

# EUROPEAN COURT OF HUMAN RIGHTS

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4.12.2003

Press release issued by the Registrar

## CHAMBER JUDGMENT IN THE CASE OF *M.C. v. BULGARIA*

The European Court of Human Rights has today notified in writing a judgment<sup>1</sup> in the case of *M.C. v. Bulgaria* (application no. 39272/98).

The Court held, unanimously, that there had been:

- a **violation of Article 3** (prohibition of degrading treatment) **and Article 8** (right to respect for private life) of the European Convention on Human Rights as the respondent State failed to comply with its positive obligations under those provisions ;
- that no separate issue arose under Article 13 (right to an effective remedy);
- and that is not necessary to examine the applicant's complaint under Article 14 (prohibition of discrimination).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 8,000 euros (EUR) for non-pecuniary damage and EUR 4,110 for costs and expenses. (The judgment is available only in English.)

### 1. Principal facts

The applicant, M.C., is a Bulgarian national born in 1980 who alleged that she was raped by two men, A. and P., aged 20 and 21, when she was 14 years old, the age of consent for sexual intercourse in Bulgaria.

M.C. claimed that, on 31 July 1995, she went to a disco with the two men and a friend of hers. She then agreed to go on to another disco with the men. On the way back, A. suggested stopping at a reservoir for a swim. M.C. remained in the car. P. came back before the others, allegedly forcing M.C. to have sexual intercourse with him. M.C. maintained that she was left in a very disturbed state. In the early hours of the following morning, she was taken to a private home. She claimed that A. forced her to have sex with him at the house and that she cried continually both during and after the rape. She was later found by her mother and taken to hospital where a medical examination found that her hymen had been torn.

A. and P. both denied raping M.C.

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<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The criminal investigations conducted found insufficient evidence that M.C. had been compelled to have sex with A. and P.. The proceedings were terminated on 17 March 1997 by the District Prosecutor, who found that the use of force or threats had not been established beyond reasonable doubt. In particular, no resistance on the applicant's part or attempts to seek help from others had been established. The applicant appealed unsuccessfully.

Written expert opinions submitted to the European Court of Human Rights by M.C. identified "frozen fright" (traumatic psychological infantilism syndrome) as the most common response to rape, where the terrorised victim either submits passively to or dissociates her or himself psychologically from the rape. Of the 25 rape cases analysed, concerning women in Bulgaria aged between 14 and 20, 24 of the victims had responded to their aggressor in this way.

## **2. Procedure and composition of the Court**

The application was lodged with the European Commission of Human Rights on 23 December 1997 and transmitted to the Court on 1 November 1998. It was declared admissible on 5 December 2002. *Interrights*, a non-governmental organisation based in London, submitted comments after being given leave to intervene as a third party.

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

Christos **Rozakis** (Greek), *President*,  
Françoise **Tulkens** (Belgian),  
Nina **Vajić** (Croatian),  
Egil **Levits** (Latvian),  
Snejana **Botoucharova** (Bulgarian),  
Anatoli **Kovler** (Russian),  
Vladimiro **Zagrebelsky** (Italian), *judges*,

and also Søren **Nielsen**, *Deputy Section Registrar*.

## **3. Summary of the judgment<sup>1</sup>**

### **Complaints**

M.C. complained that Bulgarian law and practice do not provide effective protection against rape and sexual abuse, as only cases where the victim resists actively are prosecuted. She submitted that Bulgaria has a positive obligation under the European Convention on Human Rights to protect the individual's physical integrity and private life and to provide an effective remedy. She also complained that the authorities had not effectively investigated the events in question. She relied on Article 3 (prohibition of degrading treatment), Article 8 (right to respect for private life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination).

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<sup>1</sup> This summary by the Registry does not bind the Court.

## Decision of the Court

### Articles 3 and 8 of the Convention

The Court reiterated that, under Articles 3 and 8 of the Convention, Member States had a positive obligation both to enact criminal legislation to effectively punish rape and to apply this legislation through effective investigation and prosecution.

