EUROPEAN COURT OF HUMAN RIGHTS

785
6.11.2008

Press release issued by the Registrar

Chamber judgments concerning
Bulgaria, Germany, Greece, Russia, Switzerland,
"the former Yugoslav Republic of Macedonia" and Ukraine

The European Court of Human Rights has today notified in writing the following 24 Chamber judgments, none of which are final[1].

Repetitive cases[2] and length-of-proceedings cases, with the Court's main finding indicated, can be found at the end of the press release.

No violation of Article 5 § 3
Violation of Article 5 §§ 1, 4 and 5

Gulub Atanasov v. Bulgaria (application no. 73281/01)
The applicant, Gulub Atanasov Atanasov, now deceased, was a Bulgarian national who suffered from schizophrenia.

In July 1999 Mr Atanasov was arrested and placed in pre-trial detention on suspicion of robbery and murder. By an order of 6 July 2000 the Plovdiv Court of Appeal decided to place him under house arrest. On 3 August 2000 the investigator responsible for the case ordered that an expert examination be conducted and the applicant was admitted to a psychiatric hospital for that purpose from 8 August to 4 September 2000. In July 2001 the order placing the applicant under house arrest was lifted. The proceedings against him were closed on his death.

Relying on Article 5 §§ 1, 3, 4 and 5 (right to liberty and security) of the European Convention on Human Rights, the applicant alleged, in particular, that the length of his pre-trial detention and the period spent under house arrest had been excessive. He also submitted that his placement in a psychiatric hospital in August and September 2000 had been illegal, that he had been unable to contest that measure before a court and that he not had been entitled to compensation in that connection.

Applying the relevant criteria from its case-law concerning the length of pre-trial detention and house arrest to the applicant's case, the Court considered that his right to be judged

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[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.

[2] In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

within a reasonable time or released pending the proceedings had not been breached and concluded unanimously that there had not been a violation of Article 5 § 3.

The Court found that the question of the lawfulness of the applicant's transfer to a psychiatric hospital concerned the legality of the deprivation of liberty within the meaning of Article 5 § 1, even though the applicant's house arrest had been lawful. It further considered that the applicant's transfer from his home to a psychiatric hospital had been illegal under domestic law, since it had not been based on a valid decision by the competent authorities. It therefore concluded unanimously that there had been a violation of Article 5 § 1 on account of the applicant's detention in a psychiatric hospital for 26 days.

The Court also noted that, although the applicant had challenged his house arrest during his detention in the psychiatric hospital, the courts which were called on to examine his appeal were not authorised to review the lawfulness of the investigator's order of 3 August 2000 and, consequently, the lawfulness of the applicant's detention in the psychiatric hospital. There had accordingly been a violation of Article 5 § 4.

Finally, the Court considered that the applicant had not enjoyed a right to compensation with a sufficient degree of certainty and therefore concluded, unanimously, that there had been a violation of Article 5 § 5. It awarded the applicant's two sons 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,860 for costs and expenses. (The judgment is available in English and in French.)

Violation of Article 5 § 4

Yosifov v. Bulgaria (no. 74012/01)
The applicant, Gavril Yordanov Yosifov, is a Bulgarian national who was born in 1975 and lives in Sofia.

In November 1996 Mr Yosifov was arrested and charged with, in particular, theft and robbery. Sofia District Court found him guilty as charged in December 1998 and sentenced him to three years' imprisonment. His appeal dismissed, he was detained on 30 November 1999 in Sofia Prison to serve his sentence. On 17 July 2000 Sofia City Court found that the district court had erred in dismissing the applicant's appeal. The applicant was released on 26 October 2000 pending the district court's fresh examination of the case. He was ultimately convicted and sentenced to one and a half years' imprisonment in March 2001. The case concerned the applicant's complaint about the unlawfulness of his detention between 30 November 1999 and 26 October 2000. He relied on Article 5 §§ 1 and 4 (right to liberty and security) of the Convention.

