



Inadequately planned operation and excessive use of force by special armed police unit during arrest of suspect: violation of Convention

In today's Chamber judgment¹ in the case of [Castellani v. France](#) (application no. 43207/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights.

The case concerned a complaint by the applicant that he was the victim of acts of violence during his arrest at his home by the GIPN, a special armed police unit, in the presence of his wife and daughter.

The Court found in particular that the police operation at the applicant's home had not been planned or carried out in such a way that the means used were strictly necessary to fulfil its ultimate aim, the arrest of a suspect.

The applicant had not been charged with resisting arrest and the actions of a number of police officers, wearing helmets and protected by shields, had been particularly violent.

The Court found that the means used were thus not strictly necessary for the applicant's arrest and the physical force used against him had not been made necessary by his conduct.

Principal facts

The applicant, Joseph Castellani, is a French national who was born in 1956 and lives in Contes (France).

In May 2002 a judicial investigation was opened against persons unknown for witness tampering and death threats following a complaint filed by a lawyer who had testified in a case concerning acts of violence against the police, in which three members of the E.H. family had been convicted. The main suspects in the investigation were members of the same E.H. family, who were the applicant's friends and neighbours.

On 18 June 2002 the Nice police force requested and obtained the support of the GIPN (special armed intervention unit of the national police) to arrest members of the E.H. family. At the request of police chief R., the head of the GIPN unit agreed to intervene to arrest Mr Castellani, who was implicated in the same case. The circumstances of the police operation are disputed by the parties. On 13 November 2002 a discontinuance decision was given by the investigating judge, dropping the witness-tampering and death-threat charges which had prompted Mr Castellani's arrest.

On 13 January 2009 the Criminal Court found Mr Castellani guilty of possessing a weapon without a permit and he was given a suspended sentence consisting of a fine. The court acquitted him on the charges of wilful assault against a person vested with public authority, accepting that he had acted in self-defence on the ground that he could legitimately have believed he was under attack in his home.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 18 November 2002 Mr Castellani filed a criminal complaint, with an application to join the proceedings as a civil party, for failure to assist a person in danger, wilful violence and barbaric acts. A judicial investigation was opened on 7 December 2002. On 2 July 2004 the investigating judge decided to drop some of the charges, only maintaining the charge against certain police officers of failure to assist a person in danger, for which they were committed to stand trial before the Nice Criminal Court. Following an appeal by the applicant, the Court of Appeal annulled the partial discontinuance of the investigation and ordered that it be resumed on the basis of the original charges.

A second partial discontinuance decision was given on 27 January 2006 dismissing the charges of wilful violence by persons vested with public authority. The applicant appealed. In a judgment of 15 June 2006 the Court of Appeal upheld the discontinuance on the charge of barbaric acts. In a judgment of 25 October 2007 it also upheld the discontinuance on the charge of wilful violence by persons vested with public authority.

On 26 June 2009 Mr Castellani sued the State to obtain compensation for the damage caused to him. In a judgment of 5 April 2011 the court took the view that by sending the GIPN to arrest the applicant the State had committed an act of serious negligence engaging its responsibility. The State was ordered to pay him 59,000 euros (EUR) by way of compensation and EUR 3,500 in costs. On 12 April 2012 the Aix-en-Provence Court of Appeal upheld the admissibility of Mr Castellani's action but quashed the remainder of the judgment and dismissed the applicant's claims. Mr Castellani was ordered to pay EUR 1,700 under Article 700 of the Code of Civil Procedure in addition to costs.

The Court of Cassation quashed the judgment and referred the case and the parties back to the Court of Appeal of Montpellier. By a judgment of 27 January 2015 that court found that it had not been proven that the GIPN's intervention had entailed negligence engaging the State's responsibility. It took the view that it could not be established that this intervention had been pointless or disproportionate in view not only of the acts committed by the applicant to defend himself, but also of his persistence in resisting arrest. However, the Court of Appeal found that the State had committed serious negligence on account of a failure to provide medical care to the applicant while in police custody. The State was ordered to pay EUR 5,000 by way of compensation for the lack of medical care and EUR 2,000 under Article 700 of the Code of Civil Procedure.

On 10 February 2016 the Court of Cassation dismissed the applicant's appeal on points of law.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant complained that he had been the victim of acts of violence when arrested by the police, adding that the intervention of the GIPN and the use of force were neither necessary nor proportionate.

The application was lodged with the European Court of Human Rights on 19 July 2016.

