



Fatal shot fired at a fleeing vehicle: the use of force was not absolutely necessary

In today's Chamber judgment¹ in the case of [Toubache v. France](#) (application no. 19510/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights.

The case concerned the necessity and proportionality of the use of force by the law-enforcement agencies in the context of the death of the applicants' son, who was shot and killed by a gendarme while travelling in the rear of a fleeing vehicle.

The Court did not wish to impose an impossible burden on the authorities. It noted that the gendarmes had earlier used alternative methods to try to stop the car and that the death of the applicants' son had occurred during an unplanned operation during which the gendarmes had had to react without prior preparation. Nevertheless, in view of the fact that the driver had not posed an immediate threat and that stopping the vehicle had not been a matter of urgency, the use of a firearm by the gendarme O.G. had not been absolutely necessary in order to carry out a lawful arrest for the purposes of Article 2 § 2 (b) of the Convention.

The Court noted that after the events in this case France had passed a law on 28 February 2017 incorporating the principles laid down in the Court's case-law, according to which law-enforcement officials may use weapons only in cases of absolute necessity and in a strictly proportionate manner.

Principal facts

The applicants, Mohammed Toubache and Sikina Toubache, are French nationals who were born in 1951 and 1958 respectively and live in Montataire (France). They are the parents of N.T., born in 1987.

On the night of 27 November 2008, following a burglary and the theft of some fuel, a vehicle carrying three men, including N.T., was chased by a gendarmerie patrol. The vehicle refused to stop despite being chased and despite rounds of Flash-balls being fired. After issuing two warnings and almost being struck twice, a gendarme, O.G., fired six times in the direction of the fleeing vehicle.

A judicial investigation was instituted against the gendarme on a charge of manslaughter. It emerged from the investigation that N.T. had died following the fifth or sixth shot fired by O.G. On 25 January 2013 an order by the investigating judges reclassified the offence as inadvertent and negligent homicide.

On 21 July 2013 the Court of Appeal quashed that order on the grounds that O.G. was not criminally responsible and should not be committed for trial. The Court of Appeal found that the gendarme's use of his weapon had been absolutely necessary in order to stop the vehicle. The Court of Cassation dismissed an appeal on points of law by the applicants.

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.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants alleged that the fatal shooting of their son had not been proportionate to the aim pursued.

The application was lodged with the European Court of Human Rights on 17 April 2015.

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

Erik **Møse** (Norway), *President*,
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

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

Decision of the Court

Article 2 (right to life)

The Court observed that N.T., who had been travelling in the back of a fleeing vehicle, had died following the fifth or sixth shot fired by the gendarme O.G. It considered that the gendarmes’ actions in the instant case had been aimed at carrying out a lawful arrest for the purposes of Article 2 § 2 (b) of the Convention. The Court therefore had to ascertain whether the force used had been “absolutely necessary” in order to achieve that aim and in particular whether the risk entailed in the use of gunfire against the vehicle, which had resulted in a loss of life, had been strictly proportionate to the danger posed by the fleeing vehicle and the urgency of stopping it.

In the Court’s view, O.G. had been aware that there were three people in the car and knew the risks inherent in firing at a moving vehicle. In such circumstances he had run a considerable risk of injuring or killing some of the vehicle’s occupants, especially with the last few shots, which had had virtually no chance of hitting the engine or the tyres in order to stop the vehicle. Such a degree of risk to life could be justified only where the use of gunfire was a measure of last resort designed to avert a very clear and present danger that would result if the driver of the car were to succeed in escaping. In the present case the occupants of the vehicle were under suspicion of offences against property rather than persons, were not suspected of committing a violent offence, and were not alleged to be armed.

It was not disputed that in manoeuvring the car in order to evade the gendarmerie roadblock the driver had not hesitated to drive at high speed towards O.G. on two occasions, demonstrating that he was both dangerous and determined. However, the driver alone had been responsible for the dangerous manoeuvres and the passengers could not be equated with him. Furthermore, by the time O.G. had succeeded in opening fire, his life and that of his colleagues had no longer been in danger and the vehicle was already fleeing. Lastly, the Government had not demonstrated that the way in which the vehicle was being driven had presented a danger to other road users or to road safety, or that the gendarmes might have believed they were dealing with a terrorist attack.

The Court observed that the gendarmes had earlier used alternative methods to try to stop the vehicle. N.T.’s death had occurred during an unplanned operation during which the gendarmes had had to react without prior preparation. While not wishing to impose an impossible burden on the authorities, the Court nevertheless considered that the risk to the passengers’ lives resulting from

the use of a firearm had to be viewed in the light of the fact that the driver had posed no immediate threat and the fact that stopping the car had not been a matter of urgency.

In view of these factors, the Court considered that N.T.'s death had resulted from a use of force that had not been absolutely necessary in order to carry out a lawful arrest. There had therefore been a substantive violation of Article 2 of the Convention.

Just satisfaction (Article 41)

The Court held that France was to pay the applicants 60,000 euros (EUR) in respect of non-pecuniary damage (EUR 30,000 each), and EUR 9,784 in respect of costs and expenses.

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.