



## Judgments concerning Hungary, Italy, Portugal, Switzerland, Turkey and Ukraine

The European Court of Human Rights has today notified in writing the following 21 judgments, of which four (in italics) are Committee judgments and are final. The others are Chamber judgments<sup>1</sup> and are not final.

Repetitive cases<sup>2</sup> and length-of-proceedings cases, with the Court's main finding indicated, can be found at the end of the press release. The judgments in French are indicated with an asterisk (\*).

Just satisfaction

### Donati v. Italy (application no. 63242/00)\*

The applicants are three Italian nationals, Enrico Donati, Maurizio Donati and Angelo Donati. The case concerned the occupation of their land by the authorities without compensation. In a judgment of 15 July 2005, the Court found that there had been a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights and reserved the question of the application of Article 41 (just satisfaction) of the Convention. Today's judgment concerned the question of just satisfaction (Article 41).

**Given the Government's declaration to redress the violation of Article 1 of Protocol No. 1 as well as the amount of compensation proposed – EUR 8,000,000, a fair amount in this case in the Court's view – the Court considered that it was no longer justified to continue the examination of the case and, under Article 37 § 1 (c) (striking out applications), decided to strike it out of its list of cases.**

### Bargão and Domingos Correia v. Portugal (nos. 53579/09 and 53582/09)\*

The applicants are two Portuguese nationals, José Moreira Bargão and Jacinto Domingos Correia, who were born in 1940 and 1941 respectively and live in Idanha-a-Nova (Portugal). The case concerned their conviction for aggravated defamation in respect of an administrative assistant in a health centre, whom they had accused, in a letter sent to the Ministry of Health, of failing to comply with his working hours and of taking advantage of users' vulnerability. Relying, in particular, on Article 10 (freedom of expression) of the Convention, the applicants complained about their conviction.

### Violation of Article 10

<sup>1</sup> Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a judgment's 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. Under Article 28 of the Convention, judgments delivered by a Committee are final.

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](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

**Just satisfaction:** The applicants did not submit a claim for just satisfaction.

### Joos v. Switzerland (no. 43245/07)

The applicant, Hans Joos, is a Swiss national who was born in 1945 and lives in Samedan (Switzerland). The owner of a house from the 16<sup>th</sup> century in the centre of Samedan, he objected to plans for the construction of a wellness centre with a swimming pool on the roof on the plot of land adjacent to his house. His objection was rejected by the Municipal Council and he subsequently brought administrative proceedings against the construction plans. His appeal was eventually rejected by the Federal Tribunal on 16 May 2007. Relying on Article 6 § 1 (right to a fair hearing), he complained that he had not had an opportunity to submit comments on the observations submitted by the Federal Department of the Interior in the proceedings, in particular since the Federal Tribunal had failed to inform him that it had requested information from the Department and because the Federal Tribunal had given its judgment less than a month after he had received the Department's observations.

**No violation of Article 6 § 1**

### Kissiwa Koffi v. Switzerland (no. 38005/07)\*

The applicant, Christine Kissiwa Koffi, is an Ivory Coast national who was born in 1980 and lives in the Ivory Coast. As the wife of a Swiss national of Ivory Coast origin, she travelled in 2001 to Switzerland, where she obtained a residence permit that was renewed on several occasions. In 2003 she was arrested by the police at the Zurich-Kloten airport with 2.5 kg of cocaine in her luggage. She served two-thirds of the sentence imposed for this offence and was released in 2005. On 25 October 2004, the Migrations Office of the Canton of Zurich refused to extend her residence permit. In 2006 she and her husband had a son (the second applicant). Her appeals against the authorities' decision not to extend her residence permit were unsuccessful and in 2007 she was sent back to the Ivory Coast with her son, who was subsequently returned to Switzerland by his father, ostensibly on health grounds. The Swiss courts upheld the exclusion order against Ms Kissiwa Koffi on the ground that she represented a danger to public order and safety. Relying in particular on Article 8 (right to respect for private and family life), she complained about her expulsion from Switzerland.

**No violation of Article 8**

### Shala v. Switzerland (no. 52873/09)\*

The applicant, Isak Shala, who states that he is a Kosovo national, was born in 1983 and lives in Prizren (Kosovo). He arrived in Switzerland in 1990 in the context of family reunion, received all his schooling there and served an apprenticeship as a locksmith. Having received several criminal convictions and been fined for attempted blackmail and death threats against his former girlfriend, he was deported from Switzerland in March 2008, a decision that was subsequently confirmed by the Federal Court. In 2007 the applicant had married, in Kosovo, a national of that country, with whom he had requested family reunion. Relying on Article 8 (right to respect for private and family life), the applicant complained about his expulsion from Switzerland, where he had lived for 18 years.

