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

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Application lodged by family of Chief Corporal A.C. murdered by Mohamed Merah in Montauban in 2012 declared inadmissible

In its decision in the case of Chennouf and Others v. France (application no. 4704/19) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the application lodged by the parents, widow and son of Chief Corporal A.C., a serviceman stationed in Montauban who was murdered by Mohamed Merah on 15 March 2012. They complained about the conduct of the competent authorities during the period preceding the death of their family member, alleging that those authorities had failed to take the necessary measures to prevent the attack that had cost him his life, thereby breaching their positive obligation to protect the right to life.

After specifying that it would confine its examination solely to the substantive aspect of Article 2 of the Convention, the Court found that the acknowledgment of a breach of Article 2 was evident from the terms of the settlement agreements signed by the victim's parents, from the National Police Inspectorate's report, which had highlighted the shortcomings and failings of the authorities tasked with monitoring Mohamed Merah, and from the unequivocal statements made by the Minister of the Interior and the French President following Chief Corporal A.C.'s murder. The Court further noted that although the administrative courts had ruled out any "gross" negligence on the part of the State authorities, regard being had to the particular difficulties inherent in preventing that kind of terrorist attack, they had nevertheless recognised shortcomings and errors of judgment on the part of those authorities.

Secondly, the Court noted that the applicants had all been compensated for the damage sustained owing to the death of their family member. Having found that the redress afforded by the domestic courts to compensate for the damage sustained had been both appropriate and sufficient, the Court concluded that the applicants were not victims, within the meaning of Article 34 of the Convention, of a substantive violation of Article 2.

Principal facts

The applicants, Ms Katia Chennouf, Mr Albert Chennouf-Meyer, Ms Caroline Chennouf-Monet and Mr Eden Chennouf, are French nationals who were born in 1958, 1952, 1991 and 2012 respectively, and live in Manduel and Garons. They are respectively the parents, widow and dependent child of A.C., who was murdered by Mohamed Merah on 15 March 2012 while serving in the military in Montauban.

From 2006 until March 2010 Mohamed Merah, who was born in Toulouse in 1988, was classified as a security threat on account of his connections in radical Islamist circles. He also had prior convictions for robbery with violence and at knifepoint, for which he had served a prison sentence between December 2007 and September 2009. His security classification was reactivated in January 2011.

A note dated 25 January 2012 reported on trips he had taken abroad, in particular to Pakistan, and on his assessment as part of an interview conducted by agents of the intelligence services upon his return to France, reproducing the explanations he had given to justify these trips as tourist and marital expeditions. In the absence of any firm indication that he had participated in jihadist training camps or in preparing terrorist attacks, and for want of any evidence to contradict his statements,

the note concluded that it was impossible to establish a link between any potential jihadist network and Mohamed Merah. It was thus decided to stop monitoring him as of January 2012.

On 11 March 2012, in Toulouse, Mohamed Merah murdered a serviceman. On 15 March 2012 he shot two servicemen dead in Montauban. Chief Corporal A. C. of the 17th Field Engineering Parachute Regiment, who was on active duty at the time, was among the victims. A third serviceman was severely injured. On 19 March Merah killed a teacher, two of the latter's children, and a pupil in front of Ozar Hatorah Elementary School in a residential neighbourhood of Toulouse. Mohamed Merah was ultimately shot dead by officers of the RAID (*Recherche, Assistance, Intervention, Dissuasion* – Search, Assistance, Intervention, Deterrence) tactical police unit on 22 March 2012.

In its capacity as A.C.'s employer, the Ministry of Defence compensated his family for the pecuniary and non-pecuniary damage sustained. First, it offered the third applicant, in her capacity as spouse and as mother of the couple's dependent child, compensation in respect of non-pecuniary damage in the amount of 11,000 euros (EUR). The sums proposed corresponded to the compensation paid to widows and children of servicemen killed in non-domestic operations. Moreover, pursuant to the Civilian and Military Retirement Pensions Code, she received pension payments corresponding to 100% of her husband's gross entitlement, namely EUR 17,002.43 per annum, in addition to EUR 51,007.29 by way of death grant and EUR 105,570.65 in capital from the military's provident fund, both from the Ministry of Defence, on top of which EUR 64,787.04 was paid out in respect of her son. Secondly, the Ministry of Defence signed settlement agreements with the first two applicants, A.C.'s mother and father, who were each paid compensation in respect of non-pecuniary damage in the amount of EUR 17,500. Those agreements contained a hand-written waiver, which specified that it applied "exclusively and exhaustively to any claim for damages on grounds of State negligence". Thirdly, the Insurance Fund for Victims of Terrorist Acts and Other Crimes (*Fonds de garantie des victims des actes de terrorisme et d'autres infractions* – "FGTI") awarded compensation in respect of non-pecuniary damage under the compensation scheme for victims of terrorist acts. A.C.'s parents each received EUR 16,500 and his widow EUR 35,000.

On 10 February 2014 the parents informed the Ministry of Defence that they wished to terminate the settlement agreements on the grounds that they would not have signed them had they known of the failings mentioned in the media by the Minister of the Interior, adding that they deemed the compensation paid insufficient. They did not bring proceedings before the domestic courts to have those settlements invalidated.

On 15 April 2013 and 29 December 2014 lawyers for the members of A.C.'s family sent the Ministry of the Interior a preliminary request for compensation in respect of damage sustained as a result of his murder, relying on the purported negligence of the intelligence services in the monitoring and surveillance of Mohammed Merah. That request went unanswered.

