



## Failure to comply with duty to carry out a thorough investigation of allegations of police ill-treatment breached the Convention

In today's Chamber judgment in the case of **B.S. v. Spain** (application no. 47159/08), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman and degrading treatment – lack of an effective investigation)** of the European Convention on Human Rights as regards the investigation;

**no violation of Article 3** of the Convention as regards the allegations of ill-treatment; and

**a violation of Article 14 (prohibition of discrimination) in conjunction with Article 3.**

The case concerned a woman of Nigerian origin who was stopped by the police while working as a prostitute on the outskirts of Palma de Mallorca. The Court found that the State had not conducted an adequate and effective investigation into her allegations of ill-treatment on two occasions when she was stopped and questioned in the street.

### Principal facts

The applicant, Ms B.S., of Nigerian origin, was born in 1977 and has been lawfully resident in Spain since 2003.

On 15 July 2005 B.S. was on a street in the El Arenal area near Palma de Mallorca, where she worked as a prostitute. Two police officers asked her to provide her identity and to leave, which she did immediately. Shortly afterwards, having returned to the same location, she noticed the same police officers approaching her and attempted to run away. She alleged that the officers caught up with her, hit her on the left thigh and the wrists with a truncheon and again asked for her identity papers, and that one of the officers racially abused her.

On 21 July 2005 the same police officers again stopped and questioned her and one of them hit her on the left hand with a truncheon. B.S. lodged a complaint with the Palma de Mallorca investigating judge and went to hospital to have her injuries treated. The doctors observed inflammation and a slight swelling on the left hand.

The investigating judge asked the police headquarters to produce an incident report. The chief of police explained in his report that there were frequent patrols of the area in

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

question as a large number of thefts and assaults had been reported by local residents. He stated that B.S. had been stopped for questioning and had tried to run away, but added that the police officers had at no time used humiliating language or physical force. He gave the identities of the police officers on patrol at the time of the incidents, which differed from those indicated by B.S. in her statement. In a decision of 17 October 2005 the investigating judge made a provisional discharge order and discontinued the proceedings on the ground that there was insufficient evidence of a criminal offence.

B.S. applied for a review of that decision, complaining that the police officers had displayed a discriminatory attitude. She asked for various measures to be taken to gather evidence, such as identifying the police officers concerned and obtaining statements from people alleged to have witnessed the incidents. In a decision of 10 June 2007 the judge refused to review his decision, holding that there was no objective confirmation of B.S.'s accusations against the police officers.

B.S. lodged an appeal, which was examined by the Balearic Islands *Audiencia Provincial*. It quashed the decision to discontinue the proceedings and ordered the institution of minor-offence proceedings against the two police officers who had stopped the applicant, identifying them on the basis of the report produced by the police headquarters. On 11 March 2008 the investigating judge gave judgment following a public hearing at which the police officers were not formally identified by B.S.; they were acquitted.

B.S. was again stopped for questioning on 23 July 2005. Later that day she reported to the casualty department, where the doctor observed abdominal pain and bruising to the hand and knee. She lodged a criminal complaint two days later, alleging that she had been beaten on the hand and knee with a truncheon. She complained that she had been targeted in particular because of her race. She stated that she had been forcibly taken to the police station for the purpose of signing a statement acknowledging that she had resisted the authorities. The investigating judge began a judicial investigation. B.S. requested that all police officers who had patrolled the area on 15 and 23 July be summoned for an identity parade using a two-way mirror. Her request was refused. The judge asked the police headquarters to produce an incident report.

The report by the chief of police stated that B.S. had admitted to working as a prostitute in the area where she had been stopped, and that the sole purpose of her complaints had been to allow her to carry on occupying the public highway without being disturbed by the law-enforcement authorities. As regards the identity of the officers in question, the chief of police noted that, while the police had indeed intervened on 15 and 21 July, there was no record of any such intervention on 23 July. On 22 February 2006 the investigating judge made a provisional discharge order and discontinued the proceedings on the ground that there was insufficient evidence of a criminal offence. B.S. applied for a review of that decision. That and her subsequent appeal were unsuccessful.