**No violation of Article 8**

### Çelik v. Turkey (no 3) (no. 36487/07)\*

The applicant, Murat Çelik, is a Turkish national who was born in 1966 and lives in Istanbul (Turkey). A lawyer, he was president of the Istanbul branch of the Association of Contemporary Lawyers (Çağdaş Hukukçular Derneği) from 1997 to 2000. The case concerned his arrest in the context of an assembly of members of this association on 16 September 2000 for the purpose of reading a statement to the press about a protocol adopted in January 2000 to regulate management, protection and health services within prisons and detention facilities. Relying, in particular, on Article 3 (prohibition of inhuman or degrading treatment), the applicant alleged that the police had used violence against him and complained of the ineffectiveness of the criminal proceedings brought against the police officers on duty on the day of the incident, on the ground that they had been ended as time-barred. He also complained of an infringement of his rights as protected, in particular, by Article 11 (freedom of assembly and association).

**Violation of Article 3** (treatment and investigation)

**Violation of Article 11**

**Just satisfaction:** EUR 10,000 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

### Mehmet Yolcu v. Turkey (no. 33200/05)\*

The applicant, Mehmet Yolcu, is a Turkish national who was born in 1957 and lives in Malatya (Turkey). At the relevant time, he was a university research assistant. The case concerned an administrative procedure following the Vice-Chancellor's refusal to appoint him to the post of lecturer in Arab language and literature in the Theology Faculty at the Inonu Public University. Relying, in particular, on Article 6 § 1 (right to a fair hearing within a reasonable time), the applicant complained about the length of that procedure and about the failure to communicate the opinion of the Chief Public Prosecutor at the Supreme Administrative Court in the context of his appeal against the administrative court's judgment, and his application for rectification of that judgment.

**Two violations of Article 6** (length of proceedings and failure to communicate the opinion of the Chief Public Prosecutor)

**Just satisfaction:** EUR 2,500 (non-pecuniary damage)

### Grinenko v. Ukraine (no. 33627/06)

The applicant, Vladislav Grinenko, is a Ukrainian national who was born in 1983 and lives in Kharkiv (Ukraine). Convicted of attempting to arrange a murder and sentenced to four and a half years' imprisonment in June 2005, he complained in particular, under Article 3 (prohibition of torture and of inhuman or degrading treatment), that following his arrest in November 2004 he had been ill-treated by police officers and that there had been no effective investigation of his allegations. Relying on Article 5 § 1 (c) (right to liberty and security), he complained in particular that for more than 24 hours following his arrest, his detention had not been recorded by the authorities and no formal decision had been made, and that even after his detention as a suspect had been formalised, it had been unlawful as it had not complied with the Code of Criminal Procedure. Relying further on Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance of own choosing), he complained that following his arrest he had been denied access to a lawyer and that he had subsequently been provided with a legal aid lawyer instead of being represented by a lawyer of his own choosing.

**No violation of Article 3** (treatment)

**Violation of Article 3** (investigation)

**Violation of Article 5 § 1 (c)** (unrecorded detention between 20 and 21 November 2004)

**Violation of Article 5 § 1 (c)** (detention based on the arrest report of 21 November 2004)

**Violation of Article 6 §§ 1 and 3 (c)**

**Just satisfaction:** EUR 14,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

### Khayrov v. Ukraine (no. 19157/06)

The applicant, Ramil Khayrov, is a Ukrainian national who was born in 1968 and is currently serving a prison sentence. Convicted of murder and sentenced to ten years' imprisonment in July 2004, he complained in particular, relying on Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance), that he had not been provided with a lawyer at the initial stage of the proceedings. He further complained, under Article 6 §§ 1 and 3 (d) (right to a fair trial / right to obtain attendance and examination of witnesses), that the courts had failed to examine another suspect as a witness.

**Violation of Article 6 §§ 1 and 3 (c)**

**Violation of Article 6 §§ 1 and 3 (d)**

**Just satisfaction:** EUR 3,000 (non-pecuniary damage)

### Koval and Others v. Ukraine (no. 22429/05)

The applicants, Mikhail and Anna Koval, born in 1944 and 1955 respectively, and their children Dmitriy Brik, and Yelena Dubova, born in 1977 and 1980 respectively, are Ukrainian nationals who live in Chernigiv (Ukraine). Their case originated in a dispute between Mr Brik and two of his acquaintances over the ownership of an electric drill. When the acquaintances arrived at the applicants' apartment in Mr Brik's absence in order to take the drill, they were threatened by Mr Koval with a gas gun. Following their complaint to the police, police officers accompanied by the acquaintances came to the applicants' apartment on 14 August 2001. They allegedly used force against three of the applicants and subsequently took Mr Koval and Mr Brik to the police station, where they were beaten. In the evening of the same day, the police returned to the applicants' apartment and seized the drill and the gas gun. Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr and Ms Koval and Mr Brik complained about having been beaten - Mr Koval and Mr Brik maintained that the treatment to which they had been subjected at the police station had amounted to torture - and that there had been no effective investigation in respect of their complaints. Mr Koval and Mr Brik further complained, relying on Article 5 § 1 (right to liberty and security), that their detention at the police station for several hours with the sole purpose of forcing them to return the electric drill, had been unlawful. Relying further on Article 8 (right to respect for private and family life and the home), all the applicants complained that police officers had unlawfully entered their apartment. Finally, under Article 1 of Protocol No. 1 (protection of property), Mr Koval and Mr Brik complained about the police having seized the electric drill and the gas gun.

