



Finnish authorities failed to take the precautionary measure of seizing a student's weapon before a school shooting

The case of [Kotilainen and Others v. Finland](#) (application no. 62439/12) concerned complaints about failures by the authorities to protect the lives of the victims of the 2008 school shooting in the town of Kauhajoki, in which 10 people were killed.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held that there had been,

by **six votes to one, a violation of Article 2 (right to life)** of the European Convention on Human Rights owing to the authorities' failure to observe their duty of diligence and seize the killer's weapon before the attack, and,

unanimously, no violation of Article 2 over the investigation after the attack.

Nine students and a teacher were killed during the shooting, carried out by a student at the school who then killed himself.

The Court found that the authorities could not have known of a real and immediate risk to the life of the applicants' relatives.

However, the police had known of posts on the Internet by the student, had interviewed him prior to the attack, and had considered, but decided against, confiscating his weapon. Such a confiscation would have been a reasonable precaution, which had also been allowed by law. The failure to take that step meant the authorities had not fulfilled their special duty of diligence flowing from the particularly high level of risk inherent in any misconduct involving the use of firearms.

Principal facts

The applicants are 19 Finnish nationals who are relatives of the nine students and a teacher who were killed during the school shooting on 23 September 2008.

The perpetrator had been given a gun licence by the local police station a few months before the attack. Further to certain Internet postings, including a comment about a film on the Columbine High School massacre "being the best entertainment ever", he was interviewed the day before the attack by the Detective Chief Inspector of the police station to determine whether he posed a danger to society. The inspector decided that was not the case and there was no need to take his weapon.

After the shooting, criminal charges were brought against the inspector for negligent breach of an official duty and grossly negligent homicide. The courts found him guilty in 2011 of the first charge, finding that the perpetrator's Internet postings had been disturbing and had warranted the temporary seizure of his gun. As to the second charge, however, the courts found that the inspector was not responsible for the homicides because he had not had any probable cause to suspect that there was an actual risk of an attack in the form of a school shooting. Appeals by the applicants to the Supreme Court were unsuccessful.

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.

The inspector was given a warning and the applicants' compensation claims were rejected.

The Government appointed an investigation commission to enquire into the school shooting, leading to several recommendations in February 2010 concerning the availability of firearms, mental health services for young people, security planning in schools, and co-operation between authorities to prevent similar incidents.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life), the applicants alleged that the police had or ought to have been aware of the imminent risk presented by the perpetrator, but had failed to take any measures to prevent the shooting and to protect their relatives' lives.

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

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

Ksenija **Turković** (Croatia), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Aleš **Pejchal** (the Czech Republic),
Armen **Harutyunyan** (Armenia),
Pauliine **Koskelo** (Finland),
Tim **Eicke** (the United Kingdom),
Jovan **Ilievski** (North Macedonia),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 2

The Court rejected a Government argument that the applicants had lost their status as victims of a violation of the Convention. It found that the domestic judgments had not been favourable to them, the authorities had not acknowledged any breach of the Convention, and no redress had been afforded.

Duty to protect lives

The Court noted that the applicants' main grievance was that the person who had carried out the shooting had been allowed to possess a firearm, which the police had not seized before the attack.

Highlighting the inherent risks to the right to life from the use of firearms and States' obligation to adopt and implement measures to ensure public safety, the Court found that it could not discern any deficiencies in the relevant framework in Finland at the time.

Reiterating the domestic courts' findings, the Court also held that it was unable to conclude that there had been a real and immediate risk to life aimed at identifiable individuals of which the authorities had known or ought to have known. It could thus not be concluded that the circumstances of the case had given rise to a duty of personal protection to the victims of the killing or the other pupils or staff at the school, or that there had been a real and immediate risk from the perpetrator which the police had known or ought to have known about in advance of the attack.

The Court also rejected an argument by the applicants that the police ought to have obtained the killer's medical and military records to obtain data regarding his mental health.

Duty of diligence in connection with firearms

The Court went on to examine whether the State had complied with its duty of diligence in the protection of public safety, taking into account the context of the case, that is, the use of firearms and the inherent high level of risk to life.

It noted that the police had become aware of the perpetrator's Internet posts which, while not containing any threats, had cast doubt on whether he could safely remain in possession of a weapon. The police had interviewed him, but had not seized his weapon. An individual error of judgment could not suffice to conclude that there had been a violation of the Convention, but for the Court the issue in the case went beyond such an error of judgment.

The crucial question was whether there were measures which the domestic authorities might reasonably have been expected to take to avoid the risk to life from the potential danger the perpetrator's actions had given an indication of.

The precautionary measure of seizing the gun had been available to the police. It would not have caused any significant interference with any competing rights under the Convention and would not have involved any particularly difficult or delicate balancing exercise. Indeed, the Court of Appeal had said that the gun could have been seized according to domestic law as a low threshold precautionary measure.

The Court thus found that seizing the weapon was a reasonable measure of precaution given the doubts about the perpetrator's fitness to possess a dangerous firearm. The authorities had thus not observed the special duty of diligence incumbent on them owing to the particularly high level of risk to life inherent in any misconduct involving firearms.

The Court, by six votes to one, found that there had been a violation by the State of its obligations to safeguard lives under Article 2.

Investigation

The Court could find no issues of partiality or lack of independence in the pre-trial investigation, or that it had somehow been insufficient or faulty. The Government had also in 2008 appointed a commission to investigate the school shooting, which had issued recommendations.

The Court concluded unanimously that there had been no violation of the procedural aspect of Article 2 stemming from any deficiencies in the investigation. It also rejected complaints by the applicants under other Articles of the Convention as manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Finland was to pay 31,571.97 euros to the applicant Elmeri Kotilainen in respect of pecuniary damage, and EUR 30,000 to each household unit (as listed in the judgment) jointly in respect of non-pecuniary damage. It held that Finland was also to pay EUR 2,086.34 to the first household unit and EUR 6,818.56 to each of the other household units (two to ten), in respect of costs and expenses.

Separate opinion

Judge Eicke expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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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.