The applicants then lodged two applications with the Nîmes Administrative Court seeking compensation from the State in respect of damage sustained as a result of A.C.'s murder, alleging gross negligence on the part of the intelligence services for allowing Mohamed Merah to carry out a series of criminal acts for which they considered the State to be liable.

On 12 July 2016 the Nîmes Administrative Court held that the intelligence services' decision to stop monitoring Mohamed Merah constituted negligence in the performance of their mission to prevent terrorist acts and monitor radical individuals and that the State's liability was engaged.

The Ministry of the Interior appealed against the judgment, disputing that there had been any gross negligence on the part of the intelligence services such as to incur State liability.

On 4 April 2017 the Marseilles Administrative Court of Appeal set aside the impugned judgment and dismissed the applicants' claims after finding that the errors of judgment by the intelligence services did not constitute "gross negligence" such as to incur State liability.

On 18 July 2018 the *Conseil d'État*, to which the applicants had applied, dismissed their appeal on points of law against the judgment of the Administrative Court of Appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 16 January 2019.

Relying on Article 2 (right to life) of the Convention, in its substantive and procedural aspects, the applicants complained that France had breached its positive obligation to protect the right to life by failing to take the necessary steps to prevent the murder of their family member.

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

Georges **Ravarani** (Luxembourg), *President*,
Lado **Chanturia** (Georgia),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Mattias **Guyomar** (France),
Mykola **Gnatovskyy** (Ukraine),

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

Decision of the Court

Article 2

Having the power to decide on the characterisation of the facts, the Court first of all specified that it would confine its examination to the question of the alleged breach of duty on the part of the domestic authorities with regard solely to the substantive limb of Article 2 of the Convention.

The Court next pointed out that it had consistently held that a decision or measure favourable to the applicant was in principle sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention, provided the national authorities had acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention. It further reiterated that even in the event of death caused unintentionally by an agent of the State, which was not at issue in the present case, an award of damages through civil or administrative proceedings might offer appropriate redress, and that in cases of negligence attributable to the State, it had previously admitted that, where a settlement had been reached in civil proceedings, taking account of the use of the available domestic remedies, the award of substantial compensation and the discontinuance of the proceedings, an applicant would no longer be able to claim to be a victim for the purposes of a complaint lodged under the substantive limb of Article 2. Moreover, in the event of a settlement, an applicant could not claim to be a victim on grounds of insufficient compensation.

In the present case, the Court noted firstly that the State's liability was not disputed by the respondent Government, which had emphasised that the domestic authorities had all acknowledged errors of judgment, negligence and failings in the monitoring of Mohamed Merah. For its part, the Court found that the acknowledgment, in substance, of a breach of Article 2 of the Convention was evident from the terms of the settlement agreements entered into with the first two applicants on the basis of State liability, from the National Police Inspectorate's report, which had highlighted the shortcomings and failings of the services tasked with monitoring Mohamed Merah, and from the unequivocal statements made by the Minister of the Interior and the French President following A.C.'s murder.

Concerning the domestic courts, the Court noted that the Marseilles Administrative Court of Appeal and the *Conseil d'État* had ruled out any "gross" negligence on the part of the State authorities, regard being had to the particular difficulties inherent in preventing that kind of terrorist attack, but that they had nevertheless recognised shortcomings and errors of judgment on the part of those authorities. In addition, the applicants had not alleged that the legislative and regulatory framework put in place at the relevant time by the French authorities had, in itself, been incapable of protecting the right to life within the meaning of Article 2 of the Convention.

Secondly, as to whether there had been appropriate and sufficient redress, the Court noted that the applicants had all been compensated for the damage sustained owing to the death of their family member as a result of the acts committed by Mohamed Merah on 15 March 2012.

The first two applicants had accepted the administration's offer to pay each of them EUR 17,500 as compensation in respect of non-pecuniary damage owing to the death of their son. The settlement agreements had expressly indicated that State liability had been incurred and that the applicants undertook to waive any claim for damages on grounds of State negligence. The Court noted that the applicants had failed to lodge applications with the courts that had jurisdiction to invalidate the settlements and, in addition, that they had in fact been paid and had kept the sums they had been awarded. Moreover, the Court found that the FGTI had also paid each of them the sum of EUR 16,500 in compensation, that amount having been set by mutual agreement as a settlement for all damage resulting from the act of terrorism that had cost their son his life. That being the case, the Court took the view that the compensation ultimately paid to the first two applicants constituted appropriate and sufficient redress.

As to the third applicant, who was acting in her own name and that of her dependent son, the Court noted that she had refused to sign a settlement agreement recognising the State's liability and providing for compensation in the amount of EUR 11,000. The FGTI had however paid her the lump-sum of EUR 35,000 and she had been awarded that compensation without prejudice to any claims she may have had to payments in respect of the annual pension due under the Civilian and Military Retirement Pensions Code, the death grant and a payment from the military's provident fund. The compensation received by the third applicant had therefore also constituted appropriate and sufficient redress in the Court's view.

The Court concluded that the applicants could no longer claim to be the victims, within the meaning of Article 34 of the Convention, of a violation of the substantive limb of Article 2. The application was therefore incompatible with the provisions of the Convention and had to be declared inadmissible.

The decision 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.