



## Use of force by the police against assailant was legitimate as the victim had been in danger

In its decision in the case of [Mendy v. France](#) (application no. 71428/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the death of a man who was armed with a knife and had failed to heed police warnings while dangerously pursuing another before being shot by the police.

The Court concluded from all the circumstances that the police officer's response had been absolutely necessary in the light of the serious immediate threat to the life of the man being pursued. Moreover, observing that the domestic court decisions had contained particularly thorough reasoning, the Court found that the investigation as a whole had been sufficiently effective to establish that the use of force had been justified in the circumstances.

### Principal facts

The applicant, Florence Mendy, is a French national who was born in 1976 and lives in La-Seyne-sur-Mer (France). She is the sister of L.M., a sports coach who was killed by a police officer.

At around 6 p.m. on 3 May 2007 an employee at a day-care centre informed the police that L.M. was threatening J.-P. H., a sports club member.

Police sergeant L.L. and police officer S.T. went to the scene of the incident. They looked through a small window to see L.M. and J.-P.H. inside a sports hall, with L.M. brandishing a knife. The police officers ordered him to drop the weapon. J.-P. H. left the premises and fled, immediately pursued by L.M., who ran towards the police sergeant, threatening him with his knife. The police officer sidestepped him and L.M. ran on after J.-P. H. One of the officers fired a warning shot in the air.

Shortly afterwards, police sergeant L.L. came face-to-face with L.M., who tried to stab him, injuring his hand on the second attempt. L.M. fled, was hit by a car, got up again and continued chasing J.-P.H., still armed with his knife.

Police officer S.T. then fired two shots at L.M., missing him, and set off in pursuit. He shot twice and hit L.M., who collapsed. Despite his injury, police sergeant L.L. immediately ran to L.M.'s assistance and alerted the emergency services. L.M. was hospitalised and died the next day.

An investigation was instigated by the regional branch of the National Police Department. The case was dropped.

On 19 May 2007 Ms Mendy lodged a complaint against persons unknown for murder, joining the proceedings as a civil party. On 15 December 2009 the investigating judge issued a discontinuance decision on the grounds that the investigation had not revealed any deliberate intention on the part of the police officer to kill L.M., that the events had unfolded extremely quickly and unforeseeably, and that S.T. had been acting legitimately in attempting to protect the life of J.-P.H., whom L.M. had been directly threatening. Lastly, the judge considered that the use of the firearm had been proportionate to the threat posed by L.M. to J.-P. H.'s life. Ms Mendy appealed. By a judgment of 16 February 2010, the Aix-en-Provence Court of Appeal ordered further investigations. By a judgment of 3 May 2011, the Investigation Divisions ruled that there were no grounds for prosecution. It held that the police officer's response had been proportionate to the seriousness of the risk to J.-P.H.'s

life. It found that all the conditions for the lawful defence of the lives of others had been fulfilled. Ms Mendy lodged an appeal on points of law, which was dismissed.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 2 November 2012.

Relying on Article 2 (right to life), the applicant submitted that the use of such a degree of force by the police officers had not been absolutely necessary, since her brother's behaviour had not constituted a threat justifying the shots fired by the police. She also argued that the investigation had fallen short of the requisite criteria of independence and effectiveness.

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

Angelika **Nußberger** (Germany), *President*,  
Yonko **Grozev** (Bulgaria),  
André **Potocki** (France),  
Síofra **O'Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lado **Chanturia** (Georgia),

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

## Decision of the Court

### Article 2

#### ***The use of force***

The Court noted, as had the domestic courts, that the evidence obtained during the investigation showed that L.M. had been armed with a knife throughout the events, that he had not dropped the knife when the police officers had ordered him to do so and had subsequently stabbed a police officer in the hand. A dagger had also been found in his belt. The Court also observed that it had been established that one of the police officers had fired a warning shot which L.M. had ignored. Nor had he stopped after being hit by a car. It could be seen from the domestic courts' decisions and the evidence obtained during the investigation, particularly witness evidence, that L.M. had not been in a "normal" state. The police officers had therefore been justified in thinking that L.M. appeared to be out of control, resuming his headlong pursuit of J.-P.H. despite their attempts to stop him.

It could be seen from the domestic courts' decisions, which contained particularly thorough reasoning, that the wildly erratic behaviour of L.M. had indisputably posed an imminent threat to J.-P.H.'s life. The Court therefore considered that police officer S.T. had acted in the sincere conviction that J.-P.H.'s life was under threat and had genuinely believed it necessary to use force.

The Court reiterated that where it was called upon to examine whether the use of lethal force was legitimate, being detached from the events at issue it could not substitute its own assessment of the situation for that of an officer who was required to react in the heat of the moment to avert a genuinely perceived danger.

The Court concluded from all the circumstances that the police officer's response had been absolutely necessary in the light of the serious immediate threat to J.-P.H.'s life. In view of L.M.'s attitude, the inability of the other police officer, who was injured, to intervene and to the undeniable imminent risk facing J.-P.H., police officer S.T.'s decision to use his firearm could, in the circumstances, be deemed absolutely necessary in "defence of any person from unlawful violence".

The Court also considered that Ms Mendy's allegations of poor handling of the operations and regarding the effect of the arrival of the police on her brother's conduct were unsubstantiated.

Lastly, with regard to Ms Mendy's allegation that the rules governing the use of weapons were inadequate, the Court observed that Article 122-5 of the Criminal Code, applicable to law-enforcement officers, which lay down the grounds for legitimate self-defence, referred to the "necessity" of the defensive action and the "imminence" of the danger, and required the response to be proportionate to the attack. That provision echoed the wording of Article 2 of the Convention and contained the elements required by the Court's case-law.

It followed that the complaints were ill-founded and must be rejected.

### ***The investigation***

The Court pointed out that the review of the proportionality of the use of force had been carried out by the three levels of domestic courts. Referring to its finding that the domestic courts' decisions had contained particularly thorough reasoning in the present case, the Court found that the investigation as a whole had been sufficiently effective to establish that the use of force had been justified in the circumstances of the case. Moreover, Ms Mendy's complaint about the alleged lack of independence of the investigation was not substantiated.

That part of the application was ill-founded and had to be rejected.

*The decision is available only in French.*

---

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) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

### **Press contacts**

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

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

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

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

**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.