



Judgments and decisions of 5 February 2015

The European Court of Human Rights has today notified in writing 11 judgments and 43 decisions: seven Chamber judgments¹ are summarised below; and for one other Chamber judgment a separate press release has been issued: *Razzakov v. Russia* (application no. 57519/09); for two decisions², in the cases of *NML Capital LTD v. France* (no. 23242/12) and *A.M.E. v. the Netherlands* (no. 51428/10), separate press releases have been issued; all remaining judgments and decisions³, which concern issues which have already been submitted to the Court, can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments in French below are indicated with an asterisk ().*

Čikanović v. Croatia (application no. 27630/07)

The applicant, Pavle Čikanović, is a Croatian national who was born in 1952 and lives in Vukovar (Croatia). The case concerned salary arrears following his dismissal from his job working for the local government.

Mr Čikanović worked for the Borovo Municipality until 16 January 1991, when he was made redundant. He subsequently brought civil proceedings against the municipality, seeking his reinstatement and salary arrears. By a partial judgment of 15 October 1996, the courts annulled the decision to dismiss him, finding that it was unlawful, and ordered his reinstatement. The courts decided to wait until this partial judgment had become final before examining his claim for salary arrears. The claim for salary arrears was then dismissed by the courts in June 2004 on the ground that Mr Čikanović had not applied for enforcement of the partial judgment of October 1996 within 30 days of it becoming final (on 29 November 1996). Mr Čikanović lodged an appeal on points of law, arguing that he could not possibly have applied for enforcement of the partial judgment because the defendant's appeal had at the time still been pending and he could not therefore have been aware that the judgment had become final. The Supreme Court then upheld the dismissal of his claim for the period from December 1996 to October 1997 but remitted the case to the first-instance court for salary arrears between March 1991 and December 1996. His constitutional complaint concerning the salary arrears from December 1996 to October 1997 was dismissed in November 2006 and in the resumed proceedings before the first-instance court the municipality was ordered to pay Mr Čikanović salary arrears for the period between March 1991 and December 1996.

In the meantime, Mr Čikanović had taken early retirement in September 1997 on grounds of disability.

Relying on Article 6 § 1 (right to a fair hearing / access to court) of the European Convention on Human Rights, Mr Čikanović complained about the decisions dismissing his claim for salary arrears

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber 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.

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 Inadmissibility and strike-out decisions are final.

³ Inadmissibility and strike-out decisions are final.

between December 1996 and October 1997 for non-compliance of a time-limit which had been impossible for him to comply with.

Violation of Article 6 § 1

Just satisfaction: 2,500 euros (EUR) (non-pecuniary damage) and EUR 1,620 (costs and expenses)

Phostira Efthymiou and Ribeiro Fernandes v. Portugal (no. 66775/11)*

The applicants, Gabriella Phostira Efthymiou and Elizabeth Ribeiro Fernandes, are a Cypriot and a Portuguese national respectively who were born in 2006 and 1978 and live in Cantanhede (Portugal). The case concerned a request for the return of the first applicant, the daughter of the second applicant, to her country of habitual residence, Cyprus, which was granted by the Portuguese Supreme Court.

Ms Ribeiro Fernandes met her partner, Mr D., a South African and Cypriot national, in Mozambique. In November 2006 they had a daughter, Gabriella Phostira Efthymiou. In December 2007 the family moved to Cyprus. In September 2009, with the father's consent, Ms Ribeiro Fernandes went on holiday to Portugal with the child, with a planned return date of 15 September. On that date she informed her partner that she had decided to remain in Portugal with their daughter and would not be coming back to Cyprus.

On 21 September Mr D. applied to the Cypriot central authority seeking the return of his daughter to Cyprus under the Hague Convention. The Cypriot authority submitted a request to its Portuguese counterpart seeking the child's return.

