



Use of armed force by gendarme against prisoner who attacked his colleague during transfer from prison to court: no violation of Article 2 of the Convention

In today's **Chamber** judgment¹ in the case of [Bouras v. France](#) (application no. 31754/18) 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 a complaint, under the substantive limb of Article 2 of the Convention, about a gendarme's use of armed force resulting in the death of a prisoner who attacked another gendarme in the vehicle that was transferring him from Strasbourg Prison to the Colmar *tribunal de grande instance*.

Like the national courts – whose decisions, the Court noted, had contained particularly comprehensive reasoning – the Court found that the gendarme had acted in the honest belief that his colleague's life was in danger and had genuinely believed it was necessary to use armed force. The investigation had not cast any doubt on the genuineness or honesty of that belief. The Court observed that the decision to use the weapon had been preceded by verbal warnings and other unsuccessful attempts to stop the attack. The danger to the gendarmes was borne out by the forensic ballistics report, whose conclusions were endorsed by the Investigation Division of the Court of Appeal. Noting that the administrative inquiry conducted by the internal affairs department of the national gendarmerie had found no breach of regulations, the Court likewise held that the transfer could not be regarded as not having been prepared and managed in such a way as to minimise any risk to the prisoner's life or the lives of the gendarmes.

In the circumstances, the Court concluded that the gendarme's decision to use his firearm could be considered justified and absolutely necessary "in defence of any person from unlawful violence" within the meaning of Article 2 § 2 (a) of the Convention.

Principal facts

The applicants, Fatiha Bouras, née Rabah, and Bouamama Bouras, are nationals of France and Algeria, respectively. They were born in 1960 and live in Colmar and Châtelleraut. They are the parents of H.B., who died on 26 August 2014 as a result of a gunshot fired by a gendarme responding to a violent attack on his colleague during H.B.'s transfer to court.

On 26 August 2014, while being transferred from Strasbourg-Elsau Prison to the Colmar *tribunal de grande instance*, the applicants' son, H.B, aged 23, died as a result of a gunshot which a member of his two-person escort team, volunteer private M.G., fired from his service weapon after H.B. suddenly attacked and disarmed his colleague and escort team leader, M.R., who was sitting beside H.B. in the back of the vehicle as it was being driven down the motorway.

That same day, the prosecutor commissioned an urgent inquiry by the internal affairs department of the national gendarmerie (*Inspection générale de la gendarmerie nationale* – IGGN). M.G. was taken into custody and interviewed four times. M.R. was interviewed as a witness twice. A forensic medical

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.

examination of M.R. performed in the immediate aftermath revealed bruising and abrasions on her torso, arms and legs, swelling of her right upper cheek and several linear marks consistent with scratch injuries. A bloodstained button from her shirt was found on the ground.

Inquiries continued in the form of a judicial investigation opened by the prosecutor on 28 August 2014 on a charge of assault occasioning death without intent to kill by a person vested with public authority in the exercise of his or her duties. Evidence was taken from several witnesses, an autopsy was performed and pathology and ballistics reports were obtained. Genetic testing showed several traces of H.B.'s DNA present on M.R.'s service weapon and holster. The investigating judge appended to the judicial investigation file the results of the administrative inquiry conducted by the IGGN into the circumstances of the transfer. That inquiry found no breach of the applicable regulations and made four recommendations for the future.

The prosecutor's final application of 24 November 2015 sought the discontinuance of the proceedings against M.G. on the ground that he had acted in lawful defence of M.R.

On 19 January 2016 the court's vice-president, who was the investigating judge in the case, discontinued the proceedings on the ground that M.G. had shot H.B. in lawful defence of another. The vice-president found that M.G.'s actions had been a proportionate and absolutely necessary response to the attack on M.R. and to the imminent threat to her life posed by H.B.'s repeated attempts to grab hold of her pistol, which was loaded and held a round in the chamber. The vice-president further noted that M.R.'s medical examination and the bloodstained button found on the ground from her clothing bore out the violence of the assault she had endured; that the quantity and location of the traces of H.B.'s DNA on M.R.'s holster and weapon showed that he had deliberately grasped the weapon; that the forensic findings corroborated M.G.'s account according to which, in addition to verbal warnings, he had tried other means of getting H.B. to release his grasp, using physical force and subsequently his baton.

The second applicant appealed against the discontinuance of the proceedings. The first applicant did not exercise her right of appeal.

By a judgment of 8 September 2016 the Investigation Division of the Colmar Court of Appeal upheld the discontinuance decision.

By a judgment of 9 January 2018 the Court of Cassation dismissed the second applicant's appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the Convention, the applicants argued that the use of force which had led to H.B.'s death was neither absolutely necessary nor proportionate to any of the aims enumerated in Article 2 § 2.

The application was lodged with the European Court of Human Rights on 5 July 2018.

