



Grand Chamber Panel's decisions

At its last meeting (Monday 19 October 2015), the Grand Chamber panel of five judges decided to refer two cases and to reject requests to refer 13 other cases¹.

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

Lupeni Greek Catholic Parish and Others v. Romania (application no. 76943/11): concerning the restitution of places of worship belonging to the Greek Catholic Church which were transferred to the Orthodox Church under the totalitarian regime, and more specifically the question of the application of a special law to determine the legal status of such property;

J.K. and Others v. Sweden (no. 59166/12): concerning a family's threatened deportation to Iraq.

Referrals accepted

[Lupeni Greek Catholic Parish and Others v. Romania \(no. 76943/11\)](#)

The applicants are the Lupeni Greek Catholic Parish, the Lugoj Greek Catholic Diocese and the Lupeni Greek Catholic Archpriesthood, all of which are situated in Romania. They belong to the Eastern-Rite Catholic (Greek Catholic or Uniate) Church.

After the fall of the communist regime in 1989, legislation was passed in Romania (Legislative Decree No. 126/1990 – hereafter “the special law”) specifying that the legal status of property which had belonged to the Greek Catholic Church would be determined by joint commissions made up of representatives of both denominations, who were to take account of the “wishes of the adherents of the communities in possession of these properties”. In the event of disagreement, the party with an interest entitling it to bring proceedings could do so under ordinary law.

Following the dissolution in 1948 of the Lupeni Greek Catholic Parish, the Lugoj Greek Catholic Diocese and the Lupeni Greek Catholic Archpriesthood, a church and an adjoining courtyard that had belonged to the Lupeni Greek Catholic Parish were transferred to the ownership of the Romanian Orthodox Church in 1967. The applicant parish was legally re-established on 12 August 1996 and comes under the authority of the Lugoj Greek Catholic Diocese (the second applicant) and the Lupeni Greek Catholic Archpriesthood (the third applicant). In 2001 the applicants instituted judicial proceedings, seeking restitution of the church and adjoining courtyard.

In 2009 the County Court found in favour of the applicants, but their action was subsequently dismissed by the Court of Appeal in 2010. In a final judgment of 15 June 2011 the High Court upheld the Court of Appeal's judgment, finding that it had correctly applied the special law and its criterion of respecting the wishes of the (mostly Orthodox) adherents of the community in possession of the property, while at the same time highlighting irregularities in the reasoning of the first-instance court, which had merely compared the title deeds and disregarded the special law.

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.

Complaining of the refusal by the Romanian courts to adjudicate on what they consider to be their ownership rights over a religious building under ordinary law, the applicants complained in particular of the infringement of their right of access to a tribunal and of the principle of legal certainty as protected by Article 6 § 1 (right to a fair trial within a reasonable time). Under the same Article, they also complained of the length of the restitution procedure for the church in question. They further complained of the infringement of the right of respect for their property as protected by Article 1 (protection of property) of Protocol No. 1 and their freedom of religion (Article 9), as well as a violation of the prohibition of discrimination (Article 14).

In its Chamber [judgment](#) of 19 May 2015, the Court held, unanimously, that there had been no violation of Article 6 § 1 as regards the right of access to a court and the question of legal certainty, a violation of Article 6 § 1 concerning the length of proceedings and no violation of Article 14 in conjunction with Article 6 § 1.

On 19 October 2015 the Grand Chamber panel of five judges accepted the applicant's request to refer the case to the Grand Chamber.

[J.K. and Others v. Sweden \(no. 59166/12\)](#)

The applicants, a married couple and their son, are Iraqi nationals who were born in 1964, 1965, and 2000, respectively. They all applied for asylum in Sweden in 2011. In the ensuing domestic proceedings, they claimed that they were at risk of persecution by al-Qaeda if deported to Iraq on account of the applicant husband having run a business in Baghdad with exclusively American clients. The family had been the target of a number of attacks: the husband had had to stay in hospital for three months in 2004 following a murder attempt by al-Qaeda; a bomb was placed next to their house in 2006; their home and business stock was destroyed in a fire in 2006 and 2008; and the husband and his daughter were shot at in their car in 2008, resulting in the daughter dying in hospital shortly afterwards. The husband stated that they had constantly been on the move since 2008 and had not therefore received any more threats. Their case was examined by the Migration Board and the Migration Court which found their story credible and acknowledged that they had been the victims of severe violence and harassment. However, those acts had been committed several years before and the applicant husband had ended his business with the Americans in 2008 and had stayed in Baghdad for two years after that without substantiating that the family had been the victim of any further attacks. In the event that the family was still under threat, they should seek protection from the Iraqi authorities. The Migration Court of Appeal refused leave to appeal in August 2012. Subsequently, in September 2012, the Migration Board refused their request for reconsideration of their case. The family's deportation was, however, then suspended in September 2012 on the basis of an interim measure granted by the European Court of Human Rights under Rule 39 of its Rules of Court, which indicated to the Swedish Government that the applicants should not be expelled to Iraq whilst the Court was considering their case.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant family alleges that, if returned to Iraq, they would be at risk of persecution and ill-treatment by al-Qaeda who had infiltrated the domestic authorities, which were therefore been in a position to protect them.

In its Chamber [judgment](#) of 4 June 2015, the Court held, by five votes to two, that the implementation of the expulsion order against the applicants would not give rise to a violation of Article 3 of the Convention. Having regard to the particular circumstances of the applicants, the Chamber found no reason to disagree with the Swedish authorities' assessment that they had not been threatened and persecuted by al-Qaeda since 2008, almost six and a half years ago, when the applicant husband stopped working with American companies, and that there were not sufficient evidence to conclude that for other reasons the applicants would face a real risk of being subjected to treatment contrary to Article 3 upon return to Iraq. The Court lastly decided to continue to

indicate to the Swedish Government, under Rule 39 (interim measures) of its Rules of Court, not to deport the applicants to Irak until the Chamber judgment became final or until further order.

On 19 October 2015 the Grand Chamber panel of five judges accepted the applicant's request to refer the case to the Grand Chamber.

Requests for referral rejected

Judgments in the following 12 cases are now final²

Requests for referral submitted by the applicants

Bratanova v. Bulgaria (application no. 44497/06), [judgment](#) of 9 June 2015

Banović v. Croatia (no. 44284/10), [judgment](#) of 11 June 2015

Anatoliy Kuzmin v. Russia (no. 28917/05), [judgment](#) of 25 June 2015

K.M. v. Switzerland (no. 6009/10), [judgment](#) of 2 June 2015

Levent Bektaş v. Turkey (no. 70026/10), [judgment](#) of 16 June 2015

Requests for referral submitted by the Government

B. and Others v. Croatia (no. 71593/11), [judgment](#) of 18 June 2015

S.L. and J.L. v. Croatia (no. 13712/11), [judgment](#) of 7 May 2015

Chitos v. Greece (no. 51637/12), [judgment](#) of 4 June 2015

Pisari v. the Republic of Moldova and Russia³ (no. 42139/12), [judgment](#) of 21 April 2015

Caraian v. Romania (no. 34456/07), [judgment](#) of 23 June 2015

Cătălina Filip v. Romania (no. 15052/09), [judgment](#) of 21 April 2015

Mezhiyeva v. Russia (no. 44297/06), [judgment](#) of 16 April 2015

Mukhitdinov v. Russia (no. 20999/14), [judgment](#) of 21 May 2015

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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.

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 The referral request in question was submitted by the Russian Government.