



Slapping by law-enforcement officers of individuals under their control amounts to degrading treatment

In today's **Grand Chamber** judgment¹ in the case of **Bouyid v. Belgium** (application no. 23380/09) the European Court of Human Rights:

held, by a majority, that the slap which the applicants had received from police officers while under their control at a police station had undermined their dignity and that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in that they had been subjected to degrading treatment;

held, unanimously, that the applicants had not had the benefit of an effective investigation and that there had been a **violation of Article 3** of the Convention on that account.

The case concerned an allegation by two brothers, one of whom was a minor at the time, that two police officers had slapped them in the face while they were under the officers' control at their family's local police station in the district of Saint-Josse-ten-Noode (Brussels).

The Court found in particular that the slapping had undermined their dignity. It also observed that the subsequent investigation had not been effective, that the investigating authorities had failed to devote the necessary attention to the applicants' allegations and that the length of the investigation had been unreasonable.

The Court reiterated that even in the most difficult circumstances, the Convention imposed an absolute prohibition on torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. In a democratic society ill-treatment was never an appropriate response to problems facing the authorities.

Principal facts

The applicants, Saïd and Mohamed Bouyid, are Belgian nationals who were born in 1986 and 1979 respectively and live in Saint-Josse-ten-Noode (a district of the Brussels-Capital region).

The two brothers lived with their parents, another brother and two sisters next to the local police station of Saint-Josse-ten-Noode. They complained that they each had been slapped in the face by a police officer, one on 8 December 2003 and the other on 23 February 2004.

Saïd and Mohamed Bouyid submitted that on 8 December 2003, while Saïd Bouyid had been standing with a friend by the door of the building where he lived and ringing the bell to be let in as he had forgotten his keys, a plain-clothes police officer had asked him to show his identity card. He had refused to comply, asking the officer to show his credentials. The police officer had then grabbed him by his jacket and taken him to the police station, placing him in a room where the officer had slapped him in the face while he was protesting about his arrest. A medical certificate issued on the same day noted that Saïd Bouyid had been "in a state of shock" and had had erythema on the left cheek and in the area of the left ear canal. The following day, Saïd Bouyid filed a complaint with the Standing Committee for the Oversight of Police Services ("Committee P") and was interviewed by a member of the investigation department.

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

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

They also submitted that on 23 February 2004, while Mohamed Bouyid was being questioned by an officer at the Saint-Josse-ten-Noode police station in connection with an altercation that had led to a complaint being filed, the officer had slapped him in the face. A medical certificate issued later that day referred to bruising on the left cheek. Mohamed Bouyid filed a complaint on the same day. The police officer was interviewed on 5 May 2004 by the director of internal oversight of the police force and stated that Mohamed Bouyid had been particularly disrespectful towards him during the interview and that, although he had grabbed the young man by the arm to make him leave the office, he had not slapped him.

On 17 June 2004 Saïd and Mohamed Bouyid applied to join the proceedings as civil parties. The police officers concerned were charged with using violence against individuals in the course of their duties and, in particular, with intentional wounding or assault, and with engaging in arbitrary acts in breach of the rights and freedoms guaranteed by the Constitution.

The investigation department sent the investigating judge, at the latter's request, a report outlining developments in the relations between the Bouyid family and the local police force. The report listed the cases brought against members of the family, noted their difficult relationship with the police and highlighted the aggressive and provocative attitude they had adopted towards the police officers.

The investigating judge sent the file to the prosecuting authorities. The Crown Prosecutor called for the charges to be dropped. The Committals Division, endorsing the grounds set out in the prosecutor's submissions, ordered the discontinuance of the case. The Principal Crown Prosecutor submitted that the discontinuance order should be upheld. In a judgment of 9 April 2008 the Indictments Division of the Brussels Court of Appeal upheld the order, finding that "it transpires from all the findings of the judicial investigation, and in particular from the inconsistent statements of the parties in question, that there is no evidence against the defendants". An appeal on points of law by Saïd and Mohamed Bouyid was dismissed by the Court of Cassation on 29 October 2008.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Article 6 § 1 (right to a fair hearing) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, the applicants complained that they had both been slapped in the face by officers at the Saint-Josse-ten-Noode police station. They claimed that they had been victims of degrading treatment. They further complained that the investigation into their complaints had been ineffective, incomplete, biased and excessively lengthy.

