



French authorities should have ensured fairness of proceedings under their supervision in connection with an international letter of request

In today's Chamber judgment in the case **Stojkovic v. France and Belgium** (application no. 25303/08), which is not final¹, the European Court of Human Rights declared the application **inadmissible** in so far as it was lodged against Belgium and declared it **admissible** in respect of France. The Court held, unanimously, that there had been:

a violation of Article 6 § 3 (c) (right to legal assistance) of the European Convention on Human Rights taken together with **Article 6 § 1** (right to a fair hearing) of the Convention.

The case concerned the right of a suspect to be assisted by a lawyer when first questioned by Belgian police officers acting under an international letter of request issued by a French judge, who was present at the interview.

Principal facts

The applicant, Mr Boban Stojkovic, is a Serbian national who was born in 1973 and lives in Verviers (Belgium).

On 31 January 2003 an armed robbery was committed in a jeweller's shop in Courchevel (France). A suspect, K., was arrested the next day in possession of weapons and jewels that had been stolen. The statements of K., together with intercept evidence, led the investigating judge to believe that the applicant, Mr Stojkovic, was involved in the case.

On 12 January 2004 the investigating judge issued an international letter of request (*commission rogatoire internationale*). He requested that the applicant, who was being held in another case in Belgium, be questioned as a "legally assisted witness" (*témoin assisté*) by the Belgian judicial police, in the presence of a lawyer, the investigating judge himself, and two French police officers.

Prior to questioning, when notified of his status as "legally assisted witness", the applicant immediately asked to be assisted by a lawyer "practising in the French courts". However, he was questioned without a lawyer.

During the police interview, on 11 and 12 March 2004, Mr Stojkovic admitted that he had taken part in the armed robbery on 31 January 2003 in the Courchevel jeweller's shop. He mentioned other armed robberies, recognising his involvement in some of them, in particular in Saint Tropez and Biarritz.

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

In December 2005 Mr Stojkovic escaped from prison in Belgium and was arrested under a European Arrest Warrant. He was subsequently handed over by the Belgian authorities to the French authorities and placed under judicial investigation (*mis en examen*) in France.

Mr Stojkovic lodged an application for the annulment of certain investigative acts, including his questioning in Belgium, but it was rejected.

On 7 December 2007 Mr Stojkovic was indicted before the Assize Court on a charge of armed robbery committed as part of a gang in Courchevel, Biarritz and Saint Tropez.

As regards the Courchevel robbery, the indictment indicated that the charges against Mr Stojkovic had been confirmed, among other things, by his own "precise and detailed" statements. It mentioned that the statements in question were those given in Belgium on 11 March 2004 and that he had subsequently reiterated them. The indictment added that he had, however, refused to comment on the charges when examined by the French investigating judge.

As regards the Biarritz and Saint Tropez robberies, the indictment noted that Mr Stojkovic had also refused to comment on them before the investigating judge, because he alleged that his confessions had been taken unlawfully when he was questioned in Belgium.

Before the Assize Court Mr Stojkovic recognised all the offences with which he was charged. He was sentenced to six years' imprisonment.

Complaints, procedure and composition of the Court

Relying on Article 6 § 3 (c), the applicant complained of a violation of his defence rights, in that he had been questioned by the Belgian police, under a letter of request from a French judge stating that he was to be questioned as a "legally assisted witness", but had not been given legal assistance.

The application was lodged with the European Court of Human Rights on 19 May 2008.

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

Dean **Spielmann** (Luxembourg), *PRESIDENT*,
Elisabet **Fura** (Sweden),
Jean-Paul **Costa** (France),
Françoise **Tulkens** (Belgium),
Boštjan M. **Zupančič** (Slovenia),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR*.

Decision of the Court

[Article 6 § 3 \(c\) \(right to legal assistance\)](#)

The Court reiterated that the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, was one of the fundamental features of fair trial.

The Court further reiterated that access to a lawyer should be provided as from the first interrogation of a suspect by the police. It was important to protect the accused against improper compulsion by the authorities. In a criminal case, the prosecution should seek to prove their case without resort to evidence obtained through methods involving duress or oppression, in defiance of the will of the accused. An accused person had the right not to incriminate himself or herself.

The questioning of the applicant had taken place solely for the purposes of implementing an international letter of request, in the context of a judicial investigation being conducted in France. The requesting investigating judge had indicated that he would be questioned as a "legally assisted witness". The wording of that request showed that the applicant was strongly suspected of taking part in the offence in question.

The Court found that, as the applicant's situation had been substantially affected by the interview, there had already been a "criminal charge against him".

As regards Mr Stojkovic's situation at the time of the interview, the Court laid emphasis on the fact that he had been brought from prison to be questioned. He had been simultaneously notified of the provisions of Belgian law, which did not provide for legal assistance, and of his French status as "legally assisted witness", which allowed him to be assisted by a lawyer. The interview had taken place in the presence of the judge who had granted him that status. For the Court, the applicant must have been understandably confused by such a situation. Whilst he chose to make certain disclosures to the investigators, even incriminating himself by his statements, this could not therefore be regarded as a totally informed choice. The Court also pointed out that he had not expressly been notified of his right to remain silent.

In the French Government's submission, the execution of the international letter of request and the supervision of that execution were in the hands of the Belgian authorities and were thus governed by Belgian law. As a result, the applicant's request for a French lawyer had to be understood as referring solely to the subsequent proceedings in France.

The Court acknowledged that the French authorities bore no responsibility for the legal conditions in which the interview had taken place. Those authorities had to abide by the provisions of Belgian law as required by their international undertakings. However, under Article 1 of the Convention, the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention was laid on the national authorities.

It had therefore been for the French criminal authorities to ensure that the acts carried out in Belgium had not been in breach of the rights of the defence and thus to verify the fairness of the proceedings under France's supervision. There had therefore been a violation of Article 6 § 3 (c) taken together with Article 6 § 1 as concerned the application in respect of France.

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

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

The judgment is available only in 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.