



## Judgments concerning Hungary, Latvia, Malta, the Republic of Moldova, Poland, Romania, Serbia, Slovakia and Turkey

The European Court of Human Rights has today notified in writing the following 19 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 judgments in the cases of Contrada v. Italy (no. 2) (application no. 7509/08) and Grămadă v. Romania (no. 14974/09), for which separate press releases have been issued.*

### Gábor Nagy v. Hungary (application no. 33529/11)

The applicant, Gábor Nagy, is a Hungarian national who was born in 1990 and lives in Budapest. He was placed in detention on remand on 6 December 2010 on charges of multiple thefts by breaking into three cars. His appeals against the detention order and against the prolongation of his detention were repeatedly dismissed until he was released on 13 April 2011. Relying in substance on Article 5 § 3 (right to liberty and security – entitlement to trial within a reasonable time or to release pending trial) of the European Convention on Human Rights, Mr Nagy complained that his detention had been unjustified and its prolongation undue, since the courts had failed to demonstrate its necessity and because his lawyer had not been present at the first hearing concerning his detention on remand. Mr Nagy also complained that the proceedings by which he had sought to challenge his detention had been in breach of Article 5 § 4 (right to have lawfulness of one's detention decided speedily by a court), as his application for release had been adjudged without the requisite oral, adversarial procedure.

#### Violation of Article 5 § 3

#### Violation of Article 5 § 4

**Just satisfaction:** 3,000 euros (EUR) (non-pecuniary damage), and EUR 1,100 (costs and expenses)

### Cēsnieks v. Latvia (no. 9278/06)

The applicant, Valters Cēsnieks, is a Latvian national who was born in 1975 and is currently serving his sentence in Matīsa Prison. The case concerned his conviction of murder on the basis of self-incriminating statements allegedly made under duress. In March 2002 Mr Cēsnieks was asked to come to a police station, where police officers accused him of a murder and used physical force against him, as a result of which he made a written confession to having committed the murder in question. Together with three other people he was charged with murder. In a first-instance judgment of October 2004 he was acquitted, the court holding that his statements of March 2002 had been made under duress and could not be used to convict him. However, in April 2005 the

<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.

Supreme Court overturned that judgment and found him guilty in a judgment eventually upheld in August 2005. He was sentenced to 11 years' imprisonment. Relying on Article 6 § 1 (right to a fair trial), Mr Cēsniēks complained in particular that his conviction had been unfair as evidence obtained in violation of Article 3 (prohibition of inhuman or degrading treatment) had been used at his trial.

#### **Violation of Article 6 § 1**

**Just satisfaction:** EUR 6,000 (non-pecuniary damage) and EUR 5,000 (costs and expenses)

### **Sapožkovs v. Latvia (no. 8550/03)**

The applicant, Aleksandrs Sapožkovs, is a "permanently resident non-citizen" of the Republic of Latvia, who was born in 1959 and is currently serving a prison sentence for a number of offences, including murder, in Jelgava Prison. The case concerned the allegedly excessive use of force used against him by prison officers. Mr Sapožkovs submitted that on 1 July 2009, when he was about to be transferred from Daugavgrīva Prison to Jelgava Prison, a dispute had ensued between him and three prison officers who had then brutally beat him until he fell to the ground unconscious. A prison doctor subsequently recorded a number of haematoma on his body. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Sapožkovs complained that excessive force had been used against him and that the subsequent investigation of the incident had been ineffective.

