



## Judgments concerning Croatia, the Czech Republic, Greece, Ireland, Luxembourg, Russia, Sweden, “The former Yugoslav Republic of Macedonia”, and Ukraine

The European Court of Human Rights has today notified in writing the following 13 judgments, of which on (in italics) is a Committee judgment and is final. The others are Chamber judgments<sup>1</sup> and are not final.

One length-of-proceedings case, 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 (\*).

### Jaćimović v. Croatia (application no. 22688/09)

The applicant, Doko Jaćimović, is a national of Bosnia and Herzegovina who was born in 1953 and lives in Bosanski Brod (Bosnia and Herzegovina). The case concerned his unemployment benefits. In December 1990 Mr Jaćimović was granted unemployment benefit, on the condition that he reported to the Republic Workers’ Fund in Croatia on a monthly basis. According to Mr Jaćimović, he reported every month until 24 March 1992, when he could no longer travel to Croatia because of the escalating war following Croatia’s declaration of independence. He therefore reported by sending a letter each month. This caused the payment of his unemployment benefit to be stopped, for failure to comply with the conditions. In June 2000 Mr Jaćimović submitted a request for payment of benefits to the Croatian authorities, but this was rejected and his right to benefits was discontinued with effect from the end of March 1992. His appeals against that decision were rejected, and his complaint to Croatia’s Constitutional Court was dismissed in September 2008. Relying in particular on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, Mr Jaćimović complained about the decisions of the Croatian authorities to terminate his right to receive unemployment benefits.

#### Violation of Article 6 § 1

**Just satisfaction:** The Court dismissed the applicant’s claim for just satisfaction.

### Oreb v. Croatia (no. 20824/09)

The applicant, Perica Oreb, is a Croatian national who was born in 1982 and lives in Split (Croatia). The case concerned his pre-trial detention and the legal proceedings related to it, before his conviction for conspiracy to supply drugs. Between the beginning of a police investigation into his activities on 1 August 2008 and his conviction on 20 September 2010, Mr Oreb was held in pre-trial detention, except from 3 to 28 October 2008, when he was temporarily released following a successful appeal. Mr Oreb made numerous other appeals against his detention, but they were all dismissed. Relying in particular on Article 5 § 3 (right to liberty and security) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), he complained that his pre-trial

<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)

detention had been excessively long – more than two years – and that it had been ordered and extended without the authorities referring to concrete relevant facts or considering alternative preventive measures. Relying on Article 6 § 2 (presumption of innocence), he also alleged that the national courts had repeatedly stated as a reason for ordering and extending his pre-trial detention that he had already been charged with similar drugs offences even though he had not actually been convicted but had had similar criminal proceedings pending against him.

**Violation of Article 5 § 3**

**Violation of Article 5 § 4**

**Violation of Article 6 § 2**

**Just satisfaction:** 4,000 euros (EUR) (non-pecuniary damage) and EUR 1,215 (costs and expenses)

### **Janyr v. the Czech Republic (no. 42937/08)\***

The applicant, Philipp Janyr, has dual Czech and Austrian nationality, was born in 1973 and lives in Vienna. Mr Janyr was investigated in connection with customs offences concerning poultry imports. In April 2003 he was found guilty of import duty evasion and sentenced to five years' imprisonment. Relying in particular on Article 6 §§ 1 and 3 (right to a fair trial within a reasonable time), he complained that the Constitutional Court had breached the adversarial principle by failing to let him have the submissions of the authorities who had been party to the proceedings, as well as infringing his right to legal assistance of own choosing by assigning a court-appointed lawyer to assist him.

**Violation of Article 6 § 1**

**No violation of Article 6 § 3 b) and c)**

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

### **Mosinian v. Greece (no. 8045/10)\***

The applicant, Ruslan Mosinian, is a Georgian national who was born in 1986 and lives in Salonica. He was arrested on suspicion of drug trafficking and, in November 2006, sentenced to six years and five months' imprisonment. In November 2008 he was acquitted by the Court of Appeal and released. The case concerned Mr Mosinian's detention and the fact that his claim for damages had been rejected although he had finally been acquitted. Relying in particular on Article 6 § 2 (presumption of innocence), he complained that the reasons given by the Criminal Court of Appeal for rejecting his claim for damages for wrongful incarceration had been incompatible with his right to be presumed innocent.

**Violation of Article 6 § 2**

**Just satisfaction:** EUR 10,000 (non-pecuniary damage)

### **S.J. v. Luxembourg (No. 2) (no. 47229/12)\***

The applicant, Mr S.J., is a national of Luxembourg who was born in 1976. S.J., who is currently in detention in Luxembourg, complained that for the purposes of a body search he had been made to undress in an open booth in the presence of a number of guards. Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), S.J. alleged that a body search in such conditions had amounted to inhuman and degrading treatment.

