



## Grand Chamber Panel's decisions

At its last meeting (Monday 28 May 2018), the Grand Chamber panel of five judges decided to refer two 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.

**Magyar Kétfarkú Kutya Párt v. Hungary** (application no. 201/17): which concerns a political party's complaint about domestic court findings that a mobile telephone application it developed to allow voters to show and comment on invalid ballots cast during a 2016 referendum on European Union migrant relocation plans broke election rules;

**López Ribalda and Others v. Spain** (nos. 1874/13 and 8567/13): which concerns the covert video surveillance of a Spanish supermarket chain's employees at their workplace after suspicions of theft had arisen.

### Referral accepted

#### [Magyar Kétfarkú Kutya Párt v. Hungary \(application no. 201/17\)](#)

The applicant, Magyar Kétfarkú Kutya Párt, is a political party registered in Budapest (Hungary).

The case concerns the party's complaint about domestic court findings that a mobile telephone application it developed to allow voters to show and comment on invalid ballots cast during a 2016 referendum on European Union migrant relocation plans broke election rules.

Voters could use the app to post anonymous photographs of invalid ballot papers and comments on reasons for how they cast their ballots. Following a complaint by a private individual, the National Election Commission fined the party after finding that the app broke rules on fair elections, voting secrecy and the proper exercise of rights.

The *Kúria* (Supreme Court) ultimately only upheld the decision on the proper exercise of rights and reduced the fine. A complaint to the Constitutional Court was deemed inadmissible.

The application was lodged with the European Court of Human Rights on 16 December 2016.

The applicant party complains under Article 10 (right to freedom of expression) of the European Convention on Human Rights.

In its Chamber [judgment](#) of 23 January 2018, the European Court of Human Rights held, unanimously, that there had been a violation of Article 10 of the Convention. The Chamber noted in particular that the applicant party had developed the mobile phone application precisely for the purpose of allowing voters to use information and communication technologies to share opinions through anonymous photographs of invalid ballot papers. The app thus had a communicative value and so constituted expression on a matter of public interest. Furthermore, as the *Kúria* had emphasised, it was not possible to identify voters through the anonymously uploaded photographs

<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.

and although the posting of the photographs had infringed the principle of the proper exercise of rights, it had not affected the fair conduct of the vote. The Chamber was therefore satisfied that the applicant's conduct had not undermined the secrecy or fairness of the referendum. Lastly, while it was true that the domestic authorities had established that the use of ballot papers for any other purpose than casting a vote infringed section 2(1)(e) of the Act on Electoral Procedure, the Government had not convincingly established any link between that principle of domestic law and the aims exhaustively listed in paragraph 2 of Article 10. The sanction imposed on the applicant had therefore not met the requirements of Article 10 § 2 of the Convention.

On 28 May 2018 the Grand Chamber Panel accepted the Government's request that the case be referred to the Grand Chamber.

### [López Ribalda and Others v. Spain \(nos. 1874/13 and 8567/13\)](#)

The applicants, Isabel López Ribalda, María Ángeles Gancedo Giménez, María Del Carmen Ramos Busquets, Pilar Saborido Apresa, and Carmen Isabel Pozo Barroso, are five Spanish nationals who were born in 1963, 1967, 1969 and 1974 respectively and live in Sant Celoni and Sant Pere de Vilamajor (Ms Pozo Barroso) (both in Spain).

The case concerns the covert video surveillance of the applicants at their workplace. In June 2009 they were all working as cashiers for M.S.A., a family-owned supermarket chain. The surveillance was carried out by their employer in order to investigate possible theft after the shop manager had noticed irregularities between stock levels and what was actually sold on a daily basis.

The employer installed both visible and hidden cameras. The company told its workers about the visible cameras but not about the hidden ones and they were thus never aware that they were being filmed. All the workers suspected of theft were called to individual meetings where the videos were shown to them. They had caught the applicants helping customers and other co-workers to steal items and stealing them themselves.

The applicants admitted involvement in the thefts and were dismissed on disciplinary grounds.

