



Shortcomings in investigation into an alleged gang-rape accompanied by prejudicial gender stereotypes and victim-blaming attitudes

In today's **Chamber judgment**¹ in the case of [X v. Cyprus](#) (application no. 40733/22) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (lack of effective investigation) of the European Convention on Human Rights, and

a violation of Article 8 (right to respect for private and family life).

The applicant, X, a young British woman, alleges that she was gang-raped by several Israeli nationals when in Ayia Napa, Cyprus, in July 2019. The case concerned the ensuing investigation by the national authorities. After 10 days and a bout of lengthy questioning that lasted late into the night, X ended up retracting her allegations. She was immediately prosecuted for public mischief and was found guilty at first instance. However, she was acquitted on appeal, with the Cyprus Supreme Court noting various failures in the investigative process of her rape allegation.

Also identifying a number of failures in the investigation, the Court found, without expressing an opinion as to the suspects' guilt, that, in light of the numerous shortcomings identified, the investigative and prosecutorial authorities' response to X's allegations of rape had fallen short of the State's duty ("positive obligation") to apply the relevant criminal provisions in practice through effective investigation and prosecution. Moreover, the credibility of X's allegations appeared to have been assessed through prejudicial gender stereotypes and victim-blaming attitudes.

Principal facts

The applicant, X, is a British national who was born in 2000 and lives in the United Kingdom.

X visited Ayia Napa in Cyprus in July 2019, staying in an apartment complex for young people and sharing a room with two friends. According to statements she later made to the police, she had consensual sex with a fellow guest, an Israeli, S.Y., on two occasions, but was disturbed by his friends each time, as they kept coming into his room and trying to film them. She was groped and even slapped across the buttocks by one of them. She claimed that one of his friends had also tried to have sex with her but, as she had had a lot to drink, everything had been hazy, and she did not have a clear recollection of what had actually happened on that occasion.

X alleged that the next time she went with S.Y. to his room, in the early hours of 17 July 2019, his attitude had changed. He had forced himself on her, taking no notice of her protests. He had then called around 12 friends into the room and had pinned her down with his knees on her shoulders while they gang raped her. She thought she remembered two people filming the scene. She finally managed to escape outside but slipped and fell before some of them caught up with her. Two British men and one of her friends, alerted by the noise, came to her aid and then took her to the hotel doctor, who called the police.

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.

The police took two statements from her that day, one early in the morning and one at the end of the afternoon. In the meantime, she was taken to a hospital, where she was examined in turn by a forensic pathologist and a nurse. Urine and blood samples were taken, as well as swabs from her mouth, face, vagina and rectum in order to test for DNA. Arrest warrants were issued for 12 suspects who were subsequently arrested. Eleven mobile phones were seized, and DNA samples taken from the suspects. Thirteen open condom wrappers and five used condoms were found in S.Y.'s room. The police took photographs of the room and took away four bedsheets for analysis. DNA from the applicant and three of the suspects was found on some of the condoms and DNA from another suspect was found on one of the bedsheets. DNA of an unknown male was also found on X's underwear. Five of the suspects were released without being charged for lack of incriminating evidence; seven suspects remained in custody.

Ten days later, the police, considering that there were various contradictions in X's first two statements, asked her to provide a third, supplementary statement and to clarify certain issues. She was questioned for over six hours with only two short breaks, and at 1.15 a.m. on 28 July 2019, she signed a retraction statement saying that her account of the events of 17 July 2019 had been false, that she had not been raped and that she had consented to the events of that night.

X was arrested immediately for committing public mischief and was held in custody. A few hours later the District Court of Famagusta issued an arrest warrant against her as a suspect. Later that day, the Chief Investigator produced a summary report including his comments on the evidence collected and concluded that she had wholly distorted the facts and had made the rape allegation up. He suggested that the case be classified as 'unsubstantiated'. The seven suspects who were still in custody were released. On 7 January 2020, the District Court of Famagusta sentenced X to four months' imprisonment, suspended for three years.

Upon appeal, that conviction was overturned by the Supreme Court on 31 January 2022, noting various failures in the investigative process of her rape allegation. Those included the failure of the police to establish the time of the alleged rape, their failure to address witness statements describing X's psychological state after the alleged rape, the forensic medical examiner's assumption that X had not been raped since she had no visible injuries, the failure to take into account evidence from a video-recording taken on 17 July 2019 showing that X had not wanted other men besides S.Y. in the room, and that none of the mobile phone videos showed X engaging in group sex prior to that, as had been alleged by some of the suspects.

Complaints, procedure and composition of the Court

Relying on Articles 3 (lack of effective investigation) and 8 (right to respect for private and family life), X complained that the Cypriot authorities had not fulfilled their duty to effectively investigate and prosecute her allegations of rape.

