EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Applicant's home raided in expedited police investigation: no violation of Article 8; applicant questioned in police station without being placed in police custody despite having been taken there by force: violation of Article 5

In today's **Chamber** judgment[1] in the case of Jarrand v. France (application no. 56138/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights**, and**

a violation of Article 5 § 5 (right to compensation for unlawful detention) of the Convention, and

no violation of Article 8 (right to respect for one's home).

The case concerned a police raid on the home of Mr Jarrand after he had failed to return his elderly, dependent and highly vulnerable mother to her care home, in breach of a placement order, in addition to his arrest and questioning at the police station without being formally taken into police custody.

The applicant began by challenging the necessity of the interference with his right to respect for his private life caused by the police intervention at his home. The Court took the view that the applicant's conduct had rendered the police intervention necessary in the context of an expedited police investigation opened for "ill-treatment of a vulnerable person". Having regard to the margin of appreciation afforded in such cases to the respondent State and given the particular circumstances of the case, and the pressing social need for the home raid, the Court acknowledged that it was necessary in a democratic society.

Therefore there had not been a violation of Article 8 of the Convention.

The applicant further complained about the conditions in which he had been questioned at the police station. The Court found that the measure constituted a "deprivation of liberty" for the purposes of Article 5 of the Convention. After noting that in domestic law there had been, already at the time, a constitutional requirement that anyone brought before a police officer by force should enjoy the specific safeguards provided for within the framework of police custody, the Court observed that he had been questioned outside this framework, thus concluding that he had not been detained "in accordance with a procedure prescribed by law" as required by Article 5 § 1.

In the very specific circumstances of the case, where the courts which examined the applicant's complaint had failed to consider whether his detention had been compatible with Article 5 § 1 of the Convention, the Court found that there had also been a violation of Article 5 § 5, as he had not been able to claim compensation for his unlawful detention in breach of Article 5 § 1.

Principal facts

The applicant, Daniel Jarrand, is a French national who was born in 1954 and lives in Fontaine (France).

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.

On 23 November 2009 a doctor at Grenoble University Hospital, where Mr Jarrand's mother had been admitted at the request of the family doctor, reported to the public prosecutor of Grenoble that she was in a very poor physical and mental state. After his mother's admission to hospital, Mr Jarrand became very aggressive towards the staff and threatened to fetch a gun.

On 26 November 2009 the community social action centre sent a report to the public prosecutor, stating that the situation of Mr Jarrand's mother "seem[ed] very problematic", that she was living in "unacceptably unhygienic conditions" and that her son was refusing any help or monitoring. On 21 December 2009 the Grenoble guardianship judge, upon a referral from the public prosecutor, ordered the mother's placement under court protection and appointed a family association as her special representative.

Mr Jarrand's mother was admitted to a care home on 4 May 2010. At the same time an investigation was opened for neglect of a vulnerable person. On 31 March 2011 Mr Jarrand was found guilty as charged and sentenced to a six-month suspended prison term by the Grenoble Criminal Court. The Grenoble Court of Appeal upheld the conviction and added a fine of 2,000 euros to the sentence, of which the sum of 1,500 euros was suspended. However, the Court of Cassation overturned this judgment without referring it back to the court below.

On 10 June 2010 Mr Jarrand, who had taken his mother out of the care home for the afternoon as part of an arrangement with its director, refused to take her back there. He was finally persuaded to do so by staff of the association representing his mother. On 11 July 2010 the applicant again refused to return his mother to the care home after she had spent the afternoon at the family home. Two employees of the association paid a visit there the next day. At around 1.15 p.m., they tried to contact the applicant, who had just come back to the house, but he locked himself in with his mother. At 2.10 p.m. the director of the association lodged a complaint against the applicant at the Fontaine police station on account of what had happened.

An expedited police investigation on a charge of "mistreatment of a vulnerable person" was opened by a senior police officer from the Grenoble family protection unit, which notified the Grenoble public prosecutor. Five police teams were sent to the scene, under the command of a police superintendent, who tried in vain to make contact with Mr Jarrand to persuade him to open the door. At around 4.45 p.m. the public prosecutor gave the order to break down the front door. About ten police officers entered the house. They pointed their weapons at Mr Jarrand, ordering him to raise the hand he was concealing and to get down on the ground. He complied with the orders. The police officers conducted a "home security visit" or a "rapid visual inspection of the premises" to check for weapons. Mr Jarrand was arrested, searched, handcuffed and, according to him, manhandled, and then taken to Grenoble police station where he was questioned by a senior police officer from 5.55 p.m. to 6.55 p.m. According to Mr Jarrand he was released during the night and had to return home by taxi. He has maintained that his home was thoroughly searched while he was being held at the police station and that his mother had been taken back to the care home.

Mr Jarrand stated in his application that his mother had returned to live with him in January 2011, remaining there until her death on 14 March 2014.

On 15 July 2010 Mr Jarrand lodged a complaint with the Grenoble police for acts of violence and damage. The case was closed by the public prosecutor on the grounds that no offence had been committed, as the police had intervened on his orders.

On 21 January 2011 Mr Jarrand and his mother lodged a complaint with the most senior investigating judge of the Grenoble Criminal Court, against persons unknown, alleging a violation of their home, acts of violence, threats with a weapon, unlawful arrest, illegal confinement, theft and damage to property.

On 18 December 2014 the investigating judge discontinued the case. The applicant's appeal against that decision was dismissed.

The applicant lodged an appeal on points of law with the Court of Cassation, which dismissed the appeal.

