



Resolution 2154 (2017)¹

Securing access of detainees to lawyers

Parliamentary Assembly

1. The Parliamentary Assembly emphasises the importance of the right to the assistance of a defence counsel in criminal cases, as enshrined in Article 6.3.c of the European Convention on Human Rights (ETS No. 5, “the Convention”). It reiterates that this right comprises the possibility for defendants to defend themselves, to be assisted by a defence counsel of their own choosing or to be provided with the assistance of an officially appointed lawyer free of charge if they do not have sufficient means and when the interests of justice so require.
2. The Assembly notes that the implementation of the right to the assistance of a defence counsel is an intrinsic part of the right to a fair trial guaranteed by Article 6.1 of the Convention and the principles of the rule of law. It stresses that respect for this right is fundamentally important for persons deprived of their liberty, whatever the nature of that deprivation.
3. In its [Resolution 2077 \(2015\)](#) on the abuse of pretrial detention in States Parties to the European Convention on Human Rights, the Assembly had called on member States to ensure greater equality of arms between the prosecution and the defence by allowing defence lawyers unfettered access to detainees, granting them access to the investigation file and providing sufficient funding for legal aid.
4. The Assembly notes that limitations to this right may infringe other rights and freedoms guaranteed by the Convention, such as the right to life, the right not to be subjected to torture or inhuman or degrading treatment or punishment or the right to appeal against the initial decision on deprivation of liberty. It emphasises that guaranteeing detainees the right to access a lawyer can be a vital means of preventing torture or inhuman or degrading treatment or punishment within the meaning of Article 3 of the Convention.
5. The Assembly stresses that it is crucially important for a detainee to have access to a lawyer from the outset of the detention – whatever the nature of the offence and whether it be minor or major – in order to guarantee that the rights of defence are practical and effective rather than theoretical and illusory. It is often at the very start of the detention that the risk of abuse in order to obtain confessions in the absence of a lawyer and/or under duress is highest.
6. The Assembly therefore calls on the member States to:
 - 6.1. guarantee the effective access of suspects, accused and convicted persons (deprived of liberty or not), as well as participants in the criminal proceedings, to a lawyer of their choice at any stage of criminal proceedings, especially from the outset of custody or of any other measure involving deprivation of liberty – including the administrative detention of migrants and asylum seekers – and not only at the beginning of the police interview, and to guarantee that access throughout the proceedings; ensure that sufficient and reasonable time is always allocated to allow a lawyer to arrive at any scene where investigative activities, in particular searches, are being conducted; and abolish unjustified restrictions on the number of defence lawyers;
 - 6.2. ensure the confidentiality of lawyer–client communications in all circumstances and, in this connection, ensure that all places of detention have the infrastructure necessary to enable detainees to speak to their lawyers in private;

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 10 March 2017 (see [Doc. 14267](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Ms Marietta Karamanli).*



- 6.3. guarantee the presence of a lawyer during detainee hearings, including in connection with the detention of foreign nationals;
 - 6.4. set up, where necessary, a system of free legal aid, which is a fundamental guarantee of the effectiveness of the right to access a lawyer, and to allocate appropriate funds for this purpose;
 - 6.5. introduce, if such a system does not already exist, an independent national system for designating officially appointed lawyers, as a means of preventing abuses and in order to avoid direct contact in advance between the investigator and the potential lawyer;
 - 6.6. repeal, if need be, procedural provisions stating that lawyers need the prosecutor's or the investigator's permission to meet their clients;
 - 6.7. ensure that any exception to the presence of a lawyer is subject to very strict conditions. Such an exception must be limited in time and be subject to the authorisation or supervision of a court responsible for guaranteeing individual freedom, including in connection with the fight against terrorism and the implementation of exceptional measures;
 - 6.8. introduce effective remedies in the event of the absence of, or an obstacle to, detainees' access to a lawyer.
7. The Assembly stresses that self-incriminating testimony obtained in the absence of a lawyer, or if access to a lawyer has been impeded, should in no case be accepted as valid evidence before a court or serve as a basis for convicting a defendant.
8. In addition, the Assembly calls on member States to investigate promptly, effectively and entirely independently all allegations of threats to, intimidation of or violence against lawyers, including allegations of murder.
9. In the light of restrictions on the right of access to a lawyer imposed by some member States in the context of the fight against terrorism and in a state of emergency, the Assembly reminds member States that a state of emergency is an exceptional situation that should not persist and should be lifted as early as possible in order to return to the application of ordinary law. The Assembly insists that the effective access of suspects, accused and convicted persons (deprived of liberty or not), as well as participants in criminal proceedings, to a lawyer of their choice can be limited only in cases of derogation in times of emergency under the provisions of Article 15 of the European Convention on Human Rights. It also calls on national parliaments to establish parliamentary scrutiny of a state of emergency where applicable. It further calls on them to improve the *ex ante* judicial review of measures restricting individual freedoms. Lastly, it would like decisions on implementing and renewing such measures to be assessed and reviewed in terms of the extent to which they are appropriate, necessary and proportionate with regard to the aims they are intended to pursue.
10. The Assembly calls on member States to continue to co-operate with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and authorise the publication of the reports of the CPT's visits as early as possible.