



## Judgments concerning Hungary, Latvia, Poland, Romania and Turkey

The European Court of Human Rights has today notified in writing the following seven Chamber judgments<sup>1</sup>, none of which is final. The judgments in French are indicated with an asterisk (\*).

*The Court has also delivered today judgments in the cases of Panju v. Belgium (application no. 18393/09), Peltureau-Villeneuve v. Switzerland (no. 60101/09), and Gough v. the United Kingdom (no. 49327/11), for which separate press releases have been issued.*

### Cavani v. Hungary (application no. 5493/13)

The case concerned the Hungarian authorities' failure to enforce a father's access rights to his two daughters, despite him having been granted exclusive custody in Italy.

The applicants in this case are Francesco Cavani, an Italian national born in 1971, and his two daughters, Ester Cavani and Anna Maria Cavani, who were born in 2003 and 2004 respectively and who both hold dual Hungarian and Italian nationality. Francesco Cavani lives in Formigine (Italy). Ester and Anna Maria Cavani are currently apparently living with their mother, a Hungarian national and Mr Cavani's ex-wife, in or near Budakeszi (Hungary).

In 2004 Ester and Anna Maria were taken by their mother from Italy, where the family were living at the time, to Hungary. The mother having refused to return with the daughters to Italy, Mr Cavani brought proceedings before both the Hungarian and Italian courts. In November 2005 the Hungarian courts ordered the return of Mr Cavani's daughters to Italy. The enforcement of that order remains unenforced to date: the mother was arrested in July 2010 on the basis of a European arrest warrant but was released shortly after without Mr Cavani being reunited with his daughters or their whereabouts being established; she was also sentenced to a 200-day fine in her absence in October 2011. In the meantime, the Italian courts granted Mr Cavani exclusive custody of his daughters and annulled the marriage between Mr Cavani and his ex-wife. Mr Cavani also subsequently withdrew a criminal suit for child abduction before the Italian courts in the hope of appeasing the situation and allowing his ex-wife to travel freely to Italy with his daughters.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Cavani and his daughters complained that the Hungarian authorities had repeatedly failed to enforce the legally binding decision of November 2005, with the result that they had not been able to see one another since 2005, even occasionally.

### Violation of Article 8

**Just satisfaction:** 3,000 euros (EUR) to Mr Cavani and EUR 3,000 jointly to Ester Cavani and Anna Maria Cavani (non-pecuniary damage), and EUR 6,500 to Mr Cavani (costs and expenses)

<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)

## Urtāns v. Latvia (no. 16858/11)

The case concerned the system in Latvia of authorisation of pre-trial detention by investigating judges.

The applicant, Rolands Urtāns, is a Latvian national who was born in 1973 and is currently serving a sentence in Daugavgrīva Prison (Latvia).

Mr Urtāns was arrested in September 2010 on suspicion of two burglaries. Five detention orders were subsequently issued against him, on the ground that he was likely to commit another criminal offence if released. He was ultimately released in August 2011 as the maximum length – 12 months – of pre-trial detention permitted under national law had almost expired. The criminal proceedings against him are still pending before the national courts.

Relying on Article 5 § 1 (c) (right to liberty and security) of the European Convention, Mr Urtāns alleged that there had been no reasonable suspicion that he had committed the offences with which he had been initially charged, and that his continued detention had been unlawful because the initial suspicion against him had decreased over the period of almost one year he had spent in pre-trial detention.

**No violation of Article 5 § 1** – with regard to the Mr Urtāns’ arrest and initial detention

**Violation of Article 5 § 1** – with regard to Mr Urtāns’ detention at least from 12 November 2010 to 8 August 2011

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

## Ślusarczyk v. Poland (no. 23463/04)

The applicant, Dariusz Ślusarczyk, is a Polish national who was born in 1971 and lives in Będzin (Poland). The case mainly concerned his complaint about the regime in Polish prisons for detainees who are classified as dangerous and about inadequate conditions of detention.

Mr Ślusarczyk was detained on remand in three sets of criminal proceedings, the first involving, among other things, robbery, theft and causing bodily harm and the second and third robbery, battery and extortion committed in an organised criminal group. He was arrested in December 2000 in the first set of proceedings and released in March 2010 under police supervision in the third set of proceedings. He was detained, without interruption, under detention orders during the first-instance and appellate proceedings against him for a total of nine years and four months.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), he complained that, a remand prisoner between May 2004 and November 2005, he had been classified as a so-called “dangerous detainee” and subjected to high-security measures, including daily strip-searches and shackling on leaving his cell. He further complained under Article 3 about the inadequate conditions of his detention when he had not been subjected to the high-security regime, notably on account of overcrowding and lack of hygiene. He further complained under Article 5 § 3 (right to liberty and security) about the excessive length of his pre-trial detention. Lastly, he alleged censoring of his correspondence by the prison authorities, in breach of Article 8 (right to respect for private and family life, the home and the correspondence).

**Violation of Article 3** (degrading treatment) – concerning the imposition of the “dangerous detainee” regime on Mr Ślusarczyk

**Violation of Article 3** – in respect of overcrowding in the Bytom and Wojkowice Remand Centres

**Violation of Article 5 § 3** – as regards the first period of the Mr Ślusarczyk’s detention on remand

**No violation of Article 5 § 3** – in respect of the remainder of Mr Ślusarczyk’s detention on remand

**Violation of Article 8**

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

### Ion Cârstea v. Romania (no. 20531/06)

The applicant, Ion Cârstea, is a Romanian national who was born in 1949 and lives in Craiova (Romania).

