

## **Rachid N.**

### **1) Reference Details**

Jurisdiction: Court of Appeal, Brussels, Belgium

Date of Decision: 30 June 2003

Case Status: Concluded

### **2) Facts**

During the night of 8-9 July 1993 Rachid N. was stopped by three policemen patrolling the area around Place Madou. They searched Rachid and found a small knife on his person, at which point they asked him to accompany them by car to the police station. At the police station Rachid was asked to undress, he did so in the presence of several policemen but refused to take off his underpants. Rachid N. testified that, upon his refusal, a particularly large officer grabbed him and threw him against a wall, then violently hit him on the left ear. Rachid remembers falling to the floor and then finding that he was completely naked. The policemen then ordered him to do press ups, which he did whilst being insulted, and called a "dirty nigger" and other racist insults. He suffered kicks to the arms whilst others watched and laughed.

Police Marshal Jacques B. was accused of:

- Violence towards Rachid N. which resulted in injuries amounting to incapacity to work
- Insulting Mr N. in his presence and the presence of further witnesses.
- Inciting discrimination, hatred or violence towards someone on the grounds of his race, colour, ancestry, national or ethnic origin, and in the same circumstances to have publicly stated his intention to discriminate, hate and act violently towards someone by reason of his race, colour, ancestry, origin or nationality.
- Furthermore in his role as a public officer and agent of public force he committed discrimination towards a person due to their race, colour, ancestry, national or ethnic origin, and arbitrarily refused him the exercise of a right or a freedom.

Of the three policemen who arrested him, one declared that he was not present at the search and did not hear of any violence. The other two denied that any violence took place.

When Mr N. became aware his family were in the building to retrieve him, he began to shout and was transferred to a cell, then, upon his release he went to be examined by a doctor. The doctor identified several significant abnormalities caused by strikes to his upper body, back, thighs and right temple, evidence of blows causing scratches across his body and bruises on his wrists. The doctor also identified psychological troubles and declared him incapable of work for three weeks, without excluding the possibility of indefinite incapacity. Four months later, the forensic examiner found that Rachid continued to complain of headaches and dizziness and difficulties in placing pressure on his right elbow, as well as presenting with a scar on his back, not likely to fade entirely.

The court established that Rachid did not show evidence of such injuries prior to his arrest, and considering the short time between his release and his consultation with the doctor there could be no evidence of self-mutilation.

At the Tribunal of First Instance the accused Jacques Bruyère was acquitted, the Tribunal did not find that there was sufficient proof that the accused was present at the search.

The Public Prosecutor and the civil parties appealed.

### **3) Decision**

The Court of Appeal confirmed that the first judge correctly established that the injuries suffered were a result of blows received within the police station.

The Court of Appeal found that there was evidence to demonstrate that the accused was present, within the testimonies taken at various stages from the other policemen, and the fact that the victim directly identified the accused during the investigation.

The court considered that the facts were united by a single intention and therefore should be considered as one single offence, to be punished by the highest penalty applicable. However, considering that the facts are nearly 10 years old, and that the accused does not have any prior convictions, the sentence of eight months in prison was suspended for five years. Mr Jacques B. was also sentenced to pay a fine of €50 to the Special Fund for victims of intentional violence and to pay the expenses amounting to €210.30. Additionally in the civil actions, he was to pay the League of Human Rights the symbolic sum of €1 and their legal costs; to pay the Movement against Racism, Anti-Semitism, and Xenophobia the sum of €1 and their legal costs; and to pay Mr Rachid N. €5000, plus interest, in physical and moral damages, and his legal costs.