



## Judgments concerning Bosnia and Herzegovina, Finland, Italy, Romania, Serbia, Slovakia, and Turkey

The European Court of Human Rights has today notified in writing the following 18 judgments, of which three (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>, 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 Jones, Mitchell and Others v. the United Kingdom (applications nos. 34356/06 and 40528/06), for which a separate press release has been issued.*

### Muslija v. Bosnia and Herzegovina (application no. 32042/11)

The applicant, Adnan Muslija, is a citizen of Bosnia and Herzegovina who was born in 1969 and lives in Sarajevo. The case concerned his claim that he had been tried and punished twice for the same crime. In August 2004, a Minor Offences Court convicted Mr Muslija of affray, finding that at about 6.40pm on 12 February 2003 he entered the flat of his former wife, slapped her in the face and punched her in the body. He was ordered to pay a fine of 150 convertible marks (BAM). On 9 January 2008 a Municipal Court found Mr Muslija guilty of grievous bodily harm, finding that at about 7pm on 12 February 2003 he entered the flat of his former wife, grabbed her by the throat and hit her several times in the head, stomach and face. He was given a prison sentence, but this was later converted into a fine of BAM 9,000. Mr Muslija appealed to the Constitutional Court about his two convictions, but the court rejected his case in January 2011. Relying on Article 4 of Protocol No. 7 (right not to be tried or punished twice) to the European Convention on Human Rights, Mr Muslija complained that he had been tried and punished twice in respect of the same incident.

#### Violation of Article 4 of Protocol No. 7

**Just satisfaction:** The Court dismissed Mr Muslija's claim in respect of non-pecuniary damage and awarded him 1,163 euros (EUR) in respect of costs and expenses.

### Lindström and Mässeli v. Finland (no. 24630/10)

The applicants, Mark Kristian Lindström and Jouni Kristian Mässeli, are Finnish nationals who were born in 1976 and 1971 and live in Åminnefors and Kotka (Finland) respectively. The case concerned overalls that they were temporarily forced to wear in prison when they were placed in isolation on suspicion of attempting to smuggle drugs into prison. Mr Lindström and Mr Mässeli were both serving prison sentences in Riihimäki Prison in 2004; Mr Lindström had been convicted of drugs, theft and firearms offences and sentenced to two years and eight months imprisonment, while Mr Mässeli was serving a four year and three month sentence for attempted manslaughter. Between 9 and 16 May 2004, Mr Mässeli was put in isolation on returning to prison after leave. Later that

<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.

year, Mr Lindström was placed in isolation between 13 and 16 November following an unsupervised meeting with his family. While in isolation, they were obliged to wear overalls covering them from feet to neck, which were 'sealed' by prison staff with plastic strips. They claimed that, because prison guards had not been able to escort them to a supervised toilet quickly enough, they had been forced to defecate in their overalls; and that they had not been allowed to change them afterwards, or to wash during the entirety of their isolation. After Mr Lindström and Mr Mässeli reported the matter to the police, the Finnish authorities pressed charges against the prison director. However these were dismissed by the Finnish courts and the applicants' attempts to appeal the dismissal failed, their final application for leave to appeal being rejected in November 2009. Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life) of the Convention, Mr Lindström and Mr Mässeli complained that the use of the overalls had been degrading - particularly after they had been made dirty. They alleged in particular that the use of overalls had had no legal basis in Finnish law but had only been a practice adopted by a few prisons.

**No violation of Article 3**  
**Violation of Article 8**

**Just satisfaction:** EUR 3,000 to each applicant (non-pecuniary damage), and EUR 2,500 to Mr Lindström and EUR 1,000 to Mr Mässeli (costs and expenses).