#### **Violation of Article 3 (procedure)**

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

### **Vella v. Malta (no. 69122/10)**

The applicant, Francis Vella, is a Maltese national who was born in 1939 and lives in Paola (Malta). The case concerned an alleged breach of his right to be presumed innocent. Mr Vella is a collector of antiques and was charged with multiple counts of theft and/or receiving stolen goods. In October 1992 the first-instance court convicted him of a series of offences of receiving stolen goods, while at the same time acquitting him of the theft of those goods. In October 2001 the criminal appeal court reversed part of the judgment and acquitted him also of most of the charges of receiving stolen goods. His sentence was reduced from five years' imprisonment to a two-year suspended sentence. While the criminal appeal proceedings against Mr Vella were pending, a number of persons alleging to be the owners of the goods in question brought civil proceedings to vindicate their ownership of the items. In three separate judgments delivered in 2004, the appeal court in the civil proceedings found that Mr Vella was not the owner of certain items. He was thus liable to pay damages for the destruction of some of those items. Relying on Article 6 § 2 (presumption of innocence), Mr Vella complained that the appeal court's civil judgments, in particular statements to the effect that he had been responsible for receiving certain stolen goods – despite the fact that he had been acquitted of most of the charges in respect of the stolen goods – had been incompatible with his right to be presumed innocent.

#### **No violation of Article 6 § 2**

### **Sandu v. the Republic of Moldova (no. 16463/08)**

The applicant, Victor Sandu, is a Moldovan national who was born in 1958 and lives in Chişinău. He was the manager of a State-owned veterinary clinic. The case concerns Mr Sandu's conviction of soliciting and accepting a bribe from a man, C., in exchange for a vaccination document to allow C.'s dog to travel abroad, without even having seen the dog. In convicting Mr Sandu in April 2007, the criminal court relied on C.'s testimony and on the fact that money which had been previously marked by the police and given to C. had been found in Mr Sandu's pocket. He was ordered to pay a

fine and prohibited from working as a veterinary surgeon for two years. The judgment was eventually upheld in October 2007. Relying on Article 6 § 1 (right to a fair trial), Mr Sandu complained that he had been a victim of entrapment, as he had been incited to commit the crime of accepting a bribe.

#### **Violation of Article 6 § 1**

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

### **Vasîlca v. the Republic of Moldova (no. 69527/10)**

The applicant, Elena Vasîlca, is a Moldovan national who was born in 1965 and lives in Chişinău. The case concerned Ms Vasîlca's complaint that the Moldovan authorities had failed to carry out an effective investigation into the death of her 17-year old son, V., on 8 March 2008 when he fell from a balcony in an apartment block. She contested in particular the investigating authorities' conclusion, some two and a half years' later, that her son had committed suicide. She alleged that the authorities had failed to examine evidence or question witnesses which would have led them to looking at the possibility that her son had either been pushed or forced to jump from the balcony. Ms Vasîlca relied on Article 2 (right to life).

#### **Violation of Article 2 (procedure)**

**Just satisfaction:** EUR 12,000 (non-pecuniary damage), and EUR 422 (costs and expenses)

### **Ziaunys v. the Republic of Moldova (no. 42416/06)**

The applicant, Gintaras Ziaunys, is a Lithuanian national who was born in 1965 and lives in Vilnius. The case concerned the seizure of old banknotes which Mr Ziaunys had bought for a numismatic company. Having signed a contract with the Educational Coin Company, a numismatic company in the USA, under which he was to deliver 8,500 kg of banknotes issued by the bank of the "Moldavian Republic of Transdnistria" – which were no longer in circulation and had been replaced by new banknotes – he bought more than 13,000,000 roubles of the old banknotes in January 2001. When he submitted them to the Moldovan customs, asking for permission to ship them to the USA, the banknotes were transferred to the tax authorities and have not yet been returned to Mr Ziaunys. He unsuccessfully brought court proceedings seeking to have the banknotes returned. By a final decision of May 2006, the Supreme Court rejected his claims. Mr Ziaunys complained that he had been unlawfully deprived of his property, in breach of Article 1 of Protocol No.1 (protection of property).

