EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Forthcoming Grand Chamber judgment concerning the fatal shooting in the London Underground of a Brazilian national mistakenly identified by the police as a suicide bomber

The European Court of Human Rights will be delivering a **Grand Chamber** judgment[1] in the case of **Armani Da Silva v. the United Kingdom** (application no. 5878/08) at a public hearing on 30 March 2016 at 3 p.m. in the Human Rights Building, Strasbourg.

The case concerns the fatal shooting of Jean Charles de Menezes, a Brazilian national mistakenly identified by the police as a suicide bomber. Ms Armani Da Silva, who is Mr de Menezes' cousin, complains in particular about the decision not to prosecute any individuals for her cousin's death.

Principal facts

The applicant, Patricia Armani Da Silva, is a Brazilian national who was born in 1974 and lives in Thornton Heath, London. She is the cousin of Jean Charles de Menezes, a Brazilian national who was shot dead at Stockwell London Underground Station by two special firearms officers (SFOs) after he was mistakenly identified as a suicide bomber.

Mr de Menezes was shot dead on 22 July 2005. Two weeks earlier 56 people had died when suicide bombers detonated explosions on the London transport network. On 21 July 2005 unexploded bombs had been found on three London underground trains and a further unexploded bomb was found on a London bus. The police thus launched an operation to find the failed suicide bombers as it was feared that they were going to strike again.

Two of the terrorist suspects lived at the same address as Mr de Menezes in Scotia Road, London. The address was placed under surveillance and when Mr de Menezes left for work on the morning of 22 July he was followed by surveillance officers, who thought he might be one of the suspects. SFOs had been dispatched to support the surveillance officers and to stop any potential suspects leaving the Scotia Road address. However, they were not deployed in time and when they arrived at the scene Mr de Menezes had already entered Stockwell underground station. The SFOs followed him onto a train, pinned him down and shot him several times in the head.

The case was referred to the Independent Police Complaints Commission (IPCC), which concluded in a report dated 19 January 2006 that Mr de Menezes had been killed because of mistakes that could and should have been avoided. The report also made a series of operational recommendations and identified a number of possible offences that might have been committed by the police officers involved, including murder and gross negligence.

However, the Crown Prosecution Service (CPS) decided not to press criminal charges against any individual since there was no realistic prospect of a conviction being upheld. Notably, in July 2006 the CPS found that it would be very difficult to prove beyond reasonable doubt that the SFOs who shot Mr de Menezes had not genuinely believed that they were facing a lethal threat, and there was insufficient evidence to show that the mistakes made by the police officers involved in planning the operation were so bad as to amount to criminal conduct. Similarly, in May 2007 the IPCC decided that no disciplinary action should be pursued against any of the frontline and surveillance officers

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

involved in the operation since there was no realistic prospect of any disciplinary charges being upheld.

A successful prosecution was, however, brought against the police authority under the Health and Safety at Work Act 1974. The jury accepted that there had been failings in the operation's planning and implementation. In particular, there had been a failure to identify Mr de Menezes and a failure to deploy the SFOs in time to stop possible suspects leaving Scotia Road. Thus, in November 2007 the authority was ordered to pay a fine of 175,000 pounds sterling plus costs, but in a rider to its verdict that was endorsed by the judge, the jury absolved the officer in charge of the operation of any "personal culpability" for the events.

At an inquest in 2008 the jury returned an open verdict after the coroner had excluded unlawful killing from the range of possible verdicts.

The family also brought a civil action in damages which resulted in a confidential settlement in 2009.

Procedure and complaints

The application was lodged with the European Court of Human Rights on 21 January 2008.

Ms Armani Da Silva complains that the State's duty under Article 2 (right to life – investigation) to ensure accountability and punishment of State agents or bodies for the fatal shooting of her cousin has not been fulfilled by the prosecution of the police authority for a health and safety offence. More particularly, she complains about the decision not to prosecute any individuals for her cousin's death. In this regard, she alleges that the evidential test used by prosecutors to determine whether criminal charges should be brought – namely, that the prosecutor must consider that a conviction was more likely than not – was too high a threshold, particularly in cases concerning the use of lethal force by State agents. She also takes issue with the definition of self-defence in the United Kingdom, as the officers who shot Mr de Menezes only had to show that they had an honest belief (as opposed to an honest and reasonable belief) that the use of force had been absolutely necessary.

The application was lodged with the European Court of Human Rights on 21 January 2008. The case was communicated on 28 September 2010 to the United Kingdom Government, which was asked to submit its observations as well as all decisions of the IPCC as regards possible disciplinary charges against relevant officers. On 9 December 2014 the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber[2].

A Grand Chamber hearing on the case was held in public in Strasbourg on 10 June 2015.

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Press contacts
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)

[2] Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

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.