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

Síofra O'Leary (Ireland), *President*,
Ganna Yudkivska (Ukraine),
Lado Chanturia (Georgia),
Ivana Jelić (Montenegro),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveytschik, *Section Registrar*.

Decision of the Court

Article 2

The Court observed that it was clear from the investigations that H.B. had, while being transferred from Strasbourg-Elsau Prison to the Colmar *tribunal de grande instance*, attacked M.R., the member of the gendarmerie escort team sitting beside him in the back of the vehicle, and made several attempts to grab her service weapon, which was loaded and held a round in the chamber. Accordingly, the domestic courts had looked at whether the actions of the other gendarme, M.G., had been taken in defence of a person, his colleague M.R., against an act of unlawful violence, within the meaning of Article 2 § 2 (a) of the Convention, committed by H.B.

The Court noted that the statements of the two gendarmes, escort team leader M.R. and volunteer private M.G., had been corroborated by expert ballistics, genetics and medical analyses.

As to the details of H.B.'s attack on M.R., the Court observed that, in addition to the bloodstained button found on the ground from M.R.'s shirt, the forensic medical examination performed in the immediate aftermath had revealed bruising, abrasions and signs of blows and scratches on M.R.'s body. The reliability of her statements, including her description of the assault as "an onslaught of blows", had been further confirmed by the forensic medical expert who, on a reconstruction of the events, had considered her account to be consistent with the initial findings and the report of the forensic medical examiner. The Court further noted that a forensic genetics analysis had detected several traces of H.B.'s DNA on the holster of M.R.'s weapon and on many parts of the weapon itself, bearing witness to the fact that H.B. had attempted to grab it. From such a finding it had been reasonable for the investigating judge to infer that H.B. had deliberately grasped M.R.'s weapon.

Furthermore, the Court observed that the investigations had established that, before firing the fatal shot, M.G. had made several unsuccessful attempts to stop the attack on his colleague by non-lethal means including verbal warnings, physical force and use of a baton. Moreover, the Investigation Division of the Colmar Court of Appeal had expressly found that if M.G. had used tear gas in the circumstances he would have run the risk of spraying his colleague and himself, which, in all likelihood, would only have made the situation worse.

The Court underscored that the gendarme, M.G., had had to respond to an attack that was as fierce as it was sudden, forcing him to react on the spur of the moment, especially since, as a volunteer private in the gendarmerie, he lacked the experience of a career gendarme.

Considering the difficulties of policing in modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, the scope of the positive obligation incumbent on the authorities must be interpreted in a way which does not impose an impossible burden on them.

In the circumstances of the case, the Court found, as had the national courts, whose decisions contained particularly comprehensive reasoning, that M.G. had acted in the honest belief that M.R.'s life was in danger and had genuinely believed it was necessary to use force. The investigation had not cast doubt on the genuineness or honesty of that belief, as was clear from the decisions of the investigating judge and the Investigation Division. M.G.'s decision to use his weapon had resulted in the firing of only a single shot, after verbal warnings were issued and his other attempts to stop the attack had failed. The Court observed that the threat to the gendarmes was further borne out by the ballistics analysis, whose conclusions had been endorsed by the Investigation Division. The analysis had shown that a single depression of the trigger would have sufficed to discharge the weapon, and that a person shackled at the wrists could have accomplished this without particular difficulty.

In the light of the foregoing and in particular of H.B.'s conduct – his wilful attack on the gendarme, M.R., in an attempt to seize her loaded service weapon even as M.G. tried unsuccessfully to deter him and bring him under control in a situation that was particularly dangerous for both gendarmes –

M.G.'s decision to use his firearm could in the circumstances be regarded as justified and absolutely necessary "in defence of any person against unlawful violence" within the meaning of Article 2 § 2 (a) of the Convention.

As regards the preparation and management of the transfer, the Court noted that the IGGN's administrative inquiry had found no breach of regulations. The Court saw no basis on which to infer any acknowledgment of liability or fault from the IGGN's recommendations on improvements to be made for future transfers. In particular, the findings made by the investigating judge in the discontinuance decision of 19 January 2016, regarding both the transfer from prison to court and the information supplied by the prison authorities, did not show a risk of attack so serious as to have warranted particularly heightened security measures during H.B.'s transfer. The Court could not, therefore, regard the transfer as not having been prepared and managed in such a way as to minimise any risk to H.B.'s life and the lives of the gendarmes.

The Court concluded that there had been no violation of Article 2 of the Convention.

The judgment 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. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR CEDH](https://twitter.com/ECHR_CEDH).

Press contacts

echrpresse@echr.coe.int | tel.: +33 3 90 21 42 08

We would encourage journalists to send their enquiries via email.

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)

Neil Connolly (tel.: + 33 3 90 21 48 05)

Jane Swift (tel.: + 33 3 88 41 29 04)

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.