



Authorities lacked diligence in investigating disappearance of adults

In today's Chamber judgment in the case of [Girard v. France](#) (application no. 22590/04), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 2 (right to life: lack of effective investigation) and 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the French authorities' lack of diligence in conducting an investigation into the disappearance of a young woman and her partner, despite the numerous steps taken by the parents of the woman, who was eventually found murdered.

Principal facts

The applicants, Claude and Andrée Girard, are two French nationals who were born in 1934 and 1937 respectively and live in Pessac (France).

From November 1997 onwards they had no news from their daughter Nathalie (30) and her partner F.A., who had just sold their restaurant-discotheque business to A.S.. The parents then filed a request for a "search in the interest of the families" with the Juvisy-sur-Orge police station on 8 January 1998. In parallel they carried out their own investigations, took various steps and conducted numerous searches to find their daughter. They sent several letters to the police and gendarmerie but received no replies.

On 11 November 1998 Mr. Girard wrote to the commanding officer of the Viry-Châtillon gendarmerie giving a list of all the people he had met and questioned, indicating under the name A.S. "the person I most suspect". He also indicated that his daughter's bank account, which had been dormant for 9 months, had been debited using 23 cheques with a forged signature but with her identity card number on the back. He concluded that her disappearance appeared worrying and suspicious.

On 1 December 1998 the parents wrote to the public prosecutor at the *tribunal de grande instance* of Evry and he asked the Viry-Châtillon gendarmerie to investigate. On 3 May 1999 the officer in charge of the investigation drew up a report indicating that despite the enquiries made with the discotheque, neighbours, the building's management agent, the police station, the town hall and the local tax office, the new address of the couple in question had not been ascertained. On 31 May 1999 the public prosecutor closed the investigation.

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

On 4 January 1999 A.S. committed an attempted murder in the basement of the discotheque, from which the victim managed to escape.

On 15 January 1999 the applicants informed the commanding officer of the gendarmerie working on the case that A.S. had paid for work in his discotheque using cheques from the cheque book of their daughter's partner, and also mentioned the previous fraudulent use of their daughter's cheque book. Between January 1998 and March 1999 they had a number of meetings with the police and gendarmerie, requesting that searches be carried out to find their daughter and her partner. According to them, they met only with refusals, based on the fact that their daughter was an adult and no offence had been committed.

On 10 June 1999 the public prosecutor of Rodez was contacted by a person who was worried about having had no news from her mother (N.R.) or her mother's partner (C.M.), who had been running a restaurant together in the Aveyron. On 3 July 1999 the gendarmes of Rodez questioned and then arrested the restaurant's new manager, who turned out to be A.S. using his brother's identity. On 12 July 1999 the public prosecutor of Rodez opened a judicial investigation on charges of abduction and illegal confinement.

On 13 July the first applicant was contacted by a journalist who had connected the first disappearance with the one more recently reported to the public prosecutor of Rodez. On 17 July the applicant went to the Aveyron, where he met the family of the couple who had disappeared and was heard by the gendarmes.

On 19 July 1999 he contacted the gendarmerie of Evry to inform them about these facts and to mention that a few months earlier he had seen a tarpaulin in the garden of the establishment previously run by his daughter's partner and that the ground underneath the tarpaulin, now removed, had been carefully raked over. Based on that information, the ground was dug up and two bodies were exhumed. The next day in a similar operation the bodies of the couple whose disappearance had been reported to the public prosecutor of Rodez were found in the garden of the Aveyron restaurant taken over by A.S.

The Essonne Assize Court found A.S. guilty of the murder of Nathalie and her partner F.A. in November 1997, of the attempted murder in January 1999, and of the murder of N.R. and C.M. in April 1999. He was sentenced to life imprisonment by a judgment of 28 February 2003. A judgment of the Val-de-Marne Assize Court of Appeal, of 19 March 2004, upheld his conviction and sentence, and his appeal on points of law was dismissed on 5 February 2005.

On 20 July 1999 the body presumed to be that of Nathalie was taken for autopsy to the Forensic Medical Institute of Paris, then given back to the family on 13 August 1999.

On 11 October 1999 the judge asked the applicants for permission to take new samples from their daughter's remains. Her body was exhumed for that purpose on 20 October 1999 and the body was re-interred on the same day. On 30 January 2001 a laboratory in Nantes issued a report identifying Nathalie's DNA.

