



When firing several times at a motorboat transporting individuals illegally towards Greece, coastguards used force that was not “absolutely necessary” within the meaning of Article 2 of the Convention

In today’s Chamber judgment¹ in the case of [Alkhatib and Others v. Greece](#) (application no. 3566/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights under its procedural head, and

a violation of Article 2 (right to life) of the European Convention on Human Rights under its substantive head.

The case concerned a serious gunshot wound sustained by a member of the applicants’ family on 22 September 2014 near the island of Pserimos, when a vessel was intercepted transporting people illegally to Greece.

Under the procedural aspect of Article 2, the Court noted that there had been numerous shortcomings in the investigation conducted by the national authorities; this had led, in particular, to the loss of evidence, and had affected the adequacy of the investigation. Among other things, it had been impossible to determine whether or not the use of potentially fatal force was justified in the particular circumstances of the case.

Under the substantive aspect of Article 2, the Court noted, firstly, that the respondent State had not complied with its obligation to introduce an adequate legislative framework governing the use of potentially lethal force in the area of maritime surveillance operations. It then considered that the coastguards, who could have presumed that the boat being monitored was transporting passengers, had not exercised the necessary vigilance in minimising any risk to life. The coastguards had thus used excessive force in the context of unclear regulations on the use of firearms. The Court considered that the Government had not demonstrated that the use of force had been “absolutely necessary” within the meaning of paragraph 2 of Article 2 of the Convention.

Principal facts

The applicants, Mr Douaa Alkhatib, Mr Nourredin Tello and Mr Lana Tello, are three Syrian nationals who were born in 1991, 2011 and 2012 respectively and live in Taby (Sweden).

At 6.45 a.m. on 22 September 2014, in the Pserimos maritime region, a coastguard vessel (the PLS 1012) from Kalymnos, which was patrolling with a two-man crew, spotted a motorboat (the IMREN 1), which had no distinctive markings and was flying no flag, and which was entering the gulf of Vassiliki about 500m from the north-east coast of the island. The commander of the PLS 1012 ordered the motorboat to stop, but the captain of the motorboat did not comply and launched into dangerous manoeuvres. The motorboat collided with the PLS 1012 on two or three occasions. The

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.

impact caused a tear of about one centimetre in length on the front right-hand side of the patrol boat's inner air tube, resulting in a loss of air.

The commander then ordered the pilot to fire some warning shots. The order was executed, but the pilot of the IMREN 1 did not stop. The commander then ordered his colleague to target the IMREN 1's outboard engine in order to disable it and thus immobilise the motorboat.

It appears from the individual report drawn up on the day of the incident that, in total, seven warning shots were fired over a secure maritime region, and 13 targeted shots at the motorboat's engine, that is, a full magazine (20 bullets).

At 6.55 a.m. the IMREN 1 was disabled. It was found to have 14 persons on board. Two Syrian nationals had been seriously injured: one had been struck in the shoulder and the other, Belal Tello, who was the applicants' husband and father, had been shot in the head. All of the passengers were taken on board the patrol boat and transferred to Kalymnos. The applicants' relative, who was in a coma, was transferred by helicopter to the Rhodes Hospital.

On 23 December 2014 the prosecutor at the Piraeus Naval Tribunal (the naval tribunal) ordered a preliminary investigation into the possible criminal liability of the coastguards involved in the incident in question. On 30 June 2015 the prosecutor at the Naval Appeals Tribunal upheld the decision to discontinue the proceedings.

On 24 September 2014 the prosecutor at the Kos first-instance court brought criminal proceedings against two Turkish nationals, – the driver of the IMREN 1 motorboat and his assistant – and ordered that they be placed in pre-trial detention. In two judgments delivered on 15 May 2015, the Rhodes Court of Appeal convicted the two Turkish nationals of illegal entry to the national territory and illegal trafficking of third-party nationals. In a judgment of 6 February 2017, the Dodecanese Assize Court of Appeal dismissed an appeal lodged by the second defendant and adjourned the appeal hearing in respect of the first defendant. On 8 October 2018 the same court again adjourned the hearing so that witnesses could be summoned. The outcome of those proceedings is not clear from the case file.

The applicants' relative, Belal Tello, remained in intensive care in the Rhodes Hospital until 13 March 2015. On 20 August 2015 he was transferred to Sweden, where his wife and children (the applicants) were living, and was treated in the Neuro-Rehabilitation Unit at the Karolinska University Hospital in Stockholm. According to a medical certificate drawn up by the hospital on 19 November 2015, he was practically unconscious. He died on 17 December 2015.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the European Convention on Human Rights, the applicants complained that the gunshot which had seriously wounded their family member had not been authorised under the relevant regulations and had been neither absolutely necessary nor strictly proportionate to the aims pursued. They further complained of inadequate administrative and judicial inquiries into those responsible for the incident.