The application was lodged with the European Court of Human Rights on 28 April 2009. The Court delivered a Chamber judgment on 21 November 2013, in which it found that there had been no violation of Article 3 of the Convention. The Chamber held that, even assuming that their allegations could be proved, the acts of which they complained had not, in the circumstances of the case, constituted treatment in breach of Article 3 of the Convention. On 24 January 2014 the applicants requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber) and on 24 March 2014 the panel of the Grand Chamber accepted that request. A hearing took place on 8 October 2014.

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

Dean **Spielmann** (Luxembourg), *President*,
Guido **Raimondi** (Italy),
Isabelle **Berro** (Monaco),
Alvina **Gyulumyan** (Armenia),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),

Nebojša Vučinić (Montenegro),
Vincent A. de Gaetano (Malta),
Paulo Pinto de Albuquerque (Portugal),
Erik Møse (Norway),
Helen Keller (Switzerland),
Paul Lemmens (Belgium),
Paul Mahoney (the United Kingdom),
Krzysztof Wojtyczek (Poland),
Faris Vehabović (Bosnia and Herzegovina),
Egidijus Kūris (Lithuania),
Iulia Antoanella Motoc (Romania),

and also Johan Callewaert, *Deputy Grand Chamber Registrar*.

Decision of the Court

Article 3

As regards the establishment of the facts, the Court observed that for the presumption of ill-treatment to apply, individuals claiming to be the victims of a violation of Article 3 had to demonstrate that they displayed traces of ill-treatment after having been under the control of the police or a similar authority. To that end, such individuals usually provided medical certificates describing injuries or traces of blows, to which the Court attached substantial evidential weight. The Court observed that the medical certificates produced by Saïd and Mohamed Bouyid, which had been drawn up on the day of the respective incidents shortly after they had left the police station, mentioned bruising – a possible consequence of a slap. It further noted that it had not been disputed that Saïd and Mohamed Bouyid had not displayed any such marks on entering the police station. The Court deemed it sufficiently established that the bruising described in the certificates had occurred while Saïd and Mohamed Bouyid had been under police control. It also noted that the Government had failed to produce any evidence capable of casting doubt on the applicants' allegation that the bruising had resulted from a slap inflicted by a police officer. The Court therefore considered that fact proven.

The Court reiterated that where an individual was deprived of his or her liberty or, more generally, was confronted with law-enforcement officers, any recourse to physical force which had not been made strictly necessary by the person's conduct diminished human dignity and was in principle an infringement of the right set forth in Article 3. It emphasised that the words "in principle" could not be taken to mean that there might be situations in which a finding of a violation was not called for as the relevant level of severity had not been attained. Any interference with human dignity struck at the very essence of the Convention. For that reason any conduct by law-enforcement officers *vis-à-vis* an individual which undermined human dignity amounted to a violation of Article 3. That applied in particular to their use of physical force against an individual where it had not been made strictly necessary by his or her conduct, whatever the impact on the individual concerned. In the present case, pointing out that the Government had not argued that the slap of which each of the applicants had complained corresponded to recourse to physical force which had been made strictly necessary by their conduct, the Court found that the applicants' dignity had been undermined and that there had therefore been a violation of Article 3 of the Convention.

The Court further emphasised that a slap inflicted by a law-enforcement officer on an individual who was entirely under his control constituted a serious attack on the individual's dignity. A slap had a considerable impact on the person receiving it. Being directed at the face, it affected the part of the person's body which expressed his individuality, manifested his social identity and constituted the centre of his senses which were used for communication with others.