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

**Just satisfaction:** EUR 1,900 (pecuniary damage), and EUR 5,000 (non-pecuniary damage)

### **Karoly v. Romania (no. 33682/05)**

The applicant, Yozsef Karoly, is a Romanian national who was born in 1971 and was detained at the time of lodging his application in Jilava Prison in Bucharest. He was arrested in October 2003 on suspicion of aggravated homicide and robbery. He was convicted and sentenced to 23 years' imprisonment in September 2005 and this was upheld in a final judgment of May 2006. Relying on Article 5 § 3 (right to liberty and security – entitlement to trial within a reasonable time or to release pending trial), Mr Karoly complained in particular about the repeated extensions of his related pre-trial detention for a period of almost two years, without the national courts taking into consideration his arguments for release such as the fact that he had a clean criminal record and that there was no proof that, if set free, he would be a danger to the public.

**Violation of Article 5 § 3** – due to the absence of sufficient reasons for the extension of the applicant's pre-trial detention

**Just satisfaction:** The Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage.

Mihăilă v. Romania (no. 66630/10)

Nicolae Augustin Rădulescu v. Romania (no. 17295/10)

Both cases concerned detention conditions in Jilava Prison near Bucharest. The applicants are Daniel Claudiu Mihăilă and Nicolae Augustin Rădulescu, Romanian nationals who were born in 1973 and 1966, respectively. Mr Mihăilă lives in Iași and Mr Rădulescu lives in Bucharest. Both applicants complained about the conditions of their detention in Jilava Prison following their convictions of battery and threatening behavior (Mr Mihăilă) and fraud (Mr Rădulescu). Mr Mihăilă had served his sentence from January 2010 to March 2011 and Mr Rădulescu from September 2008 to November 2010. Relying on Article 3 (prohibition of inhuman or degrading treatment), both applicants complained in particular about overcrowding and lack of hygiene.

**Violation of Article 3** (degrading treatment) – in both cases

**Just satisfaction:** EUR 5,000 (non-pecuniary damage) to Mr Rădulescu. Mr Mihăilă did not submit a claim for just satisfaction within the time-limit fixed.

Maširević v. Serbia (no. 30671/08)

The applicant, Milan Maširević, is a Serbian national who was born in 1940 and lives in Sombor. He is a practicing lawyer. In July 1998 he filed a civil claim seeking payment of fees from a private insurance company for services rendered. The case concerned the Supreme Court's ensuing dismissal of Mr Maširević's appeal on points of law on the ground that he had not been entitled to lodge it on his own behalf as the plaintiff, without being represented by an attorney, even though he was himself an attorney. Relying on Article 6 (right of access to court), Mr Maširević complained that the Supreme Court's strict interpretation of the national law's requirement of mandatory legal representation had precluded his case from being examined by the highest court on the merits.

**Violation of Article 6 § 1**

**Just satisfaction:** EUR 2,000 (non-pecuniary damage), and EUR 500 (costs and expenses)

Tešić v. Serbia (nos. 4678/07 and 50591/12)

The applicant, Sofija Tešić, is a Serbian national who was born in 1934 and lives in Ledinac. The case concerned defamation proceedings against her. In April 2005 Ms Tešić was convicted of criminal defamation and sentenced to six months' imprisonment, suspended, following the publication of an article in a daily newspaper in December 2002 which was based on information she had provided and which reported that her former lawyer had deliberately failed to represent her properly in a civil case. At the same time, the sentencing court convicted the journalist who had written the article, finding that the assertions in the article lacked any factual basis and only aimed at harming the lawyer's reputation. The appeal proceedings brought by Ms Tešić are still pending before the Constitutional Court. In parallel civil proceedings brought against her by her former lawyer, Ms Tešić was ordered to pay compensation of approximately 4,900 euros (EUR) by a judgment of January 2007, which was eventually upheld by the Constitutional Court in December 2011. Relying in particular on Article 10 (freedom of expression), Ms Tešić complained notably of the defamation judgment in the civil proceedings, and of the way the compensation payment had been enforced. She stated in particular that the enforcement had caused her extreme financial hardship, as after

deduction of the monthly installments to pay the compensation, she had been left with only one third of her pension amounting to approximately EUR 60. She also alleged interference by the State with her correspondence with the European Court of Human Rights, in breach of Article 34 (individual applications).

