



Judgments concerning Austria, Azerbaijan, Croatia, France, Greece, Russia, “The former Yugoslav Republic of Macedonia”, and Ukraine

The European Court of Human Rights has today notified in writing the following 15 judgments, of which seven (in italics) are Committee judgments and are final. The others are Chamber judgments¹ and are not final.

Repetitive cases² 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 (*).

The Court has also delivered today its judgment in the case of Vilnes and Others v. Norway (application nos. 52806/09 and 22703/10), for which a separate press release has been issued.

Sharifi v. Austria (application no. 60104/08)

The applicant, Wadjed Sharifi, is an Afghan national who was born in 1985 and lives in Feres (Greece). The case concerned his transfer by the Austrian authorities from Austria to Greece. In November 2007 Mr Sharifi left Afghanistan and travelled through Pakistan, Iran, Turkey, Greece and Italy to Austria, where he was apprehended by police. In August 2008 the Austrian authorities rejected his asylum application and ordered his transfer back to Greece, on the grounds that under Austrian and European Union law (“the Dublin II Regulation”), Greece was responsible for examining Mr Sharifi's asylum application as it was the first EU state that Mr Sharifi had entered. Mr Sharifi appealed the decision twice, but he was unsuccessful, and was transferred to Greece in October 2008. Mr Sharifi complained that his transfer to Greece had exposed him to treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) as the country had been unable to deal properly with asylum requests and had provided inadequate conditions for asylum seekers.

No violation of Article 3

Omerović v. Croatia (no. 2) (no. 22980/09)

The applicants, Mehmedalija Omerović and Sanmir Omerović, father and son, are Croatian nationals who were born in 1945 and 1971 respectively and live in Slatina (Croatia). The case concerned their access to Croatia's Supreme Court. In December 1987, Mehmedalija Omerović lodged a civil action claiming compensation against the local government, the state, a certain A.K. and an insurance company, in relation to an alleged physical assault. Mehmedalija's son, Sanmir Omerović, joined the action shortly after. After numerous appeals and re-hearings, the case was dismissed at the lowest level of the Croatian courts in March 2010, and dismissed again on appeal in September 2010. The applicants then lodged an appeal with the Croatian Supreme Court, with Mehmedalija Omerović making the case himself. The appeal was, however, declared inadmissible in November 2010 on the grounds that the application had not been made by a qualified lawyer or a person who had passed the Bar exam. Relying on Article 6 § 1 (access to court), Mehmedalija and Sanmir Omerović

¹ 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

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

complained that they had been denied access to the Croatian Supreme Court in the determination of their case, even though Mehmedalija Omerović had joined the Croatian Bar Association in 2003 and had submitted proof of his membership in the course of earlier proceedings.

Violation of Article 6 § 1

Just satisfaction: 5,000 euros (EUR) (non-pecuniary damage) and EUR 850 (costs and expenses)

Henry Kismoun v. France (no. 32265/10)*

The applicant, Christian Cherif Henry Kismoun, is a Franco-Algerian national who was born in 1956 and lives in Villeurbanne (France). The case concerned the French authorities' refusal to change Mr Henry Kismoun's name, as requested by him. Having been listed in the French civil status register under his mother's surname, Henry, the applicant was recognised by his father, Mr Kismoun, in 1959. Abandoned by his mother at the age of three, he was taken in by his father, who took him to live in Algeria. There he was educated and carried out his military service under the name of Cherif Kismoun. It is also under this name, consistently used by his entourage in Algeria, that he is currently listed in the Algerian civil status register. In 1977 he attempted to re-establish contact with his mother, but she refused to enter a relationship with him. He learned on that occasion that he was registered in France as Christian Henry. In 2003, following a first unsuccessful attempt, he resubmitted his request to have the surname Henry replaced by the surname Kismoun. In support of his claims, the applicant put forward, in particular, his mother's lack of interest in him. As he had failed to provide evidence of this, his appeal was dismissed in 2008. In addition, the French courts considered that the lack of interest referred to, even supposing that it was demonstrated, was not sufficient to confer on him a legitimate interest in changing his surname. He was refused leave to appeal to the *Conseil d'Etat* in 2009. Mr Henry Kismoun alleged, in particular, that the refusal to allow him to change his surname was in violation of Article 8 (right to respect for private and family life).

Violation of Article 8

Just satisfaction: EUR 4,000 (non-pecuniary damage) and EUR 7,654.40 (costs and expenses)

Just Satisfaction

Negrepontis-Giannisis v. Greece (no. 56759/08)*

In 2009 the Greek courts held that the adoption in the United States of Mr Negrepontis-Giannisis by his uncle, who was a monk, was contrary to public policy and refused to recognise it. By a judgment of May 2011, the Court found that such a refusal amounted to a violation of Article 8 (right to respect for private and family life), taken alone and together with Article 14 (prohibition of discrimination), of Article 6 § 1 (right to a fair hearing), and of Article 1 of Protocol No. 1 (protection of property). Under Article 41 (just satisfaction), Mr Negrepontis-Giannisis claimed, primarily, re-examination of the Greek courts' decisions or, in the alternative, reopening of the proceedings before them, and several sums in respect of the pecuniary damage resulting from the loss of his inheritance rights, the non-pecuniary damage sustained and the costs and expenses incurred. As the question of the application of Article 41 of the Convention was not ready for decision, the Court invited the Government and Mr Negrepontis-Giannisis to submit their observations on that issue, and reserved it for a later date. Today's judgment concerned the question of just satisfaction (Article 41).

