



Allegations of gang rape: certain passages in the appeal court's judgment breached the presumed victim's private and intimate life

In today's Chamber judgment¹ in the case of [J.L. v. Italy](#) (application no. 5671/16) the European Court of Human Rights held, by six votes to one, that there had been:

a violation of Article 8 (right to respect for private life and personal integrity) of the European Convention on Human Rights.

The case concerned criminal proceedings against seven men who had been charged with the gang rape of the applicant and had been acquitted by the Italian courts.

The Court held that the applicant's rights and interests under Article 8 had not been adequately protected, given the wording of the Florence Court of Appeal's judgment. In particular, the national authorities had not protected the applicant from secondary victimisation throughout the entire proceedings, in which the wording of the judgment played a very important role, especially in view of its public character.

Among other points, the Court considered the comments regarding the applicant's bisexuality, her relationships and casual sexual relations prior to the events in question to have been unjustified. It found that the language and arguments used by the court of appeal conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence, in spite of a satisfactory legislative framework.

The Court was convinced that criminal proceedings and sanctions played a crucial role in the institutional response to gender-based violence and in combatting gender inequality. It was therefore essential that the judicial authorities avoided reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims' trust in the justice system.

Principal facts

The applicant, J.L., is an Italian national who was born in 1986. She lives in Scandicci (Italy). At the relevant time she was an art history and drama student.

In July 2008 the applicant lodged a complaint with the Italian authorities, alleging that she had been subjected to gang rape. She claimed that at the end of a party to which she had been invited by one of her presumed assailants (a certain L.L., with whom she had made a short film a few months previously, in which she played the role of a prostitute who was being abused), she had been obliged to have sexual relations, in a car, with seven men, while she was under the influence of alcohol.

The applicant subsequently identified the suspects, who were placed in pre-trial detention. Their mobile telephones and the vehicle in which the assault was alleged to have taken place were seized

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.

by the police for the purposes of the investigation. The applicants, the suspects and witnesses were questioned.

In May 2010 the seven suspects were committed for trial before the Florence Court, which convicted six of them, in January 2013, of having induced an individual in a state of physical and psychological weakness to perform or comply with acts of a sexual nature (an offence punishable under Article 609 *bis* § 1, taken together with Article 609 *octies* of the Criminal Code). The seventh defendant was acquitted, as the investigation showed that he had not taken part in the rape. The court noted, among other points, that the parties' versions concurred with regard to the fact that multiple-partner sexual relations had indeed occurred, but that, in contrast, they differed substantially as to the issue of consent, and that there had been inconsistencies in the initial part of the facts provided by the applicant.

The six convicted men lodged an appeal. In March 2015 the Florence Court of Appeal acquitted the six appellants, considering that the numerous inconsistencies noted by the first-instance court in the applicant's account of events undermined her credibility in its entirety. For that reason, it considered that the first-instance court had been wrong to carry out a fragmented assessment of the applicant's various statements and to accept her credibility with regard to some of the facts.

In July 2015 the applicant asked the public prosecutor's office to lodge an appeal on points of law, challenging the reasons given in the court of appeal's judgment. The public prosecutor's office did not do so, and the judgment became final.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life) of the Convention, the applicant complained that the national authorities had failed to protect her right to respect for her private life and for her personal integrity in the context of the criminal proceedings.

Relying on Article 14 (prohibition of discrimination) taken together with Article 8, the applicant complained of discrimination on grounds of sex, alleging that the acquittal of her presumed assailants and the negative attitude of the national authorities during the criminal proceedings could be attributed to sexist bias.

The application was lodged with the European Court of Human Rights on 19 January 2016.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Péter **Paczolay** (Hungary),
Gilberto **Felici** (San Marino),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),

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

Decision of the Court

[Article 8 \(right to respect for private life and to personal inviolability\)](#)

The Court noted that the applicant was not alleging that the conduct of the investigation had been characterised by shortcomings and manifest delays or that the authorities had failed to carry out measures of judicial investigation. What she sought to demonstrate was that the manner in which the investigation and the trial had been conducted had been traumatising for her and that the

authorities' attitude towards her had violated her personal integrity. She complained, in particular, about the way in which she had been questioned throughout the entire criminal proceedings and challenged the arguments on which the judges had relied in reaching their decisions in this case.

The Court specified that the manner in which alleged victims of sexual offences were questioned had to permit a fair balance to be struck between that individual's personal integrity and dignity and the defence rights to which defendants were entitled. While the accused had to be allowed to defend themselves by challenging the credibility of the presumed victims and by revealing possible inconsistencies in her statement, cross-examination was not to be used as a means of intimidating or humiliating her.

The interviews with the applicant: the Court noted that at no stage, either during the preliminary investigation or during the trial, had there been a direct confrontation between the applicant and her presumed assailants. Furthermore, it did not discern a disrespectful or intimidating attitude on the part of the investigating authorities, or actions to steer the subsequent investigations in a particular direction. It considered that the questions that had been put to her were relevant and intended to obtain a reconstruction of events which would take account of her arguments and points of view and allow for the preparation of a thorough investigation file for the purpose of continuing the judicial proceedings. Although, given the circumstances, it was a difficult experience for the applicant, it could not be considered that the manner of conducting the interviews during the investigation had exposed the applicant to unjustified trauma or a disproportionate interference with her intimate and private life.