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

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

### Eduard Rozhkov v. Russia (no. 11469/05)

The applicant, Eduard Rozhkov, is a Russian national who was born in 1969 and lives in Krasnodar (Russia). He was convicted of murder in August 2004 and sentenced to ten years' imprisonment. He appealed the decision, but the appeal was dismissed in October 2004. Both he and a representative of the prosecution were present at the appeal hearing, but his lawyer was not. Relying in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Rozhkov complained that the Russian courts had failed to ensure that he was legally represented at his appeal.

#### Violation of Article 6 § 1 in conjunction with Article 6 § 3 (c)

**Just satisfaction:** EUR 4,000 (non-pecuniary damage)

### Grossman v. Russia (no. 46282/07)

The applicant, Yuriy Grossman, is a Russian national who was born in 1977 and is serving an 18-year prison sentence in the Kemerovo Region (Russia) for numerous offences, including murder. The case concerned his complaint about the appalling conditions of his detention in a temporary detention centre in Naberezhnyye Chelny between August 2006 when he had been arrested and December 2009. Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), Mr Grossman alleged that the cells were overcrowded and that there was no daylight or opportunity to use a private toilet. Further relying on Article 5 § 3 (right to liberty and security), he alleged that his pre-trial detention had not been based on sufficient or relevant reasons, the national courts having relied essentially on the gravity of the charges against him, without considering alternative preventive measures.

**Violation of Article 3** (inhuman and degrading treatment) – in respect of the applicant's conditions of detention in the temporary detention centre

**Violation of Article 13**

**Violation of Article 5 § 3**

**Just satisfaction:** EUR 5,000 (non-pecuniary damage)

### Tovbulatova and Others v. Russia (nos. 26960/06, 27926/06, 6371/09 and 6382/09)

The applicants are Russian nationals who are the families of five men who disappeared in the Chechen Republic (Russia) after being apprehended, in 2001 and 2006, by armed men belonging – according to the applicants – to the Russian military or security forces.

Magomed Edilov, born in 1979, Akhamdi Isayev, born in 1981, and Ali Vadilov, born in 1974, were detained in the early hours of the morning of 9 December 2001 at their respective family homes in the village of Valerik (Achkhoy-Martani district of Chechnya) by a group of armed masked men in camouflage uniforms. Their families have had no news of the three men since (application nos. 26960/06, 6371/09 and 6382/09).

Bulat Chilayev, born in 1973, who was a driver for a Russian humanitarian NGO, and Aslan Israilov, born in 1978, who had been visiting his grandfather in Sernovodsk, were on their way to Grozny on 9 April 2006 when their car was stopped during a large-scale sweeping operation by a group of men wearing camouflage uniforms. Eyewitnesses stated that both men were punched and beaten with rifle butts and then bundled into the boot and back seat of their car, with one of the men in camouflage taking the wheel and driving off in the direction of Grozny. There has been no news of the two men since (application no. 27926/06).

The applicants alleged that their relatives had disappeared after being unlawfully detained by Russian servicemen and that this had caused them mental suffering. They also alleged that the authorities had failed to carry out an effective investigation into the disappearance of their relatives. They relied on Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy).

**Violation of Article 2** (right to life) – in respect of the applicants’ relatives (Magomed Edilov, Akhamdi Isayev, Ali Vadilov, Bulat Chilayev and Aslan Israilov)

**Violation of Article 2** (procedure) – in respect of the failure to investigate effectively the disappearance of the applicants’ relatives

**Violation of Article 3** – in respect of the applicants, on account of their relatives’ disappearance and the authorities’ response to their suffering

**Violation of Article 5** – in respect of the applicants’ relatives, on account of their unlawful detention

**Violation of Article 13 in conjunction with Articles 2 and 3**

**Just satisfaction:** EUR 10,000 (pecuniary damage) to Bulat Chilayev’s daughter; per family of each of the five men who disappeared, EUR 60,000 (non-pecuniary damage); and, per application, sums between EUR 1,168 and EUR 2,500 (costs and expenses)

(Striking-out)

### Atayeva and Burman v. Sweden (no. 17471/11)

The applicants, Myahri Atayeva, a Turkmen national born in 1974, and Mats Burman, a Swedish national born in 1954, live in Luleå (Sweden). The case concerned the possible deportation of Ms Atayeva. She arrived in Sweden with her son in March 2006 and married Mr Burman in April 2006. The couple had a son together in January 2010, and in September 2010 Mr Burman adopted Ms Atayeva’s first son. Beginning in September 2006, Ms Atayeva made numerous applications and appeals to the Swedish authorities for asylum and a residence permit. Other than an application made in July 2013, which is still outstanding, all of these were rejected and Ms Atayeva alleged that her most recent application for residence had no prospect of success. The applicants complained that Ms Atayeva’s expulsion from Sweden would violate their rights under Article 8 (right to respect for family life).