The Court then observed that, historically, proof of the use of physical force by the perpetrator and physical resistance on the part of the victim was sometimes required under domestic law and practice in rape cases in a number of countries. However, it appeared that this was no longer required in European countries. In common-law jurisdictions, in Europe and elsewhere, any reference to physical force had been removed from legislation and/or case-law. Although in most European countries influenced by the continental legal tradition, the definition of rape contained references to the use of violence or threats of violence by the perpetrator, in case-law and legal theory, it was lack of consent, not force, that was critical in defining rape.

The Court also noted that the Member States of the Council of Europe had agreed that penalising non-consensual sexual acts, whether or not the victim had resisted, was necessary for the effective protection of women against violence and had urged the implementation of further reforms in this area. In addition, the International Criminal Tribunal for the former Yugoslavia had recently found that, in international criminal law, any sexual penetration without the victim's consent constituted rape, reflecting a universal trend towards regarding lack of consent as the essential element of rape and sexual abuse. As *Interights* had submitted, victims of sexual abuse - in particular, girls below the age of majority - often failed to resist for a variety of psychological reasons or through fear of further violence from the perpetrator. In general, law and legal practice concerning rape were developing to reflect changing social attitudes requiring respect for the individual's sexual autonomy and for equality. Given contemporary standards and trends, Member States' positive obligation under Articles 3 and 8 of the Convention requires the penalisation and effective prosecution of any non-consensual sexual act, even where the victim had not resisted physically.

The applicant alleged that the authorities' attitude in her case was rooted in defective legislation and reflected a practice of prosecuting rape perpetrators only where there was evidence of significant physical resistance. In the absence of case-law explicitly dealing with the question, the Court considered it difficult to arrive at safe general conclusions on the issue. However, the Bulgarian Government were unable to provide copies of judgments or legal commentaries clearly disproving the applicant's allegations of a restrictive approach in the prosecution of rape. Her claim was therefore based on reasonable arguments which had not been disproved.

The presence of two irreconcilable versions of the facts obviously called for a context-sensitive assessment of the credibility of the statements made and for verification of all the surrounding circumstances. Little was done, however, to test the credibility of the version of events put forward by P. and A. - even the assertion that the applicant, aged 14, had started caressing A. minutes after having had sex for the first time in her life with another man - or to test the credibility of the witnesses called by the accused or the precise timing of the events. Neither were the applicant and her representative able to question witnesses, whom she had accused of perjury. The authorities had therefore failed to explore the available

possibilities for establishing all the surrounding circumstances and did not assess sufficiently the credibility of the conflicting statements made.

The reason for that failure appeared to be that the investigator and prosecutor considered that a “date rape” had occurred, and, in the absence of “direct” proof of rape such as traces of violence and resistance or calls for help, that they could not infer proof of lack of consent and, therefore, of rape from an assessment of all the surrounding circumstances. While the prosecutors did not exclude the possibility that the applicant might not have consented, they adopted the view, in the absence of proof of resistance, that it could not be concluded that the perpetrators had understood that the applicant had not consented. They did not assess evidence that P. and A. had deliberately misled the applicant in order to take her to a deserted area, thus creating an environment of coercion, or judge the credibility of the versions of the facts proposed by the three men and witnesses called by them.

The Court considered that the Bulgarian authorities should have explored all the facts and should have decided on the basis of an assessment of all the surrounding circumstances. The investigation and its conclusions should also have been centred on the issue of non-consent. Without expressing an opinion on the guilt of P. and A., the Court found that the effectiveness of the investigation of the applicant’s case and, in particular, the approach taken by the investigator and the prosecutors fell short of Bulgaria’s positive obligations under Articles 3 and 8 of the Convention - viewed in the light of the relevant modern standards in comparative and international law - to establish and apply effectively a criminal-law system punishing all forms of rape and sexual abuse.

#### Articles 13 and 14 of the Convention

The Court found that no separate issue arose under Article 13 and that it was not necessary to examine the complaint under article 14.

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Judge Tulkens expressed a concurring opinion which is annexed to the judgment.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court’s judgments. More detailed information about the Court and its activities can be found on its Internet site.*