The Court held unanimously that there had been a violation of Article 5 § 4 on account of the applicant not having had the opportunity from 30 November 1999 to 26 October 2000 to take proceedings to challenge the lawfulness of his detention. The remainder of the application was declared inadmissible.

Mr Yosifov was awarded EUR 1,500 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in English.)

Violation of Article 6 § 1 (length)
No violation of Article 9

Leela Förderkreis e.V. and Others v. Germany (no. 58911/00)

The applicants are, in particular, three associations registered under German law, Leela Förderkreis e.V., Wies Rajneesh Zentrum für spirituelle Therapie und Meditation e.V. and Osho Uta Lotus Commune e.V.. They are religious or meditation groups belonging to the Osho movement, formerly known as the Shree Rajneesh or Bhagwan movement, which emerged in Germany in the 1960s and 1970s.

In 1979 the German Government launched a campaign to draw attention to the potential dangers of such groups. The Government referred to them as "sects", "youth sects", "youth religions" and "psycho sects" and issued warnings that they were "destructive", "pseudo-religious" and "manipulated their members". In October 1984 the applicant associations brought proceedings in which they requested that the Government refrain from describing them in such negative terms. Following the domestic courts' dismissal of their claims, they brought a constitutional complaint. In June 2002 the Federal Constitutional Court prohibited the use of "destructive", "pseudo-religious" and "manipulated their members" but, considering that the Government could provide the public with adequate information about such associations, authorised the remaining terms.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicant associations complained about the excessive length of the civil proceedings. They also alleged that the Government had infringed their duty to be neutral in religious matters and had embarked on a repressive and defamatory campaign against them, in breach of Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 14 (prohibition of discrimination).

The Court noted that the proceedings had lasted in total 18 years and one month, of which more than 11 years had been before the Federal Constitutional Court. Even in the unique context of German reunification, the Court considered that that length had been excessive and therefore held unanimously that there had been a violation of Article 6 § 1.

The Court assumed that the Government's information campaign had interfered with the applicants' right to manifest their religion or belief. That interference had, under the Basic Law, been "prescribed by law" and pursued the "legitimate aim" of providing information about the dangers of groups which were commonly known as sects.

The information campaign had aimed to settle a matter of major public concern at the relevant time by warning citizens of a phenomena viewed as disturbing, that is to say the emergence of new religious movements and their attraction for young people. The campaign had not, however, in any way prohibited the applicant associations' freedom to manifest their religion or belief. Indeed, the Constitutional Court had set certain limits by authorising some statements and not others. The authorised terms ("sects", "youth sects" and "psycho sects"), even if somewhat pejorative, had been used at the relevant time quite indiscriminately for any kind of non-mainstream religion. The Court further noted that the Government refrained from further using the term "sect" in their information campaign following an expert recommendation issued in 1998. The Court therefore found that the Government's statements, as delimited by the Constitutional Court, had not overstepped what a democratic State might regard as in the public interest. Accordingly, the interference with the applicant associations' right to manifest their religion or belief had been justified and had been proportionate to the aim pursued and the Court held, by five votes to two, that there had been no violation of Article 9. It further held unanimously that no separate issue arose under

Article 14 taken in conjunction with Articles 9 and 10. The three applicant associations were awarded EUR 4,000 for costs and expenses. (The judgment is available only in English.)

Violation of Article 6 § 1 (length)
Violation of Article 13

Angelov v. Greece (no. 22035/05)
The applicant, Marian Angelov, is a Bulgarian national who was born in 1977. He is currently held in Patras Prison (Greece).

Mr Angelov was arrested in July 2003 on suspicion of drug trafficking and sentenced at first instance to 12 years' imprisonment. The hearing for his appeal was set for 17 January 2008. The parties have provided no other information on those proceedings.

Relying on Articles 6 § 1 (right to a fair trial within a reasonable time) and 13 (right to an effective remedy), the applicant complained of the excessive length of the proceedings.

