



## Impossibility under the Belgian law for detained person to be assisted by a lawyer from the start of her police custody was not in breach of the right to liberty and security under the Convention

In its decision in the case of [Simons v. Belgium](#) (application no. 71407/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

### Principal facts

The applicant, Ms Carine Simons, is a Belgian national who was born in 1967 and lives in Ougrée (Belgium). On 13 March 2010 the Liège police were informed that a man had been stabbed with a knife. Ms Simons, the victim's girlfriend, was arrested at the scene the same day and was interviewed by the police. She was not assisted by a lawyer nor, she alleged, was she informed in advance of her right to remain silent. She admitted having stabbed her boyfriend and described in detail the fight that had taken place between them. The following day, before an investigating judge, she confirmed the statement she had made to the police. Again, she was not assisted by a lawyer nor – she claimed – was she informed of her right to remain silent.

On 18 March 2010 the applicant appeared before the Liège Court of First Instance, assisted by her lawyer. The court ruled that the arrest warrant was lawful and remanded the applicant in custody for one month. The measure was subsequently extended twice.

Ms Simons lodged an appeal with the Liège Court of Appeal. Her lawyer submitted that the fact that Ms Simons had not been assisted by a lawyer during her police interview or her questioning by the investigating judge amounted to a violation of her right to a fair trial under Articles 5 § 1 (right to liberty and security) and 6 § 3 (c) (right to legal assistance of own choosing) of the European Convention on Human Rights. He requested that the records of the interview and questioning be removed from the case file and that Ms Simons be released.

In a judgment of 3 June 2010 the Liège Court of Appeal upheld the Principal Public Prosecutor's submissions. The latter argued, among other things, that, according to the case-law of the Court of Cassation, persons who had not been assisted by a lawyer within the first 24 hours of their detention could not be said to have been denied the possibility of a fair trial. The Court of Appeal ordered Ms Simons' release on the grounds that her detention was no longer required in the interests of public safety. The investigation is still ongoing.

### Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 3 December 2010.

Relying on Articles 5 § 1 (right to liberty and security), 6 § 1 (right to a fair trial) and 6 § 3 (c) (right to be assisted by a lawyer) of the Convention, the applicant complained that, owing to deficiencies in Belgian law, she had not been assisted by a lawyer while in

police custody and during her police interview, or during her initial questioning by the investigating judge; in addition, she had not been informed of her right to remain silent.

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

Danutė **Jočienė** (Lithuania), *President*,  
Françoise **Tulkens** (Belgium),  
Dragoljub **Popović** (Serbia),  
Isabelle **Berro-Lefèvre** (Monaco),  
András **Sajó** (Hungary),  
Işıl **Karakaş** (Turkey),  
Guido **Raimondi** (Italy), *Judges*,

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 5 § 1

As the case was still pending before the domestic courts, the Court considered that Ms Simons' application was premature and inadmissible from the standpoint of Article 6.

The Court observed that Ms Simons had not had the possibility of being assisted by a lawyer while being held and interviewed by the police or during her initial questioning by the investigating judge. This fact resulted from the legislation in force, which did not provide for assistance by a lawyer before and during the initial questioning by the investigating judge.

The applicant contended that Belgian law disregarded one of the general principles spelt out or implicit in the Convention, as it did not allow persons deprived of their liberty to be assisted by a lawyer while in police custody or when being questioned afterwards by the investigating judge. In her view, the requirement under Article 5 § 1 to observe a "procedure prescribed by law" had not been complied with.

The Court noted that, according to its case-law, accused persons had the right to be assisted by a lawyer from the start of their time in police custody or pre-trial detention, and when being questioned by the police or the investigating judge. While some restrictions on that right might be justified in certain conditions, the fact of being unable to obtain the assistance of a lawyer in such circumstances by virtue of a rule of domestic law was incompatible with the right to a fair trial.

However, this was a principle inherent in the right to a fair trial, which was based specifically on Article 6 § 3 concerning the right of any accused to be assisted by a lawyer of his or her choosing. It was not a "general principle" implicit in the Convention, such principles being by definition overarching in nature.

Accordingly, although the impossibility in law for accused persons placed in detention to be assisted by a lawyer from the start of their detention had a bearing on the fairness of the criminal proceedings, this did not imply that the detention in question was in breach of Article 5 § 1. Ms Simons' application was manifestly ill-founded from the standpoint of that provision, and the Court therefore declared it inadmissible.

*The decision is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on

[www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here:  
[www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en).

**Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@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)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

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

**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.