



## Police custody – right to remain silent and to be assisted by a lawyer

In today's Chamber judgment in the case of **Brusco v. France** (Application no. 1466/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been a **violation of Article 6 §§ 1 and 3 (right to remain silent and not to incriminate oneself)** of the European Convention on Human Rights.

### Principal facts

The applicant, Claude Brusco, is a French national who was born in 1952 and lives in Hyères (France).

After being attacked by two hooded individuals in the underground car park of his apartment building in Paris in December 1998, B.M. lodged a complaint against his wife and Mr Brusco (who he alleges were having an affair). Mr Brusco was questioned by the police about the incident. On 2 and 3 June 1999 the two presumed aggressors were taken into police custody and placed under investigation. One of them accused Mr Brusco of having masterminded the attack. The investigating judge issued a warrant for the police to question witnesses and conduct all the investigations necessary to establish the truth.

At 5.50 p.m. on 7 June 1999 Mr Brusco was stopped and taken into police custody. He was made to swear "to tell the truth, the whole truth and nothing but the truth", as witnesses could be required to do under Article 153 of the Code of Criminal Procedure. He was then questioned by the police. He confessed to having been involved in the incident and having hired two men to "scare" B.M. and make him leave his wife alone and stay away from his daughter. He admitted to having paid them 100,000 French francs (about 15,000 euros) and given them his description. However, he firmly denied having asked them to use physical violence against B.M. or agreed to them using it. At 2.10 p.m. on 8 June he was allowed to see his lawyer.

At the end of his police custody Mr Brusco was placed under investigation for aiding and abetting attempted murder, and remanded in custody. He lodged an application with the Indictment Division of the Paris Court of Appeal to disallow the records of his questioning in police custody and the subsequent measures. His application was rejected on 28 June 2001, as it had been perfectly legal to question Mr Brusco as a witness and therefore to make him swear an oath. Indeed, although he was suspected of having masterminded the offence, there was no evidence that he had actually encouraged the use of violence. On 1 March 2002 Mr Brusco was sent before the Paris Criminal Court. On 31 October

<sup>1</sup> 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 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](http://www.coe.int/t/dghl/monitoring/execution)

2002 that court dismissed his objections of nullity concerning his questioning under oath and based, among other things, on the statements thus obtained from him, sentenced him to five years' imprisonment, one of which was suspended. On 26 October 2004 that judgment was upheld in full by the Paris Court of Appeal. On 27 June 2006 the Court of Cassation rejected Mr Brusco's further appeals.

The Law of 9 March 2004 did away with the obligation for a person in police custody under a warrant issued by an investigating judge to give evidence under oath.

## Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1 and 3 of the Convention, Mr Brusco complained that he had been obliged to take an oath before being questioned, and that he had been deprived of the right to remain silent and not to incriminate himself.

The application was lodged with the European Court of Human Rights on 27 December 2006.

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

Peer **Lorenzen** (Denmark), *President*,  
Jean-Paul **Costa** (France),  
Karel **Jungwiert** (the Czech Republic),  
Rait **Maruste** (Estonia),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Zdravka **Kalaydjieva** (Bulgaria), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

The Court began by stressing the importance of the right to remain silent and the right not to incriminate oneself, which are generally accepted international legal principles at the heart of the notion of a fair trial.

It then noted that when Mr Brusco had been made to swear "to tell the truth, the whole truth and nothing but the truth", he had been in police custody (at the time it was possible to place an individual in police custody even without "substantial, consistent evidence" or "reasonable suspicion" that he or she had committed an offence). However, at the time when Mr Brusco was questioned in police custody one of the presumed aggressors had already identified him as the mastermind behind the attack, and the victim had lodged a complaint against him. The authorities had therefore had reason to suspect him of being involved in the offence. Accordingly, in the Court's opinion the argument that Mr Brusco had merely been a witness – which was why he had been asked to take an oath – was purely formalistic and therefore unconvincing. In actual fact, when Mr Brusco had been taken into custody and made to swear an oath, "criminal charges" had been brought against him and he should therefore have had the right to remain silent and not to incriminate himself, as guaranteed by Article 6 §§ 1 and 3 of the Convention.

Mr Brusco was convicted on the basis of the statements he had made under oath. The Court found that the fact that he was made to take an oath before answering the questions of the police amounted to a form of pressure on the applicant (who had been in police custody since the previous day), and that the threat of criminal proceedings should he be found to have committed perjury must have placed him under even greater

pressure. The Court also noted that the law had changed in 2004 and that the obligation to swear an oath and answer questions was no longer applicable to people placed in police custody under a warrant issued by an investigating judge.

Furthermore, Mr Brusco had not been informed at the start of the interview that he had the right to remain silent, not to answer any questions or to answer only those questions he wished to answer. In addition, he had been allowed the assistance of a lawyer only after 20 hours in police custody (as provided for under Article 63-4 of the Code of Criminal procedure). His lawyer had thus been unable to inform him, before he was questioned, of his right to remain silent and not to incriminate himself, or to assist him when he was questioned on that and subsequent occasions, as required under Article 6.

The result had been an infringement of Mr Brusco's right to remain silent and not to incriminate himself, in violation of Article 6 §§ 1 and 3.

Under Article 41 (just satisfaction), the Court held that France was to pay the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,000 in respect of costs and expenses.

*The judgment 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 its [Internet site](#). To receive the Court's press releases, please subscribe to the [Court's RSS feeds](#).

#### **Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

**Frédéric Dolt (tel: + 33 3 90 21 53 39)**

Emma Hellyer (tel: + 33 3 90 21 42 15)

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

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

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

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

**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.