**Ojala and Etukeno Oy v. Finland (no. 69939/10)**  
**Ruusunen v. Finland (no. 73579/10)**

The applicants in the first case are Kari Markus Ojala, a publisher, who is a Finnish national born in 1952 and living in Helsinki, and Etukeno Oy, a publishing company, which is a Finnish limited liability company based in Helsinki. The applicant in the second case is Susan Ruusunen, a Finnish national who was born in 1970 and who also lives in Helsinki. Ms Ruusunen dated the former Prime Minister of Finland for nine months whilst he was still in office, and the cases concerned the criminal convictions of Ms Ruusunen and Mr Ojala for writing and publishing an autobiographical work which contained details of the relationship. The Prime Minister was in office between June 2003 and June 2010, and the book was published in February 2007. In October 2007 the Finnish authorities brought criminal charges against Mr Ojala and Ms Ruusunen for disclosing information about the Prime Minister's private life. The Prime Minister supported the charges against Mr Ojala and also lodged a claim for compensation against him, but he did not pursue charges or compensation claims against Ms Ruusunen. The book was withdrawn from sale in February 2008. In March 2008 the charges against both defendants were dismissed by a Finnish court, but this decision was overturned on appeal. In June 2010 the Finnish Supreme Court held that Mr Ojala and Ms Ruusunen were to be convicted of disseminating information violating personal privacy. The court held that, though much of the contents of the book were valid subjects of public debate, the descriptions of the couple's sex life and intimate moments were invasions of the Prime Minister's private life that he had not condoned, and which went beyond anything he had previously disclosed. Relying on Article 10 (freedom of expression), all three applicants complained that their convictions had violated their right to freedom of expression, Ms Ruusunen arguing in particular that she had only disclosed details of her own private life, even if they had also concerned the former Prime Minister.

**No violation of Article 10** – in both cases

**Association of Victims of Romanian Judges and Others v. Romania**  
**(no. 47732/06)**

The applicants in this case are Rodica Neagu, Virgil Radu, Valentin Turigioiu, C. Gheorghe Lupan,

Viorica Alda, Eugen Neagu, Maria Nicolau, Domnica Turigioiu and Valerica Șugubete, nine Romanian nationals and the Association of Victims of Romanian Judges. The case concerned the Romanian authorities' refusal to register the Association of Victims of Romanian Judges in the country's Register of Associations and Foundations. The Bucharest District Court first refused to do this in November 2005, finding that registration would be unconstitutional. This was on the ground that the association's articles stated an intention to declare certain court rulings to be unfair; the court held that this would encourage non-compliance with court judgments and represent an attack on a State power. An appeal of the decision was dismissed in February 2006. Relying on Article 11 (freedom of assembly and association), the applicants complained that the refusal of the Romanian authorities to carry out the registration had infringed their right to freedom of association.

#### Violation of Article 11

**Just satisfaction:** EUR 2,000 to the applicants jointly (pecuniary and non-pecuniary damage).

#### Birgean v. Romania (no. 3626/10)\*

The applicant, Sorin Birgean, is a Romanian national who was born in 1968 and lives in Timisoara (Romania). The case concerned the alleged use of violence by the police during his arrest. In September 2008 football team supporters organised a demonstration and blocked the traffic in a street. After warning them that force would be used imminently, the gendarmes charged the demonstrators, using tear gas. Mr Birgean complained that despite the fact that he had not taken part in the demonstration and had not behaved aggressively a gendarme had grabbed him and, with the assistance of a colleague, had violently twisted his arms behind his back with his truncheon. He alleged that he had then been kept in a police vehicle for about thirty minutes before finally being released. Shortly afterwards, Mr Birgean lodged a complaint together with an application to join the proceedings as a civil party seeking damages. His complaint was dismissed. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Birgean complained of the ill-treatment inflicted on him by the gendarmes. He also alleged that the investigation carried out by the Romanian authorities regarding that treatment had been ineffective.

