



## Grand Chamber Panel's decisions

At its last meeting (Monday 2 June 2014), the Grand Chamber panel of five judges decided to refer three cases and to reject requests to refer 14 other cases<sup>1</sup>.

The following cases have been referred to the Grand Chamber of the European Court of Human Rights.

**Pentikäinen v. Finland** (application no. 11882/10): concerning the arrest of a media photographer during a demonstration and his subsequent conviction for disobeying the police.

**F.G. v. Sweden** (no. 43611/11): concerning the refusal of asylum to an Iranian national who alleges that if expelled to Iran he would be at a real risk of being persecuted and punished or sentenced to death.

**Perinçek v. Switzerland** (no. 27510/08): concerning the criminal conviction of the applicant for publicly challenging the existence of the Armenian genocide.

### Referral accepted

#### [Pentikäinen v. Finland \(application no. 11882/10\)](#)

The applicant, Markus Veikko Pentikäinen, is a Finnish national who was born in 1980 and lives in Helsinki (Finland). He is a photographer and journalist employed by a weekly magazine. Mr Pentikäinen was sent by his employer to take photos of a demonstration held on 9 September 2006 in protest against the Asia-Europe meeting (ASEM) in Helsinki. After the demonstration had turned violent, the police stopped the event, sealed off the demonstration area and allowed demonstrators to leave. Mr Pentikäinen remained in the area, where a small group of demonstrators was still gathered, to cover the events. Together with those demonstrators he was arrested. His conviction of December 2007 for disobeying the police was eventually upheld by the Supreme Court in September 2009, but the courts did not impose any penalty on him.

Mr Pentikäinen complains that his rights under Article 10 (freedom of expression) of the European Convention on Human Rights were violated by his arrest and conviction, as he was prevented from doing his job as a journalist.

In its Chamber [judgment](#) of 4 February 2014 the Court held, by five votes to two, that there had been no violation of Article 10 of the Convention. It found that the Finnish courts had struck a fair balance between the competing interests at stake and that they had therefore been entitled to decide that the interference with the applicant's freedom of expression had been "necessary in a democratic society". The Court underlined in particular that Mr Pentikäinen had not been arrested for acting as a photographer but for refusing to obey police orders to leave the scene of the demonstration. His equipment had not been confiscated and he had not been sanctioned.

<sup>1</sup> Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 2 June 2014 the case was referred to the Grand Chamber at the request of the applicant.

### [F.G. v. Sweden \(no. 43611/11\)](#)

The applicant, F.G., is an Iranian national who was born in 1962 and is currently in Sweden. He applied for asylum and a residence permit in Sweden in November 2009, stating in particular that he had been active in the opposition movement, that he had been arrested on two occasions, and that he had converted to Christianity after coming to Sweden. He therefore risked persecution if returning to Iran. He also submitted a summons to the Revolutionary Court in Iran ordering him to present himself at Evin prison in Teheran in November 2009. The Migration Board rejected his request in a decision eventually upheld by the migration courts in June 2011. The courts found in particular that the summons to the Revolutionary Court could not in itself substantiate a need for protection, and they doubted that F.G.'s political activities had been of such a nature and extent to lead to a risk of persecution. F.G.'s request to stay the enforcement of his expulsion to Iran was also rejected by the authorities in a decision eventually upheld in November 2011.

Relying on Article 2 (right to life) and Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention, F.G. complains that if expelled to Iran he would be at a real risk of being persecuted and punished or sentenced to death.

In its Chamber [judgment](#) of 16 January 2014 the Court held, by four votes to three, that F.G. had failed to substantiate that, if returned to Iran, he would face a real and concrete risk of being subjected to treatment contrary to Article 2 or 3 of the Convention. Consequently, it found that the implementation by Sweden of the expulsion order against the applicant would not give rise to a violation of these provisions. The Court also decided to continue to indicate to the Swedish Government, under Rule 39 (interim measures) of the [Rules of Court](#), not to expel F.G. until the Court's judgment became final or pending any further order.

On 2 June 2014 the case was referred to the Grand Chamber at the request of the applicant.

