



Periods in police custody prior to the legislative reform: the Court reiterates the importance of the right to remain silent and to be assisted by a lawyer

In today's two Chamber judgments¹ in the cases of [Olivieri v. France](#) (application no. 62313/12) and [Bloise v. France](#) (no. 30828/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 §§ 1 (right to a fair trial) and 3 (c) (right to be assisted by a lawyer) of the European Convention on Human Rights in the case of [Olivieri v. France](#) (no. 62313/12), and

no violation of Article 6 §§ 1 (right to a fair trial) and 3 (c) (right to be assisted by a lawyer) of the Convention in the case of [Bloise v. France](#) (no. 30828/13).

Both cases concerned periods spent in police custody prior to the legislative reform of 14 April 2011. They related to the failure to notify the applicants of their right to remain silent while in police custody, and to the lack of assistance by a lawyer during that time. The law in force at the relevant time made no provision for persons in police custody to be notified of their right to remain silent or for them to be assisted by a lawyer during questioning.

In the case of Mr Olivieri, and with regard to his right not to incriminate himself, the Court noted in particular the existence of statements and answers given to the investigators which had clearly affected his position in the proceedings. Firstly, Mr Olivieri had been questioned by the police for around ten hours while in police custody, after which he had admitted responsibility. Secondly, there was nothing in the reasoning of the domestic decisions to suggest that other elements could be regarded as an integral and significant part of the evidence on which his conviction had been based. The Court therefore found that the criminal proceedings, considered as a whole, had not cured the procedural defects occurring during police custody.

In the case of Mr Bloise the Court noted in particular that the trial and appeal courts had based their decisions on evidence other than the statements made in police custody, namely on the evidence established during the investigation, when the applicant had been assisted by a lawyer, on the hearings before the first-instance court, on the precise and detailed testimony of third parties directly connected with the applicant's activities, and on examination of the accounting and banking records. The Court found that in the present case the criminal proceedings, considered as a whole, had cured the procedural defects occurring during police custody.

Principal facts

The applicant in the first case, Mr Noël Olivieri, is a French national who was born in 1950 and lives in Ajaccio. On 2 August 2004 and 30 May 2005 a commercial court ordered the judicial organisation and winding-up of the company Les Bâisseurs Corses, of which Mr Olivieri was the manager. The public prosecutor opened an investigation into criminal bankruptcy relating to the company. Mr Olivieri was taken into police custody on 27 November 2007 at 10 a.m. He was informed of his

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

rights, and in particular of the right to speak with his lawyer for thirty minutes away from the interview room. After around ten hours of questioning he admitted criminal responsibility. The interviews and police custody were terminated at 9 p.m. the same day. Mr Olivieri was summoned to appear before the Criminal Court on a charge of criminal bankruptcy. He requested in writing that the summons, his police custody and the subsequent proceedings be declared null and void. On 28 May 2010 the court ruled that his plea of nullity was well founded and set aside the summons. The public prosecutor appealed against that judgment. On 30 May 2011 the Court of Appeal upheld the nullity of the summons only in relation to the offence of criminal bankruptcy through concealment of assets in respect of part of the facts. For the remainder, it found Mr Olivieri guilty and sentenced him to a suspended term of one month's imprisonment and to a fine of 1,000 euros (EUR). The Court of Cassation dismissed an appeal on points of law by the applicant on 21 March 2012 on the grounds that, in finding him guilty, the courts had not based their decisions solely or mainly on his statements in police custody.

The applicant in the second case, Mr Auguste Bloise, is a French national who was born in 1938 and lives in Punaauia (French Polynesia). On 19 February 2007, at 2 p.m., he was taken into police custody in connection with the misappropriation of corporate assets in his capacity as the chairman and managing director of company S. He was placed under formal investigation on 12 April 2007. In the proceedings before the Criminal Court Mr Bloise requested that his police custody be declared null and void. On 2 November 2010 the Criminal Court held that the applicant was no longer entitled to contest his police custody as the deadline for doing so had expired. It found Mr Bloise guilty of misappropriation of corporate assets and sentenced him to two years' imprisonment and to a fine equivalent to around EUR 33,500. On 9 November 2010 the Criminal Court ordered Mr Bloise to pay damages to the company, which had been a civil party. Mr Bloise appealed against both those judgments. On 27 October 2011 the Court of Appeal dismissed the pleas of nullity made by Mr Bloise and upheld the rulings in a judgment giving detailed reasons. On 7 November 2012 the Court of Cassation dismissed an appeal on points of law by Mr Bloise, finding that the Court of Appeal had not based its ruling solely or mainly on the statements made by the applicant in police custody.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial) and 6 § 3 (c) (right to be assisted by a lawyer), the applicants in both these cases alleged a violation of the Convention in that their criminal convictions had been based on the confessions they made while in police custody, during which time they had not been notified of their right to remain silent and had not had the effective assistance of a lawyer.