Further to a request by the applicants, the Principal Public Prosecutor at the Paris Court of Appeal refused in November 2003 to order the return to them of the samples taken from Nathalie's body, on the ground that A.S. was to be tried on appeal in March 2004. A civil judgment of 19 March 2004 of the Val-de-Marne Assize Court of Appeal ordered the return of those samples with immediate effect. In spite of a number of requests to the public prosecutor and his superior, it was not until 27 July 2004 that the applicants were informed by the Bordeaux Forensic Medical Institute that the samples were now at their disposal. The final burial took place on 29 July 2004.

Complaints, procedure and composition of the Court

Relying in substance on Article 2, the applicants complained of inaction on the authorities' part following the disappearance of their daughter. Relying on Article 8, among other provisions, they also complained about the time taken by the authorities to return samples from their daughter's body.

The application was lodged with the European Court of Human Rights on 17 June 2004.

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

Dean **Spielmann** (Luxembourg), *President*,
 Elisabet **Fura** (Sweden),
 Jean-Paul **Costa** (France),
 Boštjan M. **Zupančič** (Slovenia),
 Isabelle **Berro-Lefèvre** (Monaco),
 Ann **Power** (Ireland),
 Angelika **Nußberger** (Germany), *Judges*,

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

Decision of the Court

Article 2 (right to life: effective investigation)

The Court reiterated that the right to an effective investigation under Article 2 could apply in the event of a disappearance and that there was an obligation to carry out an investigation even prior to the possible discovery of a body.

The Court made a distinction between two periods.

Before November 1998, when the applicants had, by themselves, been taking various steps and making numerous enquiries, of which they had informed the police and gendarmerie, there had been no information to suggest that this disappearance – of an individual who was an adult and in good health – was in any way abnormal or suspicious.

However, from November 1998 onwards, the applicants had provided the authorities with significant information about facts that were suspicious or at the very least abnormal: debits by cheque from their daughter's bank account, which had previously remained dormant for several months; forgery of her signature and addition of her identity card number on the back of those cheques; use by A.S. of cheques from the cheque book of her partner, who had also disappeared. As a result of the applicants' enquiries, the authorities had then had sufficient information for their daughter's disappearance to be regarded as worrying and suspicious, and the Court found that they had then been under an obligation to investigate her disappearance.

Despite that, the authorities had simply conducted an unsuccessful search for an address, in early May 1999, after which the case had been closed. A.S. had never been questioned, even though he was the only person who purported to provide any news of Nathalie and her partner and had been using the latter's cheque book fraudulently. The suspicious bank-account debits indicated by the first applicant and the use of his daughter's identity card had never been verified. It would have been sufficient to question the discotheque staff to find out that the identity documents and personal belongings of Nathalie and F.A. had been found on the premises back in January 1998. The Court therefore found that, in today's case, the investigation conducted by the authorities was not effective and prompt.

The Court noted that in the similar case concerning the disappearance of the couple who owned a restaurant in the Aveyron, the authorities had acted with much greater diligence, as, only three weeks after their disappearance had been reported, the gendarmes had arrested the new manager, who turned out to be A.S., and a judicial investigation for abduction and illegal confinement had immediately been opened. Lastly, the Court observed that it was ultimately the applicants themselves who, after making their own enquiries, had elucidated the disappearance of Nathalie and her partner, by informing the Evry gendarmerie on 19 July 1999 of the place where the bodies were actually found.

The Court concluded that, between November 1998 and July 1999, when Nathalie's body was found, the authorities' reaction had not been adapted to the circumstances. They had failed in their duty to carry out an effective investigation, in breach of Article 2.

Article 8 (right to respect for private and family life)

The Court took the view that the right, invoked by the applicants, to give their daughter's remains a final burial place, was inherent in their right to respect for their private and family life.

The Court observed that the conservation by the authorities of the samples taken from Nathalie's body until the judgment of the Val-de-Marne Assize Court of Appeal in March 2004 had not constituted interference with that right.

However, the four-month period between the court's judgment ordering the immediate restitution of the remains and the actual restitution to the applicants had entailed a disproportionate interference with their right to respect for their private and family life, in breach of Article 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that France was to pay the applicants 20,000 euros in respect of non-pecuniary damage.

Separate opinion

Judge Nußberger expressed a separate opinion, which is annexed to the judgment.

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.