



## Criminal justice and prosecutorial system in the UK did not undermine investigation into fatal shooting in the London Underground

In today's **Grand Chamber** judgment<sup>1</sup> in the case of **Armani Da Silva v. the United Kingdom** (application no. 5878/08) the European Court of Human Rights held, by 13 votes to four, that there had been:

**no violation of Article 2 (right to life – investigation)** of the European Convention on Human Rights.

The case concerned the fatal shooting of Jean Charles de Menezes, a Brazilian national mistakenly identified by the police as a suicide bomber. Ms Armani Da Silva, who is Mr de Menezes' cousin, complained that the State had not fulfilled its duty to ensure the accountability of its agents for his death because the ensuing investigation had not led to the prosecution of any individual police officer.

Having regard to the proceedings as a whole, the Court found that the UK authorities had not failed in their obligations under Article 2 of the Convention to conduct an effective investigation into the shooting of Mr de Menezes which was capable of identifying and – if appropriate – punishing those responsible.

In particular, the Court considered that all aspects of the authorities' responsibility for the fatal shooting had been thoroughly investigated. Both the individual responsibility of the police officers involved and the institutional responsibility of the police authority had been considered in depth by the Independent Police Complaints Commission (IPCC), the Crown Prosecution Service (CPS), the criminal court and the Coroner and jury during the Inquest. The decision not to prosecute any individual officer was not due to any failings in the investigation or the State's tolerance of or collusion in unlawful acts; rather, it was due to the fact that, following a thorough investigation, a prosecutor had considered all the facts of the case and concluded that there was insufficient evidence against any individual officer to prosecute.

### Principal facts

The applicant, Patricia Armani Da Silva, is a Brazilian national who was born in 1974 and lives in Thornton Heath, London. She is the cousin of Jean Charles de Menezes, a Brazilian national who was shot dead at Stockwell London Underground Station by two special firearms officers (SFOs) after he was mistakenly identified as a suicide bomber.

Mr de Menezes was shot dead on 22 July 2005. Two weeks earlier 56 people had died when suicide bombers detonated explosions on the London transport network. On 21 July 2005 unexploded bombs had been found on three London underground trains and a further unexploded bomb was found on a London bus. The police thus launched an operation to find the failed suicide bombers as it was feared that they were going to strike again.

Two of the terrorist suspects lived at the same address as Mr de Menezes in Scotia Road, London. The address was placed under surveillance and when Mr de Menezes left for work on the morning of 22 July he was followed by surveillance officers, who thought he might be one of the suspects. SFOs had been dispatched to support the surveillance officers and to stop any potential suspects leaving

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

the Scotia Road address. However, they were not deployed in time and when they arrived at the scene Mr de Menezes had already entered Stockwell underground station. The SFOs followed him onto a train, pinned him down and shot him several times in the head.

The case was referred to the IPCC, which concluded in a report dated 19 January 2006 that Mr de Menezes had been killed because of mistakes that could and should have been avoided. The report also made a series of operational recommendations and identified a number of possible offences that might have been committed by the police officers involved, including murder and gross negligence.

However, the CPS decided not to press criminal charges against any individual since there was no realistic prospect of a conviction being upheld. Notably, in July 2006 the CPS found that it would be very difficult to prove beyond reasonable doubt that the SFOs who shot Mr de Menezes had not genuinely believed that they were facing a lethal threat, and there was insufficient evidence to show that the mistakes made by the police officers involved in planning the operation were so bad as to amount to criminal conduct. Similarly, in May 2007 the IPCC decided that no disciplinary action should be pursued against any of the frontline and surveillance officers involved in the operation since there was no realistic prospect of any disciplinary charges being upheld.

A successful prosecution was, however, brought against the police authority under the Health and Safety at Work Act 1974. The jury accepted that there had been failings in the operation's planning and implementation. In particular, there had been a failure to identify Mr de Menezes and a failure to deploy the SFOs in time to stop possible suspects leaving Scotia Road. Thus, in November 2007 the authority was ordered to pay a fine of 175,000 pounds sterling plus costs, but in a rider to its verdict that was endorsed by the judge, the jury absolved the officer in charge of the operation of any "personal culpability" for the events.

At an inquest in 2008 the jury returned an open verdict after the coroner had excluded unlawful killing from the range of possible verdicts.

The family also brought a civil action in damages which resulted in a confidential settlement in 2009.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 January 2008.

Ms Armani Da Silva complained that the State's duty under Article 2 (right to life – investigation) to ensure accountability and punishment of State agents or bodies for the fatal shooting of her cousin had not been fulfilled by the prosecution of the police authority for a health and safety offence. More particularly, she complained about the decision not to prosecute any individuals for her cousin's death. In this regard, she alleged that the evidential test used by prosecutors to determine whether criminal charges should be brought – namely, that the prosecutor must consider that a conviction was more likely than not – was too high a threshold, particularly in cases concerning the use of lethal force by State agents. She also took issue with the definition of self-defence in the United Kingdom, as the officers who shot Mr de Menezes only had to show that they had an honest belief (as opposed to an honest and reasonable belief) that the use of force had been absolutely necessary.