**Violation of Article 3** (investigation)

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

**Just satisfaction:** EUR 3,000 (non-pecuniary damage) and EUR 800 (costs and expenses)

#### Carpen v. Romania (no. 61258/10)\*

The applicant, Nelu Carpen, is a Romanian national who was born in 1975 and lives in Bucharest. The case mainly concerned his conditions of detention. In 2010 Mr Carpen, who was then a judge, was placed in detention on suspicion of various acts of corruption involving lawyers and police officers. His detention was extended at regular intervals until November 2011, when he was released. Whilst the versions submitted by the Government and Mr Carpen differ, the latter alleged that he had been detained in cramped, run-down and poorly ventilated cells in the presence of dangerous inmates. On the basis of the transcript of a recording of some of his telephone conversations, Mr Carpen was sentenced in 2012 to six years' imprisonment and stripped of some of his civil rights for accepting bribes, abusing his office and forging documents. An appeal by Mr Carpen against that judgment is still pending before the High Court of Cassation and Justice. In the meantime, in 2010, the Romanian courts had dismissed a complaint he had lodged about being exposed to the public wearing handcuffs during journeys between prison and the court hearing room. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Carpen complained notably of poor conditions of detention.

**Violation of Article 3** – in respect of the material conditions of detention in the Bucharest police premises

**Just satisfaction:** EUR 3,000 (non-pecuniary damage) and EUR 150 (costs and expenses)

### Cipleu v. Romania (no. 36470/08)

The applicant, Dănuț Cipleu, is a Romanian national who was born in 1968 and lives in Timișoara (Romania). The case concerned the fairness of Mr Cipleu's conviction for failure to stop after a drink-driving accident. The accident occurred on the evening of 17 November 2005 when Mr Cipleu's family car hit a pedestrian crossing the street. The driver fled the scene of the accident. When the police arrived at his home that night Mr Cipleu stated that he had been driving the car, which he confirmed in a written statement later that evening. A medical report later showed that he had been drinking. However, in December 2005 Mr Cipleu and his wife both informed the authorities that she had been driving the vehicle rather than him. The trial court found this evidence unconvincing; it convicted Mr Cipleu as charged in June 2007, and imposed a three-year suspended sentence. Mr Cipleu was later acquitted on appeal, but his acquittal was then quashed by the High Court of Cassation and Justice. The High Court chose to re-examine the evidence in the file, and in February 2008 upheld Mr Cipleu's original conviction. Relying on Article 6 § 1 (right to a fair trial), Mr Cipleu complained that, though the High Court had re-tried the case and imposed a conviction, it had not heard any evidence from him.

### **Violation of Article 6 § 1**

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

### Lavric v. Romania (no. 22231/05)

The applicant, Elena Lavric, is a Romanian national who was born in 1951 and lives in Piatra-Neamț (Romania). At the time of the events she was a prosecutor. The case concerned defamation proceedings Ms Lavric had brought against a journalist for two articles in a national newspaper reporting on her professional conduct in two sets of criminal proceedings initiated by her. Following a complaint by the defendant in those proceedings, who had been convicted in one case, disciplinary proceedings were brought against Ms Lavric in February 2002. They were discontinued in March 2002 following a decision of the Supreme Court. The articles, published in February 2002 while the disciplinary proceedings were pending, alleged in particular that she had falsified the indictments in the criminal proceedings in question. The first-instance court in the defamation proceedings brought by Ms Lavric found the journalist guilty of defamation and sentenced him to pay a fine, but he was acquitted on appeal in December 2004. Relying on Article 8 (right to respect for private and family life), Ms Lavric complained that her right to protection of her reputation had been breached by the newspaper articles and the dismissal of her defamation complaint.

