

Press release issued by the Registrar

Chamber judgments¹

[Bouchacourt v. France](#) (application no 5335/06)

[Gardel v. France](#) (no 16428/05)

[M.B. v. France](#) (no 22115/06)

**INCLUSION IN NATIONAL SEX OFFENDER DATABASE DID NOT INFRINGE THE
RIGHT TO RESPECT FOR PRIVATE LIFE**

***No Violation of Article 8 (right to respect for private and family life)
of the European Convention on Human Rights***

Principal facts

The applicants are three French nationals who live in France: Bernard Bouchacourt, who was born in 1959 and lives in Toulouse; Fabrice Gardel, who was born in 1962 and is currently held in Monmédy Prison; and M.B., who was born in 1943 and lives in Millau. They were sentenced, in 1996, 2003 and 2001 respectively, to terms of imprisonment for rape of 15 year old minors by a person in a position of authority.

On 9 March 2004 Law no. 2004-204 "adapting the judicial system to the evolution of criminality" created a national judicial database of sex offenders (later extended to include violent offenders). The provisions of the Code of Criminal Procedure concerning this Sex Offender Database entered into force on 30 June 2005.

In August 2005, November 2005 and February 2006, respectively, the applicants were notified of their inclusion in this database on account of their convictions and on the basis of the transitional provisions of the Law of 9 March 2004.

Complaints, procedure and composition of the Court

Relying on Article 7 (no punishment without law) and Article 8 (right to respect for private and family life), the applicants complained, in particular, about their inclusion in the Sex

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Offender Database and the retroactive application of the legislation under which it was created.

The applications were lodged with the European Court of Human Rights on 30 April 2005 (Mr Gardel), 26 January 2006 (Mr Bouchacourt) and 23 May 2006 (M.B.).

The judgments were given in the *Bouchacourt* and *Gardel* cases by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), **President**,
Renate **Jaeger** (Germany),
Jean-Paul **Costa** (France),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), **judges**,

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

The judgment in the *M.B.* case was given by a Chamber of seven judges, composed as follows:

Peer **Lorenzen** (Denmark), **President**,
Renate **Jaeger** (Germany),
Jean-Paul **Costa** (France),
Rait **Maruste** (Estonia),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), **judges**,
Karel **Jungwiert** (Czech Republic),
Zdravka **Kalaydjieva** (Bulgaria), **substitute judges**,

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

Decision of the Court

Article 7

The obligation arising from registration in the national Sex Offender Database pursued a purely preventive and dissuasive aim and could not be regarded as punitive in nature or as constituting a criminal sanction. The fact of having to prove one's address every year and to declare changes of address within a fortnight, albeit for a period of thirty years, was not serious enough for it to be treated as a "penalty".

The Court thus took the view that inclusion in the national Sex Offender Database and the corresponding obligations for those concerned did not constitute a "penalty" within the meaning of Article 7 § 1 of the Convention and that they had to be regarded as a preventive measure to which the principle of non-retrospective legislation, as provided for in that Article, did not apply. This complaint was thus rejected.

Article 8

The protection of personal data was of fundamental importance to a person's enjoyment of respect for his or her private and family life, all the more so where such data underwent automatic processing, not least when such data were used for police purposes.

The Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the State.

Moreover, as the applicants had an effective possibility of submitting a request for the deletion of the data, the Court took the view that the length of the data conservation – thirty years maximum – was not disproportionate in relation to the aim pursued by the retention of the information.

Lastly, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances.

The Court concluded that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake, and held unanimously that there had been no violation of Article 8.

(The judgments are available only in French). This press release is a document produced by the Registry. It does not bind the Court. The judgments are available on its website (<http://www.echr.coe.int>).

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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.*