The Court concluded, unanimously, that there had been a violation of Article 6 § 1 and Article 13 on account of the excessive length of the proceedings against the applicant, namely four years, five months and 20 days at the least, and the absence of a domestic remedy whereby he could enforce his right to a "hearing within a reasonable time". It awarded the applicant EUR 6,000 in respect of non-pecuniary damage. (The judgment is available only in French.)

Violation of Article 1 of Protocol No. 1

Kokkinis v. Greece (no. 45769/06)
The applicant, Charalambos Kokkinis, is a Greek national who was born in 1926.

Mr Kokkinis, who was a civil servant, retired in February 1982. The Public Accounting Department dismissed a request submitted by the applicant in December 1998 for reassessment of his old-age pension. He applied to the Audit Court, which upheld his claim in January 2002. However, the court held that the amounts in question were payable only from 1 January 1999. It held that the limitation period provided for in Article 60 § 1 of Presidential Decree no. 166/2000 – limiting the retroactive effect of claims against the State with regard to pension rights – began to run from the publication of its own judgment, namely the decision granting the applicant's request to retire. The applicant appealed unsuccessfully on points of law.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained of the manner in which the Audit Court had fixed the starting point for the limitation period.

The Court noted that the date from which the applicant could receive payment of his pension rights had been determined exclusively on the basis of the time that the authorities and administrative authorities had taken to give their decisions. Although the applicant had requested the reassessment of his pension in December 1998, the decision upholding his claim was not given until four years later. The Court noted that the application of such a criterion appeared vague and likely to lead to contradictory and unjustified results. In consequence, the Court concluded unanimously that there had been a violation of Article 1 of Protocol No. 1 and that the finding of a violation provided in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant. It awarded the applicant

EUR 12,200 for pecuniary damage and EUR 1,500 for costs and expenses. (The judgment is available only in French.)

Violation of Article 6 § 1 (length)

Petroulia v. Greece (no. 919/06)
The applicant, Eleni Petroulia, is a Greek national who was born in 1953 and lives in Athens.

In December 1998 the applicant was prosecuted for fraud and forgery against a banking establishment. The proceedings are still pending. Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicant complained of the excessive length of the proceedings against her.

The Court held, unanimously, that there had been a violation of Article 6 § 1 on account of the excessive length of the criminal proceedings against Ms Petroulia – more than nine years. It awarded her EUR 6,000 in respect of non-pecuniary damage. (The judgment is available only in French.)

Violation of Article 1 of Protocol No. 1

İsmayılov v. Russia (no. 30352/03)
The applicant, Adil Yunus oğlu İsmayılov, is an Azerbaijani national who was born in 1937 and lives in Moscow.

On arrival in Moscow in November 2002 Mr İsmayılov was charged with smuggling for not declaring the 21,348 US dollars (approximately 17,059 euros) he was carrying with him from the sale of a flat he had inherited in Baku. He was found guilty as charged and given a suspended sentence of six months' imprisonment; the money was also confiscated. The case concerned the applicant's complaint that that confiscation order had not been lawful. He relied, in particular, on Article 1 of Protocol No. 1 (protection of property).

The Court noted that the lawful origin of the money had not been in dispute and that the applicant had had no criminal record and had not been suspected of money laundering, corruption or other serious financial offences. Since he had already been punished for the smuggling offence with a criminal conviction; the desired deterrent effect had therefore already been achieved and the Court was not convinced that it had been necessary to take away his money. Accordingly, the Court concluded that the confiscation measure had been excessive and disproportionate in the circumstances and held by six votes to one that there had been a violation of Article 1 of Protocol No. 1. Mr İsmayılov was awarded EUR 25,000 in respect of pecuniary and non-pecuniary damage. (The judgment is available only in English.)