The trial: as the applicant was not a minor and had not requested that the trial be held in camera, the hearings had been held in public. Nonetheless, the president of the first-instance court had decided to prohibit the journalists present in the courtroom from filming them, for the specific purpose of protecting the applicant's privacy. In addition, he intervened on several occasions during the cross-examinations, interrupting the defence lawyers when they asked the applicant redundant or personal questions or when they raised matters that were unrelated to the facts. He also ordered short recesses so that she could regain her composure.

The Court had no doubt that the proceedings as a whole had been experienced by the applicant as a particularly distressing period, especially as she had been required to go through her evidence statement on numerous occasions, over a period of more than two years, in order to respond to the questions put, successively, by the investigators, the prosecutor's office and eight defence lawyers. The Court also noted that the latter had not hesitated, in order to undermine the applicant's credibility, to put personal questions to her, concerning her family life, her sexual orientation and her intimate choices; these were unrelated to the facts, which was firmly contrary not only to the principles of international law with regard to the protection of the rights of victims of sexual violence, but also to Italian criminal law.

Nonetheless, given the attitude taken by the prosecutor and the president of the first-instance court, such as the measures taken by the latter to protect the applicant's privacy with a view to preventing the defence lawyers from defaming or unnecessarily upsetting her during cross-examination, the Court could not attribute to the public authorities in charge of the proceedings the responsibility for the particularly distressing experience undergone by the applicant, or hold that they had failed to ensure that her personal integrity was duly protected during the trial.

The judicial decisions: the Court did not substitute its own assessment of the facts of the case for that of the national authorities, an area which fell outside its competence. Nonetheless, irrespective of any assessment of the credibility of the version provided by the applicant, the Court noted several passages in the Florence Court of Appeal's judgment which referred to the applicant's personal and private life and which breached her rights under Article 8.

In particular, the Court considered the references to the red underwear “shown” by the applicant in the course of the evening to be unjustified, as were the comments regarding her bisexuality, relationships and casual sexual relations prior to the events in question. Equally, the Court found inappropriate the considerations concerning the applicant’s “ambivalent attitude towards sex”, which the court of appeal detected from, among other sources, her artistic decisions. Thus, the Court of Appeal cited, among these questionable decisions, her agreement to take part in L.L.’s short film, in spite of its violent and explicitly sexual nature, without however making any comment or argument, and rightly so, to the effect that the fact of L.L. having written and directed this short film was indicative of his attitude to sex. Equally, the Court considered that the remarks concerning the applicant’s decision to lodge a complaint about the events, which, according to the court of appeal, resulted from a wish to “denounce” and to repudiate a “moment of fragility and weakness that was open to criticism”, was regrettable and irrelevant, as was the reference to the applicant’s “non-linear life”.

The Court considered that the above arguments and considerations on the part of the court of appeal had been neither relevant for the assessment of the applicant’s credibility, a matter which could have been examined in the light of the numerous objective findings of the procedure, nor decisive in resolving the case.

The Court acknowledged that in the present case the question of the applicant’s credibility was particularly crucial, and it was prepared to accept that it could have been justified to refer to her previous relationships with one or other of the defendants or to aspects of her conduct in the course of the evening. However, it did not see how the applicant’s family situation, her relationships, her sexual orientation or her clothing choices, and the subject matter of her artistic and cultural activities, could be relevant for assessing her credibility and the criminal liability of the defendants. Thus, it could not be considered that this interference with the applicant’s private life and image had been justified by the need to ensure that the defendants could enjoy their defence rights.

The Court considered that the positive obligations to protect the presumed victims of gender-based violence also imposed a duty to protect their image, dignity and private life, including through the non-disclosure of personal information and data that were unrelated to the facts. This obligation was moreover inherent in the judicial function and arose from national law as well as from various international texts. Accordingly, judges’ entitlement to express themselves freely in decisions, which was a manifestation of the judiciary’s discretionary powers and of the principle of judicial independence, was limited by the obligation to protect the image and private life of persons coming before the courts from any unjustified interference.

The Court found that the language and arguments used by the court of appeal conveyed prejudices existing in Italian society regarding the role of women and were likely to be an obstacle to providing effective protection for the rights of victims of gender-based violence, in spite of a satisfactory legislative framework.

The Court was convinced that criminal proceedings and sanctions played a crucial role in the institutional response to gender-based violence and in combatting gender inequality. It was therefore essential that the judicial authorities avoided reproducing sexist stereotypes in court decisions, playing down gender-based violence and exposing women to secondary victimisation by making guilt-inducing and judgmental comments that were capable of discouraging victims’ trust in the justice system.

In consequence, while acknowledging that the national authorities had sought to ensure in the present case that the investigation and trial proceedings had been conducted in a manner compatible with their positive obligations under Article 8 of the Convention, the Court considered that the applicant’s rights and interests under Article 8 had not been adequately protected, given the wording of the judgment delivered by the Florence Court of Appeal. It followed that the national authorities had not protected the applicant from secondary victimisation throughout the entire

proceedings, in which the wording of the judgment played a very important role, especially given its public character.

There had therefore been a violation of Article 8 of the Convention.

Other articles

In view of the conclusion it had reached in respect of the applicant's complaint under Article 8, the Court considered that it was not necessary to examine whether there had been a breach of Article 14 of the Convention in the present case.

Just satisfaction (Article 41)

The Court held, by six votes to one, that Italy was to pay the applicant 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,600 in respect of costs and expenses.

Separate opinion

Judge Wojtyczek expressed a dissenting 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.