



## Cases referred to the Grand Chamber

At its last meeting (24 September 2012), the Grand Chamber panel of five judges decided to refer two cases and to reject requests to refer 41 other cases<sup>1</sup>.

The following two cases have been referred to the Grand Chamber of the European Court of Human Rights.

**Janowiec and Others v. Russia** (applications nos. 55508/07 and 29520/09), concerning complaints about the adequacy of the investigation by the Russian authorities into the 1940 Katyń massacre.

**Fernández Martínez v. Spain** (no. 56030/07), which concerns the decision not to renew the contract of a priest, who was married with five children, to teach Catholic religion and morals, following the publication of an article disclosing his membership of the "Movement for Optional Celibacy".

### Referrals accepted

#### [Janowiec and Others v. Russia \(no. 55508/07\)](#)

The applicants are 15 Polish nationals who are relatives of 12 victims of the Katyń massacre. The 12 victims were police and army officers, an army doctor and a primary school headmaster. Following the Red Army's invasion of the Republic of Poland in September 1939, they were taken to Soviet camps or prisons and were then killed by the Soviet secret police without trial, along with more than 21,000 others, in April and May 1940. They were buried in mass graves in the Katyń forest near Smolensk, and also in the Pyatikhatki and Mednoye villages.

The investigations into the mass murders were started in 1990. The criminal proceedings lasted until 2004 when it was decided to discontinue the investigation. The text of the decision has remained classified to date and the applicants have not had access to it or to any other information about the Katyń criminal investigation. Their repeated requests to gain access to that decision and to declassify its top-secret label were continuously rejected by the Russian courts which found among other things that, as the applicants had not been recognised as victims, they had no right to access the case materials. The applicants' requests for rehabilitation of their relatives were also rejected by the Chief Military Prosecutor's Office and the courts alike.

On 26 November 2010 the Russian Duma adopted a statement about the "Katyń tragedy", in which it reiterated that the "mass extermination of Polish citizens on USSR territory during the Second World War" had been carried out on Stalin's orders and that it was necessary to continue "verifying the lists of victims, restoring the good names of

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, 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.

those who perished in Katyń and other places, and uncovering the circumstances of the tragedy...".

Relying in particular on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicants complained that the Russian authorities had not carried out an effective investigation into the death of their relatives and had displayed a dismissive attitude to all their requests for information about the dead people's fate.

Their applications were lodged with the Court on 19 November 2007 and 24 May 2009 respectively. The Court [declared admissible](#), on 5 July 2011, the applicants' complaints under Articles 2 and 3. A [public hearing](#) was held in the Human Rights building in Strasbourg on 6 October 2011.

In its [Chamber judgment of 16 April 2012](#), the Court held that it could not examine the applicants' complaint about the ineffective investigation into the Katyń massacre (Article 2). The Court noted that Russia had ratified the Convention 58 years after the killing of the applicants' relatives and most of the investigative steps in the case had been taken before that date. It therefore concluded that there had been no elements capable of providing a bridge between the distant past and the recent post-ratification period, and that there had been no special circumstances justifying a connection between the death and the ratification of the Convention by Russia in 1998.

The Court however found a violation of Article 38 (obligation to furnish necessary facilities for examination of the case) on the ground that Russia had failed to cooperate with the Court by refusing to provide a copy of its decision to discontinue the investigation. The Court further held that Russia's response to most victims' relatives' attempts to find out the truth about what happened had amounted to inhuman treatment. It therefore concluded that there had been a violation of Article 3 in respect of 10 of the applicants and no violation of Article 3 in respect of the remaining five applicants.

On 24 September 2012 the case was referred to the Grand Chamber at the applicants' request.

### [Fernández Martínez v. Spain \(application no. 56030/07\);](#)

The applicant, Mr José Antonio Fernández Martínez, is a Spanish national who was born in 1937 and lives in Cieza (Spain). He was ordained as a priest in 1961. In 1984 he applied to the Vatican for dispensation from celibacy, which was granted in 1997. He was married in a civil ceremony in 1985, and he and his wife have five children. He taught religion and ethics in a State high school from October 1991, his contract being renewed every year by the Bishop of the Diocese of Cartagena. In November 1996 the Murcia newspaper *La Verdad* published an article about the "Movement for Optional Celibacy" for priests. It reported that Mr Fernández Martínez, a member of the movement, had previously been rector of a seminary, and published a photograph of him attending a meeting of the movement, together with his wife and their five children. The article included comments by a number of participants indicating their disagreement with the Church's position on abortion, divorce, sexuality and contraception. On 29 September 1997 the Diocese of Cartagena informed the Ministry of Education of its intention not to renew Mr Fernández Martínez's contract for the 1997/98 school year.

Mr Fernández Martínez appealed to the Murcia employment tribunal, which found that he had been discriminated against because of his civil status and his membership of the Movement for Optional Celibacy. However, at the conclusion of the proceedings the Constitutional Court highlighted at the outset the special role of teachers of religious

education in Spain and found that the reasons for not renewing the applicant's contract had been purely religious.

