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

Press Release
issued by the Registrar of the Court

ECHR 078 (2024)
04.04.2024

Living conditions of children of Harkis in Bias camp were in breach of Convention but *Conseil d'État* did not infringe their right of access to a court

The case of Tamazount and Others v. France (applications nos. 17131/19, 19242/19, 55810/20, 28794/21 and 28830/21) concerned five French nationals who are the descendants of "Harkis" (auxiliary forces of Algerian origin who fought alongside the French army during the Algerian War of Independence).

In today's **Chamber** judgment[1] in this case, the European Court of Human Rights reached the following unanimous findings.

No violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights**, in respect of the five applicants.**

The Court found in particular that the *Conseil d'État*'s declaration that it lacked jurisdiction, based on the acts of State doctrine, being limited to the applicants' claims that the State was liable for negligence on account of a failure to protect the Harkis and their families in Algeria and to repatriate them systematically to France, could not be considered to have overstepped the margin of appreciation afforded to States in limiting an individual's right of access to a court.

A violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life and correspondence) of the Convention and of Article 1 of Protocol No. 1 (protection of property) to the Convention in respect of the four applicants who are members of the Tamazount family.

The Court found that the day-to-day living conditions of the residents of the Bias camp, the four applicants included, had not been compatible with respect for human dignity and had moreover involved infringements of their individual freedoms. It clarified that it was mindful of the difficulty of putting a precise figure on the damage sustained by these applicants and of the limits of the analogy with inhumane detention conditions, given the particularities of the historical context. Nevertheless, it considered that the sums awarded by the domestic courts in the present case had not afforded appropriate and sufficient redress for the violations found.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

The applicants are five French nationals who were born between 1957 and 1969 and are the children of "Harkis" (auxiliary forces of Algerian origin who fought alongside the French army during the Algerian War of Independence (1954-1962)). Four of the applicants are members of the Tamazount family. They arrived in France at the time of Algerian independence in 1962 or were subsequently born there, where they lived in a Harki Reception Camp (mainly in the Bias camp) until 1975. The fifth applicant (Mr Mechalikh) lost his father in 1957, when the latter was executed by the Algerian National Liberation Front. He remained in Algeria until 1980, then moved to France, where he currently resides.

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 various dates the five applicants lodged actions on grounds of State liability, alleging that the French State had committed two acts of negligence by failing first to protect the Harkis and their families from the massacres and reprisals perpetrated against them in Algeria when that country had achieved independence and then to organise their systematic repatriation to France. The administrative courts, including the *Conseil d'État* at last instance, considered that they lacked jurisdiction to rule on any potential acts of negligence on the part of the State, finding that the decisions that had been taken by the French authorities constituted acts of State which involved the relations between France and Algeria and for which the State could not be held liable on grounds of negligence.

In addition, the four applicants from the Tamazount family complained about their living conditions in the Bias camp (in particular that they had been confined to the camp, that their letters and parcels had been opened by the camp authorities, that the social benefits due to their family had been allocated to camp expenses and that they had been educated in a school within the camp outside the ordinary education system), for which they sought compensation. The administrative courts found that the State was to be held liable for negligence on account of the inhumane living conditions to which the applicants had been subjected from their birth or arrival at the camp to its decommissioning in 1975. They ordered the State to pay each of them the sum of 15,000 euros (EUR) as compensation for the pecuniary and non-pecuniary damage they had sustained.

Complaints

Relying on Article 6 (right of access to a court) of the Convention, the applicants submitted that their right of access to a court had been breached by the *Conseil d'État*'s decision that it lacked jurisdiction – based on the acts of State doctrine – to hear their compensation claims on grounds of State liability for negligence as a result of a failure by France both to intervene in Algeria to protect the Harkis and their families at the time of Algerian independence and to organise their systematic repatriation to France.

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life and correspondence) of the Convention, and on Article 1 of Protocol No. 1 (protection of property), four of the applicants further complained about their living conditions in the Harki reception facilities in France.

Procedure and composition of the Court

The applications were lodged with the European Court of Human Rights between March 2019 and May 2021.

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

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Lado **Chanturia** (Georgia),
María **Elósegui** (Spain),
Kateřina **Šimáčková** (the Czech Republic) and,
Jean-Marie **Delarue** (France)*, ad hoc Judge*,

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 6

The Court noted that the *Conseil d'État*'s declaration that it lacked jurisdiction, based on the acts of State doctrine, had deprived the applicants of a decision on the merits of the right to compensation they had sought to assert on the basis of State liability for negligence and had, in consequence, restricted their right of access to a court.

It found that this restriction had pursued a legitimate aim, namely the preservation of the separation of powers between the executive and the judiciary, and, as a result, the courts' inability to call into question diplomatic or military decisions taken in the context of relations between France and Algeria following the "Evian Accords" (signed on 18 March 1962).

Firstly, as to the proportionality of the restriction in relation to the aim pursued, the Court observed that the acts of State doctrine was interpreted narrowly by the administrative courts, which had developed the concept of an act which was dissociable from the conduct of French diplomatic or foreign relations.

Concerning the doctrine's application in the present case, the Court noted that the *Conseil d'État* had examined whether the impugned acts and omissions on the part of the French authorities, taking into account the domestic policy considerations they had emphasised, could be dissociated from the context of French diplomacy and international relations. The *Conseil d'État* had nonetheless opted to take the view that it was appropriate to regard Algeria – from the moment negotiations with a view to concluding the Evian Accords had begun – as a nascent State whose relations with France had fallen within the framework of diplomacy. It had inferred and concluded from this that the domestic authorities' acts and omissions, on which the applicants had relied, could not be dissociated from the relations between France and Algeria, for which State liability could not be incurred on grounds of negligence.

