



**International Conference**  
**Oranienburg/Berlin**

**Police interviews and human rights:**  
**Respecting dignity and ensuring a**  
**fair trial**



## Human rights in context of a police interrogation



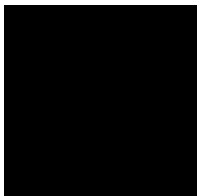
**Prohibition against torture, Article 3 ECHR**



**Right to a fair trial, Article 6 § 1 ECHR**



**Right to an effective defence, Article 6 § 1, 3 ECHR**



ECtHR's practice concerning Article 6 ECHR: evaluation of the overall fairness of the proceedings („*proceedings as a whole*“)



# HUMAN RIGHTS ABSTRACT OUTLINE



## **Article 3 ECHR – prohibition of ill-treatment**

“No one shall be subjected to **torture** or to **inhuman** or **degrading treatment** or **punishment.**”

- **Absolute right** enshrined by the ECHR – no interference allowed (Article 15 ECHR)
- implicitly protects **human dignity**
- Violation is determined based on the **scope of protection** by requiring a **certain intensity** of the interference: certain threshold must be exceeded (note: **Article 8 ECHR: protection of privacy**)



## Article 1 UNCAT – Prohibition of Torture

1. For the purposes of this Convention, the term "**torture**" means any act by which severe pain or suffering,

whether **physical or mental**,

is intentionally inflicted on a person

for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,



## **Article 1 UNCAT: Prohibition of Torture**

when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a **public official or other person acting in an official capacity**.

It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.



## Article 3 ECHR – prohibition of ill-treatment

### ECtHR:

- **torture** is intentional inhuman treatment that causes very severe and cruel suffering and refers to **Art. 1 of the UN Convention against Torture** for a definition
- **inhuman treatment** is the deliberate and prolonged infliction of bodily injury or physical or mental suffering
- **degrading treatment**, focuses on the act of humiliating the victim

When is **police conduct** (in connection with an interrogation) considered as torture, inhuman or degrading treatment?

What happens to the **gathered evidence** which violates the rights enshrined in Article 3 ECHR?



## **Inhuman / degrading treatment in police interrogations**

- **Torture:**
  - **Raping** and subjecting defendant to **physical violence** during an interrogation (Maslova a. Nalbandov v. Russia, 2008, 839/02)
  - Subjecting defendants to treatments like **sleep deprivation**, **“Palestinian hanging”** and **“falaka”** or **beatings for several days** while in custody in order to extract a confession (Bati and Others v. Turkey, 2004, 33097/96, 57834/00)
- **Inhuman treatment:**
  - **Threatening with torture** while in police custody in order to extract confession, Gäfgen v. Germany [GC], 2010, 22978/05
- **Degrading treatment:**
  - **Use of force** on the applicants when searching their home was not strictly necessary (Ilievi and Ganchevi v. Bulgaria, 2021, 69154/11, 69163/11)





## **Duty to investigate allegations of torture, inhuman or degrading treatment or punishment**

- **Ineffective investigation:**
  - into arguable allegations of ill-treatment by police officers –  
ECtHR, *Sládková v. Czech Republic*, 10.11.2022, no.  
15741/15



## **Article 6 § 1 ECHR – right to a fair trial**

In the determination of his civil rights and obligations or of **any criminal charge against him**, everyone is entitled to a **fair** and **public hearing** within a **reasonable time** by an **independent** and **impartial tribunal** established **by law**.  
(...)