The application was lodged with the European Court of Human Rights on 28 December 2015.

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

Pere **Pastor Vilanova** (Andorra), *President*,
Yonko **Grozev** (Bulgaria),
Georgios A. **Serghides** (Cyprus),
Darian **Pavli** (Albania),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),
Oddný Mjöll **Arnardóttir** (Iceland),

and also Milan Blaško, *Section Registrar*.

Decision of the Court

Article 2

The Court reiterated its consistent case-law to the effect that Article 2 of the Convention was applicable even where the victim survived, if the force used had been potentially lethal and the fact that he or she was not killed was fortuitous. The Court considered that although the injury in question had not immediately led to the death of the applicants' relative on the day of the incident, it had resulted in a serious medical condition which, in all likelihood, had ultimately caused his death in December 2015. In those circumstances, there was no doubt that the force used during the incident in question had been potentially lethal. Article 2 was thus applicable in the present case.

The procedural aspect

The Court noted at the outset that, in discontinuing the case, the prosecutor at the Piraeus Naval Tribunal had considered that the two Turkish nationals, namely the pilot of the IMREN 1 and his assistant, had been responsible for the injuries to the two passengers. In addition, the prosecutor had held, firstly, that the IMREN 1 had accosted (rammed) the PLS 1012, which had caused a loss of air and endangered the life of its crew, and, secondly, that the injuries in question had resulted from the ricochet of shots that had been fired on account of the Turkish pilot's awkward and dangerous manoeuvres. In the Court's opinion, however, this conclusion was not sufficiently substantiated, since it could not be considered that it resulted from a thorough investigation.

Firstly, the Court noted that the witness statements from the ten passengers on the IMREN, taken on the day of the incident, contained practically stereotyped responses. Secondly, the Court observed that several measures had not been ordered: a forensic medical report on the injury to the applicants' relative; a ballistic report determining the trajectories of the shots, including the shot which had hit the applicants' relative, in order to elucidate whether the injuries had indeed been caused by a ricochet or from a bullet that had missed its target; a detailed expert report on both vessels, shedding light on whether the collisions and the resulting loss of air had been such as to create a real and imminent danger for the crew. Thirdly, the Court attached particular importance to the fact that the decision by which the prosecutor at the Piraeus Naval Tribunal had discontinued the case did not refer to the Rhodes Assize Court's judgment of 15 May 2015, which had acquitted the pilot of the motorboat of the charges of attempting to cause a shipwreck and endangering human life, exposing other persons to a risk to their life and serious bodily injury.

Thus, the Court could only conclude that the investigation carried out by the national authorities contained numerous shortcomings which had resulted, among other failings, in the loss of evidence, and which had rendered the investigation inadequate; in particular, it had not been possible to establish whether the use of potentially lethal force had been justified in the particular circumstances of the case.

The Court concluded that there had been a violation of Article 2 of the Convention under its procedural aspect.

The substantive aspect

Having regard to its conclusions under the procedural limb of Article 2 of the Convention, the Court considered that there was insufficient evidence in the present case enabling it to establish certain facts beyond reasonable doubt. This was due in large part to the lack of a thorough and effective investigation by the national authorities. The shortcomings in the investigation thus prevented the Court from basing its assessment of the facts of the case solely on the observations of the national authorities.

The Court was first called upon to examine whether the operation in question was regulated and, if so, to determine which regulations had been applicable.

The Court noted that the 2004 Regulations provided an adequate legal framework for the use of force by coastguards. However, the Court was concerned by the fact that, in the present case, the national authorities responsible for the investigation, like the coastguards themselves in their statements, referred only to the operation's compatibility with the 1992 rules of engagement. In those circumstances, it was logical to conclude that it appeared unlikely that the two coastguards had been aware of the requirements of the 2004 Regulations, far less that they had been ordered to comply with them during the operation in question.

In any event, the Court considered that the 1992 rules of engagement, which were not only relatively old, but also confidential, as indicated by the Government, had provided a legal framework which was less detailed and, consequently, afforded a lesser degree of protection to life than that in the 2004 Regulations.