(Applicants' relatives) Violations of Article 2 (life and investigation)
(Applicants) Violation of Article 3 (treatment)
Violation of Article 5
Violation of Article 13

Khadzhialiyev and Others v. Russia (no. 3013/04)
Magamadova and Iskhanova v. Russia (no. 33185/04)
Tsurova and Others v. Russia (no. 29958/04)

No violation of Article 2 (life)
Violation of Article 2 (investigation)

Shaipova and Others v. Russia (no. 10796/04)
The applicants in the first case are three Russian nationals: Salman Saidovich Khadzhialiyev and Alpaty Elikhanova, born in 1932 and 1937 respectively, who are the parents of Ramzan and Rizvan Khadzhialiyev, born in 1977 and 1979; and, Magamed Ramzanovich Khadshialiyev, born in 2002, who is Ramzan Khadzhialiyev's son. In the early hours of the morning on 15 December 2002 Ramzan and Rizvan Khadzhialiyev were abducted from the family home in Samashki, a village in the Chechen Republic, by armed men in camouflage uniforms. They were allegedly seen being taken away in UAZ vehicles. Four days later the bodies of the two men were found near their village; they had been decapitated and dismembered. The missing parts of their bodies have never been found.

The applicants in the second case are two Russian nationals: Luiza Abdulbekovna Magamadova and Alpatu Didievna Iskhanova, who were born in 1964 and 1958 respectively and live in Mesker-Yurt (Chechen Republic). They are the wives of Viskhadzhi Shatayevich Magamadov, born in 1962, and Khasan Shakhtamirovich Mezhiyev, born in 1963. The two men have not been seen since the early hours of 14 November 2002 when they were taken away from the Magamadovs' home in armoured personnel carriers (APCs) by armed men in camouflage uniforms.

The applicants in the third case are four Russian nationals: Isa Beksultanovich Tsurov, born in 1948; Aminat Tarkhanovna Tsurova, born in 1949; Leyla Isayevna Tsurova, born in 1973; and, Magomed Isayevich Tsurov, born in 1982. They live in Ingushetia (Russia). They are the parents, sister and brother of Ibragim Isayevich Tsurov, born in 1970, an advocate admitted to the Bar of the Chechen Republic. He has not been seen since 26 April 2003 when, his car stopped by armed men, he was seen being taken away in the boot of a car.

The applicants in the fourth case are five Russian nationals: Tamara Daliyevna Shaipova, born in 1953; Yakhita Musayevna Shaipova, born in 1974; Ramzan Akhmedovich Shaipov, born in 1995; Askhab Akhmedovich Shaipov, born in 1998; and, Magomed Akhmedovich Shaipov, born in 2002. They live in Urus-Martan (Chechen Republic.) They are the mother, wife and sons of Akhmed Musayevich Shaipov, born in 1972, who has not been seen since the early hours of 9 April 2003 when he was abducted from the family home by armed men in camouflage uniforms.

All the applicants alleged that their relatives were abducted and killed by Russian servicemen and that the domestic authorities failed to carry out an effective investigation into their allegations. They relied, in particular, on Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy).

In the case of ***Khadzhialiyev and Others v. Russia*** the Court noted that the local police had admitted to having seen on the night of 14 to 15 December 2002 a group of armed men who had identified themselves as servicemen from Grozny carrying out a special operation. It was doubtful that, as suggested by the Government, two different groups of armed men in camouflage uniforms had been driving through the village of Samashki in UAZ vehicles on that same night.

In the case of ***Magamadova and Iskhanova*** the Court considered it unlikely that, as suggested by the Government, paramilitary groups in stolen APCs could have moved freely at the relevant time through Russian military check-points and abducted the applicants' husbands.

In the case of ***Tsurova and Others v. Russia*** the parties had not disputed the fact that a large group of armed men in uniform had stopped Ibragim Tsurov's car in Grozny in broad daylight. Indeed, the Government had suggested that three eyewitnesses, trained military servicemen, had thought that the incident had probably been a regular police operation. The applicants had also even been informed by the Ministry of the Interior of the Republic of Ingushetia that their relative had been arrested by the police.