The Court reiterated that it could well suffice that the victim was humiliated in his own eyes for there to be degrading treatment within the meaning of Article 3 of the Convention. It did not doubt that even one unpremeditated slap devoid of any serious or long-term effect on the person receiving it could be perceived as humiliating by that person. That was particularly true when the slap was inflicted by law-enforcement officers on persons under their control, because it highlighted the superiority and inferiority which by definition characterised the relationship between the former and the latter in such circumstances. The fact that the victims knew that such an act was unlawful could also arouse in them a feeling of arbitrary treatment, injustice and powerlessness. Moreover, individuals who were under the control of the police or a similar authority were in a situation of vulnerability, and the authorities were consequently under a duty to protect them. In inflicting the humiliation of being slapped by one of their officers they were flouting this duty.

The Court noted that the fact that the slap might have been administered thoughtlessly by an exasperated officer was irrelevant in this context. The Grand Chamber therefore departed from the Chamber's approach on this point. Even in the most difficult circumstances, the Convention imposed an absolute prohibition on torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned. In a democratic society ill-treatment was never an appropriate response to problems facing the authorities.

Lastly, the Court noted as a further consideration that Saïd Bouyid had been 17 years old and thus a minor at the relevant time. Ill-treatment was liable to have a greater psychological impact on a minor than on an adult. The Court had on numerous occasions stressed the vulnerability of minors in the context of Article 3 of the Convention. It was therefore vital for law-enforcement officers who were in contact with minors to take due account of the vulnerability inherent in their young age.

In conclusion, the slap administered to both Saïd and Mohamed Bouyid by police officers while they had been under their control in the Saint-Josse-ten-Noode police station had diminished their dignity. There had thus been degrading treatment and a violation of Article 3 in respect of each of the applicants.

As regards the procedural aspect, the Court observed that after Saïd and Mohamed Bouyid had lodged a civil-party complaint, an investigation had been initiated and the two police officers had been charged with using violence against individuals in the course of their duties and, in particular, with intentional wounding or assault, and with engaging in arbitrary acts in breach of the rights and freedoms guaranteed by the Constitution. The investigation had been conducted in accordance with statutory requirements, under the authority of an investigating judge.

Nevertheless, the investigating judge did not appear to have ordered any specific investigative measures in person and had merely asked the investigation department to take note of the civil-party complaint by Saïd and Mohamed Bouyid, to interview them in order to ascertain the details of their complaint, to draft a report on the conduct of the Bouyid family, to draw up a list of the cases brought against them and complaints filed by them and to explain what action had been taken in that connection. The investigating judge had failed to hold, or arrange for, a face-to-face confrontation between the police officers and Saïd and Mohamed Bouyid, or to interview or order an interview of the doctors who had drawn up the medical certificates, or of any other witnesses. The investigation had been confined to interviews of the police officers involved by other police officers seconded to the investigation department, and the preparation by those officers of a report summarising the evidence gathered and describing the general behaviour of the Bouyid family. Furthermore, no reasons had been provided for either the submissions of the Crown Prosecutor or the order by the Committals Division of the Brussels Court of First Instance discontinuing the case.

Those factors suggested that the investigating authorities had failed to devote the requisite attention to the allegations – even though they were substantiated by the medical certificates submitted as evidence – or to the nature of the act, involving a law-enforcement officer slapping a person in the face.

Lastly, the Court noted the unusual length of the investigation. As it had previously emphasised, a prompt response by the authorities in investigating allegations of ill-treatment could be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

The Court considered that the applicants had not had the benefit of an effective investigation and thus found a violation of Article 3 in respect of the investigation.

[Just satisfaction \(Article 41\)](#)

The Court held that Belgium was to pay the applicants 5,000 euros (EUR) each in respect of non-pecuniary damage and EUR 10,000 jointly in respect of costs and expenses.

Separate opinion

Judges Paul Mahoney, Vincent A. de Gaetano and Paul Lemmens expressed a separate 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.