## **Article 6 § 1 ECHR – right to a fair trial**

**Fairness of a hearing** (i.e. proceedings)

**Privilege against self-incrimination**

**Equality of arms**

**Right to effective defence** through themselves or through legal assistance

**Right of access to a court** (impartial tribunal, public hearing within a reasonable time; etc.)

**Key aspects** applying to **police interviews**:

Fairness of a hearing, equality of arms, privilege against self-incrimination



## Article 6 ECHR – Privilege against self-incrimination

- **Right to remain silent and not to contribute to incriminating himself (procedural guarantee)**
- Protection against obtaining evidence by coercion or oppression: examination of **existence, nature and degree of compulsion**

ECtHR: situations to concern as **improper compulsion**:

1. Suspect is obliged to testify under **threat of sanctions** / testifies as a result thereof
2. Subjecting suspect to **physical or psychological pressure** (often treatment in breach of Article 3 ECHR) aiming to obtain real evidence or a statement
3. **Use of subterfuge** to elicit information which is otherwise unable to be obtained during questioning

**Procedural safeguard: early access to lawyer** (as soon as being questioned by police for the first time)



## **Article 6 § 3 ECHR – effective defence**

Information on nature + cause of accusation, Art. 6 § 3 (a)

Preparation of the defence, Art. 6 § 3 (b)

Right to defend oneself in person or through legal assistance, Art. 6 § 3 (c)

Examination/confrontation of witnesses, Art. 6 § 3 (d)

Interpretation, Art. 6 § 3 (e)

**Key aspects** applying to police interviews:

Information on the nature and cause of the accusation, right to defend oneself in person or through legal assistance



## **Article 6 § 3 ECHR – key aspects for police interviews**

Information on the nature and cause of the accusation,

**Art. 6 § 3 (a):**

- right to receive **full, detailed information** concerning the charges, and consequently the legal characterization that the court might adopt in the matter; essential prerequisite for ensuring that the proceedings are fair
- information of “**cause**” and “**nature**” of the charge
- as soon as one is “**charged**” (autonomous meaning) with a criminal offence




## Article 6 § 3 ECHR – key aspects for police interviews

 **Right to defend oneself in person or through legal assistance,**

Art. 6 § 3 (c) (three separate rights)

- to **defend oneself in person**
- to **defend** oneself through **legal assistance** of one's own choosing
- to be given **free legal assistance** (under certain conditions)

 Article 6 ECHR does not lay down any rules on the **admissibility of evidence** as such (primarily regulated under domestic law)



## Art. 6 ECHR – Effects of unlawful gathered evidence

ECtHR's practice: evaluation of the **overall fairness** of the proceedings concerning obtainment and use of any kind of evidence (**statements** as well as **real evidence**)

- Was the **way** in which the **evidence was obtained** fair?
- What is the **quality, accuracy and reliability** of the evidence?
- Were the **rights of the defendant** respected?
- Was the defendant able to **challenge the authenticity** of the evidence? Were they able to oppose its use?
- **Has another human right** been violated during the proceedings?
  - Question for admissibility of such evidence: could its use violate the integrity of the trial or the rule of law (high threshold)? If so, it **must** be excluded (**usually when absolute human rights such as Article 3 ECHR are violated**)
  - Was the unlawfully obtained evidence **used for the conviction**?





# HUMAN RIGHTS CASE-LAW

## Art. 3 ECHR – inhuman/degrading treatment



## **ECtHR, R.S. v. Hungary, 2.7.2019**

Applicant had **been forced to catheterization** at a police station **in order to obtain** a urine sample to determine whether he had been involved in a traffic related offence – without him consenting to the use of this method.

Authorities could have had retrieved the same evidence by taking the applicant's blood sample.

The manner in which the measure was carried had caused the applicant both physical pain and mental suffering.

**Legal Findings:** applicant had been subjected to **inhuman and degrading treatment** in breach of Article 3 ECHR

**Would evidence be admissible in court?**



## **ECtHR, Gäfgen v. Germany (GC), 1.6.2010**

G killed child in his flat and afterwards blackmailed its family which was under the belief that their child was still alive and therefore paid the ransom enabling the police to his arrest.

During his interrogation and under the assumption that the child was still alive the **police officer threatened the suspect with inflicting intolerable harm and pain on him in case of his persistence not to disclose the location of the child.**

These threats led to the subsequent confession of his crime and the disclosure of the whereabouts of the dead child's corpse.

National courts declared G's confession inadmissible in court but admitted the real evidence such as the child's corpse and tire tracks found at the dumping site which had been obtained as a result of the threat; against his conviction applicant lodged a complaint with the ECtHR.



