



## Judgments concerning Austria, Bulgaria, Greece, Italy, Latvia, the Republic of Moldova, Norway, Poland, Portugal, Romania, Russia and Turkey

The European Court of Human Rights has today notified in writing the following 32 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 (\*).

Küchl v. Austria (application no. 51151/06)

Rothe v. Austria (no. 6490/07)

Verlagsgruppe News GmbH and Bobi v. Austria (no. 59631/09)

The applicants in the first two cases, Ulrich Küchl and Wolfgang Rothe, are an Austrian and a German national. Until July 2004 they were principal and deputy principal, respectively, of the St Pölten seminary (Austria), where future Roman Catholic priests are trained. On 12 July 2004, the weekly news magazine *Profil* published an article which stated that the applicants had had sexual relations with seminarians. It was accompanied by a photo showing Mr Küchl with his hand between the legs of one of the seminarians and two photos showing Mr Rothe about to kiss and embrace a seminarian. Both applicants brought proceedings against Verlagsgruppe News GmbH, the publisher of *Profil*, requesting compensation for defamation and for the violation of their strictly personal sphere. Relying in particular on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, they both complained about the Austrian courts' judgments refusing them compensation for the publication of the article and the photos, which became final in June and July 2006, respectively.

The first applicant in the third case, Verlagsgruppe News GmbH, is the publisher of *Profil* and the second applicant in that case, Emil Bobi, is an editor-in-chief of the magazine. Relying on Article 10 (freedom of expression), they complained about an injunction prohibiting them from further publishing Mr Küchl's picture in connection with allegations about unwanted homosexual advances towards seminarians or allegations about engaging in sexual antics with seminarians, which had been upheld by the Austrian Supreme Court on 26 March 2009.

**No violation of Article 8** – in the two first cases

**No violation of Article 10** – in the third case

<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.

## Filipovi v. Bulgaria (no. 24867/04)

The applicants, Rositsa Filipova and Alberto Filipov, are Bulgarian nationals who were born in 1967 and 1994 respectively and live in Sofia. They are the widow and son of Nikolay Filipov who was shot by a police officer on 13 May 1999 during a police operation concerning three armed robberies. The police argued that one of their officers had acted in self-defence when, the operation having turned into a car chase, Mr Filipov, a suspect, had got out of his car and brandished a fire-arm. Relying on Article 2 (right to life) of the Convention, the applicants alleged that their relative, shot in the back, had been killed intentionally and that the ensuing investigation into the incident had been ineffective and had resulted in the police officer responsible for Mr Filipov's death being acquitted.

### Violation of Article 2

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

## Nieciecki v. Greece (no. 11677/11)\*

The applicant, Otton Nieciecki, is a Polish national who was born in 1937 and is currently being held in Korydallos Prison (Greece). The case concerned Mr Nieciecki's arrest in July 2010 and his subsequent detention pending trial for a drug offence and possession of illegal weapons. In particular, he was accused by the Greek authorities of having transported a large quantity of drugs from Venezuela on his yacht for the sum of 25,000 euros. Relying in particular on Article 3 (prohibition of torture and inhuman or degrading treatment), he complained about the conditions of his detention in Korydallos Prison, referring especially to the sanitary conditions and overcrowding.

### Violation of Article 3

**Just satisfaction:** EUR 5,600 (non-pecuniary damage) and EUR 800 (costs and expenses)

## Tzamalīs and Others v. Greece (no. 15894/09)\*

The fourteen applicants, Dimitrios Tzamalīs, Triantafyllos Katavatis, Ioannis Vassos, Mustafa Rashid, Panayotis Theoharis, Athanassios Tzoulas, Hristos Ioannou, Nikolaos Vassiliadis, Thimjo Millo, Fotios Sampanis, Emmanouil Mihos, Dimitrios Kalantzis, Mukul Mohamod and Mihail Gravanis – eleven Greek nationals, an Iraqi national, an Albanian national and a Bangladeshi national – served prison sentences of between six months and ten years in Ioannina Prison at different times. They complained about the conditions of their detention there, especially the overcrowding, poor sanitary conditions and lack of medical treatment. They relied on Article 3 (prohibition of torture and inhuman or degrading treatment).

