



The Belgian authorities did not take the necessary steps to establish the circumstances surrounding alleged acts of rape and indecent assault

In today's **Chamber** judgment¹ in the case of **B.V. v. Belgium** (application no. 61030/08) the European Court of Human Rights held, unanimously, that there had been:

a violation of the procedural aspect of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights.

The case concerned the investigation carried out by the Belgian authorities after the applicant had lodged a criminal complaint alleging rape and indecent assault.

The Court found in particular that the applicant's allegations were arguable and could therefore be regarded as complaints of treatment breaching Article 3 of the Convention. Accordingly, in view of the State's obligation to carry out an effective investigation, the authorities should, as soon as she had lodged her complaint, have made prompt use of all the available opportunities to establish the facts and, as appropriate, the circumstances surrounding the alleged acts of rape and indecent assault.

The Court concluded that the investigation could not, in such circumstances, be said to have been serious and thorough.

Principal facts

The applicant, Ms B.V., is a Belgian national who lives in Brussels.

Ms B.V. alleged that she had been raped twice and indecently assaulted once by X, a work colleague, between 1996 and 1998.

On 15 September 1998 she confided in her managers, who contacted the Unit for Protection from Sexual Harassment at Work, which conducted various interviews. On 25 September 1998 Ms B.V. lodged a complaint with the gendarmerie, providing a medical certificate and the full name of a witness. The gendarmerie interviewed both her and X. The proceedings concerning her complaint were discontinued, although Ms B.V. was not officially informed of this.

On 30 April 2001, having learned by chance that no further action was to be taken on her complaint, Ms B.V. asked the public prosecutor's office to reopen the case against X. She complained that X had not been questioned by the gendarmerie and asked for evidence to be taken afresh.

On 14 February 2002 Ms B.V. lodged a criminal complaint and applied to join the proceedings as a civil party. No investigative steps were carried out between March 2002 and June 2004, and it emerged that an inspection of the sites of the incidents was no longer possible. In June and July 2004 the police interviewed six of Ms B.V.'s former colleagues.

In September 2004 Ms B.V. applied to the Indictments Division of the Brussels Court of Appeal, which withdrew the case from the investigating judge on the grounds that his investigation had been

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.

“unacceptably” delayed and that he had simply repeated the contents of his notes without taking any action on them. A new investigating judge was appointed. Several people were interviewed by the police, and psychiatric assessments of X and Ms B.V. were conducted. The investigating judge sent the file to the public prosecutor’s office, which on 2 October 2006 filed submissions recommending that the proceedings be discontinued for lack of sufficient evidence.

After additional investigative measures had been carried out on an application by Ms B.V. and the public prosecutor’s office had again recommended discontinuing the proceedings, the Committals Division found in an order of 17 January 2008 that there was insufficient evidence and ruled that X had no case to answer. The order was upheld by the Indictments Division of the Brussels Court of Appeal in a judgment of 28 February 2008. On 18 June 2008 the Court of Cassation dismissed an appeal on points of law by Ms B.V., holding that the judgment appealed against had contained adequate reasons.

Complaints, procedure and composition of the Court

Relying in substance on Article 3 (prohibition of inhuman and degrading treatment) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, the applicant complained that a full and comprehensive investigation had not been carried out and that she had not had an effective remedy by which to raise her complaints of rape and indecent assault. Under Article 6 § 1 (right to a fair hearing within a reasonable time), she also complained that the proceedings had not been conducted within a reasonable time.

The application was lodged with the European Court of Human Rights on 12 December 2008.

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

Işıl **Karakaş** (Turkey), *President*,
Nebojša **Vučinić** (Montenegro),
Paul **Lemmens** (Belgium),
Valeriu **Griţco** (the Republic of Moldova),
Ksenija **Turković** (Croatia),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of inhuman and degrading treatment\)](#)

In the Court’s view, Ms B.V.’s allegations that a colleague had raped and assaulted her were arguable and could therefore be regarded as complaints of treatment breaching Article 3 of the Convention.

The provisions of Article 3 had therefore required the authorities to carry out an effective investigation. In view of this positive obligation, the authorities should, as soon as the applicant had lodged her complaint, have made prompt use of all the available opportunities to establish the facts and, as appropriate, the circumstances surrounding the alleged acts of rape and indecent assault. The Court pointed out that compliance with the procedural requirement to carry out an effective investigation was assessed on the basis of factors including the adequacy of the investigative measures and the promptness and thoroughness of the investigation. The investigating authorities had therefore had a duty to assess the credibility of the accusations and clarify the circumstances of the case while observing the requirements of promptness and reasonable expedition.

However, the Court observed that at the time when Ms B.V. had lodged her complaint in September 1998 no appropriate steps had been taken to investigate its credibility. The only action taken before the prosecutor's office had discontinued the proceedings had been a brief interview of X in December 1998. The Court further noted that all the investigative measures ordered in the course of the investigation after the applicant had applied to join the proceedings as a civil party had been carried out at a late stage, without any indication of a coherent investigative plan for ascertaining the truth. In the Court's view, the investigation could not, in such circumstances, be said to have been serious and thorough.

The Court thus concluded, unanimously, that there had been a violation of the procedural aspect of Article 3 of the Convention.

Article 6 (right to a fair hearing within a reasonable time)

In view of its finding of a violation of Article 3 of the Convention, the Court found that no separate examination of the complaint under Article 6 was necessary.

Just satisfaction (Article 41)

The Court held that Belgium was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 13,000 in respect of costs and expenses.

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.