Just satisfaction: EUR 300,000 (pecuniary damage), EUR 5,200 (non-pecuniary damage) and EUR 12,300 (costs and expenses)

Kutepov v. Russia (no. 13182/04)

The applicant, Valeriy Kutepov, is a Russian national who was born in 1968 and is currently in prison. The case concerned the criminal proceedings against Mr Kutepov, and the treatment he received for a spinal injury (myelopathy) during his subsequent detention. Following the discovery of a man's dismembered corpse, police found a bloodstained axe in the apartment of Mr Kutepov's mother. Mr Kutepov was detained on suspicion of the crime in November 2002, and in June 2003 he was convicted of murder and given a sentence of 16 years' imprisonment. In October 2003 his conviction was upheld by the Supreme Court on appeal. However, in July 2010 the Presidium of the Supreme Court ordered a re-examining of his case, because he was not represented by a lawyer at the appeal in 2003. In September 2010 Mr Kutepov's conviction was finally upheld once again, though his sentence was reduced to 14 years. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Kutepov complained that during his detention he had not been provided with appropriate medical care; in particular, he claimed that the Russian authorities had failed to diagnose and treat his myelopathy.

Violation of Article 3 (inhuman and degrading treatment)

Just satisfaction: EUR 15,000 (non-pecuniary damage)

Yevgeniy Gusev v. Russia (no. 28020/05)

The applicant, Yevgeniy Gusev, is a Russian national who was born in 1952 and lives in Volgograd (Russia). At the time he was the President of Vostok-Plus, which was a shareholder in Volga Aviaexpress Airlines. He was arrested in October 2003 on suspicion of fraud and forgery involving a Yak-42 aircraft. He was convicted in June 2005 and sentenced to four years' imprisonment. This judgment was upheld on appeal in October 2005 but the sentence was suspended for two years, with Mr Gusev being placed on probation and released. Relying on Article 3 (prohibition of inhuman or degrading treatment), he complained that on the days he had been transported to the court-house for trial he had been deprived of food and sleep. Further relying on Article 5 §§ 3 and 4 (right to liberty and security), he also made a number of complaints about his detention, notably that it had been based on insufficient grounds and had lacked speedy judicial review.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 5 § 3

Violation of Article 5 § 4

Just satisfaction: EUR 15,000 (non-pecuniary damage) and EUR 6,100 (costs and expenses)

Revision**Naumoski v. "The former Yugoslav Republic of Macedonia" (no. 25248/05)**

The applicant, Velko Naumoski, is a Macedonian national who was born in 1948 and lives in Skopje. Mr Naumoski was a teacher in a Skopje High School until December 2000 when he was made redundant. He was then dismissed in February 2001 because he refused to work in the school library after being made redundant. In a judgment of 27 November 2012 the Court held that there had been a violation of Article 6 § 1 (right to a fair trial within a reasonable time) on account of the excessive length of the proceedings concerning his dismissal as well as of the national courts' failure to communicate to him the defendant's observations submitted in reply to his appeals during those proceedings. On 14 February 2013 the Government requested revision of this judgment, informing the Court that it had based its findings on an incorrect date.

The Court decided to revise the judgment and confirmed the conclusions of the original judgment of 27 November 2012.

Arskaya v. Ukraine (no. 45076/05)

The applicant, Lyubov Arskaya, is a Ukrainian and Russian national who was born in 1937 and lives in Moscow. The case concerned Ms Arskaya's allegation that her 42-year-old son died as a result of medical negligence in April 2001 when he was hospitalised for pneumonia and tuberculosis. The criminal proceedings into her complaint of medical malpractice were terminated in August 2008 for lack of evidence, the national authorities finding in particular that the applicant's son had repeatedly refused to accept medical treatment, which had aggravated his condition and ultimately resulted in his death. Relying on Article 2 (right to life), she alleged that her son, who had showed signs of a mental disorder, had died on account of inadequate health-care regulations on patients refusing to consent to treatment, and that the official investigation into her son's death had been inadequate.

Violation of Article 2 – in respect of the State's procedural obligations

Violation of Article 2 – in respect of the State's positive obligation to ensure adequate health-care regulations

Just satisfaction: EUR 10,000 (non-pecuniary damage) and EUR 200 (costs and expenses)

Repetitive cases

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

Denk v. Austria (no. 23396/09)

Willroider v. Austria (no. 22635/09)

The applicants in these two cases complained that their appeals to the Austrian courts about the suspension of their unemployment payments had been dismissed without an oral hearing, despite the fact that they had specifically requested one. They relied on Article 6 § 1 (right to a fair hearing).

Violation of Article 6 § 1 – in both cases

Valiyev and Others v. Azerbaijan (nos. 58265/09, 7526/10, 73346/10, 7928/11 and 16785/11)

This case concerned the non-enforcement of final judgments in the applicants' favour ordering the eviction from their flats of the families of internally displaced persons, who had illegally settled there. The applicants relied on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).

Violation of Article 6 § 1

Violation of Article 1 of Protocol No. 1

Škrtić v. Croatia (no. 64982/12)

The case concerned the applicant's complaint about the national courts' judgments ordering her eviction from her flat. She relied on Article 8 (right to respect for private and family life and the home).

Violation of Article 8

Length-of-proceedings cases

In the following cases, the applicants complained in particular under Article 6 § 1 (right to a fair hearing within a reasonable time) about the excessive length of non-criminal proceedings.

Aleksić v. Croatia (no. 12422/10)

Keko v. Croatia (no. 21497/12)

Xypolitakos v. Greece (no. 25998/10)*

Violation of Article 6 § 1 – in the three cases above

Violation of Article 13 (right to an effective remedy) – in the case of *Xypolitakos v. Greece*

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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.