Complaints, procedure and composition of the Court

Relying on Articles 5 § 1 (right to liberty and security) and 8 (right to respect for private and family life), the applicant submitted that there had been no legal basis for his arrest and deprivation of liberty and that the police officers, acting without a warrant or any right to do so, had breached his right to respect for his home. Relying on Article 5 § 5, the applicant also alleged that there had been no remedy by which to seek redress for his detention in breach of Article 5 § 1.

The application was lodged with the European Court of Human Rights on 22 September 2016.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Jovan **Ilievski** (North Macedonia),
Lado **Chanturia** (Georgia),
Arnfinn **Bårdsen** (Norway),
Mattias **Guyomar** (France),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 5 § 1

The Court noted that on 12 July 2010 the applicant had been arrested at his home by the police. He was handcuffed and then forcibly taken to Grenoble police station, where he was questioned between 5.55 and 6.55 p.m. The Court found that between his arrest and his release from the police station the applicant had been deprived of his liberty within the meaning of Article 5 of the Convention.

The Court emphasised that, under Article 5 § 1 of the Convention, no one may be deprived of liberty save in the situations listed in that provision and "in accordance with a procedure prescribed by law". Any deprivation of liberty must not only fall within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1 but must also have a legal basis in domestic law and comply with the relevant substantive and procedural rules.

The applicant's arrest had not in itself raised any difficulty in the light of those requirements: the arrest had taken place in the context of an expedited police investigation following a complaint, by the director of the association which had been asked to represent the interests of the applicant's mother, for acts potentially constituting the offence of neglect of a vulnerable person, as provided for in Article 223-3 of the Criminal Code and punishable, in particular, by five years' imprisonment.

As regards the deprivation of liberty which had followed the arrest, the Court noted the Government's position that, notwithstanding Article 62 of the Code of Criminal Procedure as then in force (i.e. the version applicable from 10 March 2004 to 1 June 2011), "the applicant's deprivation of liberty following his arrest had not been carried out in accordance with the legal procedure", given that he had been "arrested, handcuffed and consequently brought by force before the senior police officer [and that] he had therefore been deprived of his liberty during his transfer without subsequently being given the benefit of the police custody framework and the rights associated with it". The Court concluded from the Government's observations that, at the time of the events in issue

and even before the domestic legislation on this point had been amended, a person who was arrested *in flagrante delicto* for acts potentially constituting a serious offence punishable by imprisonment, and then taken by force to be questioned by a senior police officer, had to be formally taken into police custody in order to enjoy the safeguards of Articles 63 et seq. of the Code of Criminal Procedure, in the context of the resulting deprivation of liberty.

The Court further noted that on 30 July 2010 the Constitutional Council had declared several provisions of the chapter of the Code of Criminal Procedure on arrests *in flagrante delicto* to be unconstitutional, including Article 62. Following this decision, Law no. 2011-392 of 14 April 2011 had amended the Code of Criminal Procedure by providing, in particular, that the questioning of individuals where there were plausible grounds for suspecting that they had committed or attempted to commit an offence had to be carried out in the police custody framework, without ruling out the possibility that they could be interviewed outside this framework as long as they were not held by force at the investigators' disposal. In a decision of 18 November 2011 the Constitutional Council had ruled that this arrangement complied with the constitutional principle of respect for the rights of the defence, provided that the persons concerned were informed of the date and nature of the offence of which they were suspected and of their right to leave the police station or gendarmerie at any time. It could be concluded from the Constitutional Council's decision of 18 November 2011 that there had been a constitutional requirement in domestic law, even at the time of the events in question, for any person who was questioned, after being brought by force before a senior police officer, to be granted the special safeguards associated with police custody. It followed that the applicant's questioning at the Grenoble police station on 12 July 2010, when he had not been placed in police custody even though he had been taken there by force, had constituted a deprivation of liberty that had not been "in accordance with a procedure prescribed by law".

Article 8

The police had entered the applicant's home on the instructions of the Grenoble public prosecutor in the context of an expedited police investigation on charges of "ill-treatment of a vulnerable person". The relevant provisions of the Code of Criminal Procedure set out the legal framework for an expedited investigation and the powers of criminal investigation officers to intervene in that context, including, if necessary, by means of a home raid. In these circumstances, the Court found that the interference at issue had been "in accordance with the law". The Court further noted that the interference with the applicant's right to respect for his home had pursued the legitimate aims of "the prevention of disorder or crime" and "the protection of the rights and freedoms of others".

As regards the necessity of the interference, the Court, bearing in mind the context in which the home raid had taken place, emphasised that the applicant's conduct had made it necessary for the police to intervene in his home by force in order to arrest him and assist his mother, an elderly dependent person under court protection whose state of health was a matter of legitimate concern. The Court noted that any failure of the authorities to act, while being aware of the very vulnerable state of the applicant's mother and the risks to which she was exposed as a result of his conduct, could have engaged the respondent State's responsibility under the Convention.

Having regard to the margin of appreciation afforded to the respondent State, the material in the case file and the compelling social need to which it had responded, the Court accepted that the interference with the applicant's right to respect for his home had been "necessary in a democratic society".

Therefore there had been no violation of Article 8 of the Convention.

Article 5 § 5

The domestic courts dealing with the applicant's complaint had not addressed the question of compliance with Article 5 § 1 of the Convention, even though that complaint had concerned

arbitrary detention and in the subsequent appeals he had referred to this provision which had allegedly been breached, thus precluding an award of compensation for the damage sustained.

In these very specific circumstances, where the courts called upon to examine the applicant's complaint had failed to consider whether his detention had been compatible with Article 5 § 1 of the Convention, the Court found that there had also been a violation of Article 5 § 5.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinions

Judge Mourou-Vikström 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.