



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

Information Note on the Court's case-law 225

January 2019

Knox v. Italy - 76577/13

Judgment 24.1.2019 [Section I]

Article 3

Effective investigation

Lack of an investigation into allegations of ill-treatment by the police during the questioning of a person in a state of shock: *violation*

Article 6

Article 6-3-c

Defence through legal assistance

Use in evidence of a malicious accusation, made to the police by a person in a state of shock, without access to a lawyer: *violation*

Article 6-3-e

Free assistance of interpreter

Interpreter having acted as a mediator and with a motherly attitude during the questioning of a person in a state of shock: *violation*

Facts – At the time of the events Ms Knox, a 20 year-old American student, had been in Italy for about two months. She had found a temporary job in a pub run by D.L. Following the discovery of the body of a girl living in the same flat as the applicant, who was then present on the premises with her boyfriend, they were both interviewed by the police and their telephone conversations were monitored.

On 6 November 2007 at 1.45 a.m., the applicant was interviewed by three police officers and A.D., who had been called as an interpreter. She stated, among other things, that D.L. had committed the crimes. The public prosecutor then interviewed the applicant at 5.45 a.m., with A.D. and some police officers being present. The applicant was not assisted by a lawyer during that interview. At 8.30 a.m., the applicant, her boyfriend and D.L. were formally arrested on charges of sexual assault and murder. Having provided an alibi, D.L. was later released.

Around 1 p.m. and throughout the proceedings, the applicant spoke of her state of shock and confusion during her last incriminating interview under police pressure, and she retracted her accusation against D.L. However, on 14 May 2008, she was formally charged with bringing a malicious accusation.

Following a hearing on 13 March 2009, at which the applicant again alleged that she had been ill-treated during the interview of 6 November 2007 and complained about the conduct of the interpreter A.D., her defence requested the transmission of documents to the public prosecutor's office, but nothing happened. Further proceedings were brought against the applicant for falsely accusing the police officers and prosecutor who had questioned her on 6 November 2007.

In September 2015 the Court of Cassation acquitted the applicant on the charges of murder and sexual assault and observed that her conviction and three-year prison sentence for the malicious accusation against D.L. had already become final. The applicant was also acquitted on the charge of falsely accusing the police officers and the prosecutor.

Law

Article 3 (*procedural limb*): On 6 November 2007, a few hours after making incriminating statements about D.L. and throughout the proceedings, the applicant had clearly explained that she had been in an extreme state of shock and confusion and that the police had put pressure on her. The Court of Appeal, in its judgment of 3 October 2011, had concluded that the applicant had in fact been subjected to a genuine degree of torment, placing her in an unbearable psychological situation from which she had sought to extract herself by incriminating D.L.

In addition, the interpreter had been acting more as a "mediator", even though she was not required to go beyond her interpreting duties. One of the police officers had even embraced and caressed the applicant and had clasped her hands, thus clearly behaving inappropriately, especially in a context where she had made accusations subsequently characterised as malicious which had resulted in her conviction.

The above-mentioned behaviour, which shed light on the general conditions in which the applicant had been interviewed, should have alerted the national authorities to the possibility that her dignity and capacity for self-determination had been impaired.

In spite of her repeated complaints, the treatment complained of had not led to any investigation capable of shedding light on the facts and on any responsibilities. In particular, her lawyer's request of 13 March 2009 for the transmission of documents to the public prosecutor had remained unanswered. Moreover, the criminal proceedings against the applicant for bringing a malicious accusation against the authorities – which had in fact led to her acquittal, as there was no evidence that her account of what had happened was inaccurate – could not constitute an effective investigation into the applicant's complaints.

Conclusion: violation (unanimously).

Article 6 §§ 1 and 3 (c)

(a) *Applicability of Article 6* – The Court reiterated that a "criminal charge" existed from the moment that an individual was officially notified by the competent authority of an allegation that he had committed a criminal offence, or from the point at which his situation had been substantially affected by actions taken by the authorities as a result of a suspicion against him. The applicant could certainly be regarded as a suspect by the time she made her statement to the public prosecutor, at 5.45 a.m. on 6 November 2007. Therefore by 5.45 a.m. at the latest, there had been a criminal charge against her within the meaning of the Convention.

(b) *Whether there were any compelling reasons to justify the restriction of her right of access to a lawyer* – The Government had relied on the interpretation of domestic case-

law to point out that the impugned statements of 6 November 2007, even though no lawyer had been present, could be used in evidence, as they incorporated in themselves a criminal offence. The Court noted, however, that this interpretation was general in scope and the Government had failed to establish that there had been exceptional circumstances in the present case to justify the restrictions on the applicant's right. Thus there was no compelling reason capable of justifying the restriction on her access to a lawyer.

(c) *Overall fairness of the proceedings* – A few hours after the interview of 6 November 2007, the applicant, who was vulnerable as a foreigner and as a young woman of 20, not having been in Italy for long and not being fluent in Italian, had promptly gone back on her statements. Nevertheless, six months later, on 14 May 2008, she was charged with malicious accusation.

The impugned statements had been taken in a context of heightened psychological pressure, which had not been investigated. And those statements had constituted in themselves the offence with which she was charged and therefore the real evidence on the basis of which she had been found guilty of bringing a malicious accusation. Lastly, the record of the applicant's interview at 5.45 a.m. did not indicate that she had been notified of her procedural rights.

Consequently, the restriction of the applicant's access to legal assistance during her interview of 6 November 2007 at 5.45 a.m. had irretrievably impaired the overall fairness of the proceedings.

Conclusion: violation (unanimously).

Article 6 §§ 1 and 3 (e): The fact that the interpreter A.D. had played the role of a mediator, adopting a motherly attitude, while the applicant, having been charged with a criminal offence, was formulating her statement, had gone beyond the duties expected of an interpreter. However, the authorities had failed to assess the conduct of A.D., to examine whether her interpreting assistance had been consistent with the safeguards under Article 6 §§ 1 and 3 (e) of the Convention, or to consider whether that conduct had had an impact on the outcome of the criminal proceedings against the applicant. In addition, in the relevant police record there was no mention of the exchanges between the applicant and A.D. during the interview of 6 November 2007.

That initial failure had thus had repercussions for other rights, which were separate but closely related to the right at issue, and had undermined the overall fairness of the proceedings.

Conclusion: violation (unanimously).

The Court also found that there had been no violation of Article 3 in its substantive limb, as there was insufficient evidence for it to conclude that the applicant had actually sustained the inhuman or degrading treatment of which she had complained.

Article 41: EUR 10,400 in respect of non-pecuniary damage.

(See also *Salduz v. Turkey* [GC], 36391/02, 27 November 2008, [Information Note 113](#); *Gäfgen v. Germany* [GC], 22978/05, 1 June 2010, [Information Note 131](#); *Kaçiu and Kotorri v. Albania*, [33192/07 and 33194/07](#), 25 June 2013; *Baytar v. Turkey*, 45440/04, 14 October 2014, [Information Note 178](#); *Ibrahim and Others v. the United Kingdom* [GC], 50541/08 et al., 13 September 2016, [Information Note 199](#); *Beuze v. Belgium* [GC], 71409/10, 9 November 2018, [Information Note 223](#); and the Factsheet on [Police arrest and assistance of a lawyer](#))

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