In an order of 2 November 2009 the public prosecutor at the Coimbra family court requested the return of the child to Cyprus on the grounds that she was being unlawfully retained in Portugal. In January 2010 the Coimbra court held that retaining the child in Portugal was wrongful for the purposes of Article 3 (b) of the Hague Convention, in so far as parental responsibility had been exercised jointly and Mr. D had been opposed to the child's settling in Portugal. Noting that the child had been retained there for less than a year, the court ordered her return to Cyprus. On 5 February 2010 Ms Ribeiro Fernandes appealed against that judgment. On 15 June 2010 the Coimbra Court of Appeal set aside the judgment and ordered that the child should not be returned to Cyprus. The prosecuting authorities lodged an appeal on points of law and the Supreme Court quashed the Court of Appeal judgment and upheld the judgment given by the Coimbra family court at first instance. According to the most recent information received, dating back to 16 May 2014, the child was still in Portugal with her mother.

Relying on Article 8 (right to respect for private and family life) of the Convention, the applicants alleged an infringement of their right to respect for their family life on account of the decision of the domestic courts ordering the child's return to Cyprus.

Violation of Article 8 – if the Supreme Court's judgment of 14 April 2011 was to be enforced

Just satisfaction: The Court held that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicants. It further awarded them EUR 765 in respect of costs and expenses.

Khloyev v. Russia (no. 46404/13)

The applicant, Andrey Khloyev, is a Russian national who was born in 1974 and lives in St. Petersburg (Russia). The case concerned, in particular, his complaint of not having received adequate medical assistance in detention for his condition – which included chronic viral hepatitis, diabetes and tuberculosis – and of having been remanded in custody without valid reasons.

Mr Khloyev was arrested in late February 2012 on suspicion of having organised a criminal group to commit a number offences, including aggravated kidnapping, extortion and robbery. He was subsequently remanded in custody, where he remained – the detention order being extended on numerous occasions – until his release for medical reasons in late October 2013.

Mr Khloyev complained that the Russian Government had breached his rights under Article 34 (right of individual petition) by failing to have his medical examination performed with a view to answering three questions about his condition – as requested by the European Court of Human Rights on 3 October 2013 under Rule 39 of its Rules of Court (interim measures) – namely: whether his treatment in detention had been adequate to his condition; whether his state of health had been compatible with detention; and whether his condition had required treatment in a hospital. Relying further on Article 3 (prohibition of inhuman or degrading treatment), he complained that he had not received adequate medical care while in detention, which had led to a serious deterioration in his condition. Finally, he relied on Article 5 § 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), complaining of the length of his detention on remand and alleging that the orders for his detention had not been based on sufficient reasons.

Violation of Article 34

Violation of Article 3 (inhuman and degrading treatment)

No violation of Article 5 § 3

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

Mifobova v. Russia (no. 5525/11)

The applicant, Lyudmila Mifobova, is a Russian national who was born in 1958 and lives in Magadan (Russia). The case concerned her involuntary placement in a psychiatric hospital.

Ms Mifobova, examined by a psychiatrist following a complaint from her local mayor's office that she had been stalking the mayor and his employees, was interned on 20 May 2010. On 26 May 2010 the national courts held a hearing in which they ordered Ms Mifobova's involuntary hospitalisation, basing their decision on her long history of schizophrenia and inability to control her behaviour. Representatives of the hospital, social services, prosecuting authorities as well as Ms Mifobova herself were present at the hearing; her legal representative was notified of the hearing but did not appear. The decision to intern her was upheld at an appeal hearing on 6 July 2010. The hearing was held in the presence of a representative from the hospital and a prosecutor; Ms Mifobova was absent as she had not been transferred from the hospital to the courthouse and she was not represented by a lawyer. The appeal court upheld the order to intern her. She was released at some point in 2010.

Relying in particular on Article 5 § 1 (right to liberty and security), Ms Mifobova alleged that the authorities had had no reason to hospitalise her, notably complaining that she had been prevented from effectively participating in the first-instance and appeal proceedings deciding on her case.

Violation of Article 5 § 1

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

Sergey Zubarev v. Russia (no. 5682/06)

The applicant, Sergey Pavlovich Zubarev, is a Russian national who was born in 1953 and lives in Tula (Russia). The case concerned the national courts' refusal to accept his defamation claim against a judge on grounds of judicial immunity.

Mr Zubarev, a lawyer, brought a defamation claim against a judge who had asked the Bar Association in April 2005 to institute disciplinary proceedings against him for his conduct in civil

proceedings. The judge notably alleged that Mr Zubarev had caused delays in a set of civil proceedings in which he was one of the representatives due to absence without good reason. In May 2005 the courts refused to accept his claim for consideration because of the judge's judicial immunity from liability in her professional capacity as presiding judge of the civil case. That decision was upheld in June 2005 on appeal.