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

Síofra **O'Leary** (Ireland), *President*,
Gabriele **Kucsko-Stadlmayer** (Austria),
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Mārtiņš **Mits** (Latvia),
Lado **Chanturia** (Georgia),
Anja **Seibert-Fohr** (Germany),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 3

The Court noted at the outset that all the medical certificates in the file recorded that the applicant had suffered significant injuries. In addition to physical suffering, the applicant had had to endure mental suffering. Mr Castellani's arrest, very early in the morning at his home, after the gate and front door had been forced open by numerous hooded and armed officers in front of his girlfriend and daughter, had necessarily provoked strong feelings of fear and anxiety in him, with the potential for him to be humiliated and degraded in his own eyes and in the eyes of his family.

As regards the planning of the operation, the Court took the view that, in principle, it was not its role to pass judgment on the choice of a particular unit for the arrest of an individual to be questioned in a criminal investigation. Nevertheless, it reiterated a previous finding that the intervention of special units, which were usually engaged in situations of extreme violence or particularly dangerous situations requiring prompt and firm reactions, could entail particular risks of abuse of authority and violation of human dignity. The intervention of such units therefore had to be surrounded by sufficient safeguards (compare *Kučera v. Slovakia*, no. 48666/99, § 122, 17 July 2007).

The purpose of the police intervention with the assistance of the GIPN had initially been to arrest the E.H. family. The commanding officer had asked the investigating judge for the GIPN's intervention, which had then been agreed by the Director of Public Security, in order to arrest, not the applicant, but only the members of that family who had already been convicted of violence and abduction of a police officer. It was only after some members of that family had been arrested that police chief R. had taken advantage of the opportunity afforded by the presence of the GIPN to request its assistance in the arrest of the applicant, who was suspected of being implicated in the same offences, but without informing the investigating judge or securing the agreement of the Director of Public Security. The Court therefore noted that the operation had not been accompanied by the existing internal safeguards normally surrounding the intervention of this type of special unit.

With regard to the applicant's character, the domestic courts had considered that the claim of the applicant's dangerousness, which had been used to justify the intervention of the GIPN, stemmed only from statements by the police officers who had requested the intervention and was not supported by any evidence.

Furthermore, some domestic courts had themselves questioned the proportionality of the GIPN's intervention in the circumstances of the case. The Criminal Court held on 13 January 2009 that the intervention of a special unit such as the GIPN in a preliminary investigation into threats was unusual and that, following the applicant's disorderly arrest, he had never been placed under judicial investigation or even questioned by the investigating judge who had issued the letter of request prompting the police intervention.

The Court also observed that the Court of Appeal had nevertheless taken the view that it was "possible that this choice was disproportionate to the risk presented by Mr Castellani".

Lastly, the file showed that no reference had been made to any prior enquiries to determine whether or not the applicant would be alone at the time of his arrest. The Court found that the possible presence of members of the suspect's family at the location of the arrest had to be taken into account in the planning and execution of this type of police operation. Such consideration was lacking in the present case and the police had not planned their operation at the applicant's family home accordingly.

Having taken into account all the particular circumstances of the case, the Court concluded that the police operation at the applicant's home had not been planned or carried out in such a way as to ensure that the means employed were strictly necessary to achieve its ultimate aim, namely the arrest of a person suspected of having committed a criminal offence.

Press Release

With regard to the use of force by the police officers, it was not disputed, first, that the applicant's recorded injuries had been caused by the police officers who arrested him or, secondly, that Mr Castellani had hit one of them with an iron bar. However, the applicant and the Government had not related the same version of the events.

The Court noted that the Criminal Court had held, in a decision which had become final, that the applicant had legitimately believed that he had been attacked in his home and that he had acted in self-defence. Consequently, the Court could not accept the Government's submission that the applicant had knowingly assaulted the police officers, a version which derived only from the assertions of the police officers who had been involved in the arrest and against whom proceedings had subsequently been brought, without there being any other evidence in the file to support this claim.

The Court nevertheless observed, first, that the applicant had not been charged with resisting arrest and, secondly, that the actions of a number of police officers, who were wearing helmets and protected by shields, had been particularly violent.

The Court thus found that the means used were thus not strictly necessary for the applicant's arrest and that the physical force used against him had not been made necessary by his conduct.

There had therefore been a violation of Article 3 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held that France was to pay the applicant 2,803 euros (EUR) in respect of pecuniary damage, and EUR 20,000 in respect of non-pecuniary damage.

The judgment is available only in French.

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Press contacts

Journalists can continue to contact the Press Unit via echrpress@echr.coe.int

Denis Lambert

Tracey Turner-Tretz

Inci Ertekin

Patrick Lannin

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.