trial

In today's **Grand Chamber** judgment¹ in the case of [Beuze v. Belgium](#) (application no. 71409/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 and 3 (c) of the European Convention on Human Rights (right to a fair trial, right to legal assistance).

The case concerned the denial of legal assistance at the pre-trial stage of criminal proceedings.

The Court found that the criminal proceedings, when considered as a whole, had not remedied the procedural defects occurring at the pre-trial stage. The restrictions on the right of access to a lawyer had been particularly extensive and in those circumstances, without being sufficiently informed of his right to remain silent, Mr Beuze had made detailed statements while in police custody and throughout the judicial investigation.

His statements had subsequently been included in the evidence before the Assize Court, which had failed to conduct an appropriate examination of how they had been obtained or to consider the impact of the lawyer's absence. The Court of Cassation had focused on the lack of legal assistance in police custody but had not assessed the consequences for the applicant's defence rights of the lawyer's absence during his subsequent police interviews, examinations by the investigating judge and other acts during the judicial investigation.

In the Court's view, the combination of these various factors had rendered the proceedings unfair as a whole.

Principal facts

The applicant, Philippe Beuze, is a Belgian national who was born in 1974 and is currently serving a life sentence in Marche-en-Famenne Prison (Belgium).

On 17 December 2007 Mr Beuze was arrested by the French gendarmerie in a village situated in the French *département* of Nord and taken into police custody under a European arrest warrant issued by an investigating judge of the Charleroi (Belgium) Court of First Instance, who had charged him with the premeditated murder of his former girlfriend, M.B., committed on 5 November 2007. The interview record drawn up by the French gendarmes indicated that he had waived his right to consult a lawyer of his choosing or, failing that, officially assigned counsel. The Investigation Division of the Court of Appeal of Douai (France) ordered his surrender to the Belgian judicial authorities.

After his surrender to the Belgian authorities on 31 December 2007, Mr Beuze was questioned by the criminal investigation police from 11.50 a.m. to 3.55 p.m. and then by the investigating judge at the Charleroi Court of First Instance at 4.45 p.m. the same day. On being asked whether he had chosen a lawyer, Mr Beuze answered in the negative. Following the investigating judge's examination, which finished at 5.42 p.m., the judge called for an immediate examination by a psychiatrist. An arrest warrant was issued on the same day and he was remanded in custody.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Beuze was not allowed to communicate with a lawyer between the time of his surrender to the Belgian authorities and the end of his period in police custody on 31 December 2007. He was only allowed to consult a lawyer, in accordance with the applicable law, once the decision had been taken by the investigating judge to remand him in custody. Even though he was subsequently assisted by a lawyer during the pre-trial judicial investigation, that lawyer did not attend the police interviews, examinations by the investigating judge or other investigative acts which took place throughout that phase of the proceedings.

On 11 January 2008 Mr Beuze was again interviewed by the criminal investigation police. There is no indication in the interview record that the applicant had actually been assigned a lawyer or that he had been in contact with a lawyer prior to that interview. In parallel to the investigation into the murder of M.B., Mr Beuze was interviewed by the police on four occasions between 6 and 7 March 2008 for "criminal association" in respect of car thefts. On 6 June 2008 a reconstruction was held at the scene of the crime without a lawyer being present.

An arrest warrant was issued on 8 August 2008 extending the investigating judge's remit to three additional offences: the attempted murder of M.B. on 25 October 2007, and two offences committed on 17 September 2007 against C.L., namely robbery with violence or threats, and fraud.

At the close of the judicial investigation stage, Mr Beuze was committed to stand trial before the Assize Court of Hainaut Province.

At the start of the trial in the Assize Court, on 1 February 2010, Mr Beuze, assisted by counsel, filed a submission in which he requested that the records of the interviews conducted without legal assistance and the ensuing acts be annulled and that the prosecution case be declared inadmissible.

He argued that his lack of access to a lawyer while in police custody, on 31 December 2007, and during the subsequent interviews and examinations had entailed a breach of his defence rights and had thus irretrievably invalidated the arrest warrant. The Assize Court dismissed his plea to have the prosecution case declared inadmissible.