**Violation of Article 10** – as regards the civil and enforcement proceedings

**No violation of Article 34**

**Just satisfaction:** EUR 5,500 (pecuniary damage), EUR 6,000 (non-pecuniary damage), and EUR 2,200 (costs and expenses)

### Franek v. Slovakia (no. 14090/10)

The applicant, Ján Franek, is a Slovak national who was born in 1964 and lives in Liptovský Mikuláš. He is an enforcement officer. The case concerned bankruptcy proceedings against a company whose movable property Mr Franek had previously seized in the context of enforcement proceedings against that company. On application by the administrator in the bankruptcy proceedings, Mr Franek was ordered by a court in October 2003 and, after a remittal of the case, again in March 2006, to transfer the property to the administrator. Mr Franek appealed – stating in particular that he had been unable to attend a relevant hearing and that he had no standing in the case as a defendant – but the judgment was upheld and his constitutional complaint was eventually dismissed in September 2009. Mr Franek complained in particular that his rights under Article 6 § 1 (right to a fair trial) had been breached, notably because the Constitutional Court had rejected his complaint as having been lodged out of time.

**Violation of Article 6 § 1** (right of access to a court)

**Just satisfaction:** The Court held that the finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage. EUR 700 (costs and expenses)

### Gülizar Tuncer Günes v. Turkey (no 32696/10)\*

The applicant, Gülizar Tuncer Günes, is a Turkish national who was born in 1966 and lives in Istanbul. In the present case Ms Günes complained mainly of assault by police officers during her arrest. In 2000, while she was taking part in a demonstration, Ms Günes was arrested and then taken into police custody. After the incident she was found to have sustained several bruises and was accordingly declared unfit for work for five days. In 2004, following a complaint lodged by Ms Günes, three police officers were convicted of employing force in excess of the limits authorised in the course of their duties. In 2006 the Court of Cassation set aside the conviction part of the judgment on account of the entry into force of the New Criminal Code. In 2007 the three police officers concerned were convicted again on the same grounds. Finding that the statutory limitation period had expired, however, the Court of Cassation declared the proceedings statute-barred in 2009. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), she notably complained of assault by police officers and of the ineffectiveness of the criminal proceedings instituted against them.

**Violation of Article 3** (excessive use of force + ineffectiveness of the criminal proceedings)

**Just satisfaction:** EUR 9,750 (non-pecuniary damage), and EUR 3,265 (costs and expenses)

## Revision

**Nural Vural v. Turkey (no 16009/04)\***

The applicant, Nural Vural, was a Turkish national born in 1935. He died in 2010. The case concerned an application by his heirs for revision of a judgment of the European Court of Human Rights of May 2010 in which the Court had found a violation of Article 1 of Protocol No. 1 (protection of property) and awarded Mr Vural 131,449 euros (EUR) for pecuniary damage. As the applicant had died, his heirs requested the Court to revise the judgment in question, under Rule 80 of the Rules of Court, and to give them the sum he had been awarded.

**The Court decided to revise the judgment of May 2000 and held that Turkey should pay to the heirs of Mr Vural, jointly, the sum of EUR 131,449.**

## Repetitive cases

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

*Burczy v. Poland* (no. 43129/04)

*Czyż v. Poland* (no. 21796/05)

*Hajduk v. Poland* (no. 6210/05)

These three cases concerned in particular the applicants' complaints about the reopening of social security proceedings with regard to their right to an early-retirement pension, which had resulted in the quashing of final decisions granting them the right to a pension. They relied on Article 1 of Protocol No. 1 (protection of property).

**Violation of Article 1 of Protocol No. 1** – in all three cases

*Şiray v. Turkey* (no. 29724/08)

The case mainly concerned the applicant's complaint of having had no access to a lawyer while in police custody. He relied in particular on Article 6 §§ 1 and 3 (right to a fair trial).

**Violation of Article 6 § 3 (c) in conjunction with Article 6 § 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.