



Conduct of proceedings enabled the defendant to understand why she had been convicted

In today's **Grand Chamber** judgment¹ in the case of **Lhermitte v. Belgium** (application no. 34238/09) the European Court of Human Rights held, by ten votes to seven, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned the reasons given by the Assize Court for the conviction of a mother who had killed her five children.

The Court noted that the jury – which had answered the questions put by the president of the Assize Court – had not provided reasons for its decision to find that the applicant had been criminally responsible at the time of the events. However, the procedure followed had made it possible for her to understand her conviction. From its preliminary stage, the investigation had focused on her personal history, character and psychological state at the time of the killings. There had been an adversarial trial, with the defendant and her counsel present, and the emergence of new evidence had led the president to order a further psychiatric assessment. The question of Ms Lhermitte's criminal responsibility had been a central focus of the trial hearing. The sentencing judgment also included reasoning that could have assisted her in understanding why the jury had found her criminally responsible. Lastly, the Court of Cassation had noted that consideration of her cold-blooded manner and her determination to carry out her crimes had constituted the Assize Court's reason for finding that she had been criminally responsible at the time of the events.

The procedure followed had therefore enabled Ms Lhermitte to understand the reasons for her conviction by the Assize Court.

Principal facts

The applicant, Ms Geneviève Lhermitte, is a Belgian national who was born in 1966 and is currently detained in Forest-Berkendael Prison (Belgium).

On 22 September 1990 Ms Lhermitte married B.M., whom she divorced after the events forming the subject of this case. B.M. lived with Dr M.S., a man fifteen years his elder, who had taken him in following B.M.'s arrival from Morocco in 1983, providing him with a home and paying for his studies. Ms Lhermitte and B.M. had five children. In 1992, after the birth of her first child, Ms Lhermitte began suffering from depression and left her job as a French and history teacher. Dr M.S. certified her unfit for work on account of depression and asthenia.

Ms Lhermitte, B.M. and Dr M.S. lived in a house paid for by Dr M.S., for whom B.M. worked part-time as an administrative assistant. On the recommendation of Dr M.S., who was her general practitioner, Ms Lhermitte saw a psychiatrist, D.V., who prescribed an antidepressant, sleeping tablets and anti-anxiety medication for her.

The day before the incident, Ms Lhermitte delivered a letter to Dr D.V.'s practice, and on the following day, 28 February 2007, she left a final letter, together with a bag of jewellery, in the letterbox of her friend and confidante. Next, using two knives which she had stolen from a

1. Grand Chamber judgments are final (Article 44 of the Convention).

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department store, Ms Lhermitte killed her five children one by one before attempting suicide. Afterwards, she telephoned the emergency services to say that she had killed her five children and to report her suicide attempt. When the police, the ambulance crew and the medical services arrived at the scene, they found the bodies of the five children, and also Ms Lhermitte, who was injured.

During her initial police interview, Ms Lhermitte explained that she had acted in a fit of despair caused by her family's dependence on Dr M.S.

The investigating judge ordered several psychological reports. Two psychologists examined Ms Lhermitte and submitted their respective reports on 30 October and 8 November 2007. The judge also ordered a psychiatric assessment, appointing a panel of three psychiatrists, who examined Ms Lhermitte and produced a report on 30 October 2007.

The indictment drawn up by the Principal Public Prosecutor gave an account of the precise sequence of events, the steps taken and evidence obtained during the investigation, the forensic medical reports, and also Ms Lhermitte's personal history and family life and the motives and reasons that had prompted her actions, particularly in the light of the expert assessments of her psychological and mental state. The trial took place in the Assize Court from 8 to 19 December 2008. During the trial, Dr D.V. for the first time mentioned the existence of two letters which Ms Lhermitte had addressed to him. In view of this new evidence, the president of the Assize Court instructed the panel of three psychiatrists who had already been involved at the investigation stage to produce a further report. In their report the experts concluded unanimously that Ms Lhermitte had been "suffering at the time of the events from a severe mental disturbance making her incapable of controlling her actions".

On 18 December 2008, after the submissions of the prosecution and the parties had been heard, the jury was called to answer five questions put by the president of the Assize Court. The following day, after withdrawing to deliberate on their own, the members of the jury answered "yes" to the first two questions, concerning Ms Lhermitte's guilt on charges of premeditated intentional homicide, and "no" to the final question, concerning her current mental state. The Assize Court, composed of three judges and the jury, then deliberated and on 19 December 2008 delivered a judgment in which it took note of the guilty verdict reached by the jury alone and gave reasons for the life sentence it imposed on Ms Lhermitte. On 8 January 2009 she appealed on points of law, but the Court of Cassation dismissed her appeal.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), the applicant complained of the lack of reasons given in the Assize Court's judgment for finding her criminally responsible and convicting her.