Three of the five applicants signed a settlement agreement acknowledging their involvement in the thefts and committing themselves not to challenge their dismissal before the labour courts, while the employer company committed itself not to initiate criminal proceedings against them. The other two applicants did not sign an agreement. All the applicants ultimately went to court, but the dismissals were upheld at first-instance by the Granollers Employment Tribunals and on appeal by the High Court of Justice of Catalonia. The courts accepted the video evidence as having been obtained lawfully.

The application was lodged with the European Court of Human Rights on 28 December 2012.

Relying on Article 8 (right to respect for private life) and Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, the applicants complain about the covert video surveillance and the courts' use of the data obtained to find that their dismissals had been fair. Three of the applicants also complain that the settlement agreements were made under duress owing to the video material and should not have been accepted as evidence that their dismissals had been fair. Lastly, the first applicant also complains that the judgments had lacked proper motivation as to her specific circumstances or any reasoning leading to the conclusion that her dismissal had been fair.

In its Chamber [judgment](#) of 9 January 2018, the European Court of Human Rights held, by six votes to one, that there had been a violation of Article 8 of the Convention. The Chamber found in particular that under Spanish data protection legislation the applicants should have been informed that they could eventually be placed under surveillance, but they had not been.

The Chamber noted that the legislation in force at the time of the facts of the case clearly established that every data collector had to inform the data subjects of the existence of a means of

collecting and processing their personal data. In a situation where the right of every such subject to be informed of the existence, aim and manner of covert video surveillance was clearly regulated and protected by law, the applicants had had a reasonable expectation of privacy. The Chamber did not share the domestic courts' view on the proportionality of the measures taken by the employer with the legitimate aim of protecting the employer's interest in the protection of its property rights. The employer's rights could have been safeguarded by other means and it could have provided the applicants at the least with general information about the surveillance. The domestic courts had thus not struck a fair balance between the applicants' privacy rights and the employer's property rights.

The Chamber held, however, that there had been no violation of Article 6 § 1 of the Convention. It found in particular that the proceedings as a whole had been fair because the video material was not the only evidence the domestic courts had relied on when upholding the dismissal decisions and the applicants had been able to challenge the recordings in court.

As regards the first applicant's last complaint, the Chamber found that it did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

On 28 May 2018 the Grand Chamber Panel accepted the Government's request that the case be referred to the Grand Chamber.

## Requests for referral rejected

Judgments in the following 16 cases are now final<sup>2</sup>.

### Requests for referral submitted by the applicants

**Ceesay v. Austria** (application no. 72126/14), [judgment](#) of 16 November 2017

**Bikas v. Germany** (no. 76607/13), [judgment](#) of 25 January 2018

**J.R. and Others v. Greece** (no. 22696/16), [judgment](#) of 25 January 2018

**Koureas and Others v. Greece** (no. 30030/15), [judgment](#) of 18 January 2018

**Stănculeanu v. Romania** (no. 26990/15), [judgment](#) of 9 January 2018

**Gabriela Kaiser v. Switzerland** (no. 35294/11), [judgment](#) of 9 January 2018

**Feldman and Slovyanskyy Bank v. Ukraine** (no. 42758/05), [judgment](#) of 21 December 2017

### Requests for referral submitted by the Government

**Sharxhi and Others v. Albania** (no. 10613/16), [judgment](#) of 11 January 2018

**Akarsubaşı and Alçiçek v. Turkey** (no. 19620/12), [judgment](#) of 23 January 2018

**Çölgeçen and Others v. Turkey** (nos. 50124/07, 53082/07, 53865/07, 399/08, 776/08, 1931/08, 2213/08 and 2953/08), [judgment](#) of 12 December 2017

**Dinçer v. Turkey** (no. 17843/11), [judgment](#) of 16 January 2018

**İncin v. Turkey** (no. 3534/06), [judgment](#) of 9 January 2018

**Kuveydar v. Turkey** (no. 12047/05), [judgment](#) of 19 December 2017

**Öğrü and Others v. Turkey** (nos. 60087/10, 12461/11 and 48219/11), [judgment](#) of 19 December 2017

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<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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