



Grand Chamber Panel's decisions

At its last meeting (Monday 29 May 2017), the Grand Chamber panel of five judges decided to refer two cases, to adjourn two referral requests and to reject requests to refer 16 other cases¹.

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

Ilseher v. Germany (applications nos. 10211/12 and 27505/14): concerning the lawfulness of a convicted murderer's preventive detention;

Navalnyy v. Russia (nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14): concerning the arrest of Aleksey Navalnyy on seven occasions at different public gatherings, and his subsequent prosecution for administrative offences.

Referrals accepted

[Ilseher v. Germany \(applications nos. 10211/12 and 27505/14\)](#)

The applicant, Daniel Ilseher, is a German national who was born in 1978 and is currently detained in a centre for persons in preventive detention on the premises of Straubing Prison (Germany).

In 1999, Mr Ilseher was convicted of murder in the Regensburg Regional Court and sentenced to ten years' imprisonment under the criminal law applicable to young offenders. The court found that in June 1997, Mr Ilseher, then aged 19, had strangled a woman who had been jogging on a forest path.

From July 2008 onwards, after he had served his full prison sentence, Mr Ilseher was remanded in provisional preventive detention. In June 2009, the Regensburg Regional Court ordered his retrospective preventive detention. The court, having regard to reports by a criminological expert and a psychiatric expert, found that Mr Ilseher was still harbouring violent sexual fantasies and that there was a high risk that he would again commit serious violent and sexual offences if released, including murder for sexual gratification.

From March 2010 until December 2013, Mr Ilseher engaged in proceedings before the German courts challenging the lawfulness of his preventive detention. In May 2011, he successfully appealed to the Federal Constitutional Court, which quashed the order for his preventive detention and remitted his case to the Regional Court. On 6 May 2011, the Regional Court, however, once again ordered Mr Ilseher's provisional preventive detention. After a series of appeals, the courts ultimately found that his preventive detention had been necessary, as a comprehensive assessment of Mr Ilseher, his offence, and his development during the enforcement of his sentence revealed that there was a high risk that he could commit serious crimes of a violent and sexual nature, similar to the one he had been found guilty of, if released. It was further noted that he still suffered from a sexual preference disorder (sexual sadism) which had caused and been manifested in his offence and that the therapy he had undergone until 2007 had not been successful. Since 20 June 2013, Mr

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.

Ilseher has been detained in a newly-built preventive detention centre at Straubing Prison. He has refused all offers of therapy at that centre.

In the new main proceedings on his retrospective preventive detention before the Regensburg Regional Court, Mr Ilseher also lodged a motion for bias against one of the judges of that court, Judge P., who had ordered his retrospective preventive detention in June 2009 and a subsequent order in 2012. Judge P. had allegedly made a remark in a private meeting between Mr Ilseher's counsel and judges of the Regional Court in 2009, warning Mr Ilseher's lawyer to be careful after his release not to find him standing in front of her door waiting to "thank" her in person. The case was dismissed and was also dismissed on appeal to the Federal Court of Justice and the Federal Constitutional Court.

The proceedings for review of Mr Ilseher's provisional preventive detention lasted in total 11 months and one day over three levels of jurisdiction; and in particular eight months and 22 days before the Federal Constitutional Court.

Relying on Article 5 § 1 (right to liberty and security) and Article 7 § 1 (no punishment without law) of the European Convention on Human Rights, Mr Ilseher complains that his retrospective preventive detention has violated his right to liberty, and his right not to have a heavier penalty imposed than the one applicable at the time of his offence. Lastly, he complains under Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) about the duration of the proceedings for review of his provisional preventive detention and under Article 6 § 1 (right to a fair trial) about the lack of impartiality of one of the judges who had ordered his retrospective preventive detention.

