

Significant flaws in the procedural response to a rape allegation

In today's **Chamber judgment**¹ in the case of [Daugaard Sorensen v. Denmark](#) (application no. 25650/22) 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, and

a violation of Article 8 (right to respect for private and family life) of the Convention.

The case concerned the withdrawal of charges against the applicant's alleged rapist, in view of errors that had occurred at the Regional State Prosecutor's Office, in particular a failure to comply with a statutory time-limit.

The Court found in particular that at least three consecutive errors had been committed – and acknowledged – by the prosecution service. Regardless of who had been responsible for failing to ensure compliance with the prescribed deadline, the result remained the same; the charges against the alleged perpetrator had been dismissed. As a result, Ms Daugaard Sorensen had been deprived of an effective prosecution or judicial review in respect of the alleged rape that she had reported to the police. Therefore, the Court concluded that there had been significant flaws in the procedural response to her allegations. Denmark had thus failed to fulfil its duties under those Articles of the Convention.

Principal facts

The applicant, Emma Daugaard Sorensen, is a Danish national who was born in 2000 and lives in Helsingør (Denmark).

On 7 June 2021 Ms Daugaard Sorensen reported to the police that she had been raped the previous night. The next day, her alleged rapist, A, was remanded in custody. The police investigated the case, which included interviewing the applicant and a number of individuals, examining the scene of the crime and the applicant's clothes, and searching A's home. A was released on 18 June 2021.

On 30 July 2021 the prosecution decided to drop the charges against A, finding that there was insufficient evidence to prove that he was guilty of rape. Amongst other things, there were two opposing statements and no other evidence to conclusively corroborate the statement of either side.

On 18 August 2021 Ms Daugaard Sorensen appealed against the decision, and it was overturned by the Regional State Prosecutor on 16 September 2021. That decision had to be served on A before 30 September 2021, that is to say within two months of the date of the initial decision of 30 July 2021, either through A's Digital Post account (*e-Boks*) or by registered letter. Under Danish law it is compulsory for all citizens over the age of 15 to have a Digital Post account in order to ensure secure digital communication between them and the public authorities. Dispensations can only be granted

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.

if the person concerned cannot use a computer due to physical or mental disabilities or other difficulties.

Owing to a typing error in the entry concerning A in the prosecutor's database, it was incorrectly assumed that he was not able to receive letters through a Digital Post account. Consequently, a registered letter was sent. However, on account of another error in the database, it was not written in the address field of the letter that A had a c/o address, that is to say, that he was registered and lived at the address, but his name was not on the letterbox. The letter was therefore returned to the prosecutor's office on 23 September 2021 with a stamp stating: "addressee unknown at this address". Owing to yet another error, no further attempt was made to serve the letter. Having failed to inform A about that decision within the two-month time-limit set out in section 724(2) of the Administration of Justice Act, the charges against him were dropped by a City Court decision of 16 November 2021.

Ms Daugaard Sorensen was informed that the charges had been dropped when the regional state prosecutor wrote a letter to her lawyer two weeks later, apologising and explaining that it was due to a mistake that his office had made when sending a registered letter to A. Ms Daugaard Sorensen's subsequent court claims for compensation were refused.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment), 6 (access to court), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the European Convention, the applicant complained that she had been deprived of her right to an effective prosecution and judicial review.

The application was lodged with the European Court of Human Rights on 17 May 2022.

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

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Anja **Seibert-Fohr** (Germany),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),
Sebastian **Rădulețu** (Romania),
Mateja **Đurović** (Serbia),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Articles 3 and 8

The Court decided to examine the complaints jointly under Articles 3 and 8 of the Convention. It observed in particular that States had a duty ("positive obligation") under these articles to enact criminal laws that effectively punished rape, and to apply them through prompt and effective investigation and prosecution.

The Court noted that both the Prosecution Service and the Government had acknowledged and regretted the mistakes made. In the Government's opinion though, the errors had not been so serious as to amount to a violation of the Convention.

The Court was not convinced by Ms Daugaard Sorensen's assertion that section 724(2) of the Administration of Justice Act by itself had amounted to an obstacle for her to obtain a judicial review

of the decision in respect of the reported rape offence, and that the mistakes committed in her case were part of a structural and systemic problem in Denmark. It had no reason to doubt that the system generally worked well, and that decision reversals and withdrawal of charges were usually successfully notified to the relevant individuals within the required timeframe. In particular, the Danish system of compulsory Digital Post accounts would usually mean that notifications were successfully delivered within an instant. The relatively short time-limit did, however, require diligence from the Prosecution Service to ensure that notifications were made before the expiry of the time-limit.

Nevertheless, in this case, at least three consecutive errors had been committed – and acknowledged – by the Prosecution Service, including a failure to follow the internal guidelines of the prosecutor’s office when the registered letter had been returned undelivered on 23 September 2021. The Court noted that the prosecution would have had ample time, before the expiry of the deadline one week later, to check whether the registered letter had been sent to the correct address, whether A had a new address and whether it was possible to re-attempt to serve the letter of notification. It would also have been appropriate to check whether the prosecutor’s database had indeed been correct in indicating that A, quite exceptionally, did not have a compulsory Digital Post account.

Regardless of who had been responsible for those errors and for failing to ensure that A had been notified in time, the result remained the same; the charges against him had been dismissed by the District Court on 16 November 2021, and as a result, Ms Daugaard Sorensen had been deprived of an effective prosecution or judicial review of the decision not to prosecute in respect of the alleged rape that she had reported to the police. Therefore, the Court concluded that there had been significant flaws in the procedural response to her allegations of rape and that Denmark had failed in its duties towards her under Articles 3 and 8 of the Convention.

Articles 6 and 13

The Court did not find it necessary to examine the complaints under these articles.

Just satisfaction (Article 41)

The Court held that Denmark was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 in respect of costs and expenses.

The judgment is available only in English.

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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.