The Court considered that those elements in particular strongly supported the allegation that the five men had been apprehended by Russian servicemen. Drawing inferences from the Russian Government's failure to submit documents – despite specific requests from the Court – to which it exclusively had access and the fact that it had not provided any other plausible explanation for the events in question, the Court considered that the applicants' relatives had been arrested by Russian servicemen during unacknowledged security operations. In the cases of ***Magamadova and Iskhanova*** and ***Tsurova and Others v. Russia*** there had been no reliable news of the applicants' three relatives since their disappearances and the Russian Government had not submitted any further explanations. In the context of the conflict in Chechnya, when a person had been detained by unidentified servicemen without any subsequent acknowledgment of their detention, that situation could be regarded as life-threatening. The absence of the applicants' relatives or any news of them for more than five years corroborated that assumption. Therefore the Court found that those three men had to be presumed dead following their unacknowledged detention by Russian servicemen. In the case of ***Khadzhialiyev and Others v. Russia***, given the lack of any DNA expert examination or willingness to provide a copy of the post-mortem forensic report, the Court considered it proven that the remains found four days after the abduction had belonged to the applicants' relatives and found it established that Ramzan and Rizvan Khadzhialiyev had been kidnapped and killed by Russian servicemen. Noting that the authorities had not justified the use of lethal force by their agents in any of those three cases, the Court concluded that there had been a violation of Article 2 in respect of all five of the applicants' relatives.

However, in the case of ***Shaipova and Others***, the Court noted that the group of armed men who had abducted the applicants' relative had been wearing running shoes, not normally part of regulation uniform for a Russian servicemen, and uniforms with unrecognisable insignia. Nor had the group of men allegedly used military vehicles. The Court therefore found that the applicants had not submitted persuasive evidence to support their allegations that Russian servicemen had been implicated in the abduction of their relative. Nor had it therefore been established "beyond reasonable doubt" that Akhmed Shaipov had been deprived of his life by State agents. In such circumstances, the Court found that there had been no violation of Article 2 in respect of the applicants' relative.

In all three cases, the Court held that there had been violations of Article 2 concerning the Russian authorities' failure to carry out effective criminal investigations into the circumstances in which the applicants' relatives had disappeared and, in the case of ***Khadzhialiyev and Others***, into their relatives' deaths.

Furthermore, in the cases of ***Magamadova and Iskhanova*** and ***Tsurova and Others***, the Court found that the applicants had suffered and continued to suffer, distress and anguish as a result of the disappearance of their relatives and their inability to find out what had happened to them. The manner in which their complaints had been dealt with by the authorities had to

be considered to constitute inhuman treatment in violation of Article 3. In the case of ***Khadzhialiyev and Others***, the Court noted that the missing parts of the applicants' relatives, including their heads, had still not been found, meaning that the applicants had not yet been able to bury the bodies in a proper manner, which had to have caused them profound and continuous anguish and distress, in violation of Article 3.

The Court further found that the applicants' relatives in the first three cases had been held in unacknowledged detention without any of the safeguards contained in Article 5, which constituted a particularly grave violation of the right to liberty and security enshrined in that article.

Finally, the Court held unanimously that, in all the first three cases, there had been a violation of Article 13 as regards the alleged violation of Article 2 and that, in the case of ***Tsurova and Others***, there had been no violation of Article 13 as regards the alleged violation of Article 3 in respect of the applicants' relative.

In the case of ***Khadzhialiyev and Others*** the Court awarded the parents of Ramzan and Rizvan Khadzhialiyev, jointly, EUR 3,000 in respect of pecuniary damage and EUR 50,000 in respect of non-pecuniary damage. It further awarded EUR 1,500 to Ramzan Khadzhialiyev's son in respect of pecuniary damage and EUR 20,000 in respect of non-pecuniary damage. For costs and expenses, the applicants were awarded EUR 4,150.

In the case of ***Magamadova and Iskhanova*** the Court awarded each applicant EUR 3,000 in respect of pecuniary damage, EUR 35,000 in respect of non-pecuniary damage and EUR 4,150, jointly, for costs and expenses.

In the case of ***Tsurova and Others*** the Court awarded the parents of Ibragim Tsurov, jointly, EUR 10,000 in respect of pecuniary damage and EUR 25,000 in respect of non-pecuniary damage. The Court awarded EUR 5,000, each, to Ibragim Tsurov's sister and brother in respect of non-pecuniary damage.