**Violation of Article 3** (treatment; in respect of the first, second and third applicants)

**Violation of Article 3** (investigation; in respect of the first, second and third applicants)

**Violation of Article 5 § 1** (in respect of the first and third applicants)

**Violation of Article 8**

**Violation of Article 1 of Protocol No. 1** (in respect of the third applicant)

**Just satisfaction:** EUR 284 to Mr Koval (pecuniary damage); EUR 12,000 to Mr Koval, EUR 6,000 to Mrs Koval and EUR 12,000 to Mr Brik (non-pecuniary damage); and EUR 4,500 to all applicants (costs and expenses)

### Nikolayenko v. Ukraine (no. 39994/06)

The applicant, Vyacheslav Nikolayenko, is a Ukrainian national who was born in 1968 and is currently serving a life sentence for murder, of which he was convicted in November 2005. He complained in particular, under Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance of own choosing), that he had been represented by a lawyer only on certain occasions during the investigation and trial.

#### **Violation of Article 6 §§ 1 and 3 (c)**

**Just satisfaction:** EUR 2,400 (non-pecuniary damage)

### Sergey Afanasyev v. Ukraine (no. 48057/06)

The applicant, Sergey Afanasyev, is a Russian national who was born in 1963 and is currently serving a prison sentence. Convicted of murder and sentenced to ten years' imprisonment in July 2005, he complained in particular, relying on Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance), that he had had no access to a lawyer at his first questioning by the police.

#### **Violation of Article 6 §§ 1 and 3 (c)**

**Just satisfaction:** EUR 2,400 (non-pecuniary damage) and EUR 700 (costs and expenses)

### Yermolenko v. Ukraine (no. 49218/10)

The applicant, Grygoriy Yermolenko, is a Ukrainian national who was born in 1958 and is currently detained in Sumy no. 116 Correctional Colony. He was the former deputy head of the Sumy District State Administration and was convicted of corruption and sentenced to seven years' imprisonment in December 2009. Suffering from chronic lymphocytic leukaemia since 2002 and subsequently diagnosed with a number of other serious diseases, he maintained that he had not been provided with the necessary medical assistance in detention and that his state of health had not been compatible with detention. He relied on Article 3 (prohibition of torture and of inhuman or degrading treatment).

#### **Violation of Article 3**

**Just satisfaction:** EUR 7,500 (non-pecuniary damage)

### Yerokhina v. Ukraine (no. 12167/04)

The applicant, Elena Yerokhina, is a Ukrainian national who was born in 1963 and lives in Chernihiv. Convicted of murdering a friend and sentenced to ten years' imprisonment in April 2003, she complained in particular, relying on Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance), that she had not been given access to a lawyer at the initial stage of the criminal proceedings against her and that this had affected the fairness and outcome of the proceedings.

#### **Violation of Article 6 §§ 1 and 3 (c)**

**Just satisfaction:** EUR 2,400 (non-pecuniary damage) and EUR 400 (costs and expenses)

### Zamferesko v. Ukraine (no. 30075/06)

The applicant, Viktor Zamferesko, is a Ukrainian national who was born in 1982 and is currently serving a life sentence for murder, of which he was convicted in September 2005. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), he complained in particular that he had been psychologically and physically ill-treated by the police following his arrest in April 2005 in order to obtain a confession. Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial / right to legal assistance), he complained that he had not been provided with access to a lawyer when he had first been questioned by the police. Finally, he complained that the courts had convicted him on the basis of self-incriminating statements obtained as a result of ill-treatment, in breach of Article 6 § 1 (right to a trial).

**Violation of Article 3** (treatment)

**Violation of Article 6 §§ 1 and 3 (c)**

**Violation of Article 6 § 1** (use of evidence obtained through ill-treatment)

**Just satisfaction:** EUR 11,000 (non-pecuniary damage) and EUR 253 (costs and expenses)

### Repetitive cases

The following case raised issues which have already been submitted to the Court.

**Lombardi v. Italy** (no. 66394/01)\*

**Violation of Article 1 of Protocol No. 1**

### Length-of-proceedings cases

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

**Bodnár v. Hungary** (no. 46206/07)

**Cserjés and Others v. Hungary** (no. 53834/07)

**Cooperativa 'Sannio Verde' S.R.L. v. Italy** (no. 43465/02)\*

**Pacifico and Others v. Italy** (nos. 34389/02, 34390/02, 34392/02 and 34458/02)\*

**Violation of Article 6 § 1** in all four cases

In the following case, the applicant complained in particular about the excessive length of criminal proceedings.

**Gürceğiz v. Turkey** (no. 11045/07)\*

**Violation of Article 6**

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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.