



Defence rights of persons being interviewed voluntarily: the European Court requires observance of the safeguards applicable to police custody

In today's **Chamber** judgments¹ in the cases of [Wang v. France](#) (application no. 83700/17) and [Dubois v. France](#) (application no. 52833/19), the European Court of Human Rights held:

unanimously, that there had been a **violation of Article 6 §§ 1 and 3** (right to a fair trial/right to legal assistance) of the European Convention on Human Rights in the case of **Wang v. France** (application no. 83700/17), and

by six votes to one, that there had been **no violation of Article 6 §§ 1 and 3 (c)** in the case of **Dubois v. France** (application no. 52833/19).

Both cases concerned individuals prosecuted and convicted for unlawfully practising medicine. They complained of the conditions in which their voluntary police interviews had been conducted.

While noting the fact that legislative reforms substantially strengthening the rights of persons being interviewed voluntarily had been adopted subsequently – and thus had no practical impact on the applicants' situation – the Court found, with regard to the defence rights protected by Article 6 §§ 1 and 3 of the Convention, that the requisite safeguards should be the same as those applicable to police custody. It went on to examine compliance with those safeguards as part of its assessment of the overall fairness of the proceedings.

The Court noted that the applicants in both cases had consented to being interviewed and had been informed of their right to end the interview at any point, in accordance with the law as applicable at that time. However, they had not been expressly informed of their right to remain silent and had not been offered an opportunity to obtain legal assistance and, in one case, the assistance of an interpreter.

During the interviews both applicants had described actions performed by them which constituted the alleged offence. The Court therefore considered that they should be regarded as having incriminated themselves for the purposes of the Court's case-law.

With regard to Ms Wang, whose mother tongue was Chinese, the Court, noting the vulnerability of her position, found, firstly, that the lack of assistance from an interpreter during questioning and the failure to inform the applicant expressly of her right to remain silent had contributed to her incriminating herself. Secondly, the role played by the statements taken during the voluntary interview and the witness statements produced afterwards had rendered the proceedings as a whole unfair. The Court therefore found a violation of Article 6 §§ 1 and 3 of the Convention.

In the case of Mr Dubois, however, the Court considered that the criminal proceedings, taken as a whole, had cured the procedural defects occurring during the voluntary police interview. It noted that the Court of Appeal, in convicting the applicant, had based its decision primarily on evidence with high probative value that was unconnected to the voluntary interview. It found that, in the particular circumstances of the case, the statements made during that interview had ultimately

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.

played only an incidental role in the applicant's conviction. The Court therefore concluded that there had been no violation of Article 6 §§ 1 and 3 of the Convention.

Principal facts

Wang v. France

The applicant is a Chinese national who was born in 1972. She has lived in Saint Priest Ligoure (France) since 2008.

On 5 December 2012 the Haute-Vienne *département* council of the Medical Association (*Conseil départemental de l'Ordre des Médecins*) informed the public prosecutor that Ms Wang was performing procedures potentially constituting unlawful practice of medicine. An investigation was opened.

On 25 January 2013 Ms Wang was questioned by a police officer at the *gendarmerie* in a voluntary interview. She was informed of the allegations against her and of her right to end the interview at any time. She was not expressly informed of her right to remain silent and was not assisted by an interpreter.

Criminal proceedings were brought against Ms Wang in the Limoges Criminal Court on a charge of unlawfully practising medicine. In court, where she was assisted by counsel, she requested that the proceedings be declared null and void in the light of Article 6 of the Convention, submitting that she had not been assisted by an interpreter during her voluntary police interview, or at least had not been informed of that possibility, and that she had not been informed of her right to remain silent.

In a judgment of 27 October 2015 the Criminal Court rejected the plea of nullity on the grounds that the rights in question derived from European directives that had not yet been transposed into French law at the time of the voluntary interview, and that the latter had therefore been lawful.

Ms Wang was ordered to pay a fine of five hundred euros (EUR). The Haute-Vienne *département* council of the Medical Association was awarded EUR 400 in damages.

The applicant, assisted by counsel, appealed. On 20 July 2016 the Court of Appeal upheld the first-instance judgment on the merits.

