



## Force used against youth during identity check at police station was disproportionate

In today's Chamber judgment in the case of [Darraj v. France](#) (application no. 34588/07), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

### Principal facts

The applicant, Yassine Darraj, is a French national who was born in 1984 and lives in Asnières-sur-Seine (France). At the relevant time he was aged 16.

On 10 July 2001 he was taken to the Asnières-sur-Seine police station for an identity check, after the police had noticed him and a friend get out of a car that was stopped in the middle of the road and that seemed to have been stolen. They had no identity papers on them.

Less than two hours later Yassine Darraj was transferred to hospital, where an examination revealed bruising on his right eye, wrist, back and scalp, numerous cuts on his face and neck and a fractured right testicle with bruising. The doctor certified him as unfit for work for 21 days. The next day he underwent an emergency operation for the fractured testicle and, following his violent behaviour in hospital, was transferred to a psychiatric unit for assessment.

On 11 July 2001 the public prosecutor of Nanterre requested an internal investigation into the events. The versions of the applicant and of the police differed. On his arrival at the police station, Yassine Darraj had refused to be handcuffed, and faced with his resistance and insults, five or six police officers had, according to him, hit and insulted him. He claimed that he had been kicked, especially in the genitals, while the officers were trying to put him into the sobering-up cell. The police officers claimed that, in order to overpower and handcuff him, they had been obliged to hold him down and had only struck him with their knees to protect themselves from his kicks. In a second version, they suggested that the applicant had accidentally fallen on a tap above a sink in the wall of the police station, thus causing the testicle fracture.

Yassine Darraj filed a complaint as a civil party through his mother and a judicial investigation was opened. An expert's report of October 2001 found that the injuries

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<sup>1</sup> Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's 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. Under Article 28 of the Convention, judgments delivered by a Committee are final.

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)

observed were compatible with the applicant's version of the facts. A second report of February 2003 found, however, that the police officers' version was the most compatible with his injuries.

In December 2001 and January 2002 two police officers were placed under formal investigation for violence leading to unfitness for work for more than eight days. On an application by a senator of Hauts-de-Seine, the National Commission for ethics in matters of security found that the wearing of handcuffs could not really be justified after the youths' arrival at the police station as such restraint had not been found necessary during their transfer.

In a judgment of 14 December 2004 the Nanterre *tribunal de grande instance* sentenced the police officers to a suspended term of four and eight months' imprisonment for wilful assault by a person vested with public authority, causing unfitness for work for more than eight days. The applicant was awarded 3,333 euros (EUR) in respect of his suffering, EUR 666 for disfigurement and EUR 2,000 for emotional distress. While the domestic court recognised the applicant's aggressiveness towards the police officers, it took the view that the youth, who was a minor, had not been charged with any offence and that it was not unusual for someone in his situation to refuse to be handcuffed. The court further observed that it had not been shown how he could have suffered from such injuries other than by being kicked deliberately in the genitals.

On appeal, the police officers' responsibility was mitigated and their conviction limited to the offence of involuntary wounding, entailing a fine of EUR 800 each. The Court of Appeal found that there was no evidence of any wilful assault on the applicant. As to the civil action, it took that view that Yassine Darraj had been partly responsible for the damage claimed and reduced the total award to EUR 5,000.

The applicant's request for legal aid to appeal on points of law was rejected "for lack of any serious ground of appeal".

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant complained that he had been ill-treated at the police station. Under Article 5 § 1 (c) (right to liberty and security), he further alleged that he had been arbitrarily arrested and handcuffed without being charged with any offence.

The application was lodged with the European Court of Human Rights on 3 August 2007.

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

Peer **Lorenzen** (Denmark), *President*,  
Jean-Paul **Costa** (France),  
Karel **Jungwiert** (the Czech Republic),  
Rait **Maruste** (Estonia),  
Mark **Villiger** (Liechtenstein),  
Isabelle **Berro-Lefèvre** (Monaco),  
Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 3

The applicant's injuries, caused by a violent confrontation with police officers, had taken place in the police station while his identity was being checked, at a time when he was totally under the control of the officers, and being handcuffed he was thus in a vulnerable position. The blows inflicted on him had, in addition to bruising, resulted in a testicle fracture entailing hospital treatment, an emergency operation and unfitness for work for 21 days. Those injuries, which had caused the applicant pain and suffering, had reached a level of gravity that was sufficient to engage Article 3 of the Convention.

The reasons justifying the handcuffing of Yassine Darraj, who had been calm until his arrival at the police station and had not formally been taken into police custody, remained unclear. Five police officers had had to intervene to restrain him, pushing him to the ground and pressing a knee into his back to handcuff him. The Court took into consideration the opinion of the National Commission for Ethics in matters of security, according to which the handcuffs could not really be justified after his arrival at the police station. The Court noted that the experts' opinions had been contradictory and that, in any event, the applicant had sustained a serious injury, which remained without a clear explanation, on police premises while in the hands of officers who were supposed to ensure his protection.

The Court observed that the applicant, who was of medium build, had been handcuffed behind his back and had found himself alone with at least two officers of heavier build, that the lower court had considered the violence used to have exceeded a reasonable use of force in such circumstances, and that the Court of Appeal had recognised that the fractured testicle was not simply the result of an act of *force majeure*. Other methods could have been used to restrain the applicant.

The acts in question had thus been such as to cause the applicant pain or physical and mental suffering and, in view of his age and his post-traumatic stress, to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. Such treatment had thus been inhuman and degrading.

The French Government had alleged that, following the domestic proceedings, Yassine Darraj was no longer a victim. The Court noted that no shortcoming could be found in the investigation by the domestic authorities. However, it could not be said that the Court of Appeal had recognised that the treatment sustained by the applicant was contrary to Article 3, because it had reduced the police officers' sentences, referring to mere "blunders and imprudence" on their part. Lastly, the Court observed that no disciplinary measures had been taken against the officers and that the "petty offence" fines imposed on them had been minimal, with little deterrent effect, and of a lower amount than that of the award usually granted by the Court where it found a violation of Article 3. In that connection, while the Court recognised that it was for the national courts to choose the appropriate sanctions to be imposed on State agents, it had to intervene in cases of manifest disproportion between the seriousness of the act and the punishment in question, failing which the States' duty to carry out an effective investigation would lose much of its meaning.

Therefore the applicant could still claim to be a victim and the Court found that there had been a violation of Article 3.

## Article 5

Having regard to its finding under Article 3, the Court took the view that it did not need to examine the applicant's complaint separately under Article 5.

## Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicant EUR 15,000 in respect of non-pecuniary damage and EUR 4,000 for costs and expenses.

*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.