



Doc. 14267 – Compendium of written amendments
10/03/2017

(Final version)

Securing access of detainees to lawyers

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A. Draft Resolution

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 already 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 the limitations to that 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 decisive 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 detainees to a lawyer of their choice 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;

Amendment 1

**Tabled by Mr Georgii LOGVYNSKYI, Mr
Boriss CILEVIČS, Mr Axel FISCHER, Mr
Volodymyr ARIEV, Mr Jordi XUCLÀ**

In the draft resolution, paragraph 6.1, replace the words “of detainees to a lawyer of their choice” with the following words: “of suspects, accused and convicted persons (deprived of liberty or not), as well as participants to the criminal

proceedings, to a lawyer of their choice at any stage of criminal proceedings, especially”.

Amendment 2

**Tabled by Mr Georgii LOGVYNSKYI, Mr
Boriss CILEVIČS, Mr Axel FISCHER, Mr
Volodymyr ARIEV, Mr Jordi XUCLÀ**

In the draft resolution, at the end of paragraph 6.1, add the following words: “and to ensure that sufficient and reasonable time is always allocated to allow a lawyer to arrive at the scene where investigative activities, in particular searches, are conducted”.

Amendment 3

**Tabled by Mr Georgii LOGVYNSKYI, Mr
Boriss CILEVIČS, Mr Axel FISCHER, Mr
Volodymyr ARIEV, Mr Jordi XUCLÀ**

In the draft resolution, at the end of paragraph 6.1, add the following words: “as well as to 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;
- 6.3. guarantee the presence of a lawyer during hearings of detainees, 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 this is not yet the case, an independent national system for designating officially appointed lawyers, as a means of preventing abuses and in order to avoid direct contacts in advance between the investigator and the potential lawyer;
- 6.6. repeal, if need be, procedural provisions stating that lawyers need the prosecutor'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

Amendment 4

**Tabled by Mr Georgii LOGVYNSKYI, Mr
Boriss CILEVIČS, Mr Axel FISCHER, Mr
Volodymyr ARIEV, Mr Jordi XUCLÀ**

In the draft resolution, paragraph 6.6, after the words the words “stating that lawyers need the” insert the following words: “investigator’s or the”.

- against terrorism and the application 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 a 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. 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 claimed 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.

Amendment 5

**Tabled by Mr Georgii LOGVYNSKYI, Mr
Boriss CILEVIČS, Mr Axel FISCHER, Mr
Volodymyr ARIEV, Mr Jordi XUCLÀ**

In the draft resolution, paragraph 9, after the first sentence, insert the following sentence: "The Assembly insists that the effective access of suspects, accused and convicted persons (deprived of liberty or not), as well as participants to criminal proceedings, to a lawyer of their choice can be limited only in cases of derogation, in time of emergency, under the rules of Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."