Ms Wang lodged an appeal on points of law, which was dismissed by the Court of Cassation in a judgment of 13 June 2017.

Dubois v. France

The applicant, Mr Joël Dubois, is a French national who was born in 1949 and lives in Joué-les-Tours (France).

On 29 January 2014 the president of the Indre-et-Loire Dental Surgeons' Union informed the *département's* consumer safety agency that Mr Dubois, a dental technician, was continuing to administer dental treatment despite having been convicted on several occasions for unlawfully practising dentistry.

An investigation was opened concerning unlawful exercise of the profession of dental surgeon.

On 13 November 2014 Mr Dubois was questioned by a police officer during a voluntary interview at the police station. He was informed of the allegations against him and of his right to end the interview at any time, but was not expressly informed of his right to remain silent and did not have legal assistance.

On 30 April 2015 Mr Dubois was summoned to appear before the Tours Criminal Court on a charge of unlawful exercise of the profession of dental surgeon.

On 2 June 2016 the Criminal Court declared the record of the voluntary police interview null and void and found Mr Dubois guilty, ordering him to pay two hundred day-fines of EUR 80 each. As an additional penalty, the court ordered that the applicant be permanently barred from practising as a dental technician, that his equipment be confiscated and that the decision be disseminated. The civil parties were awarded damages.

Mr Dubois, who was assisted by counsel, appealed.

On 14 March 2018 the Orléans Court of Appeal overturned the Criminal Court's findings regarding the interview record, observing that all the rights associated with voluntary police interviews had been respected and that the legislation at the time had not required access to legal assistance.

The Court of Appeal upheld the first-instance judgment with regard to the applicant's guilt and sentenced Mr Dubois to eighteen months' imprisonment, suspended, with a three-year probation period and a specific undertaking not to carry out dentistry and to make good the damage caused as a result of the offence. The Court of Appeal upheld the additional penalties imposed at first instance and the civil aspects of the judgment.

Mr Dubois appealed on points of law. On 14 May 2019 the Court of Cassation declared the appeal inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 3 (right to a fair trial/right to legal assistance), the applicants alleged a breach of the Convention in so far as they had been convicted on the basis of statements given during a voluntary police interview, during which they had not been informed of their right to remain silent. Ms Wang had not been assisted by an interpreter or by a lawyer and Mr Dubois had not had legal assistance.

The applications were lodged with the European Court of Human Rights on 8 December 2017 and 7 October 2019 respectively.

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

Síofra O'Leary (Ireland), *President*,
Mārtiņš Mits (Latvia),
Stéphanie Mourou-Vikström (Monaco),
Lətif Hüseynov (Azerbaijan),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

[Article 6 §§ 1 and 3](#)

The Court noted that at the relevant time the applicable French legislation on voluntary police interviews, unlike the legislation on police custody, had not provided for the right to remain silent, the right to legal assistance or the right to be assisted by an interpreter. The applicants, who had been informed, in accordance with the applicable legislation, of their right to end the interview at any time, had consented to being interviewed. However, they had not been expressly offered the option of remaining silent, nor had they been offered access to a lawyer or an interpreter.

The Court took note of the fact that legislative reforms substantially strengthening the rights of persons being interviewed voluntarily had been adopted subsequently – and thus had no practical impact on the applicants’ situation – with the result that the rules were now virtually the same as for persons in police custody.

In these two cases the Government, on whom the onus had been placed to put forward compelling reasons, had not established the existence of exceptional circumstances capable of justifying the restrictions placed on the applicants’ rights.

There had therefore been no compelling reasons justifying the above-mentioned restrictions in the present cases.

The Court’s task was to ascertain whether the fact that the applicants had not been afforded an opportunity to be assisted by a lawyer and/or an interpreter, combined with the fact that they had not been informed of their right to remain silent, had undermined the overall fairness of the proceedings.