### [Perinçek v. Switzerland \(no.27510/08\)](#)

The applicant, Doğu Perinçek, is a Turkish national who was born in 1942 and lives in Ankara (Turkey). Being a doctor of laws and the Chairman of the Turkish Workers' Party, he participated in various conferences in Switzerland in May, July and September 2005, during which he publicly denied that the Ottoman Empire had perpetrated the crime of genocide against the Armenian people in 1915 and the following years. He described the idea of an Armenian genocide as an "international lie". The association "Switzerland-Armenia" filed a criminal complaint against him on 15 July 2005. On 9 March 2007 the Lausanne Police Court found Mr Perinçek guilty of racial discrimination within the meaning of the Swiss Criminal Code, finding that his motives were of a racist tendency and did not contribute to the historical debate. Mr Perinçek lodged an appeal that was dismissed by the Criminal Cassation Division of the Vaud Cantonal Court. In that court's view, the Armenian genocide, like the Jewish genocide, was a proven historical fact, recognised by the Swiss legislature on the date of the adoption of Article 261bis of the Criminal Code. The courts did not therefore need to refer to the work of historians in order to accept its existence. The Cassation Division emphasised that Mr Perinçek had only denied the characterisation as genocide without calling into question the existence of the massacres and deportations of Armenians. The Federal Court dismissed a further appeal by Mr Perinçek in a judgment of 12 December 2007.

Relying on Article 10 (freedom of expression) of the Convention, Mr Perinçek complains that the Swiss courts breached his freedom of expression. He argues, in particular, that Article 261bis, paragraph 4, of the Swiss Criminal Code is not sufficiently foreseeable in its effect, that his conviction was not justified by the pursuit of a legitimate aim and that

the alleged breach of his freedom of expression was not “necessary in a democratic society”.

In its Chamber [judgment](#) of 17 December 2013 the Court held, by five votes to two, that there had been a violation of Article 10 of the Convention. It took the view that the grounds given by the Swiss authorities to justify the applicant’s conviction were not all pertinent and that, taken as a whole, they proved insufficient. The Court observed that the domestic authorities had not shown, in particular, that the applicant’s conviction met a “pressing social need” or that it was necessary in a democratic society for the protection of the honour and feelings of the descendants of the victims of the atrocities which dated back to 1915 and the following years. The Court therefore found that the domestic authorities had overstepped the margin of appreciation afforded to them in the present case, which had arisen in the context of a debate of undeniable public interest.

On 2 June the case was referred to the Grand Chamber at the request of the Swiss Government.

## Requests for referral rejected

Judgments in the following 14 cases are now final<sup>2</sup>.

### Requests for referral submitted by the applicants

**Ojala and Etukeno Oy v. Finland** (application no. 69939/10), [judgment](#) of 14 January 2014

**de Lesquen du Plessis-Casso v. France (no. 2)** (no. 34400/10), [judgment](#) of 30 January 2014

**Jones and Others v. the United Kingdom** (nos. 34356/06 and 40528/06), [judgment](#) of 14 January 2014

**Vikentijevik v. “the former Yugoslav Republic of Macedonia”** (no. 50179/07), [judgment](#) of 6 February 2014

### Requests for referral submitted by the Government

**Zhou v. Italy** (no. 33773/11), [judgment](#) of 21 January 2014

**Akhmatov and Others v. Russia** (nos. 38828/10, 2543/11, 2650/11, 2685/11, 7409/11, 14321/11 and 26277/11), [judgment](#) of 16 January 2014

**Budanov v. Russia** (no. 66583/11), [judgment](#) of 9 January 2014

**Pitsayeva and Others v. Russia** (nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10 and 66420/10), [judgment](#) of 9 January 2014

**Shchiborshch and Kuzmina v. Russia** (no. 5269/08), [judgment](#) of 16 January 2014

**Camekan v. Turkey** (no. 54241/08), [judgment](#) of 28 January 2014

**Oruk v. Turkey** (no. 33647/04), [judgment](#) of 4 February 2014

**Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey** (no. 21377/03), [judgment](#) of 21 January 2014

### Request for referral submitted by the Government

**Pelipenko v. Russia** (no. 69037/10), [judgment](#) (just satisfaction) of 16 January 2014

**East/West Alliance Limited v. Ukraine** (no. 19336/04), [judgment](#) of 23 January 2014

<sup>2</sup> Under Article 44 § 2 (c) of the European Convention on Human Rights, the judgment of a Chamber becomes final when the panel of the Grand Chamber rejects the request to refer under Article 43.

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