In its Chamber [judgment](#) of 2 February 2017, the European Court of Human Rights held, unanimously, that there had been no violation of Article 5 § 1 or Article 7 of the European Convention on account of Mr Ilseher's retrospective preventive detention from the moment when he was placed in a centre for psychiatric treatment, namely 20 June 2013 onwards; no violation of Article 5 § 4 on account of the duration of the proceedings for review of Mr Ilseher's provisional preventive detention; and no violation of Article 6 on account of the alleged lack of impartiality of one of the judges who had ordered his retrospective preventive detention. Furthermore, the Chamber decided, unanimously, to strike out of its list of cases the part of the application concerning Mr Ilseher's preventive detention from 6 May 2011 (namely, the date when the preventive detention order in question was issued) until 20 June 2013, in view of the Government's declaration recognising that Mr Ilseher had not been detained in a suitable institution for the detention of mental health patients during that period and awarding him compensation.

On 29 May 2017 the Grand Chamber Panel accepted Mr Ilseher's request that the case be referred to the Grand Chamber.

[Navalnyy v. Russia \(nos. 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14\)](#)

The applicant, Aleksey Navalnyy, is a Russian national who was born in 1976 and lives in Moscow. He is a political activist, opposition leader, anti-corruption campaigner and popular blogger.

On the evening of 5 March 2012, Mr Navalnyy was arrested during a meeting held in Moscow's Pushkinskaya Square involving around 500 people, which was devoted to the allegedly rigged Russian presidential elections. During an overnight "walkabout" in Moscow on 8 May 2012, where activists met to discuss the inauguration of President Putin the previous day, Mr Navalnyy was arrested without warning on two occasions: firstly in the early hours of the morning whilst walking down Lubyanskiy Proyezd accompanied by about 170 people; and secondly between 11p.m. and midnight, whilst walking down Bolshaya Nikitskaya Street in a group of around 50 people. At 6 a.m. on 9 May 2012 Mr Navalnyy was arrested in Kudrinskaya Square in Moscow whilst in a gathering of 50 to 100 people discussing current affairs. On 27 October 2012 Mr Navalnyy had picketed the Russian Investigation Committee to protest against "repressions and torture" in co-ordination with

around 30 others, and was arrested – according to him, whilst walking away from the event. Finally, Mr Navalnyy was arrested twice on 24 February 2014: first when attending Zamoskvoretskiy District Court for the delivery of the judgment in a case concerning Bolotnaya Square protestors; and second when attending a public gathering of around 150 participants in Tverkaya Street later that evening.

Following each of the arrests, Mr Navalnyy was taken to a police station for several hours, while an offence report was drawn up. He was then charged with an administrative offence, of either breaching the established procedure for conducting public events (under Article 20.2 of the Code of Administrative Offences); or disobeying a lawful order of the police (under Article 19.3 of the Code). On two of the occasions, after being arrested and charged he was kept in pre-trial detention (for a number of hours on 9 May 2012; and overnight on the evening of 24 February 2014). All of the charges led to a hearing, in which Mr Navalnyy was duly convicted of an offence. On five occasions he was sentenced to a fine, ranging from 1,000 to 30,000 Russian roubles; and on two occasions he was sentenced to administrative detention (fifteen and seven days' long). All of Mr Navalnyy's appeals against the judgments were dismissed.

Relying on Article 11 (right to freedom of assembly) of the European Convention on Human Rights, Mr Navalnyy complains that the authorities repeatedly interrupted peaceful, non-violent gatherings, by arresting, prosecuting and eventually convicting him. Relying on Article 5 (right to liberty), he complains that the seven arrests (and two instances of pre-trial detention) were unlawful and arbitrary deprivations of his liberty. Relying on Article 6 (right to a fair trial), he complains that the subsequent proceedings against him were all unfair. Finally, Mr Navalnyy relies on Article 14 (prohibition of discrimination), as well as Article 18 (limitation on the restriction of rights) taken in conjunction with Articles 5 and 11, to complain that the authorities' actions were politically motivated.