## Complaints, procedure and composition of the Court

Relying on Article 3, B.S. complained that the national police officers had verbally and physically abused her when stopping her for questioning. She alleged that she had been discriminated against because of her profession as a prostitute, her skin colour and her gender. She objected to the language used by the investigating judge who, in a decision of 10 June 2007, had referred to the "shameful spectacle of prostitution on the public highway". Lastly, she argued that the courts' investigation of the events had been inadequate.

The application was lodged with the European Court of Human Rights on 29 September 2008.

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

Josep **Casadevall** (Andorra), *President*,  
Corneliu **Bîrsan** (Romania),  
Alvina **Gyulumyan** (Armenia),  
Egbert **Myjer** (the Netherlands),  
Ineta **Ziemele** (Latvia),  
Luis **López Guerra** (Spain),  
Nona **Tsotsoria** (Georgia),

and also Marialena **Tsirli**, *Deputy Section Registrar*.

## Decision of the Court

### Article 3

#### **Investigations by the national authorities**

The Court considered that where an individual claimed to have suffered ill-treatment infringing Article 3 at the hands of the police or similar State authorities, that Article, read in conjunction with Article 1, required there to be an effective official investigation capable of leading to the identification and punishment of those responsible.

As regards the investigation conducted by the domestic courts, the Court noted that B.S. had twice complained of ill-treatment, on 21 and 25 July 2005. Her complaints had indeed been investigated. However, the Court observed that the investigating judges had done no more than request reports from the police headquarters and had relied solely on those reports in discontinuing the proceedings. Furthermore, the reports had been produced by the Balearic Islands chief of police, who was the official superior of the accused police officers.

The Court noted that at the public hearing on 11 March 2008 the defendants had not been formally identified by B.S. In the Court's view, the hearing could not be regarded as satisfying the requirements of Article 3, in that it had not provided an opportunity to identify the police officers involved. The domestic courts had refused B.S.'s request for an identity parade, arguing that too much time had elapsed and that the officers would be difficult to recognise because they had been wearing helmets while on patrol. In the Court's view, however, this request by B.S. had not been superfluous.

The Court noted that the medical reports provided by B.S. recorded the presence of inflammation and swelling on the left hand after she had been stopped and questioned on 21 July 2005, and of abdominal pain and bruising to the hand and knee after she had been stopped on 23 July 2005. That aspect had not been investigated, on the grounds that the medical reports had been undated or had been insufficiently conclusive as to the cause of the injuries. The Court considered, however, that the reports should have been the starting point for the judicial authorities' investigations. Lastly, the investigating judges had not taken steps to interview anyone who had witnessed the altercations; nor had they investigated B.S.'s allegations that she had been taken to the police station to sign a statement acknowledging that she had resisted the police.

The Court considered that the investigative steps taken had not been sufficiently thorough and effective to satisfy the requirements of Article 3 of the Convention, and found a violation of Article 3 as regards the effectiveness of the investigation.

### **Allegations of ill-treatment when the applicant was stopped by the police**

The Court reiterated that torture and inhuman or degrading treatment or punishment were prohibited in absolute terms. It noted that the medical reports provided by B.S. were inconclusive as to the possible cause of her injuries, and that the evidence before it did not enable it to establish beyond all reasonable doubt how the injuries had occurred. Its inability to reach any such finding was largely due to the lack of a thorough and effective investigation by the national authorities into B.S.'s complaints of ill-treatment. The Court was thus unable to find a violation of Article 3 in this respect.

### **Article 14 in conjunction with Article 3**

The Court considered that, when investigating violent incidents, State authorities had a duty to take all possible steps to unmask any racist motive and to establish whether ethnic hatred or prejudice might have played a role in the events.

The Court noted that in her complaints of 21 and 25 July 2005 B.S. had mentioned racist comments allegedly made by the police officers. She had also accused them of not stopping women with a "European phenotype" who pursued the same activity as she did. The courts dealing with her case had not investigated these allegedly racist attitudes. The Court considered that the domestic courts had not taken into account B.S.'s special vulnerability inherent in her situation as an African woman working as a prostitute. The authorities had not taken all possible measures to ascertain whether or not a discriminatory attitude might have played a role in the events. The Court therefore concluded that there had been a violation of Article 14 in conjunction with Article 3.

### **Just satisfaction (Article 41)**

The court held that Spain was to pay the applicant 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,840.50 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.