## **ECtHR, Gäfgen v. Germany (GC), 1.6.2010**

### **Violation of Article 3 ECHR (+)**

- Threatening the suspect in order to obtain a confession results in ill-treatment while it does not cross the threshold to be considered torture

### **Violation of Article 6 § 3 ECHR (-)**

- Usually, all (direct) evidence gathered by a breach of Article 3 ECHR as a rule renders the evidence inadmissible in court; any other conduct results in a violation of Article 6 § 3 ECHR with no distinction between torture and other forms of ill-treatment



## **ECtHR, Gäfgen v. Germany (GC), 1.6.2010**

- GC found that not the **testimony** of the applicant (not admitted by national court), but only the **real evidence** had been used
- distinction between evidence gathered because of torture and other forms of ill treatment
- conviction on **second confession** during trial as essential basis
- Real evidence found because of first” tainted” testimony was not necessary for conviction; breach of Article 3 in investigation proceedings no bearing on testimony made by legally represented applicant during trial



# HUMAN RIGHTS CASE-LAW

**Article 6 ECHR – right and duty to be notified in pre-trial proceedings**



## **ECHR, Aleksandr Zaichenko v. Russia, 18.2.2010**

A was stopped on his way home from work by police officers investigating allegations of the theft of fuel from his employer.

**After finding two cans of fuel in his car and without administration of a caution**, the officers questioned him on the spot and got him to sign a record of inspection acknowledging that the fuel was taken out of his vehicle.

Also, he **was made to sign a written statement** admitting that he had taken the fuel and acknowledging him being informed about his right not to incriminate himself.

Later on the A was charged and signed an act of accusation in which he stated that he had been informed of the nature of the accusation and of his rights, stating he does not wish to be represented legally.



## **ECHR, Aleksandr Zaichenko v. Russia, 18.2.2010**

During the trial A, now represented by a lawyer, produced evidence of an **invoice** which allegedly proved his purchase of the fuel.

**This piece of evidence was rejected**, and the applicant was convicted of theft.

His conviction was upheld on appeal.

He complained to be violated in his rights of Article 6 § § 1, 3 (c) ECHR.





## **ECtHR, Aleksandr Zaichenko v. Russia, 18.2.2010**

- Police **obliged to inform** A of his rights even though he has **neither been arrested nor officially interrogated** as a formal suspect.
- Article 6 ECHR applies even though he was not formally accused of any criminal offence when the police interrogated him on his way home as he was **“substantially affected”** by the **questioning**.
- Police **considered him as a suspect** from the moment he was unable to produce any proof of purchase of the cans of fuel found in his vehicle.



## **ECtHR, Aleksandr Zaichenko v. Russia, 18.2.2010**

- The **information** of his rights not to incriminate himself and to remain silent was given to him only before signing the written form, but was **not given prior to his interrogation**; this would have been necessary.
- This failure of the police during the first investigation led to his **waiver not being considered as valid** (Art. 6 § § 1, 3 (c) ECHR).



# HUMAN RIGHTS CASE-LAW

## Article 6 ECHR – privilege against self-incrimination



## **ECtHR, Ibrahim a.o. v. United Kingdom, 13.9.2016**

The later convicted applicant was primarily **interrogated as a witness** in criminal proceedings; the subject was the suicide bombings in London in 2005 in which 52 people were killed; further bombs were detonated on the London public transport system which failed to explode; the first other three arrested applicants were interrogated during **“safety interviews” without having access to a lawyer for periods between four and eight hours.**

During his **witness-interrogation** in these “safety interviews” he made self-incriminating statements about his assistance to one of the suspects shortly after the attacks without informing the applicant about his rights as a suspect in criminal proceedings.



## **ECtHR, Ibrahim a.o. v. United Kingdom, 13.9.2016**

After a break the policemen had sought instructions of their superiors, were able to arrest the applicant and to offer him to seek services of a solicitor, which he declined with the words " No, maybe after the interview if it gets serious" // Two days later he was **interviewed as a suspect** with the presence of a lawyer.