In the case of ***Shaipova and Others*** the Court awarded the applicants, jointly, EUR 6,000 in respect of non-pecuniary damage and EUR 4,150 for costs and expenses.
(The judgments are available only in English.)

Violation of Article 6 § 1 (length)
Violation of Article 34

Ponushkov v. Russia (no. 30209/04)
The applicant, Andrey Fyodorovich Ponushkov, is a Russian national who was born in 1960 and is currently serving a sentence of life imprisonment in Minusinsk (Russia) for notably murder, robbery, kidnapping and unlawful possession of arms.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 6 § 1 (right to a fair trial within a reasonable time), Mr Ponushkov complained, in particular, about the conditions of his detention in a facility in Irkutsk and the excessive length of the criminal proceedings against him. Further relying on Article 34 (right of individual petition), he complained of censorship of his correspondence, alleging that the detention facility administration had opened letters addressed to him by the Court and withheld its enclosures.

The Court declared inadmissible the applicant's complaints under Article 3 as, in particular, no detailed information had been provided concerning his alleged harsh conditions of detention. However, it considered that the opening of the Court's letters, as well as having been in breach of domestic law, could have had an intimidating effect on the applicant and that withholding certain enclosures had deprived him of learning of the Government's position in his case before the Court. The censorship of the applicant's correspondence had therefore constituted an interference with his right to individual petition and the Court held that Russia had failed to comply with its obligations under Article 34. The Court further held unanimously that there had been a violation of Article 6 § 1 on account of the excessive length, approximately five years and 11 months, of the criminal proceedings against the applicant.

Mr Ponushkov was awarded EUR 500 in respect of non-pecuniary damage. (The judgment is available only in English.)

No violation of Article 6 § 1 (fairness)
No violation of Article 1 of Protocol No. 1
No violation of Article 34

Tkachevy v. Russia (no. 42452/02)
The applicants, Alexandre Viktorovitch Tkachev and Olga Ivanovna Tkacheva, are Russian nationals who were born in 1964 and 1939 respectively and live in Moscow.

By a final judgment of 13 January 1999, the applicants were granted subsidised housing. On 5 November 1999 the authorities decided to assign them a municipal flat. However, the applicants refused this offer and requested a flat with a larger floor area. On 3 April 2000 the bailiff's service closed the execution proceedings on the ground that the decision in question had been fully executed. The decision by the bailiff's service was not contested before the courts. In July 2006 a criminal investigation was brought against a person or persons unknown for forgery, in relation to an authority to execute issued on 4 January 2001 concerning the decision of 13 January 1999. The investigation revealed that the relevant authority to execute had been forged in unknown circumstances by unidentified persons, and the investigation was closed on the ground that the offence was time-barred.

Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicants complained about the failure to execute the judgment of 13 January 1999. They also alleged, under Article 34 (right of individual petition), that the Russian authorities had organised undue pressure in order to intimidate them and prevent them from exercising their right to apply to the Court, particularly by opening a criminal investigation into forgery of the authority to act of 4 January 2001, with a view to discrediting them.

The Court noted that the decision awarding the applicants subsidised housing had been duly and fully executed, since the authorities had offered the applicants a two-roomed municipal flat. Holding that that the time taken to execute the decision in question could not be considered unreasonable, the Court concluded that there had been no violation of Article 6 § 1 or of Article 1 of Protocol No. 1. The Court also held that the alleged actions by the Russian authorities had not been capable of influencing the applicants' intention to maintain their application before the Court, and concluded that there had been no violation of Article 34. (The judgment is available only in French.)

Violation of Article 8

Carlson v. Switzerland (no. 49492/06)
The applicant, Scott Norman Carlson, is an American national who was born in 1962 and lives in Washington. He is the father of C., who was born in 2004 and whose mother is a Swiss national.