The application was lodged with the European Court of Human Rights on 17 August 2022. The Advice on Individual Rights in Europe (AIRE) Centre was granted leave to intervene in the proceedings as third party.

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

Ivana **Jelić** (Montenegro), *President*,
Erik **Wennerström** (Sweden),
Georgios A. **Serghides** (Cyprus),
Frédéric **Krenc** (Belgium),
Alain **Chablais** (Liechtenstein),
Artūrs **Kučs** (Latvia),
Anna **Adamska-Gallant** (Poland),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

The Court observed that Cyprus had a legislative framework to protect the rights of victims of sexual violence. Specifically, the national law criminalised rape making direct reference to the absence of consent, and there was further legislation concerning the rights, support and protection of victims.

The Court noted that the police had begun investigating X's rape allegations without delay. They had traced the suspects quickly, secured warrants, collected DNA samples and other evidence and had not delayed in interviewing witnesses. The speediness of the investigation was not at issue.

Nevertheless, the case had been marked by a series of shortcomings by the investigative authorities, the prosecutorial authorities and the first instance court. At the heart of the case was the overly hasty termination of the investigation, prompted by X's retraction of her initial statements and the immediate initiation of criminal proceedings against X herself, culminating in her conviction. In subsequently overturning that conviction, the Supreme Court had identified some of the failures in the investigation.

The Court reiterated that investigating authorities are under an obligation to take whatever steps they reasonably can to secure all available evidence about the incident they are investigating. It had been up to the authorities to explore all the facts and decide on the basis of all the surrounding circumstances.

Also observing a number of shortcomings in the investigation, such as not obtaining sufficient forensic and witness evidence, the Court attached particular importance to the failure of the authorities to examine whether there had been consent. They had overlooked the fact that X had been drinking and that traces of cocaine had been found in her urine which could have affected her capacity to consent. No mention had been made of her express disagreement with the suggestion of having sex with some of the suspects or that they had shown scant regard for X's wish for privacy on all three occasions when they had persisted in entering the room despite being expressly asked to leave. It seemed that no effort had been made to check whether they had taken any steps to ensure that X consented to sex on 17 July 2019, but there was testimony to the effect that some of the suspects had hoped and expected that they would have sex with her, simply assuming that they would be able to do so.

Moreover, the police and then the investigator had taken the suspects' statements that no rape had taken place at face value despite testimony that S.Y. had said he would arrange for his friends to have sex with the applicant; that certain suspects had crudely expressed their intention to have sex with the applicant on 17 July 2019; that blood found on a condom and in the applicant's vagina and bruises on X's body and scratches on S.Y. could have been a sign that force had been used; that X had not known most of the other suspects; and that her behaviour after the incident gave credibility to her allegations.

It appeared that the authorities' disinclination to pursue the investigation further or to initiate criminal proceedings had been based on X's sexual liberty and conduct. Her credibility appears to have been assessed through prejudicial gender stereotypes and victim-blaming attitudes. Because she had allegedly participated in group sexual activities before, it seemed to be taken for granted that she would not have refused to do so on the day of the alleged rape.

The Court also observed that while the decision of the Chief Investigator to discontinue the investigation and the decision of the Attorney General not to reopen it had been largely based on alleged inconsistencies in X's statements, they had failed to consider the circumstances under which those statements had been made and the psychological effect that the alleged rape might have had on her at the time, or whether she might have still been under the influence of alcohol, drugs, or sedatives given to her by her friend to calm her down. In addition, it was not clear whether she had been given time to sleep or rest between the alleged rape and her first and second statements.

The Court observed that X, an 18-year-old foreigner, alone in Cyprus, had only been referred to a psychologist on 19 July 2019, two days after the alleged gang-rape. Moreover, even though she had been interviewed by a female police officer for her first statements, that had been done in the absence of a lawyer, a psychologist, or the social welfare services. Following six hours of questioning throughout the evening of 27 July 2019, X had ended up retracting her complaint after one o'clock in the morning. She maintained that the long and repeated interviews had led her to do so.

In the Court's view, the numerous times X had had to repeat what had happened to the authorities, and their failure to adopt a victim-sensitive approach, constituted evidence of re-victimisation. In conclusion, the Court observed that the case revealed certain biases concerning women in Cyprus which impeded the effective protection of X's rights as a possible victim of gender-based violence.

In light of the numerous shortcomings identified, the Court concluded, without expressing an opinion as to the suspects' guilt, that the investigative and prosecutorial authorities' response to X's allegations of rape had fallen short of the State's duty ("positive obligation") to apply the relevant criminal provisions in practice through effective investigation and prosecution. There had accordingly been a violation of Articles 3 and 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Cyprus was to pay the applicant 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

The judgment is available only in English.

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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.