The application was lodged with the European Court of Human Rights on 21 September 2012.

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

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1 and 6 § 3 (c)

In the first case the Court noted that Mr Olivieri had been able to hold talks with his lawyer while in police custody but that he had not been assisted by a lawyer during questioning and had not been notified of his right to remain silent. Those restrictions stemmed from the French legislation applicable at the time of the events. The Court reiterated that restrictions on access to a lawyer for compelling reasons, at the pre-trial stage, were permitted only in exceptional circumstances and had to be of a temporary nature and be based on an individual assessment of the particular circumstances of the case.

The Court observed that in the instant case the individual assessment had clearly been absent as the restriction had been general and mandatory. The Government had not demonstrated the existence of exceptional circumstances that might have justified the restrictions. There had therefore been no compelling reason to justify the restrictions imposed on the applicant.

Going on to examine whether the proceedings as a whole had been fair, the Court noted that Mr Olivieri had not been particularly vulnerable and that he had not been subjected to coercion during police custody. It further considered that his prosecution for criminal bankruptcy had been justified on public-interest grounds. Furthermore, it observed that Mr Olivieri, assisted this time by a lawyer, had been able to put forward his arguments, first before the lower courts – at first instance and on appeal – and then before the Court of Cassation. However, it noted that the plea of nullity raised by Mr Olivieri on the basis of Article 6 of the Convention on account of the lack of legal assistance during his time in police custody, which had initially been allowed by the Ajaccio Criminal Court, had subsequently been dismissed by the Bastia Court of Appeal on 30 May 2011. The Court of Appeal had found that the police custody could not be declared null and void before the entry into force of the Law of 14 April 2011, that is to say, in the absence of legislation. In so doing it had followed the position adopted by the Criminal Division of the Court of Cassation in its judgments of 19 October 2010, notwithstanding the four judgments delivered by the Court of Cassation, sitting as a full court, on 15 April 2011.

As to the applicant's right not to incriminate himself, the Court noted the existence of statements and answers given to the investigators which had clearly had a substantial effect on his position in the proceedings. Mr Olivieri had been questioned by the police for around ten hours while he was in police custody, after which he had admitted responsibility. There was nothing in the reasoning of the domestic decisions to suggest that other elements could be regarded as an integral and significant part of the evidence on which his conviction had been based.

As to other possible procedural safeguards, the Court considered that the measures referred to by the Government, despite their significance, were not capable of compensating for the lack of assistance by a lawyer and the failure to notify the applicant of his right to remain silent while in police custody.

In view of the very strict scrutiny that had to be applied where there were no compelling reasons to justify the restriction on the right of access to a lawyer, the Court found that the criminal proceedings, when considered as a whole, had not cured the procedural defects occurring during police custody. The combination of the various factors referred to above had rendered the proceedings as a whole unfair, and there had therefore been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

In the second case, as in the first, the Court noted that Mr Bloise had been able to hold talks with his lawyer during his time in police custody but that he had not been assisted by a lawyer during questioning and had not been notified of his right to remain silent. Those restrictions had also stemmed from the French legislation applicable at the relevant time.

The Court went on to note that the remedy by which to complain of this situation had been effective only as of 15 April 2011, the date of the judgments of the Court of Cassation sitting as a full court, and thus well after the events in the present case.

Nevertheless, with regard to the privilege against self-incrimination and the use of evidence by the trial and appeal courts, the Court noted that although Mr Bloise had acknowledged part of the facts during his time in police custody, the first-instance judgment and the judgment of the Papeete Court of Appeal had made no mention of those statements. The Court observed that the lower courts had based their decisions on evidence other than the statements made in police custody, namely on the evidence established during the investigation, when the applicant had been assisted by a lawyer, on the hearings before the first-instance court, on the precise and detailed testimony of third parties directly connected with the applicant's activities, and, finally, on examination of the accounting and banking records.

In view of the detailed reasons given for the decisions of the Criminal Court and the Court of Appeal, the Court found that the criminal proceedings, considered as a whole, had cured the procedural defects occurring during police custody. There had therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that France was to pay Mr Olivieri EUR 8,730 in respect of costs and expenses.

The judgment is available only in French.

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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.