During the summer of 2005 the child's mother, who lived in the United States with her husband and son, went to Switzerland with the child and decided to establish her residence there. On 28 September 2005 she petitioned for divorce before a court in the Baden district and requested interim measures for the duration of the divorce proceedings, particularly with a view to obtaining a residence order in respect of the child. On 31 October 2005 the applicant asked the Swiss courts to order that his son be returned to the place where he was habitually resident. He alleged that, as he and his wife jointly exercised parental responsibility for the child, the prolongation of the child's residence in Switzerland constituted his wrongful removal or retention within the meaning of Article 3 of the Hague Convention on the Civil Aspects of International Child Abduction. Following that request, the president of the Baden district court ordered the applicant's wife to submit C.'s passport and prohibited her from leaving Swiss territory. At the same time, he decided to join the proceedings on the child's return to the divorce proceedings. On 17 February 2006 the president of the district court dismissed the applicant's request, on the ground, in particular, that the applicant had been unable to submit evidence in support of his allegation that, although he had agreed to the mother's temporary residence in Switzerland, this had only been on the condition that she return the child to the United States once her visit to Switzerland had ended. In consequence, the judge considered that the removal of the child to Switzerland had not been unlawful under Article 3 of the Hague Convention since the applicant had given his consent, and that there was insufficient evidence to substantiate the allegation of an unlawful refusal to return the child. The applicant unsuccessfully challenged that decision before the Canton of Aargau Court of Appeal, and subsequently before the Federal Court.

Relying on Article 8 (right to respect for private and family life), Mr Carlson alleged that there had been several negligent omissions by the domestic courts in implementing the Hague Convention.

The Court reiterated that Article 16 of the Hague Convention indicated that proceedings on the merits of residence rights were to be suspended until a decision had been reached about the child's return. Thus, the district court's decision to join the two proceedings had been contrary to the terms of the Hague Convention and had also had the effect of prolonging the proceedings before the domestic courts with responsibility for ruling on the return of the abducted child. In addition, the Court noted that the lapse of time between the submission of the applicant's request and the decision by the president of the district court did not comply with Article 11 of the Hague Convention, which stated that the relevant authorities were to act "expeditiously" in proceedings for the child's return, and that any failure to act for more than six weeks could give rise to a request for reasons for the delay. Furthermore, contrary to the clear implications of the wording of Article 13 of the Hague Convention, the president of the district court had reversed the burden of proof and had required the applicant to "establish" that he had not "consented to or subsequently acquiesced in" the child's removal or non-return. In the Court's view, this method of proceeding had placed the applicant at a clear disadvantage from the outset in the proceedings concerning the child's return. The Court noted that even if the Court of Appeal had correctly applied the above-mentioned Article 13, this would not have been sufficient to correct the breach of the principle of

equality of arms at first instance, since the information obtained through the reversal of the burden of proof was relevant in the domestic courts' assessment of the situation.

The Court was not therefore convinced that C.'s "best interests", understood as a decision on his immediate return to his habitual place of residence, had been taken into account by the Swiss courts when evaluating the request for his return, as required by the Hague Convention. Given that these shortcomings had not been corrected by the appeal courts, the Court considered that the applicant's right to respect for his family life had not been protected in an effective manner by the domestic courts and concluded, unanimously, that there had been a violation of Article 8. It awarded Mr Carlson EUR 10,000 for non-pecuniary damage and EUR 12,000 for costs and expenses. (The judgment is available only in French.)

Violation of Article 3 (treatment)
Violation of Article 5 §§ 1 and 3
Violation of Article 6 § 1 (length)

Mikhaniv v. Ukraine (no. 75522/01)
The applicant, Andrey Antonovich Mikhaniv, is a Ukrainian and Russian national who was born in 1966 and lives in Kyiv.

In January 2000 Mr Mikhaniv was arrested and charged with embezzlement of public funds. He was released in February 2002; the criminal proceedings against him are still pending. The case concerned the applicant's complaint about: inadequate medical treatment during his detention; the unlawfulness and excessive length of his detention on remand; and, the excessive length of the proceedings against him. He relied on Article 3 (prohibition of inhuman or degrading treatment), Article 5 §§ 1 and 3 (right to liberty and security) and Article 6 § 1 (right to a fair trial within a reasonable time).