Relying in particular on Article 6 § 1 (right to a fair trial), Mr Zubarev alleged that the national courts' refusal to examine his defamation claim on the merits had denied him access to a court.

No violation of Article 6 § 1

Furman v. Slovenia and Austria (no. 16608/09)

The applicant, Andrej Furman, is a Slovenian national who was born in 1955 and lives in Maribor (Slovenia). The case concerned contact and enforcement proceedings in which he had sought to obtain access to his daughter.

Mr Furman and his former partner separated in 1997, and in early 1998 agreed on a provisional contact schedule for him to see their daughter, born in 1993. However, his former partner subsequently stopped allowing him contact with his daughter and moved to Austria with the child. Mr Furman brought proceedings before the Slovenian authorities and obtained a contact order in October 2000, against which the mother successfully appealed. Following the remittal of the case and a number of delays due to the authorities' inability to locate the mother, the Maribor District Court issued an interim order in July 2007, allowing Mr Furman contact with his daughter, and, in September and October 2007, he saw her for the first time in more than nine years. However, his daughter subsequently refused to see him again and, following her request, an Austrian court suspended Mr Furman's contact rights in a decision eventually upheld in August 2009.

Relying in substance on Article 8 (right to respect for private and family life), Mr Furman complained in particular that the Slovenian and Austrian authorities had prevented him from enjoying family life with his daughter.

Violation of Article 8 in respect of Slovenia (the Court further declared inadmissible the applicant's complaints in respect of Austria)

Just satisfaction: EUR 15,000 (non-pecuniary damage) and EUR 2,500 (costs and expenses)

Ogorodnik v. Ukraine (no. 29644/10)

The applicant, Maksym Ogorodnik, is a Ukrainian national who was born in 1983. He is currently serving an eleven and a half years' imprisonment in Berdychiv Prison no. 70 (Ukraine) following his conviction in May 2009 – upheld in February 2010 – on 17 counts of aggravated theft and robbery. The case concerned his allegation of severe ill-treatment in police custody.

Mr Ogorodnik, who had a history of criminal convictions for theft, was arrested on 16 July 2008 in connection with a number of armed robberies and thefts committed in the Kyiv and Vinnytsia regions. In his ensuing police custody – until 25 July 2008 under administrative detention and after that as a criminal suspect – he alleges that the police subjected him to various forms of ill-treatment to make him confess to the robberies and thefts. He alleged in particular beatings, strangulation with a plastic bag, suspension from an iron bar and rape with a baseball bat. On several occasions from September 2008 onwards Mr Ogorodnik lodged complaints with the domestic authorities about his ill-treatment, submitting that all his confessions and waivers of legal assistance had been given under duress. An investigation was opened into his complaints and the police officers concerned were questioned. However, in November 2008 the Vinnytsia prosecuting authorities refused to institute criminal proceedings against the accused officers due to lack of evidence, the officers

having denied the allegations of ill-treatment and having explained that they had had to use force against Mr Ogorodnik due to his resistance to arrest. On similar grounds, the Vyshgorod prosecuting authorities also subsequently refused to institute criminal proceedings against the police officers.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Ogorodnik alleged that he had been severely ill-treated in police custody and that the authorities had made no meaningful effort to investigate the truth regarding his allegations or punish the police officers concerned. He noted in particular that the authorities had never questioned him as a victim. Further relying on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), he also complained that his initial administrative detention had been for an ulterior motive, notably to allow the police to put pressure on him and to deny him access to a legal representative, and that his ensuing confessions – as well as those made after his detention had been registered as criminal - had been used as the basis for his conviction, the trial court not even dealing with his complaints of ill-treatment by the police.

Violation of Article 3 (ill-treatment)

Violation of Article 3 (investigation)

Violation of Article 6 §§ 1 and 3 (c)

Just satisfaction: EUR 12,000 (non-pecuniary damage)

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_Press](https://twitter.com/ECHR_Press).

Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Céline Menu-Lange (tel: + 33 3 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.