### Violation of Article 3

**Just satisfaction:** EUR 15,000 each to Mr Katavatis and Mr Tzoulas, EUR 10,000 each to Mr Vassos, Mr Vassiliadis, Mr Sampanis, Mr Kalantzis, Mr Mohamod and Mr Gravanis, EUR 7,000 each to Mr Tzamalīs, Mr Rashid, Mr Theoharis, Mr Ioannou and Mr Millo and EUR 5,000 to Mr Mihos (non-pecuniary damage), and EUR 1,500 to the applicants jointly (costs and expenses)

## Hamidovic v. Italy (no. 31956/05)\*

The applicant, Nevresa Hamidovic, is a Bosnian national of Roma origin who was born in 1975 and lives in a travellers' encampment in Rome (Italy) with her husband and five children. Having initially been lawfully resident between January 1996 and October 1997,

Ms Hamidovic applied to have her residence permit renewed but her request was refused in May 1999 on the ground that she had committed criminal offences. Following an identity check in July 2005, she was placed in a detention centre, and in September 2005 she was deported for staying illegally in Italian territory. Relying on Article 8 (right to respect for private and family life), Ms Hamidovic complained that her deportation to Bosnia and Herzegovina had resulted in a violation of her right to respect for her private and family life as she had been obliged to leave her husband and children behind in Italy. The applicant had been deported even though the Court had indicated that the deportation order should be stayed as an interim measure under Rule 39 of the Rules of Court.

### **Violation of Article 8**

**Just satisfaction:** EUR 15,000 (non-pecuniary damage) and EUR 2 000 (costs and expenses)

### **Petriks v. Latvia (no. 19619/03)**

The applicant, Kaspars Petriks, is a Latvian national who was born in 1979 and is currently being held in Šķīrotava Prison in Riga where he is serving a 13-year prison sentence for aggravated murder. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), he complained about the conditions of his detention before his conviction in June 2003 in a short-term detention facility located in a police station in Saldus which, he alleged, was entirely unsuitable for prolonged periods of detention. Notably, he alleged that he had not had enough food to eat, that the hygiene had been inadequate and that he had had to sleep on a wooden platform with no mattress.

### **Violation of Article 3**

**Just satisfaction:** EUR 6,000 (non-pecuniary damage)

### **Ciorap (no. 3) v. the Republic of Moldova (no. 32896/07)**

The applicant, Tudor Ciorap, is a Moldovan national who was born in 1965. Convicted of a number of crimes, notably fraud, he was detained, with short interruptions, between late 2000 and late 2009. In a previous case<sup>3</sup> he brought before the European Court it was found, among other things, in a judgment of June 2007, that his conditions of detention were inhuman and degrading. In this further application, Mr Ciorap complained that his conditions of detention had not changed after that judgment. He notably alleged that, a second degree invalid with special dietary needs, the extremely poor quantity and quality of food had made him ill with thrombophlebitis, septic pneumonia and anaemia, in further breach of Article 3 (prohibition of torture and of inhuman or degrading treatment).

### **Violation of Article 3 (conditions of detention)**

**Just satisfaction:** The Court dismissed the applicant's claims for just satisfaction.

### **Struc v. the Republic of Moldova (no. 40131/09)**

The applicant, Oleg Struc, is a Moldovan national who was born in 1980 and lives in Bălți (Republic of Moldova). Mr Struc was convicted in June 2010 of, among other things, injuring someone with a knife during a brawl in a bar and sentenced to seven years'

<sup>3</sup> Ciorap v. Moldova (application no. 12066/02) of 19 June 2007

imprisonment. The case essentially concerned his complaint that, arrested in August 2006, he had subsequently been kicked and punched by the police during his pre-trial detention, and that the ensuing investigation into his complaint had been inadequate. He relied in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment). Further relying on Article 13 (right to an effective remedy), he also alleged that there had been no effective remedy under domestic law for him to claim compensation for his ill-treatment. He also alleged a further violation of Article 3 because of inadequate medical care in detention, claiming that as a result he had become ill with pulmonary tuberculosis and pneumonia. Lastly, he made a complaint under Article 6 § 1 (right to a fair trial within a reasonable time) about the excessive length – four years – of the criminal proceedings brought against him.

