



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law 180

December 2014

Ibrahim and Others v. the United Kingdom - 50541/08, 50571/08, 50573/08 et al.

Judgment 16.12.2014 [Section IV]

Article 6

Article 6-3-c

Defence through legal assistance

Delayed access to a lawyer during police questioning owing to exceptionally serious and imminent threat to public safety: *no violation*

[This case was referred to the Grand Chamber on 1 June 2015]

Facts – On 21 July 2005, two weeks after 52 people were killed as the result of suicide bombings in London, further bombs were detonated on the London public transport system but, on this occasion, failed to explode. The perpetrators fled the scene. The first three applicants were arrested but were refused legal assistance for periods of between four and eight hours to enable the police to conduct “safety interviews”. During the safety interviews they denied any involvement in or knowledge of the events of 21 July. At trial, they acknowledged their involvement in the events but claimed that the bombs had been a hoax and were never intended to explode. The statements made at their safety interviews were admitted in evidence against them and they were convicted of conspiracy to murder. The Court of Appeal refused them leave to appeal.

The fourth applicant was not suspected of having detonated a bomb and was initially interviewed by the police as a witness. However, he started to incriminate himself by explaining his encounter with one of the suspected bombers shortly after the attacks and the assistance he had provided to that suspect. The police did not, at that stage, arrest and advise him of his right to silence and to legal assistance, but continued to question him as a witness and took a written statement. He was subsequently arrested and offered legal advice. In his ensuing interviews, he consistently referred to his written statement, which was admitted as evidence at his trial. He was convicted of assisting one of the bombers and of failing to disclose information about the bombings. His appeal against conviction was dismissed.

In their applications to the European Court the applicants complained that their lack of access to lawyers during their initial police questioning and the admission in evidence at trial of their statements had violated their right to a fair trial under Article 6 §§ 1 and 3 (c) of the Convention.

Law – Article 6 §§ 1 and 3 (c): The Court reiterated that for the right to a fair trial to remain sufficiently practical and effective, access to a lawyer had to be provided, as a rule, from the first police interview of a suspect, unless it could be demonstrated that in the particular circumstances there were compelling reasons to restrict that right. Even

where such compelling reasons did exist, the restriction should not unduly prejudice the rights of the defence, which would be the case where incriminating statements made during a police interview without access to a lawyer were used as a basis for a conviction (see *Salduz v. Turkey*).

Applying this test, the Court examined (a) whether compelling reasons had existed for denying the applicants' access to a lawyer and (b) if so, whether the rights of the defence had been unduly prejudiced.

(a) *Compelling reasons* – The police had been under substantial pressure and had to assume that the attempt to detonate devices on 21 July was an attempt to replicate the attacks of 7 July with the risk of further loss of life on a large scale. The need to obtain, as a matter of critical urgency, information on any further planned attacks and the identities of those potentially involved, while ensuring that the integrity of the investigation was not compromised by leaks, was clearly of the most compelling nature.

That compelling nature was borne out in the first three applicants' cases by the fact that their questioning by the police was focused on the threat posed to the public, rather than on establishing their criminality, and by the evident concern that access to legal advice would lead to the alerting of other suspects still at large. Although the position of the fourth applicant was somewhat different, in that he was being questioned as a witness, not a suspect, the decision not to arrest and caution him (which would have entitled him to legal assistance) was not unreasonable, as it was based on the fear that a formal arrest might lead him to stop disclosing information of the utmost relevance to public safety.

Accordingly there had been an exceptionally serious and imminent threat to public safety that provided compelling reasons justifying the temporary delay of all four applicants' access to lawyers.

(b) *Undue prejudice* – Importantly, unlike the position in cases such as *Salduz* and *Dayanan v. Turkey*, there had been no systemic denial of access to legal assistance in the applicants' cases. A detailed legislative framework was in place which set out a general right of access to a lawyer upon arrest, subject to exceptions on a case-by-case basis. The conditions for authorising a delay were strict and exhaustive. Once sufficient information had been obtained to avert an identified risk, questioning had to cease until the detainee had obtained legal advice. The legislation thus struck an appropriate balance between the importance of the right to legal advice and the pressing need in exceptional cases to enable the police to obtain information necessary to protect the public.

That legal framework had been carefully applied in the case of the first three applicants. Their access to a lawyer had been delayed by between four and eight hours only, well within the maximum 48 hours permitted and had been authorised by a superintendent. The reasons for the restriction on access had been recorded. As regards the fourth applicant, although he was not cautioned as soon as he became suspected of involvement in an offence as the applicable guidelines required, the clear legislation governing the admissibility of evidence obtained during police questioning had been carefully applied by the trial judge.

It was significant also that none of the applicants had alleged any coercion, compulsion or (apart from the lack of a caution in the fourth applicant's case) other improper conduct during their questioning. Indeed, the questions put to the applicants during the relevant interviews were directed not at their own involvement in the attempted bombings but on securing information about possible further bombings by persons at large. Although the fourth applicant made self-incriminating statements during his police

interview, he did not retract them when later allowed access to a lawyer and he continued to build on them before finally deciding to request their exclusion at trial.

There had also been procedural opportunities at trial to allow the applicants to challenge the admission and use of their statements and the weight to be given to them. In the case of the first three applicants the trial judge had given rigorous consideration to the circumstances surrounding their safety interviews and had taken great care in explaining why he believed the admission of statements made in those interviews would not jeopardise their right to a fair trial. He had formulated careful directions to the jury explicitly telling them that they could draw adverse inferences only in respect of the interviews conducted after the safety interviews had ended. In the fourth applicant's case, his challenge to the admission at trial of his self-incriminating statements was carefully examined by the trial judge, who provided detailed reasons for concluding that there would be no unfairness if they were admitted in their entirety.

Lastly, the impugned statements were far from being the only incriminating evidence against the applicants. In each case there had been a significant body of independent evidence capable of undermining their defence at trial.

Taking the above-mentioned considerations cumulatively, the Court found that no undue prejudice had been caused to the applicants' right to a fair trial as a result of the failure to provide access to a lawyer before and during the first three applicants' safety interviews or to caution or provide access to a lawyer to the fourth applicant during his initial police interview, followed by the admission of the statements made during those interviews at trial.

Conclusion: no violation (six votes to one).

(See *Salduz v. Turkey* [GC], 36391/02, 27 November 2008, [Information Note 113](#); and *Dayanan v. Turkey*, 7377/03, 13 October 2009, [Information Note 123](#))

* A safety interview is an interview conducted urgently for the purpose of protecting life and preventing serious damage to property. Under the Terrorism Act 2000, such interviews can take place in the absence of a solicitor and before the detainee has had the opportunity to seek legal advice.