The Court noted that both parties confirmed that the applicant had suffered from post-traumatic encephalopathy, an ulcer and a heart condition during his detention. When first remanded in custody, various medical authorities had examined him and concluded that he had been fit for detention subject to him taking the prescribed medication. However, when detained in Zhytomyr SIZO for six weeks, the applicant had not been given the prescribed drugs as they had not been available in the prison's pharmacy. In the Court's opinion, leaving a detainee without essential medical treatment as prescribed by medical experts for such a substantial period of time and without any satisfactory explanation, amounted to inhuman and degrading treatment. The Court therefore held by five votes to two that there had been a violation of Article 3 on account of inadequate medical care during Mr Mikhaniv's detention in Zhytomyr SIZO.

The Court further held unanimously that there had been a violation of Article 5 § 1 on account of the applicant having been arrested on two occasions and detained despite court decisions revoking his detention orders. The Court also held unanimously that there had been a violation of Article 5 § 3 on account of Mr Mikhaniv's detention on remand having lasted for two years and 15 days, and a violation of Article 6 § 1 on account of the excessive length of the criminal proceedings against him which have so far lasted for over eight years and are still pending.

The Court awarded Mr Mikhaniv EUR 5,000 in respect of non-pecuniary damage and EUR 3,000 for costs and expenses. (The judgment is available only in English.)

Violation of Article 5 §§ 1, 3 and 4
Violation of Article 6 § 1 (length)

Yeloyev v. Ukraine (no. 17283/02)
The applicant, Aleksandr Vladimirovich Yeloyev, is a Ukrainian national who was born in 1968 and lives in Kherson (Ukraine).

In August 1998 Mr Yeloyev was arrested and charged with tax evasion. In September 2003 he was convicted of fraud, embezzlement and abuse of power and sentenced to 11 years' imprisonment, upheld on appeal. Relying on Article 5 §§ 1, 3 and 4 (right to liberty and security), the applicant complained of the unlawfulness and excessive length of his pre-trial detention and that the lawfulness of that detention was not reviewed. He further complained of the excessive length of the criminal proceedings against him, in breach of Article 6 § 1 (right to a fair trial within a reasonable time).

The Court held unanimously that there had been a violation of Article 5 §§ 1, 3 and 4 concerning the unlawfulness of the applicant's pre-trial detention, the excessive length, five years and five months, of his detention on remand and the fact that he was denied the right to a review of the lawfulness of his detention. The Court further held unanimously that there had been a violation of Article 6 § 1 on account of the excessive length, nearly eight years, of the criminal proceedings against the applicant. (The judgment is available only in English.)

Repetitive cases

The following cases raise issues which have already been submitted to the Court.

Violation of Article 6 § 1 (fairness)
Violation of Article 1 of Protocol No. 1

Arulepp v. Russia (no. 35774/04)
Dementyev v. Russia (no. 3244/04)
Krivonozhko and Demchenko v. Ukraine (nos. 7435/05 and 7715/05)
The Court found the above violations in the cases of ***Arulepp*** and ***Krivonozhko and Demchenko*** concerning lengthy non-enforcement of decisions in the applicants' favour.

In the case of ***Dementyev***, it found a violation of each Article concerning the quashing of a final judgment in favour of the applicant by way of supervisory review.

Length-of-proceedings cases

In the following cases, the applicants complain in particular about the excessive length of (non-criminal) proceedings.

Violation of Article 6 § 1 (length)

Dali v. Greece (no. 497/07)
Dimitrieva v. "the former Yugoslav Republic of Macedonia" (no. 16328/03)
Pecevi v. "the former Yugoslav Republic of Macedonia" (no. 21839/03)
Velova v. "the former Yugoslav Republic of Macedonia" (no. 29029/03)

No violation of Article 6 § 1 (length)

Karvountzis v. Greece (no. 35172/05)

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These summaries by the Registry do not bind the Court. The full texts of the Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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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.*