



## Use of evidence obtained in breach of fundamental rights led to murder conviction

In today's **Chamber judgment**<sup>1</sup> in the case of [Lalik v. Poland](#) (application no. 47834/19) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 3 (c) (right to legal assistance of own choosing) of the European Convention on Human Rights.**

The case concerned the applicant's defence rights and privilege against self-incrimination. In January 2016, while drunk, the applicant set fire to his drinking partner's jacket, with the latter sustaining severe burns and dying as a result. The applicant was convicted of aggravated murder and sentenced to 25 years' imprisonment. The judgments of the national courts referred explicitly to statements he had made during his informal questioning which had taken place before he had seen a lawyer and allegedly while still under the effect of alcohol.

The Court found in particular that Mr Lalik had not been properly informed of his defence rights. It expressed concern that the national courts had admitted and assessed evidence obtained in breach of those fundamental guarantees. The explanations that Mr Lalik had given during his informal questioning had served as key evidence in establishing his intent to kill his friend, which in turn had led to his conviction for murder. In the Court's view, such reasoning went against the concept of a fair trial.

### Principal facts

The applicant, Przemysław Lalik, is a Polish national who was born in 1995 and lives in Zamość (Poland). He is currently serving a prison sentence in Zamość Prison.

In January 2016, while drunk, Mr Lalik set fire to his drinking partner's jacket when his friend was comatose on his basement floor. The latter sustained severe burns to 60% of his body and upper respiratory ducts and died as a result.

Within a couple of hours, Mr Lalik was arrested and taken to the police station. A breathalyser test showed approximately 0.65 mg/l of alcohol (1.3 per mille) in his system. According to the Government, he was informed of his rights shortly after his arrival at the police station, although no proof of that was submitted to the Court. The following morning, he was informally questioned by three police officers for almost three hours without being breathalysed again and before seeing a lawyer. No formal record of the questioning was drawn up but one of the officers made an official note of what was said and signed it. The next day Mr Lalik was charged with murder with particular cruelty. His defence lawyer was not present at the very start of his questioning by the prosecutor and Mr Lalik began by pleading guilty to the charge. Once he had spoken to his lawyer a few minutes later, he retracted what he had said and stated that he had not intended to kill his friend.

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](http://www.coe.int/t/dghl/monitoring/execution).

During the trial, the applicant admitted to having set fire to his friend's jacket but explained that he had never intended to kill him and that he had played a similar prank on him the previous August, setting fire to a piece of his clothing without harm.

Mr Lalik was subsequently convicted of murder committed with particular cruelty and sentenced to 25 years' imprisonment. The judgments of the national courts referred explicitly to statements he had made during his informal questioning, retaining, amongst other things, that his friend had owed him money. The courts considered what he had said to be particularly credible because he had spoken spontaneously and had not had a chance to think about his line of defence.

Mr Lalik's lawyer consistently argued that had those statements been excluded, Mr Lalik would have faced a maximum penalty of 12 years' imprisonment for causing grievous bodily harm leading to death. As it was, they constituted the main evidence of intent, and led to his being convicted of murder.

## Complaints, procedure and composition of the Court

The applicant complained under Article 6 § 3 (c) (right to legal assistance of own choosing) that his conviction had been largely based on informal statements, which had been taken without ensuring basic procedural guarantees for his defence. He submitted that the police officers who had informally questioned him after his arrest had not informed him of his rights, nor had he been offered the possibility to consult a lawyer. There was no formal record of the questioning, and his alcohol level had not been re-tested beforehand.

The application was lodged with the European Court of Human Rights on 28 August 2019.

The Government informed the Court, by a letter of 28 September 2021, that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applicant. They requested that the Court strike out the application, in accordance with Article 37 of the Convention. On 18 January 2022 the Court examined the declaration and rejected the Government's request. It felt that, if a violation were to be found, the Polish State should take general measures to put a stop to such practice.

Third-party interventions were received from the Helsinki Foundation for Human Rights and from the non-governmental organisation Fair Trials.

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

Marko **Bošnjak** (Slovenia), *President*,  
Krzysztof **Wojtyczek** (Poland),  
Alena **Poláčková** (Slovakia),  
Ivana **Jelić** (Montenegro),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

## Decision of the Court

### [Article 6 § 3](#)

The Court found that Mr Lalik had not been properly informed of his rights. It could not be sure that at the time of his arrest Mr Lalik had been told about his right to remain silent, his right not to incriminate himself and his right to consult a lawyer. In any event, he had not been given the

information the following morning prior to being informally questioned, and his alcohol level had not been checked again. The first time he had seen a lawyer was after three hours of questioning and with a police officer present in the room.

The Court was concerned that the national courts had admitted and assessed evidence obtained in breach of those fundamental guarantees. The contents of explanations that Mr Lalik had given during his informal questioning had served as key evidence in establishing his intent to kill his friend, which in turn had led to his conviction for murder. Despite the Polish Code of Criminal Procedure not prohibiting the use of spontaneous statements made during arrest, the Court did not consider that his statements had been spontaneous, seeing as they had been made in the presence of three police officers during a three-hour bout of questioning. They had been recorded in an official note signed by one of the police officers. The Court found that the use of those explanations had significantly affected the course of the investigation and, eventually, the national courts' findings. Although Mr Lalik had explicitly challenged the use of those explanations before the national courts, his arguments had been dismissed.

The Court considered that conducting a session of informal questioning after Mr Lalik's arrest without informing him of his rights, combined with the fact that the police officer who had written the official note had been questioned during the trial, had put Mr Lalik at a disadvantage from the outset of the investigation. It was concerned that the domestic courts had not only endorsed such an approach but had also made direct reference to the applicant's initial explanations given the morning after the incident and considered them to be particularly credible, since – at that time – the applicant had had “no time yet to think what would be beneficial to him and what detrimental”. In the Court's view, such reasoning went against the concept of a fair trial. Therefore, the Court found that the criminal proceedings, when considered as a whole, could not be considered as fair. There had accordingly been a violation of Article 6 § 3 (c) of the Convention.

Observing that it was impossible to speculate as to the outcome of the proceedings had there been no breach of the Convention, the Court noted that Article 540 § 3 of the Polish Criminal Code provided for the possibility of reopening criminal proceedings when such a need resulted from a decision of an international body acting on an agreement ratified by Poland.

### Just satisfaction (Article 41)

The Court held that a finding of a violation constituted in itself sufficient just satisfaction and rejected the applicant's claim in respect of pecuniary and non-pecuniary damage.

*The judgment is available only in English.*

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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.