The Court considered that in the particular circumstances of the present case, it was not the confidentiality of the 1992 rules of engagement which raised a problem under Article 2, but their application, having regard also to the numerous differences between those rules and the 2004 Regulations. On this point, the Court attached particular importance to the fact that, in citing the relevant passages of the 2004 Regulations with regard to the applicable law, the Government, like the national authorities responsible for the investigation, merely emphasised that the operation in question had complied with the 1992 rules of engagement. They did not specify the relationship between the two sets of rules, and, in particular, whether they both applied cumulatively or whether one or other set of rules was to prevail in the event of conflict. The resulting uncertainty was thus incompatible with the requirement of a legal framework containing adequate and effective safeguards against arbitrariness and abuse of force, essential in such a sensitive area in a democratic society as the use of firearms by law-enforcement agencies in peacetime.

It followed that in the present case, having regard to the uncertain nature of the applicable legal framework, and particularly the fact that the coastguards had applied rules of engagement which were confidential and less detailed, rather than the relevant legislation, the respondent State had failed in its obligation to put in place an adequate legislative framework governing the use of potentially lethal force in the area of maritime surveillance operations.

Secondly, the Court considered it necessary to rule on whether the operation in question had been organised in such a way as to minimise, to the greatest extent possible, any risk to life.

The Court could not speculate on whether the two coastguards had been able to see that there were other persons on board the IMREN in addition to the pilot. It considered that the fact that the two coastguards had seen only the pilot of the motorboat by no means relieved them of the obligation to verify whether there were passengers on board.

On the contrary, the Court considered that the coastguards could have presumed that the motorboat was transporting passengers from Türkiye towards Greece, a common practice at the relevant time.

The Court also considered that the practice of firing at the engine of a suspect vessel, although it was in movement, was extremely dangerous and that the precision and reliability of the shots fired in the present case could only be open to doubt. In consequence, the 13 gunshots necessarily posed a risk to the motorboat's passengers.

The Court thus considered that in spite of very strong evidence suggesting that the IMREN 1 was illegally transporting passengers when it was spotted by the PLS 1012, the coastguards had not taken the necessary measures to verify, before firing at the motorboat's engine with a view to disabling it, that there were no other passengers on board. It followed that the interception operation in

question had not been conducted in such a way as to minimise the use of lethal force and the possible risks to the life of the applicants' relative.

Lastly, the Court considered it appropriate to rule on whether the coastguards' use of force during the operation in question had been absolutely necessary and proportionate.

The Court noted, firstly, that the ultimate purpose of the contested operation had been to arrest the IMREN 1's pilot. However, such an aim could not in itself justify the degree of force used in the present case, given the methods used, which were clearly disproportionate. Having regard to the Court's finding that the coastguards had not taken the necessary measures when firing shots at the motorboat's engine to verify that no other passengers were on board the IMREN 1, the 13 potentially lethal gunshots which had been fired at that boat's engine could not be considered proportionate to the aim pursued, namely the arrest of the IMREN 1's pilot.

The Court noted, however, that the parties' arguments were diametrically opposed with regard to whether the conduct of the IMREN 1's pilot had endangered the life of the PLS 1012's crew, thus making their use of force absolutely necessary in self-defence.

The Court did not underestimate the fact that, in carrying out dangerous, even ill-considered, manoeuvres in order to escape, and in colliding with the PLS 1012, the pilot of the IMREN 1 could have been perceived as presenting a risk for the crew's life and physical integrity. However, given the shortcomings in the investigation in this case, and, in particular, the lack of a detailed expert analysis of both vessels, and the contradictory findings reached by the domestic authorities on this point, the Court held that it had not been established beyond any reasonable doubt that there had been a real and immediate danger to the lives of the two members of the PLS 1012's crew.

Accordingly, while noting that the actions of the IMREN 1's pilot had been potentially dangerous, the Court could not conclude that the level of threat that he represented for the crew of the PLS 1012 required that the IMREN 1 be immediately immobilised by firing 13 potentially lethal gunshots at its engine, most of which seemed to have missed their mark. In those circumstances, it was open to doubt that, when they fired these shots, the two coastguards were acting from the honest conviction that their life and physical integrity were threatened.

The Court concluded that the use of force in the present case had been neither absolutely necessary nor strictly proportionate to the legitimate aims set out in Article 2 § 2 (a) and (b) of the Convention.

Having regard to all these factors, the Court considered that the coastguards, who could have presumed that the vessel being monitored contained passengers, had failed to exercise the degree of vigilance required to minimise any risk of endangering lives, and had used excessive force in a context of regulatory uncertainty concerning the use of firearms by members of the coastguard service. The Government had not shown that the use of force had been "absolutely necessary" within the meaning of Article 2 § 2 of the Convention.

It followed that there had been a violation of Article 2 under its substantive aspect.

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

The Court held that Greece was to pay the applicants 80,000 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in French.

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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.