The application was lodged with the European Court of Human Rights on 5 June 2009. On 26 May 2015 a Chamber of the Second Section of the Court delivered a judgment in which it held, by four votes to three, that there had been no violation of Article 6 § 1 of the Convention. On 28 July 2015 the applicant requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber) and on 14 September 2015 the panel of the Grand Chamber accepted that request. A hearing took place on 27 January 2016.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido Raimondi (Italy), *President*,

Luis López Guerra (Spain),

Mirjana Lazarova Trajkovska ("the former Yugoslav Republic of Macedonia"),

Angelika Nußberger (Germany),

Vincent A. de Gaetano (Malta),

Julia Laffranque (Estonia),
Linos-Alexandre Sicilianos (Greece),
Paul Lemmens (Belgium),
Helena Jäderblom (Sweden),
Aleš Pejchal (the Czech Republic),
Faris Vehabović (Bosnia and Herzegovina),
Branko Lubarda (Serbia),
Yonko Grozev (Bulgaria),
Armen Harutyunyan (Armenia),
Stéphanie Mourou-Vikström (Monaco),
Georges Ravarani (Luxembourg),
Gabriele Kucsko-Stadlmayer (Austria),

and also Françoise Elens-Passos, *Deputy Registrar*.

Decision of the Court

Article 6 § 1

The Court had to determine whether or not Ms Lhermitte had been able to understand the reasons why the jury had found that she had been responsible for her actions at the material time, notwithstanding the unanimous findings to the contrary reached by the psychiatric experts, who had presented their new report at the end of the trial in the Assize Court.

The Court observed that at the start of the trial the indictment had been read out in full. The case against the defendant had then been the subject of adversarial argument, each item of evidence being examined and Ms Lhermitte, assisted by counsel, having the opportunity to call witnesses and respond to the testimony heard. The questions put by the president to the 12 members of the jury at the end of the ten-day hearing had been read out and the parties had been given a copy.

The Court noted, firstly, that counsel for Ms Lhermitte had not raised any objections on learning of the questions to be put to the jury by the president of the Assize Court. Secondly, it observed that since the first question had concerned Ms Lhermitte's guilt, a positive answer implied that the jury considered her responsible for her actions at the time of the events. Ms Lhermitte could not therefore maintain that she had been unable to understand the jury's position on this matter.

The Court accepted that the jury had not provided any reasons in this regard. However, it reiterated that compliance with the requirements of a fair trial must be assessed on the basis of the proceedings as a whole by examining whether, in the light of all the circumstances of the case, the procedure followed had enabled the accused to understand why he or she had been found guilty.

The Court observed that from its preliminary stage, the investigation had focused on Ms Lhermitte's personal history, character and psychological state at the time of the killings. There had been an adversarial trial, with the defendant and her counsel present. The emergence of new evidence, namely the two letters disclosed by Dr D.V., had led the president to order a further psychiatric assessment. The psychiatric experts had then changed their opinion and come back to present their new findings. The question of the defendant's criminal responsibility had therefore been a central focus of the trial hearing.

In addition, the Court noted that the sentencing judgment also included reasoning that could have assisted Ms Lhermitte in understanding why the jury had found her criminally responsible. Thus, while noting the defendant's psychological problems and the possible factors causing her to act as she had, the Assize Court had explicitly mentioned both her resolve to commit the murders and the cold-blooded manner in which she had carried them out. The Court of Cassation, moreover, had

emphasised that consideration of Ms Lhermitte's cold-blooded manner and her determination to carry out her crimes had constituted the Assize Court's reason for finding that she had been criminally responsible at the time of the events.

In the Court's view, the fact that the sentencing judgment had been drafted by professional judges who had not attended the deliberations on the issue of guilt could not call into question the value and impact of the explanations provided to Ms Lhermitte without delay, at the end of the Assize Court session. Although the professional judges had formally drafted the sentencing judgment, they had been able to obtain the observations of the 12 members of the jury, who had in fact sat alongside them in deliberating on the sentence. Lastly, the professional judges had themselves been present throughout the trial hearing.

With regard to Ms Lhermitte's criticism of the lack of specific explanations for the difference in opinion between the jury and the three psychiatric experts who had submitted the final report, the Court reiterated that both the admissibility of evidence and its assessment were primarily a matter for regulation by national law and that it was for the national courts to assess the evidence before them. Besides the fact that the experts themselves had played down the impact of their findings, the Court had already found that statements made by psychiatric experts at an Assize Court trial formed only one part of the evidence submitted to the jury. The fact that the jury had not indicated the reasons that had prompted it to adopt a view at variance with the psychiatric experts' final report had not been capable of preventing the defendant from understanding the final decision.

In conclusion, the Court considered that Ms Lhermitte had been afforded sufficient safeguards enabling her to understand the guilty verdict against her.

There had therefore been no violation of Article 6 § 1 of the Convention.

Separate opinion

Judges Raimondi, Lazarova Trajkovska, Laffranque, Sicilianos, Lubarda, Grozev and Harutyunyan expressed a joint dissenting opinion, which is annexed to the judgment.

The judgment is available in English and 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.