The case concerned the publication on 8 September 2001 in a local newspaper, *Republica Oltenia*, of an article about Mr Cârstea, a university professor, which described in detail an incident in his sex life 19 years before and accusing him of bribery, blackmail, child sex abuse and sexual deviance. The article included pictures of Mr Cârstea, nude and having sex. Mr Cârstea brought defamation proceedings before the national courts against the journalist and editor-in-chief of the newspaper, claiming compensation for serious damage to his reputation. Both defendants were acquitted during the proceedings and the compensation claim rejected. Finally, in November 2005, Mr Cârstea's appeal on points of law was dismissed as ill-founded, on the ground that the article, although defamatory, had been written to draw attention to the behaviour of a public figure, a university professor, and to expose what was going on backstage in a higher education institution.

Relying in particular on Article 8 (right to respect for private and family life), Mr Cârstea alleged that the domestic courts had failed to protect his reputation following the publication of the article and accompanying pictures. He notably submitted that the courts had failed, when assessing his complaint, to verify the truthfulness of the facts contained in the article.

#### Violation of Article 8

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

### Tirean v. Romania (no. 47603/10)

The applicant, Gheorghe Tirean, is a Romanian national who was born in 1957. He is currently serving a four-year prison sentence in Timișoara Prison (Romania) following his conviction in December 2011 for aggravated fraud and organising a criminal group.

The case mainly concerned his complaint about the conditions of his detention. He alleged in particular overcrowding in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons without segregation of smokers and non-smokers. He relied on Article 3 (prohibition of inhuman or degrading treatment).

**Violation of Article 3** (degrading treatment) – concerning the physical conditions of the Mr Tirean's detention in Aiud, Gherla, Rahova, Jilava, Slobozia, Dej and Miercurea-Ciuc Prisons

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

### Hebat Aslan and Firas Aslan v. Turkey (no. 15048/09)\*

The applicants, Hebat Aslan and Firas Aslan, are Turkish nationals who were born respectively in 1987 and 1988 and live in Istanbul.

The case concerned criminal proceedings against individuals suspected of taking part in actions committed in the name of the illegal organisation PKK (Kurdistan Workers' Party).

The applicants were arrested in that context on 31 December 2008, then questioned on 3 January 2009 by the public prosecutor and brought before a judge, who remanded them in custody. They applied to have that decision set aside but the Assize Court dismissed their application on 9 January 2009. A fresh request by the applicants for their release was dismissed after a hearing of 4 October 2012, on account of strong suspicions that they had committed the offence as charged and the risk that they might abscond in view of the possible sentence, together with the classification of the offence as arrestable under Article 100 § 3 of the Code of Criminal Procedure. On 15 October 2012 the Assize Court again dismissed an appeal by the applicants against that

decision, ruling on the basis of the case file and in line with the public prosecutor's opinion, which had not been notified to the applicants. They lodged a constitutional appeal and obtained compensation for the non-pecuniary damage sustained on account of the length of their pre-trial detention and for the failure to provide them with the public prosecutor's opinion, thus preventing them from being able to comment on it. The Constitutional Court dismissed, however, their complaint that there had been no hearing. The criminal proceedings against the applicants are still pending. Firas Aslan has been released and Hebat Aslan placed under judicial supervision.

Relying in particular on Article 5 §§ 4 and 5 (right to liberty and security / right to a speedy decision on the lawfulness of detention), the applicants notably complained about the failure to notify them of the public prosecutor's opinion and that they had not had any effective remedy by which to obtain compensation.

**Violation of Article 5 § 4** – on account of the failure to provide a copy of the public prosecutor's opinion during the examination of the objections lodged by the applicants on 7 January 2009 and 17 April 2012

**Violation of Article 5 § 5** – on account of the lack of an effective remedy for the applicants by which to obtain compensation

**Just satisfaction:** The Court found that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants. It further awarded them EUR 500 jointly in respect of costs and expenses.

### İbrahim Demirtaş v. Turkey (no. 25018/10)\*

The applicant, İbrahim Demirtaş, is a Turkish national who was born in 1947 and lives in Isparta (Turkey). The case concerned the time-barring of the criminal proceedings against individuals charged with acts of violence against Mr Demirtaş.

On 5 February 2002, the applicant, who had the status of *muhtar* (head of the village), went with officials from the regional directorate of forests to a classified forest area near the village to identify, for the purpose of replanting trees, zones which had been cultivated. He was assaulted by two villagers who were illegally occupying the classified forest area. Medical reports established that the applicant was suffering from a fractured jaw. Following the proceedings against the two villagers, they were found guilty of wounding. On 21 October 2009 the Court of Cassation declared that those proceedings were time-barred.

Relying in substance on Article 3 (prohibition of inhuman or degrading treatment), Mr Demirtaş complained that the domestic authorities had been slow to conduct the criminal proceedings against the perpetrators of the acts of violence that he had sustained.

**Violation of Article 3** (procedure)

**Just satisfaction:** The applicant did not submit a claim for just satisfaction within the time-limit fixed by the Court.

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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.