Although Ms Wang did not claim to have been put under particular pressure by the investigator during her interview, the Court nevertheless considered that she had been in a vulnerable position. At the hearings, both the Criminal Court and the Court of Appeal had taken the view that the applicant did not have a sufficient command of French to be able to dispense with an interpreter. The Court inferred from this that the applicant, as she herself had argued, had not been able to fully grasp the purpose and scope of the proceedings against her, having been questioned in a language that was not her mother tongue and without legal assistance.

On the other hand, the Court noted that Mr Dubois had not been in a particularly vulnerable position and that he had not been placed under duress during the voluntary police interview. Nevertheless, it found that the right to leave the premises at any time was not apt to compensate for the lack of legal assistance or for the failure to inform the applicant expressly of the right to remain silent during the interview.

The Court noted that in the course of the voluntary interviews, both applicants had described actions performed by them which constituted the alleged offence. It inferred from this that they should be regarded as having incriminated themselves for the purposes of the Court’s case-law. Hence, the Court had to examine whether the impugned restrictions on the applicants’ rights had been compensated for in such a way that the proceedings taken as a whole could be said to have been fair.

In Ms Wang’s case, the Court noted that the applicant had been able to defend her case properly and submit arguments with the help of a lawyer and an interpreter, initially before the trial courts, at first instance and on appeal, and subsequently before the Court of Cassation. However, the Court observed that the pleas of nullity raised by the applicant in relation to the proceedings had all been rejected by the trial courts. It took note of the fact that the Court of Appeal, in convicting the applicant, had based its reasoning on her statements during the voluntary police interview. The witness statements produced in the applicant’s defence had been used to establish her guilt. It therefore appeared that the statements taken during the voluntary interview and the witness statements which the applicant believed she was required to produce following the interview had formed an integral and important part of the evidence used to convict her.

In the Court’s view, the fact that Ms Wang had not been assisted by an interpreter during questioning, the fact that she had not been informed expressly of her right to remain silent, which had contributed to her self-incrimination, the role played by the statements taken during the voluntary police interview, and the witness statements produced subsequently, had together rendered the proceedings as a whole unfair.

The Court concluded that the criminal proceedings, taken as a whole, had not cured the serious procedural defects occurring during the police interview. There had therefore been a violation of Article 6 §§ 1 and 3 of the Convention.

With regard to Mr Dubois, the Court observed that he had been able to defend his case and submit arguments with the assistance of counsel, first in discussing the various items of evidence before the trial courts at first instance and on appeal, in the context of the remedy which had been available to him and which he had been able to use, and subsequently before the Court of Cassation, which had heard his appeal on points of law. The plea of nullity raised by the applicant on the basis of Article 6 of the Convention had initially been upheld by the Criminal Court, although that finding was subsequently overturned by the Court of Appeal. The Court stressed that the Criminal Court, after declaring the record of the voluntary interview null and void, had found the applicant guilty in a judgment containing extensive reasoning, without making any reference to the statements taken during the voluntary interview. The court had based its ruling on the applicant's statements at the hearing, where he had been assisted by counsel; on the fact that he was appearing for the ninth time since 1986 on similar charges; on the unlikely nature of his claim that he had asked his clients to place their own dental crowns; on the invoices showing that oral procedures had been carried out, as confirmed by three witnesses; on the fact that the applicant did not have a degree in dental surgery; on the name of his practice ("dental health centre"); and, lastly, on the fact that he possessed equipment very similar to that used by dental surgeons.

The Court therefore found that the Court of Appeal, in convicting the applicant, had based its decision primarily on evidence of high probative value that was unconnected to the voluntary police interview. It followed that, in the particular circumstances of the case, the statements made during that interview had ultimately played only an incidental role in the applicant's conviction.

In sum, the Court held that the criminal proceedings against the applicant, taken as a whole and in the particular circumstances of the case, had cured the procedural defects occurring during the voluntary police interview. There had therefore been no violation of Article 6 §§ 1 and 3 (c) of the Convention.

Just satisfaction (Article 41)

In the case of *Wang v. France* the Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage sustained. It held that France was to pay the applicant EUR 1,200 in respect of costs and expenses.

Separate opinion

Judge **Mourou-Vikström** expressed a dissenting opinion in the case of **Dubois v. France**, which is annexed to the judgment.

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.