It observed that the case-law of the European Court of Human Rights did not in an absolute manner guarantee the presence of a lawyer at all stages of the criminal proceedings, from the first interview onwards, and that the Court had emphasised the need to take account of the proceedings as a whole when assessing whether the right to a fair trial had been guaranteed. The Assize Court found that Mr Beuze had not incriminated himself in respect of the charges, had not claimed that he had been put under any pressure by the investigators, had not been interviewed in a state of particular vulnerability, had expressed himself freely on the facts and had not in any way been compelled to incriminate himself. He had been able to confer with his lawyer after each police interview and examination by the investigating judge to discuss his defence and had been afforded every opportunity to consult with his lawyer throughout the investigation stage. He had also been able, for the two years of his pre-trial detention, to prepare his defence with his lawyer every time he had appeared before the pre-trial courts (*juridictions d'instruction*), but he had failed, on those occasions, to mention the omission of which he had later complained in the Assize Court.

The Assize Court noted that Mr Beuze had been committed to stand trial before it in the light of indications of guilt which stemmed primarily from material other than his own statements. It concluded that his defence rights had been respected and that there was no reason to declare the interview/examination records or the prosecution case invalid.

At the close of the trial, on 9 February 2010, the jury found Mr Beuze guilty, principally of the premeditated murder of M.B. on 5 November 2007 and of the attempted premeditated murder of C.L. on 17 September 2007.

Mr Beuze lodged an appeal on points of law, relying on the right to be assisted by a lawyer and submitting that the presence of a lawyer during questioning was mandatory under the Convention. In a judgment of 26 May 2010 the Court of Cassation dismissed his appeal.

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), the applicant complained that he had been denied access to a lawyer while in police custody, had been insufficiently informed of his right to remain silent and not to incriminate himself, and had also been deprived of legal assistance when he was questioned, or subjected to other investigative acts, during the judicial pre-trial investigation.

The application was lodged with the European Court of Human Rights on 25 November 2010. On 13 June 2017 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 20 December 2017.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),
Robert **Spano** (Iceland),
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Krzysztof **Wojtyczek** (Poland),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Egidijus **Kūris** (Lithuania),
Síofra **O’Leary** (Ireland),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Lətif **Hüseynov** (Azerbaijan),
Jovan **Ilievski** (“the former Yugoslav Republic of Macedonia”),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Decision of the Court

[Article 6 §§ 1 and 3 \(c\)](#)

The Court found that Mr Beuze, who had been entitled to protection under Article 6 of the Convention as soon as he had been surrendered to the Belgian authorities, had not enjoyed respect for his right of access to a lawyer while in police custody, and that this right had subsequently been restricted throughout the judicial investigation.

The applicant had been unable to communicate with a lawyer between the time of his surrender to the Belgian authorities at 10.40 a.m. on 31 December 2007 and his police interview at 11.50 a.m., or between that interview and the examination by the investigating judge at 4.45 p.m. that day. He had only been granted the right to consult with a lawyer, in accordance with section 20 of the Law on Pre-Trial Detention, once the investigating judge had remanded him in custody, after the examination had ended at 5.42 p.m., and had notified the Bar to arrange for defence counsel to be assigned. He had continued to be deprived of legal assistance during the subsequent interviews,

examinations and other investigative acts conducted in the course of the judicial investigation. In total Mr Beuze had been questioned on the charges, without a lawyer, five times by the criminal investigation police, three times by the investigating judge and twice by the Crown Prosecutor. Nor had the applicant's lawyer participated in the reconstruction of the crime scene held on 6 June 2008.

When Mr Beuze had been questioned in police custody, no lawyer had been present and he had not been able to consult one beforehand. Nor had he been allowed legal assistance at the time of other interviews or acts during the pre-trial judicial investigation. Without being sufficiently informed of his right to remain silent, he had made detailed statements while in police custody and had later changed his version of the facts. He had made statements which substantially affected his position as regards, in particular, the charge of the attempted murder of C.L. All those statements had been included in the evidence before the Assize Court, which had failed to conduct an appropriate examination of how they had been obtained or to consider the impact of the lawyer's absence.

While the Court of Cassation had examined the admissibility of the prosecution case, seeking to ascertain whether the right to a fair trial had been upheld, it had nevertheless focused on the absence of a lawyer during the period in police custody and had not assessed the consequences for the applicant's defence rights of that absence during his subsequent police interviews, examinations by the investigating judge and other acts performed in the course of the judicial investigation. Lastly, in the trial before the Assize Court, the jurors had not received any directions or guidance as to how Mr Beuze's statements and their evidential value should be assessed.

The Court took the view that the combination of these factors had rendered the proceedings against Mr Beuze unfair, and that, when considered as a whole, the proceedings had not remedied the procedural defects occurring at the pre-trial stage. It thus found that there had been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

Separate opinion

Judges Yudkivska and Turković expressed a joint concurring opinion, which is annexed to the judgment.

The judgment is available in English and French.

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Press contacts

echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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.