### **Violation of Article 8**

**Just satisfaction:** EUR 4,500 (non-pecuniary damage)

### Mateescu v. Romania (no. 1944/10)

The applicant, Mircea Mateescu, is a Romanian national who was born in 1953 and lives in Bucharest. He is a medical doctor with more than 18 years of experience and currently has his own practice as a general practitioner. In 2006, he graduated from law school and subsequently passed the bar exam. His request to be allowed to pursue a two-year legal traineeship, the condition for obtaining a licence to practice as a lawyer, while continuing to work as a medical practitioner in his own practice, was rejected by the Bucharest Bar in March 2008. It held in particular that he was

obliged to choose between the two professions. His appeal against the decision was ultimately dismissed by the High Court in June 2009. Relying on Article 8 (right to respect for private life), Mr Mateescu complained that the refusal to let him practice as a lawyer and as a doctor simultaneously had lacked a legal basis.

#### **Violation of Article 8**

**Just satisfaction:** EUR 1 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

### **Sâncrăian v. Romania (no. 71723/10)\***

The applicant, Maria Sâncrăian, is a Romanian national who was born in 1956 and lives in Cluj-Napoca. In November 2006 she was sentenced, in her absence, to three and a half years' imprisonment for fraud. She was arrested in Italy in July 2008 and extradited to Romania, where she was placed in detention. In September 2008 Ms Sâncrăian requested that the proceedings resulting in her conviction be reopened. In November 2009 the County Court ordered the reopening of the proceedings, noting that the applicant's defence rights had been infringed during the proceedings conducted in her absence. Ms Sâncrăian was released in March 2010. Relying in particular on Article 5 § 1 (right to liberty and security), she complained that her detention had been unlawful following the judgment of November 2009 ordering the reopening of the criminal proceeding against her. Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily), she complained of the excessive length of the proceedings for her release. Lastly, relying on Article 5 § 5, Ms Sâncrăian submitted that she had not been entitled to compensation for the alleged violations of her rights guaranteed by Article 5 of the Convention.

#### **Violation of Article 5 § 1**

#### **Violation of Article 5 § 4**

#### **Violation of Article 5 § 5**

**Just satisfaction:** EUR 8,000 (non-pecuniary damage), and EUR 4,000 (costs and expenses)

### **Totolici v. Romania (no. 26576/10)\***

The applicant, Mihai Totolici, is a Romanian national who was born in 1967 and lives in Braşov (Romania). As an officer in the criminal investigation department of Braşov, he was accused in November 2008 of accepting bribes by taking money in exchange for persuading the victim of a theft to withdraw the complaint. He was placed in pre-trial detention until October 2009, when he was sentenced to prison for accepting bribes and inciting another to make false statements. Mr Totolici was imprisoned successively in Codlea Prison, Rahova Prison, Jilava prison hospital, Jilava Prison and Miercurea Ciuc Prison. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Totolici complained in particular of the material conditions of detention in Jilava and Codlea Prisons and in Jilava prison hospital.

#### **Violation of Article 3** – in respect of the material conditions of detention in Jilava prison

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

### **Schvarc v. Slovakia (no. 64528/09)**

The applicant, Branislav Schvarc, is a Slovak national who was born in 1978 and habitually resides in Krupina (Slovakia). In May 2009 he was arrested and placed in pre-trial detention on suspicion of drug-related offences. His request for release, lodged on 22 July 2009, was eventually dismissed by a regional court in a decision served on him on 30 October 2009. In March 2010, the Slovak Constitutional Court found a violation of Mr Schvarc's right to a speedy review of the lawfulness of his detention and awarded him 500 euros in compensation. Relying on Article 5 § 4 (right to have

lawfulness of detention decided speedily by a court), Mr Schvarc complained that the lawfulness of his detention had not been speedily reviewed and that the amount of compensation awarded to him in that respect was inadequate.

