



Death of dangerous individual caused by police officers acting in self-defence during his arrest did not violate the Convention

In today's **Chamber** judgment¹ in the case of [Benladghem v. Belgium](#) (application no. 5414/22) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 2 (right to life) of the European Convention on Human Rights

The case concerned the death of the applicant's brother, who was shot by members of the special units of the Belgian federal police during his arrest. He had been the subject of two investigations in Belgium and was considered to be particularly dangerous.

The Court, like the domestic courts, considered that when they had fired the shots, the police officers could be said to have been acting in the honest belief that their lives were under threat and could sincerely have believed that it had been necessary to use force; they had therefore been entitled to use appropriate means to defend themselves. In the present case, the shots fired by the officers had been in response to the threat posed by the applicant's brother, who had seized his gun and pointed it at one of the officers. The use of force had not, in the present case, exceeded what had been "absolutely necessary".

Principal facts

The applicant is a French national who lives in Nancy (France). She complained about the death of her brother (Mr Benladghem), who was shot by members of the special units of the Belgian federal police ("the DSU", formerly "the CGSU") during his arrest.

Mr Benladghem, whom the Belgian authorities considered to be particularly dangerous, was the subject of two investigations, one for participation in a terrorist group and the other for armed robbery. Various investigative methods were used against him, including surveillance of his home, physical surveillance and placement of a listening device in his car.

On 26 March 2013 an investigating judge ordered that he be apprehended and arrested. On the same day, officers were summoned to an operational briefing at which they were told that their task was to arrest Mr Benladghem, a former member of the French armed forces who was experienced in combat techniques and was suspected of preparing imminent violent action.

According to the report drawn up the same day, two police vehicles blocked Mr Benladghem's car on the A8 motorway as he was driving towards Brussels. The officers then got into position to intercept him and issued verbal warnings. He refused to comply, however, behaving in a threatening manner and pointing a gun at one of the officers. Shots were subsequently fired, as a result of which Mr Benladghem died a few minutes later.

An investigation was opened, which ended in a decision to discontinue the proceedings. That decision was upheld by the Belgian courts, which found that the officers had acted in self-defence. The Indictments Division found that the officers had been confronted with "a serious and imminent attack

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 their bodily integrity, with no possibility of avoiding it other than by using their weapons”, and that they had acted “within the limits of what [had been] strictly necessary in order to defend themselves, namely until the danger [had] ended, their response [having been] proportionate to the seriousness of the situation they [had] sought to avert”.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the Convention, the applicant disputed the facts as established by the domestic authorities, complaining of the lack of preparation for the operation of 26 March 2013 and of the disproportionate use of lethal force by the police.

The application was lodged with the European Court of Human Rights on 21 January 2022.

The Ligue des droits humains was granted leave to intervene.

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

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),
Alain Chablais (Liechtenstein),
Artūrs Kučs (Latvia),
Anna Adamska-Gallant (Poland),

and also Liv Tigerstedt, *Deputy Section Registrar*.

Decision of the Court

The Court noted that the applicant’s brother’s arrest had been ordered by an investigating judge and that, in view of the danger he posed, the task of arresting him had been entrusted to DSU officers who were specialised and trained in that type of operation. A preparatory meeting in the form of an operational briefing had been held on the morning of the operation.

As to how the operation had unfolded, the domestic courts had established, and this was not disputed before the Court, that during the arrest, the officers had ordered the applicant’s brother to stop. Instead of complying, he had accelerated and deliberately pushed one of the police vehicles. It was not disputed that he had been armed and had two ammunition magazines with him. The domestic courts had also established that conducting the operation on the motorway, having isolated the suspect, seemed to have been the best course of action, since carrying out the operation in an urban setting would have been likely to jeopardise the safety of individuals with no connection to the events. In view of the evidence in the case file and the reasons given by the domestic courts, the Court had no reason to doubt the operational choices made by the police in the present case.

The Court also noted that the domestic courts had conducted a detailed examination of the facts in question in order to determine whether the use of force had been absolutely necessary and proportionate, relying on a large number of investigative steps and various expert reports. On the basis of that evidence, they had established, among other points, that Mr Benladghem had taken a gun out of the briefcase on the passenger seat of his car, which he had pointed at one of the officers; that the officer had fired his gun while moving backwards and had fallen over; and that, following this, the other four officers had also fired shots at Mr Benladghem.

As to the proportionality of the use of force in those circumstances, both the *chambre du conseil* and the Indictments Division had concluded, having examined the case, that the officers in question had acted in self-defence. The domestic courts had also rejected the applicant’s argument that her brother

would have been unable to point his gun as a result of the police car manoeuvres. In so doing, they had relied on the findings of a court expert that the lower part of the grip and the base of the magazine of the gun used by the applicant's brother had been damaged by a gunshot. They had also taken into account the autopsy results documenting a visible injury to the deceased's right little finger, in support of the argument that he had indeed been aiming his gun at an officer when he had been shot.

In those circumstances, the Court, like the domestic courts, considered that when they had fired the shots, the officers could be said to have been acting in the honest belief that their lives were under threat and could sincerely have believed that it had been necessary to use force; they had therefore been entitled to use appropriate means to defend themselves. In the present case, the shots fired by the officers had been in response to the threat posed by the applicant's brother, who had seized his gun and pointed it at one of the officers. The shots had been fired over a period of a few seconds by several officers and had ceased as soon as the danger as subjectively perceived by the officers had ended. The Court also noted that, detached from the events at issue, it could not substitute its own assessment of the situation for that of the officers who had been required to react in the heat of the moment to avert an honestly perceived danger to their lives or the lives of others.

It followed that, in the actual circumstances of the present case, the use of force had not exceeded what had been "absolutely necessary". There had therefore been no violation of Article 2 of the Convention.

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.