In its Chamber [judgment](#) of 2 February 2017, the European Court of Human Rights held, unanimously, that there had been a violation of Article 11 of the European Convention, finding that all seven arrests had been disproportionate reactions to peaceful political gatherings, undertaken without any assessment of whether they had been justified. Taken together with other cases, they suggested the existence of a practice whereby police would interrupt an unnotified but peaceful gathering and arrest the participants as a matter of routine. The Chamber also held, unanimously, that there had been a violation of Article 5 § 1 on account of Mr Navalnyy's arrest on seven occasions and his pre-trial detention on two occasions, as no reason had been given as to why they were necessary in the circumstances. The Chamber further found, unanimously, that there had been no violation of Article 6 § 1 as regards the administrative proceedings concerning the events of 5 March 2012. It found, however, that there had been a violation of Article 6 § 1 as regards the remaining six sets of administrative proceedings. In this respect, it noted in particular that the Russian courts had based their judgments solely on the versions of events put forward by the police, whilst systematically failing to check their allegations, refusing Mr Navalnyy's requests for the court to examine evidence, and automatically presuming bias on behalf of all witnesses who had testified in his favour. Lastly, given those findings, the Chamber held: by four votes to three, that there was no need to examine Mr Navalnyy's complaint under Article 18 in conjunction with Article 5; unanimously, that there was no need to examine his complaint under Article 18 in conjunction with Article 11; and, unanimously, that there was no need to examine his complaint under Article 14.

On 29 May 2017 the Grand Chamber Panel accepted the request of both Mr Navalnyy and the Russian Government that the case be referred to the Grand Chamber.

Requests for referral adjourned

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

Saumier v. France (no. 74734/14), [judgment](#) of 12 janvier 2017

Request for referral submitted by the applicants and the Government

A.H. and Others v. Russia (nos. 6033/13, 8927/13, 10549/13, 12275/13, 23890/13, 26309/13, 27161/13, 29197/13, 32224/13, 32331/13, 32351/13, 32368/13, 37173/13, 38490/13, 42340/13 and 42403/13), [judgment](#) of 17 January 2017

Requests for referral rejected

Judgments in the following 16 cases are now final².

Requests for referral submitted by the applicants

Habran and Dalem v. Belgium (applications nos. 43000/11 and 49380/11), [judgment](#) of 17 January 2017³

Ivan Todorov v. Bulgaria (no. 71545/11), [judgment](#) of 19 January 2017

Béres and Others v. Hungary (nos. 59588/12, 59632/12 and 59865/12), [judgment](#) of 17 January 2017

Vidu and Others v. Romania (no. 9835/02), [judgment](#) (revision) of 17 January 2017

Rozhkov v. Russia (no. 2) (no. 38898/04), [judgment](#) of 31 January 2017

Lindstrand Partners Advokatbyrå AB v. Sweden (no. 18700/09), [judgment](#) of 20 December 2016

Osmanoglu and Kocabas v. Switzerland (no. 29086/12), [judgment](#) of 10 January 2017

Gümrükçüler and Others v. Turkey (no. 9580/03), [judgment](#) (just satisfaction) of 7 February 2017

Önkol v. Turkey (no. 24359/10), [judgment](#) of 17 January 2017

Requests for referral submitted by the Government

Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal (no. 31566/13), [judgment](#) of 17 January 2017

Kasparov and Others v. Russia (no. 2) (no. 51988/07), [judgment](#) of 13 December 2016

Khamidkariyev v. Russia (no. 42332/14), [judgment](#) of 26 January 2017

Lashmankin and Others v. Russia (nos. 57818/09 and 14 other applications), [judgment](#) of 7 February 2017

Terentyev v. Russia (no. 25147/09), [judgment](#) of 26 January 2017

Kutlu and Others v. Turkey (no. 51861/11), [judgment](#) of 13 December 2016

Request for referral submitted by a third party

Sagvolden v. Norway (no. 21682/11), [judgment](#) of 20 December 2016⁴

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² 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.

³ Request for referral submitted by Mr Habran.

⁴ Request for referral submitted by Mr A., an heir of the deceased applicant, who was not a party to the case.

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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.