#### Violation of Article 5 § 4

**Just satisfaction:** EUR 1,000 (non-pecuniary damage)

### Kasap and Others v. Turkey (no. 8656/10)

The applicants, Resmiye Kasap, Selma Canpolat, Selda Pan, Vildan Pan and Şengül Akgünlü, are Turkish nationals who were born in 1958, 1974, 1979, 1982 and 1974 respectively and live in Adana and Mersin (Turkey). They are the mother and sisters of Murat Kasap, who died on 29 September 2006 after being shot by a police officer when trying to escape the police who had stopped him while he was riding a motorcycle. In June 2009, the police officer was found guilty by a criminal court of having caused the death by negligence. The criminal court sentenced the officer to one year and eight months' imprisonment but then suspended the pronouncement of the judgment. The applicants complained in particular that the suspension of pronouncement of the judgment had been in breach of Article 2 (right to life). Relying further on Article 2 in particular, they also complained that the investigation into the shooting had had serious shortcomings.

#### Violation of Article 2

**Just satisfaction:** EUR 30,000 to the mother and EUR 10,000 jointly to the sisters of Murat Kasap (non-pecuniary damage)

### Yianopulu v. Turkey (no. 12030/03)\*

The applicant, Maria Yianopulu, is a Greek national who was born in 1924 and lived in Palea Apidavros (Greece). The case concerned the refusal of the Turkish courts to recognise Ms Yianopulu as heir to land situated in Turkey. In 1982, following the death of her mother, Ms Yianopulu was issued with an inheritance certificate by the Turkish courts. In 1984 she asked for the administrative order imposed on a plot of land that had belonged to her mother and was situated in Turkey to be lifted. Her request was dismissed by a judgment of 1985, which was upheld by the Court of Cassation in 1986. Following a judgment of 1995, title to the land was transferred to the Treasury. An appeal on points of law by Ms Yianopulu was dismissed in 1997. In 1999 she lodged a second action for a new inheritance certificate. In April 2000 the Court of Cassation quashed the first-instance judgment upholding the applicant's request. In a judgment of 2001, delivered following the Court of Cassation's judgment, the Turkish courts dismissed Ms Yianopulu's application. In 2001 the Court of Cassation upheld that judgment and dismissed a request for rectification of the judgment of 2000. In the meantime Ms Yianopulu had sought to have the Treasury's property title set aside and the land registered under her name in the land register. Her application was dismissed in 2002. Ms Yianopulu died in March 2009. In July 2010 the Greek courts validated her will. In that will she had made a specific legacy of the land to Ms Ciropulos, who expressed the wish to pursue the proceedings before the Court in 2010. Relying on Article 1 of Protocol No. 1 (protection of property), Ms Yianopulu complains of the refusal by the Turkish courts to recognise her capacity as her mother's heir.

#### Violation of Article 1 of Protocol No. 1

**Just satisfaction:** The Court held that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and reserved it for examination at a later date.



## Repetitive cases

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

### *Montalto and Others v. Italy* (no. 39180/08 and 16 other applications)\*

These cases concerned a transfer of local government staff to the civil service. Relying on Article 6 § 1 (right to a fair trial), the applicants complained of an intervention by the legislature while proceedings were pending, which, in their submission, had infringed their right to a fair hearing. As their seniority of employment with the original local authorities had not been recognised, they submitted that the intervention by the legislature had been motivated purely by the financial interest of the authorities and had not sufficed to qualify as a compelling ground of general interest.

#### Violation of Article 6 § 1

### *Pascucci v. Italy* (no. 1537/04)\*

In this case the applicant's mother owned building land in Bernalda (Italy). By a decree passed by the Region in February 1981, the land was declared to be situated in a public-interest area and the municipal council was given permission to occupy part of the land – which was subsequently extended – to build social housing. The applicant complained that she had been deprived of her land contrary to Article 1 of Protocol No. 1 (protection of property).

#### Violation of Article 1 of Protocol No. 1

### *Premović v. Serbia* (no. 61920/09)

This case concerned the applicant's complaints about the non-enforcement of final domestic decisions rendered in his favour against a socially/State-owned company. The applicant relied on Article 6 § 1 (right to a fair hearing) and on Article 1 of Protocol No. 1 (protection of property).

#### Violation of Article 6 § 1

#### Violation of Article 1 of Protocol No. 1

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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.