



## Violation of right to fair trial by use of “caution” measure

In today’s **Chamber** judgment<sup>1</sup> in the case of [B.G. v. France](#) (application no. 70945/17) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.**

The case primarily concerned the failure to afford the guarantees of the right to a fair trial during “caution” (*rappel à la loi*) proceedings initiated by the public prosecutor against the applicant for false accusation of rape.

The applicant, aged 16 at the time, had reported a 17-year-old man, L.A., to the police for rape. Following the discontinuance of the investigation into that complaint, L.A.’s mother reported the applicant to the police for making a false accusation. Although the applicant stood by the details of her initial complaint, she was issued with a caution and was consequently included in the criminal history database for a five-year period.

The Court emphasised the importance and the difficulty of ascertaining the existence of consent with consideration being given to all surrounding circumstances. In that regard, it noted that the applicant had been issued with an alternative to prosecution that designated her as the perpetrator of a false accusation following the discontinuance of the investigation into her rape complaint. She had not, however, admitted to the offence, nor had she at any time waived the various guarantees under Article 6 § 1 of the Convention.

The Court concluded that the case had involved two successive, indissociable sets of proceedings, namely those resulting in the decision to discontinue the investigation into the rape complaint and then those culminating in the issuance of a caution for false accusation. In those circumstances, there had been a breach of Article 6 § 1 of the Convention, which applied in its criminal aspect to the whole sequence of proceedings.

A legal summary of this case will be available in the Court’s database HUDOC ([link](#)).

### Principal facts

The applicant, B.G., is a French national who was born in 2000 and lives in Nieul (France).

On 3 June 2016 the then 16-year-old applicant, accompanied by her mother, reported a 17-year-old man, L.A., to the Limoges police for having forced her to perform oral sex on him in the toilets of their secondary school. She said that he had threatened to reveal their relationship to a friend in common, Y., if she had refused. The public prosecutor’s office discontinued the applicant’s case on 6 October 2016 because the offence had not been made out.

On 6 September 2016 – the day before L.A. reached the age of majority – his mother, as his legal representative, reported the applicant to the police for falsely accusing L.A. of rape. She stated that, according to her son, the applicant had performed oral sex on him voluntarily and then had reported

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](http://www.coe.int/t/dghl/monitoring/execution).

him for rape in order to take revenge on Y., who refused to go out with her. The applicant's unprosecuted complaint of 3 June 2016 was appended to the case.

On 8 August 2017 the applicant was summoned to appear before the public prosecutor's representative in order to be issued with a caution (*rappel à la loi*) for having made a false accusation, in accordance with Article 226-10 of the Criminal Code.

In a letter of 29 August 2017 to the public prosecutor, the applicant's parents challenged the measure intended for their minor daughter. They argued that there had been no option of a hearing before a court concerning the constituent elements of the offence or criminal intent. The applicant, assisted by her lawyer and accompanied by her parents, was ultimately issued with the caution during a private hearing on 20 September 2017, despite stating that she stood by the details of her initial complaint. As a result of the caution, she was included in the police's criminal history database for a five-year period.

## Complaints, procedure and composition of the Court

Relying on Article 6 §§ 1 and 2 of the Convention, the applicant complained of a breach of her right to a fair trial and of the principle of the presumption of innocence stemming from the caution imposed on her. Under Article 13, she further complained that the only avenue of appeal open to her was to the public prosecutor for reconsideration of the decision or to the public prosecutor's superior for a review.

The application was lodged with the European Court of Human Rights on 21 September 2017.

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

Kateřina Šimáčková (the Czech Republic), *President*,  
María Elósegui (Spain),  
Mattias Guyomar (France),  
Georgios A. Serghides (Cyprus),  
Gilberto Felici (San Marino),  
Andreas Zünd (Switzerland),  
Diana Sârcu (the Republic of Moldova),

and also Victor Soloveytchik, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

The Court began by observing that the framework governing cautions was provided for in Article 41-1 of the Code of Criminal Procedure. Although cautions were abolished on 1 January 2023 (Law no. 2021-1729 of 22 December 2021), they were considered at the time of the events to be one of the "valid criminal-law responses" available to the public prosecutor's office as an alternative to prosecution. They offered a judicial means of dealing with conduct found to constitute a criminal offence, while avoiding criminal proceedings.

A caution did not amount to a "criminal conviction" handed down following an examination on the merits of a person's guilt by a court. In the case at hand, however, it had designated the applicant as having committed an offence, in accordance with the provisions of Article 40-1 of the Code of Criminal Procedure. The caution was the consequence of the characterisation of the applicant as the perpetrator of an offence, and was the sanction deemed most appropriate by the public prosecutor's office, in view of the circumstances.

The Court noted, however, that the public prosecutor's office had come to the finding – without providing any reasons – that the applicant had lied on the basis of the parties' two irreconcilable versions of whether or not she had freely given her consent to the alleged sexual act. This was despite the fact that she had always maintained the contrary and had not admitted to the alleged offence. The national authorities had not given equal consideration to the applicant's and L.A.'s respective statements. They had also failed to explain why the applicant's statements had appeared to lack all credibility while those of L.A. had been sufficient, in themselves, to justify the caution imposed on the applicant.

Furthermore, although the applicant had always denied lying about the alleged rape, the public prosecutor's office had not granted her repeated requests to be afforded the full benefit of the guarantees of a fair trial. The applicant had thus been deprived of the guarantees pertaining to a decision on the merits of the offence of false accusation. Those guarantees stemmed from the last paragraph of Article 226-10 of the Criminal Code, which provided that "the court dealing with the proceedings against the accuser shall assess the relevance of his or her accusations".

The Court was mindful of the significant difficulty of ascertaining the existence of consent in certain criminal cases. It also acknowledged that the public prosecutor's office could in some circumstances legitimately discontinue rape cases, particularly where the parties' divergent statements were the only evidence gathered during the investigation. In the case at hand, however, the caution for false accusation had been issued because it was considered an established fact that the applicant had consented to the sexual act and had subsequently made untrue statements.

Such an assertion about the applicant was not based on a proper understanding of the concept of "consent". The Court reiterated that consent, which could by nature be withdrawn, should, in its view, reflect a person's free will to engage in the sexual intercourse in question, at the relevant time and as assessed in the context of the surrounding circumstances.

The Court once again emphasised the importance and the difficulty of ascertaining the existence of consent with consideration being given to all surrounding circumstances. In that regard, it noted that the applicant had been issued with a caution that designated her as the "perpetrator" of a false accusation following the discontinuance of the investigation into her rape complaint. At no time, however, had she waived the various guarantees under Article 6 § 1 of the Convention – not having admitted to the offence – or had an opportunity to challenge that designation before a "tribunal" affording those guarantees.

The Court concluded that in the circumstances of the case, which had involved two successive, indissociable sets of proceedings, Article 6 § 1 of the Convention applied in its criminal aspect, and there had been a violation of that provision.

### Just satisfaction (Article 41)

The Court held that France was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage and EUR 600 for costs and expenses.

### Separate opinion

Judge **Serghides** expressed a separate opinion, which is annexed to the judgment.

*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.