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

**No violation of Article 3** (conditions of detention)

**No violation of Article 6 § 1**

**Violation of Article 13**

**Just satisfaction:** EUR 8,000 (non-pecuniary damage) and EUR 1,400 (costs and expenses)

### Butt v. Norway (no. 47017/09)

The applicants, Johangir Abbas and Fozia Butt, brother and sister, are Pakistani nationals who were born in 1985 and 1986 respectively and live in Oslo. They arrived in Norway in 1989 with their mother and were granted a residence permit on humanitarian grounds. In 1999 their permits were withdrawn and they were refused further residence in Norway as their mother had lied to the immigration authorities (notably they had left Norway and returned to Pakistan from 1992 to early 1996). Relying on Article 8 (right to respect for private and family life and the home), the applicants complained that their deportation to Pakistan would break the strong ties they have with Norway where they have lived since they were young children with their aunt and uncle, their mother having gone into hiding in 2000-2001, been expelled in 2005 and died in 2007. On the other hand, their links to Pakistan were weak: they have had no contact since 1996 with their father whose abusive behaviour had prompted their mother to leave Pakistan, and they have a limited grasp of Urdu.

**Violation of Article 8** (in the event of the applicants' deportation)

**Just satisfaction:** EUR 15,000 to the applicants jointly (pecuniary damage), EUR 3,000 to each applicant (non-pecuniary damage) and EUR 20,000 to the applicants jointly (costs and expenses)

### Leontiu v. Romania (no. 44302/10)\*

The applicant, Marius Sebastian Leontiu, is a Romanian national who was born in 1979 and lives in Timișoara (Romania). The case concerned Mr Leontiu's arrest in August 2008 and subsequent detention pending trial for criminal conspiracy, fraud, forgery and making use of forged documents in connection with a property development scheme set up by a commercial company of which he was the manager, entailing losses estimated at nearly one million euros. On account of the gravity and seriousness of the charges against him, the applicant was kept in pre-trial detention until May 2011, when he was convicted and sentenced to 10 years' imprisonment. He then remained in prison until May 2012, by which time the High Court had eventually quashed his conviction. Relying in particular on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained about the conditions of his detention, especially the overcrowding. He also complained under Article 5 § 3 (right to liberty and security)

about the length of his pre-trial detention, arguing that there had been no grounds for continuing it.

**Violation of Article 3**  
**Violation of Article 5 § 3**

**Just satisfaction:** EUR 9,500 (non-pecuniary damage) and EUR 140 (costs and expenses)

**Petruş Iacob v. Romania (no. 13524/05)\***

The applicant, Petruş Iacob, is a Romanian national who was born in 1954 and lives in Brăila (Romania). The case concerned his alleged ill-treatment by police officers following an inspection by the Finance Ministry's Fraud Squad at Brăila market, where Mr Iacob was selling potatoes. As he was unable to produce the documents requested, the Fraud Squad confiscated his goods. When the applicant objected, three police officers who had been called to the scene sprayed him with an irritant, causing severe burns to his face. The applicant also alleged that the investigation into the events had not been effective and relied in that regard on Article 3 (prohibition of inhuman or degrading treatment).