**Application struck out of the Court’s list of cases, under Article 37 § 1 (striking out applications)** – the validity of the deportation order against Ms Atayeva having expired, she may institute a new asylum request

### Popovski v. “The former Yugoslav Republic of Macedonia” (no. 12316/07)

The applicant, Risto Popovski, is a national of “The former Yugoslav Republic of Macedonia” who was born in 1945 and lives in Bitola. The case concerned an article published about Mr Popovski, and the subsequent proceedings for defamation. On 2 December 2002 an article was published in the daily newspaper *Utrinski Vesnik* suggesting that Mr Popovski had stolen a tractor. The next day he sent the newspaper a letter asking for a retraction, together with evidence that the tractor belonged to him. No retraction was forthcoming. In February 2003 Mr Popovski brought a criminal charge for defamation against the editor-in-chief of the newspaper and the journalist who had written the article. Between October 2003 and January 2007 the trial court fixed 23 hearings, nearly all of which were adjourned because of the absence of the editor, his lawyer or the author of the article. In January 2007 the court stayed the proceedings because the prosecution had become time-barred, a decision which was upheld on appeal in March 2007. Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Popovski complained of the excessive length of the defamation proceedings. Relying on Article 8 (right to respect for private and family life and the home), he also complained that by not ensuring the attendance at trial of the individuals that he claimed had

defamed him the national courts had failed to protect his reputation, which had been considerably damaged by the newspaper article.

**Violation of Article 6 § 1**

**Violation of Article 8**

**Just satisfaction:** EUR 4,500 (non-pecuniary damage) and EUR 2,650 (costs and expenses)

**Bandaletov v. Ukraine (no. 23180/06)**

The applicant, Gennadiy Bandaletov, is a Ukrainian national who was born in 1961 and is currently serving a life sentence in Ladyzhynska Prison (Ukraine). On 21 April 2005 he was summoned to a police station to be questioned as a witness to a double murder committed in the house where he lived. Without a lawyer being present, he confessed to committing the two murders. He subsequently repeated his confession on numerous occasions, both in and out of court, while being legally represented. In September 2005 he was convicted of the murders and sentenced to life imprisonment. Relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Bandaletov complained that he had not been legally represented during the initial stage of the investigation, and that this meant that his early confession had not been properly documented and the courts had therefore failed to mitigate his sentence.

**No violation of Article 6 §§ 1 and 3**

**Tarasov v. Ukraine (no. 17416/03)**

The applicant, Aleksey Tarasov, is a Ukrainian national who was born in 1965 and lives in Makiyivka (Ukraine). The case concerns criminal proceedings against him for theft and robbery, and his allegations that he was ill-treated by the police. He was arrested on 13 January 2000 and kept in police custody until 25 January 2000, when he was transferred to another detention facility. Mr Tarasov alleges that during this time he had no access to a lawyer, and that he was severely beaten, electrocuted and forced to confess to various crimes. In December 2001 he was convicted and sentenced to five years' imprisonment. His appeal to the Ukrainian Supreme Court was dismissed in October 2002. Mr Tarasov relies on Article 3 (prohibition of torture and of inhuman or degrading treatment) to complain about his ill-treatment by the police and the failure of the Ukrainian authorities to carry out a proper investigation. He also relies on Article 6 §§ 1 and 3 (b), (c), and (d) (right to a fair trial) to complain that his conviction was based to a large extent on confessions made under duress and in the absence of a lawyer, that he was forced to appear in court on 21 December 2001 despite being in ill health (he could not walk or sit and remained on a stretcher throughout the hearing), and that witnesses who could have corroborated his allegations of ill-treatment were not summoned.

**Violation of Article 3** (torture)

**Violation of Article 3** (procedure)

**Violation of Article 6 §§ 1** – as regards the applicant's privilege against self-incrimination

**No violation of Article 6 § 3 (b)** – insofar as the applicant's right to adequate time and facilities to prepare his defence is concerned

**Violation of Article 6 §§ 1 and 3 (c)** – as regards the applicant's right to legal representation

**Violation of Article 6 §§ 1 and 3 (c)** – as regards the applicant's ability to participate effectively in his trial on 21 December 2001

**No violation of Article 6 §§ 1 and 3 (d)**

**Just satisfaction:** EUR 27,000 (non-pecuniary damage) and EUR 3,014 (costs and expenses)

## Length-of-proceedings case

In the following case, the applicant complained in particular about the excessive length of civil proceedings he had brought in 1987 and 1995 challenging a government scheme under which a herd of his cattle were either put down or restricted in order to eradicate Bovine Tuberculosis.

*Rooney v. Ireland* (no. 32614/10)

**Violation Article 6 § 1, both alone and in conjunction with Article 13 of the Convention**

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