The application was lodged with the European Court of Human Rights on 21 January 2008. The case was [communicated](#) on 28 September 2010 to the United Kingdom Government, which was asked to submit its observations as well as all decisions of the IPCC as regards possible disciplinary charges against relevant officers. On 9 December 2014 the Chamber to which the case had been assigned relinquished jurisdiction in favour of the Grand Chamber<sup>2</sup>.

<sup>2</sup> Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question

Third-party comments were received from the Equality and Human Rights Commission, which had been granted leave to intervene in the written procedure (under Article 36 § 2 of the Convention and Rule 44 § 3).

A Grand Chamber hearing on the case was held in public in Strasbourg on 10 June 2015.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,  
 Dean **Spielmann** (Luxembourg),  
 Işıl **Karakaş** (Turkey),  
 Josep **Casadevall** (Andorra),  
 Luis **López Guerra** (Spain),  
 Mark **Villiger** (Liechtenstein),  
 Päivi **Hirvelä** (Finland),  
 George **Nicolaou** (Cyprus),  
 Ledi **Bianku** (Albania),  
 Nebojša **Vučinić** (Montenegro),  
 Vincent A. **de Gaetano** (Malta),  
 Linos-Alexandre **Sicilianos** (Greece),  
 Paul **Mahoney** (the United Kingdom),  
 Krzysztof **Wojtyczek** (Poland),  
 Dmitry **Dedov** (Russia),  
 Branko **Lubarda** (Serbia),  
 Yonko **Grozev** (Bulgaria),

and also Lawrence **Early**, *Jurisconsult*.

## Decision of the Court

The Court found that the test for self-defence in England and Wales was not significantly different from the standard that it itself applied. In both instances the focus was on whether there existed an honest and genuine belief that the use of force was necessary and the reasonableness of that belief was relevant to the determination of whether it was honestly and genuinely held. In any case, the Court noted that all the independent authorities considering the actions of the two SFOs responsible for the shooting had carefully examined the reasonableness of their belief that Jean Charles de Menezes had been a suicide bomber who could detonate a bomb at any second.

The Court also accepted that the evidential test applied by the CPS in deciding whether to prosecute, had been within the State's discretion ("margin of appreciation") to decide on such matters. More particularly, it noted that the test applied in England and Wales was not arbitrary, having been the subject of frequent reviews, public consultations and political scrutiny. Furthermore, there was no uniform approach among Contracting States to the evidential test employed and, in any case, the test in England and Wales reflected the jury system that existed there. Finally, the Court held that Article 2 did not require the evidential test to be lowered in cases where deaths had occurred at the hands of State agents.

In addition, the Court found, overall, that it could not be said that the authorities had failed to ensure that those responsible for Mr de Menezes's death had been held accountable.

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affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

As soon as it was confirmed that Mr de Menezes had not been involved in the attempted attack on 21 July 2005, the Metropolitan Police Service (MPS) had publicly accepted that he had been killed in error by SFOs. A representative of the MPS had flown to Brazil to apologise to his family face to face and to make an *ex gratia* payment to cover their financial needs. They were further advised to seek independent legal advice and assured that any legal costs would be met by the MPS.

Following that, both the individual responsibility of the police officers involved and the institutional responsibility of the police authority were considered in depth by the IPCC, an independent investigatory body, the CPS, which had access to all the IPCC's findings in taking its prosecutorial decisions, the criminal court, and the Coroner and jury during the Inquest. There was nothing to suggest that those bodies had failed to secure the relevant physical or forensic evidence, or to seek out relevant witnesses or relevant information. The IPCC in particular took witness statements from nearly 890 people and collected more than 800 exhibits.

Institutional and operational failings were identified and detailed recommendations made to ensure that the mistakes leading to the death of Mr de Menezes were not repeated. These institutional failures resulted in the conviction of the police authority for offences under the 1974 Act. There was no evidence before the Court to indicate that the "punishment" (a fine of GBP 175,000 and costs of GBP 385,000) had been excessively light for offences of that nature.

Moreover, later, when his family brought a civil claim for damages, the MPS agreed to a settlement with an undisclosed sum being paid in compensation.

The Court noted that the facts of the case were undoubtedly tragic and the frustration of Mr de Menezes' family at the absence of any individual prosecutions was understandable. However, the decision not to prosecute any individual officer had not been due to any failings in the investigation or the State's tolerance of or collusion in unlawful acts; rather, it had been due to the fact that, following a thorough investigation, a prosecutor had considered all the facts of the case and concluded that there had been insufficient evidence against any individual officer to prosecute in respect of any criminal offence.

In conclusion, having regard to the proceedings as a whole, the Court found that the domestic authorities had not failed in their obligations under Article 2 of the Convention to conduct an effective investigation into the shooting of Mr de Menezes which had been capable of leading to the establishment of the facts, a determination of whether the force used had or had not been justified in the circumstances and of identifying and – if appropriate – punishing those responsible.

Accordingly, the Court found that there had been no violation of the procedural aspect of Article 2 of the Convention.

## Separate opinions

Judges Karakaş, Wojtyczek and Dedov expressed a joint dissenting opinion. Judge López Guerra also expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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