Relying in particular on Article 8 (right for respect to private and family life) of the Convention, Mr Fernández Martínez complained about the non-renewal of his contract because of his personal and family situation. He complained that he had been discriminated against and maintained that the public disclosure of his status as a married priest with several children formed part of his freedom of expression.

The application was lodged with the European Court of Human Rights on 11 December 2007. The Court delivered a [Chamber judgment](#) on 15 May 2012.

The Court considered that the grounds on which Mr Fernández Martínez had not had his contract renewed had been of a strictly religious nature. Since the competent courts had struck a fair balance between several private interests, the Court found that there had been no violation of Article 8.

On 24 September 2012 the case was referred to the Grand Chamber at the applicant's request.

## Requests for referral rejected

Judgments in the following 41 cases are now final<sup>2</sup>

**Mago and Others v. Bosnia and Herzegovina** (nos. 12959/05, 19724/05, 47860/06, 8367/08, 9872/09 and 11706/09); judgment of 3 May 2012

**Haralampiev v. Bulgaria** (no. 29648/03); judgment of 24 April 2012

**Sarkizov and Others v. Bulgaria** (nos. 37981/06, 38022/06, 39122/06 and 44278/06); judgment of 17 April 2012

**Yordanova and Others v. Bulgaria** (no. 25446/06); judgment of 24 April 2012

**Jirsák v. the Czech Republic** (no. 8968/08); judgment of 5 April 2012

**Huhtamäki v. Finland** (no. 54468/09); judgment of 6 March 2012

**Ahrens v. Germany** (no. 45071/09) and **Kautzor v. Germany** (no. 23338/09); judgments of 22 March 2012

**Granos Orgánicos Nacionales S.A. v. Germany** (no. 19508/07); judgment of 22 March 2012

**Stübing v. Germany** (no. 43547/08); judgment of 12 April 2012

**Gagliano Giorgi v. Italy** (no. 23563/07); judgment of 6 March 2012

**Francesco Sessa v. Italy** (no. 28790/08); judgment of 3 April 2012

**Sud Fondi S.R.L. and Others v. Italy** (no. 75909/01); judgment (just satisfaction) of 10 May 2012

<sup>2</sup> Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

**Straisteanu and Others v. Moldova** (no. 4834/06); judgment (just satisfaction) of 24 April 2012

**Pontes v. Portugal** (no. 19554/09); judgment of 10 April 2012

**C.A.S. and C.S. v. Romania** (no. 26692/05); judgment of 20 March 2012

**Akhmadova v. Russia** (no. 25548/07); judgment of 3 April 2012

**Andreyeva v. Russia** (no. 73659/10); judgment of 10 April 2012

**Chumakov v. Russia** (no. 41794/04); judgment of 24 April 2012

**Edilova v. Russia** (no. 14662/07); judgment of 28 February 2012

**Estamirova v. Russia** (no. 27365/07); judgment of 17 April 2012

**Inderbiyeva v. Russia** (no. 56765/08); judgment of 27 March 2012

**Kadirova and Others v. Russia** (no. 5432/07); judgment of 27 March 2012

**Karpenko v. Russia** (no. 5605/04); judgment of 13 March 2012

**Khamzatov and Others v. Russia** (no. 31682/07); judgment of 28 February 2012

**Kalinkin and Others v. Russia** (nos. 16967/10, 37115/08, 52141/09, 57394/09, 57400/09, 2437/10, 3102/10, 12850/10, 13683/10, 19012/10, 19401/10, 20789/10, 22933/10, 25167/10, 26583/10, 26820/10, 26884/10, 28970/10, 29857/10, 49975/10 and 56205/10); judgment of 17 April 2012

**Mogilat v. Russia** (no. 8461/03); judgment of 13 March 2012

**Nefedov v. Russia** (no. 40962/04); judgment of 13 March 2012

**Nitsov v. Russia** (no. 35389/04); judgment of 3 May 2012

**Shafiyeva v. Russia** (no. 49379/09); judgment of 3 May 2012

**Damir Sibgatullin v. Russia** (no. 1413/05); judgment of 24 April 2012

**Grudić v. Serbia** (no. 31925/08); judgment of 17 April 2012

**Labsi v. Slovakia** (no. 33809/08); judgment of 15 May 2012

**Levin v. Sweden** (no. 35141/06); judgment of 15 March 2012

**Nacic and Others v. Sweden** (no. 16567/10); judgment of 15 May 2012

**Aysu v. Turkey** (no. 44021/07); judgment of 13 March 2012

**Solomakhin v. Ukraine** (no. 24429/03); judgment of 15 March 2012

**Babar Ahmad and Others v. the United Kingdom** (nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09); judgment of 10 April 2012

**Balogun v. the United Kingdom** (no. 60286/09); judgment of 10 April 2012

**Malik v. the United Kingdom** (no. 23780/08); judgment of 13 March 2012

**Y.C. v. the United Kingdom** (no. 4547/10); judgment of 13 March 2012

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en).

**Press contacts**

[echrpress@echr.coe.int](mailto:echrpress@echr.coe.int) | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**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.