The fourth applicant claimed that the deliberate failure of the police officers **to caution him** during his witness interrogation when making self-incriminating statements, which could be used to proof his state of mind for a conviction, had resulted in his **denial of this fundamental right against self-incrimination** and the need for the **prosecution to prove its case without resort to evidence obtained by coercion or oppression.**



## **ECtHR, Ibrahim a.o. v. United Kingdom, 13.9.2016**

- Application of first three Applicants: Applicability (+), no violation
- Application of fourth Applicant: **Violation of Article 6 § § 1, 3 (c)**
  - Applicant was able to join the police **voluntarily** to the police station to give a **witness-statement**, police considered him as a witness during this time: no need to inform him of his guarantees **at this point**
  - During the witness-interrogation the suspension to seek instructions from their superior is a „**cut**“ that shows the policemen’s suspicion of the Applicant being a **potential suspect** in the case



## **ECtHR, Ibrahim a.o. v. United Kingdom, 13.9.2016**

**No compelling reasons** to restriction of his rights at this point in the proceedings even though the ECtHR did not see any case of coercion and even though the crime of terrorism is of high public interest

The Applicant, however, **was misled** as to his fundamental rights during questioning.

Even without the mentioning of the national courts of the importance of the witness-statement, it is considered to be substantial evidence for his conviction to be based on

**All procedural shortcomings** concerning the fourth applicant **combined:**

Violation of Article 6 § 1, 3 (c) ECHR



# HUMAN RIGHTS CASE-LAW

**Article 6 ECHR – effective defence, right to  
legal assistance of own choosing**





## **ECtHR, Lalik/Poland, 11.5.2023**

Applicant set fire to his collapsed and unconscious drinking partner's jacket, which the latter was wearing, with him sustaining severe burn injuries and dying as a result; **no proper information of his rights** nor **during his arrest** and neither **prior to his informal questioning** which lasted three hours; no testing of his sobriety prior to his questioning

Questioning during trial without lawyer being present in agreement with applicant; after consulting with lawyer, he later corrected his statements and refused to testify; questioning of officer who prepared official note

Unclear whether trial court admitted and assessed the content of his informally made statements as evidence in breach of the guarantees enshrined in Article 6; Statements made in informal questioning served as key evidence in establishing his intent to kill his friend which led to his conviction later on; Conviction of aggravated murder and sentenced to 25 years in prison



## **ECtHR, Lalik/Poland, 11.5.2023**

### **Legal Findings: Violation of rights in Art. 6 § 3 (c) ECHR (+)**

- **No documentation of information** of the applicant **of his rights as a suspect** when being arrested; **no documentation about informing him of his rights** before his informal questioning either
- **Overall fairness (-)**
- Vulnerability of applicant during his arrest
- Official note of the informal questioning only signed by police officer does not ensure that applicant was able to contest the noted statements



## **ECtHR, Lalik/Poland, 11.5.2023**

### **Legal Findings: Violation of rights in Art. 6 § 3 (c) ECHR (+)**

- Failure of the national courts to at least **analyze the need to exclude any of the recorded statements** made during the lack of the presence of any legal assistance
- **Questioning was crucially important** (served as key evidence) in establishing his intent to kill his friend which led to his conviction later on without being informed of his rights properly beforehand → **Violation**



# HUMAN RIGHTS CASE-LAW

## Protection of Minors



## **ECtHR – Protection of Minors**

- Salduz v. Turkey (minor in custody – importance of presence of lawyer)
- Panovits v. Cyprus (failure to inform minor of his rights to consult lawyer prior to first questioning)
- Soykan v. Turkey (no access to lawyer while in police custody)
- Dushka v. Ukraine (unlawful detention - vulnerable age - ill-treatment, Art. 3 ECHR; Art. 6 ECHR?)
- Blokhin v. Russia (detention for 30 days of a mentally disturbed 12 year old in juvenile temporary centre - questioned without legal guardian, teacher or legal counsel being present)



**THANK YOU FOR YOUR  
ATTENTION**