Concerning political decisions relating to the conduct of diplomatic or international relations, in particular those involving the engagement of military forces, the Court saw no reason to substitute its own assessment for that of the *Conseil d'État* when it came to interpreting domestic law, or to hold that the position adopted by that court had been arbitrary or manifestly unreasonable.

Secondly, the Court observed that the administrative courts' lack of jurisdiction to hear the case had not been absolute since they had had jurisdiction to adjudicate any claims brought by the applicants on grounds of the State's strict liability. The applicants had not submitted that they had sought to establish the State's strict liability in the administrative courts, but had rather argued that these courts ought in any event to have examined that form of liability of their own motion, in accordance with well-established domestic case-law.

The Court would not speculate on this point, or on the chances of success of an action on grounds of the State's strict liability, had such an action been brought by the applicants. It found, however, that the potential establishment of the State's strict liability rendered the unaccountability of acts of State merely relative. The *Conseil d'État*'s declaration that it lacked jurisdiction had only concerned one aspect of official liability, which was confined to the assessment of potential negligence, and could not be regarded as having established a general and absolute immunity that prevented the courts from ruling on any and all harmful consequences of acts of State.

Consequently, the Court found that the *Conseil d'État*'s declaration that it lacked jurisdiction, on the basis of the acts of State doctrine, being limited to the applicants' claims that the State was liable for negligence on account of a failure to protect the Harkis and their families in Algeria and to repatriate them systematically to France, could not be considered to have overstepped the margin of appreciation afforded to States in limiting an individual's right of access to a court. **It followed that there had been no violation of Article 6 § 1 of the Convention.**

Articles 3 and 8 of the Convention and Article 1 of Protocol No. 1

The Court clarified that it had jurisdiction to hear the four applicants' complaints about their living conditions in the Bias camp from 3 May 1974, the date on which the Convention and Protocol No. 1 had come into force in respect of France.

It noted that the domestic courts had fully recognised the suffering endured by the applicants in the Bias camp. They had first found that the living conditions to which Harkis and their families had been subjected in that camp had constituted an offence against human dignity for which the State could be held liable. The courts had then extended that finding to the restrictions imposed on the individual freedoms of the persons concerned on account, in particular, of the inspection of their letters and parcels, the allocation of their social benefits to the financing of the camp's expenses and the children's education outside the ordinary school system.

The Court noted that, after the decisions had been delivered in the domestic proceedings, the Law of 23 February 2022 had acknowledged the "responsibility of the Nation" for the inhumane reception and living conditions to which the Harkis and their families had been subjected and for the infringement of their individual freedoms.

The Court found that the day-to-day living conditions of the residents of the Bias camp, the four applicants included, had not been compatible with respect for human dignity and had moreover involved infringements of their individual freedoms.

It then observed that each of the applicants had been awarded a total of EUR 15,000 by the domestic courts for periods ranging from seven to fourteen years spent in the camps, all complaints and damage combined, while waiving the four-year limitation period. To determine that amount, the domestic courts had used the scale applicable to inhumane detention conditions, corresponding roughly to EUR 1,000 per year of detention, with a supplement to take account of harm specific to inadequate schooling.

The Court was mindful of the difficulty of putting a precise figure on the damage sustained by the applicants and of the limits of the analogy with inhumane detention conditions, given the particularities of the historical context. Nevertheless, it considered that the sums awarded by the domestic courts in the present case had not afforded the applicants appropriate and sufficient redress for the violations found. Firstly, as to the violation of Article 3 of the Convention, the sums awarded to the applicants had been modest by comparison with what the Court generally awarded in cases concerning inhumane detention conditions. Secondly, it inferred from this that the sums in question had not covered the damage sustained in connection with the other violations of the Convention and of Protocol No. 1.

In the light of the above, it followed that, despite the important work of memory undertaken and the solemn acknowledgment given by France's highest executive authorities, the domestic authorities had not, in setting the amount of compensation paid to the applicants, taken sufficiently into account the specificity of their living conditions in the Bias camp in order to remedy the Convention violations found and, consequently, that the payment of that compensation had not deprived them of their victim status in that regard.

Accordingly, **the Court found that the applicants' stay at the Bias camp, for the period from 3 May 1974 to 31 December 1975, had entailed violations of Articles 3 and 8 of the Convention and of Article 1 of Protocol No. 1 to the Convention.**

Just satisfaction (Article 41)

The Court considered that just satisfaction for the pecuniary and non-pecuniary damage sustained as a result of the breach of Articles 3 and 8 of the Convention and of Article 1 of Protocol No. 1 would be afforded by the award of the sum of 4,000 euros (EUR) per year spent in the Bias camp, with each partial year counting as a full year.

Having jurisdiction in respect of 1974 and 1975, the Court held that France was to pay the four applicants of the Tamazount family a total of EUR 19,518 in respect of non-pecuniary and pecuniary damage, taking into account the sums already paid in the domestic proceedings on a pro rata basis, according to the following breakdown: EUR 5,694 to Abdelkader Tamazount, EUR 4,250 to Aïssa Tamazount, EUR 5,858 to Zohra Tamazount and EUR 3,716 to Brahim Tamazount.

The judgment is available only in French.

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

We are happy to receive journalists' enquiries via either email or telephone.

Inci Ertekin (tel.: + 33 3 90 21 55 30)
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)