



Grand Chamber Panel's decisions

At its last meeting (Monday 6 June 2016), the Grand Chamber panel of five judges decided to refer one case to the Grand Chamber, to adjourn one referral request, and to reject requests to refer 24 other cases¹.

The following case has been referred to the Grand Chamber of the European Court of Human Rights.

Bărbulescu v. Romania (application no. 61496/08): which concerns an employee's dismissal by a private company for having used the company's Internet for personal purposes during working hours, in breach of internal regulations.

Referral accepted

[Bărbulescu v. Romania \(application no. 61496/08\)](#)

The applicant, Bogdan Mihai Bărbulescu, is a Romanian national who was born in 1979 and lives in Bucharest.

From 1 August 2004 until 6 August 2007 Mr Bărbulescu was employed by a private company as an engineer in charge of sales. At his employers' request, he created a Yahoo Messenger account for the purpose of responding to clients' enquiries. On 13 July 2007 Mr Bărbulescu was informed by his employer that his Yahoo Messenger communications had been monitored from 5 to 13 July 2007 and that the records showed he had used the internet for personal purposes. Mr Bărbulescu replied in writing that he had only used the service for professional purposes. He was presented with a transcript of his communication including transcripts of messages he had exchanged with his brother and his fiancée relating to personal matters such as his health and sex life. On 1 August 2007 the employer terminated Mr Bărbulescu's employment contract for breach of the company's internal regulations that prohibited the use of company resources for personal purposes.

Mr Bărbulescu challenged his employer's decision before the courts complaining that the decision to terminate his contract was null and void as his employer had violated his right to correspondence in accessing his communications in breach of the Constitution and Criminal Code. His complaint was dismissed on the grounds that the employer had complied with the dismissal proceedings provided for by the Labour Code and that Mr Bărbulescu had been duly informed of the company's regulations.

Mr Bărbulescu appealed claiming that e-mails were protected by Article 8 (right to respect for private and family life, the home and correspondence) of the European Convention on Human Rights and that the first-instance court had not allowed him to call witnesses to prove that his employer had not suffered as a result of his actions. In a final decision on 17 June 2008 the Court of Appeal dismissed his appeal and, relying on European Union law, held that the employer's conduct had been reasonable and that the monitoring of Mr Bărbulescu's communications had been the only method of establishing whether there had been a disciplinary breach. Furthermore, the Court of Appeal held that the evidence before the first-instance court had been sufficient.

¹ 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.

Relying in particular on Article 8 of the European Convention, Mr Bărbulescu complains that his employer's decision to terminate his contract was based on a breach of his privacy.

In its Chamber [judgment](#) of 12 January 2016, the European Court of Human Rights held, by six votes to one, that there had been no violation of Article 8 of the Convention, finding that the domestic courts had struck a fair balance between Mr Bărbulescu's right to respect for his private life and correspondence under Article 8 and the interests of his employer. The Court noted, in particular, that Mr Bărbulescu's private life and correspondence had been engaged. However his employer's monitoring of his communications had been reasonable in the context of disciplinary proceedings.

On 6 June 2016 the Grand Chamber Panel accepted Mr Bărbulescu's request that the case be referred to the Grand Chamber.

Request for referral adjourned

[Request for referral submitted by the applicants](#)

D.A. and Others v. Italy (nos. 68060/12, 16178/13, 23130/13, 23149/13, 64572/13, 13662/13, 13837/13, 22933/13, 13668/13, 13657/13, 22918/13, 22978/13, 22985/13, 22899/13, 9673/13, 158/12, 3892/12, 8154/12 and 41143/12), [judgment](#) of 14 January 2016²

Requests for referral rejected

Judgments in the following 24 cases are now final³.

[Requests for referral submitted by the applicants](#)

Genner v. Austria (application no. 55495/08), [judgment](#) of 12 January 2016

Hilal Mammadov v. Azerbaijan (no. 81553/12), [judgment](#) of 4 February 2016

Sow v. Belgium (no. 27081/13), [judgment](#) of 19 January 2016

A.G.R. v. the Netherlands (no. 13442/08), [judgment](#) of 12 January 2016

Rywyn v. Poland (nos. 6091/06, 4047/07 and 4070/07), [judgment](#) of 18 February 2016

Neškoska v. "The former Yugoslav Republic of Macedonia" (no. 60333/13), [judgment](#) of 21 January 2016

Dallas v. the United Kingdom (no. 38395/12), [judgment](#) of 11 February 2016

[Requests for referral submitted by the Government](#)

Bilbija and Blažević v. Croatia, (no. 62870/13), [judgment](#) of 12 January 2016

Kalda v. Estonia (no. 17429/10), [judgment](#) of 19 January 2016

Konstantinopoulos and Others v. Greece (no. 69781/13), [judgment](#) of 28 January 2016

Szabó and Vissy v. Hungary (no. 37138/14), [judgment](#) of 12 January 2016

A.L. (X.W.) v. Russia (no. 44095/14), [judgment](#) of 29 October 2015⁴

² Referral to the Grand Chamber requested by the following applicants: S.A. and 305 others (application no. 8154/12) and M.A. and Others (no. 41143/12).

³ 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.

⁴ Referral request rejected as belated; pursuant to Article 44 § 2 of the Convention, the judgment of 29 October 2015 therefore became final on 29 January 2016.

Dalakov v. Russia (no. 35152/09), [judgment](#) of 16 February 2016

Dzhabrailovy v. Russia (no. 68860/10), [judgment](#) (revision) of 4 February 2016

Frumkin v. Russia (no. 74568/12), [judgment](#) of 5 January 2016

Khachukayevy v. Russia (no. 34576/08), [judgment](#) of 9 February 2016

Khayletdinov v. Russia (no. 2763/13), [judgment](#) of 12 January 2016

Kleyn v. Russia (no. 44925/06), [judgment](#) of 5 January 2016

Nazyrova and Others v. Russia (nos. 21126/09, 63620/09, 64811/09, 32965/10 and 64270/11), [judgment](#) of 9 February 2016

R. v. Russia (no. 11916/15), [judgment](#) of 26 January 2016

Salikhova and Magomedova v. Russia (no. 63689/13), [judgment](#) of 26 January 2016

Gülcü v. Turkey (no. 17526/10), [judgment](#) of 19 January 2016

Öztünç v. Turkey (no. 14777/08), [judgment](#) of 9 February 2016

Party for a Democratic Society (DTP) and Others v. Turkey (nos. 3840/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10), [judgment](#) of 12 January 2016

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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.