**Two violations of Article 3** (treatment + investigation)

**Just satisfaction:** EUR 10,000 (non-pecuniary damage) and EUR 270 (costs and expenses)

**Mityaginy v. Russia (no. 20325/06)**

The applicants, Anna Mityagina and Nikolay Mityagin, mother and son, are Russian nationals who were born in 1938 and 1967 respectively and live in Ulyanovsk (Russia). They had a long-standing conflict with their mother/grandmother's neighbour. The case concerned their allegation that they had been assaulted at their mother/grandmother's house in May 1998 by masked men who had threatened to kill them if they did not stop making complaints about the neighbour. They alleged in particular that the men who had beaten them were police officers and complained that, some 14 years later, there had still been no progress in the authorities' investigation into the assault. They relied on Article 3 (prohibition of torture and of inhuman or degrading treatment).

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

**Violation of Article 3** (investigation)

**Just satisfaction:** EUR 5,000 to each applicant (non-pecuniary damage) and EUR 778 to the applicants jointly (costs and expenses)

**Özmen v. Turkey (no. 28110/08)\***

The applicant, Halük Özmen, is a Turkish national who was born in 1965 and lives in Samsun (Turkey). In 2005, while living in Australia, the applicant filed for divorce from his wife, who was also of Turkish origin. She was granted leave by the court to travel to Turkey temporarily with their daughter but never came back. This gave rise to a legal battle between Mr Özmen and his former wife over the return of their daughter. Having complained about her removal, the applicant eventually secured an order for his daughter's return to Australia under the Hague Convention on the Civil Aspects of International Child Abduction. However, the order was never enforced. In his complaint to the Court about the failure to enforce the order, the applicant alleged in particular, under Article 8 (right to respect for private and family life), that the authorities had not taken all the necessary steps to recover his daughter and ensure her return to Australia.

Having had no news of his child, Mr Özmen stated that he feared for her physical and psychological well-being and her right to education. He also complained about the disruption of family ties as a result of their prolonged separation. In addition, Mr Özmen complained that his right to a fair hearing had not been respected in that his child's return had not been ordered within a suitable time, the proceedings instituted by him had lasted for years and his daughter had still not been returned to her place of habitual residence.

**Violation of Article 8** (right to respect for family life)

**Just satisfaction:** EUR 12,500 (non-pecuniary damage) and EUR 5,000 (costs and expenses)

## Repetitive cases

The following cases raised issues which had already been submitted to the Court.

**Medici and Others v. Italy** (no. 70508/01)\* Just satisfaction

In its judgment of 5 October 2006 on the merits the Court held that there had been a violation of Article 1 of Protocol No. 1 (protection of property). Today's judgment concerned the question of just satisfaction (Article 41).

*Just satisfaction:* EUR 12,750,000 jointly (pecuniary damage), EUR 20,000 jointly (non-pecuniary damage) and EUR 20,000 jointly (costs and expenses)

**Frączek-Potęga v. Poland** (no. 39430/04)  
**Franciszek Dąbrowski v. Poland** (no. 31803/04)  
**Krzyżek v. Poland** (no. 11815/05)  
**Lew v. Poland** (no. 34386/04)  
**Migalska v. Poland** (no. 10368/05)  
**Misielak v. Poland** (no. 35538/04)  
**Potok v. Poland** (no. 18683/04)  
**Sasor v. Poland** (no. 6112/05)  
**Stanisława Szewc v. Poland** (no. 31492/05)  
**Stępień v. Poland** (no. 39225/05)  
**Świątek v. Poland** (no. 8578/04)  
**Zofia Sikora v. Poland** (no. 27680/04)

**Violation of Article 1 of Protocol No. 1** (protection of property) – all twelve cases

## Length-of-proceedings cases

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

**Dimitrovi v. Bulgaria** (no. 7443/06)  
**Gomes Dara v. Portugal** (no. 68415/10)\*  
**Silva Gonçalves and Neves Dias v. Portugal** (no. 52692/10)\*  
**Silva Lopes Mota v. Portugal** (no. 72506/10)\*

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

**Violation of Article 13** (right to an effective remedy) – all four cases

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