



Judgments and decisions of 19 February 2015

The European Court of Human Rights has today notified in writing nine judgments¹ and 47 decisions² :

four Chamber judgments are summarised below; for three other Chamber judgments separate press releases have been issued: *Helhal v. France* (application no. 10401/12); *Bohlen v. Germany* (no. 53495/09) and *Ernst August von Hannover v. Germany* (no. 53649/09);

two Committee judgments, concerning issues which have already been submitted to the Court, and the 47 decisions, can be consulted on [Hudoc](#) ; they do not appear in this press release.

The judgments summarised below are available in English only.

M.S. v. Croatia (No. 2) (application no. 75450/12)

The applicant, Ms M.S., is a Croatian national who was born in 1962 and lives in L. The case concerned her involuntary confinement in a psychiatric hospital for one month.

On 29 October 2012 Ms M.S. went to see her family doctor complaining of severe lower-back pain. The doctor sent her to the emergency health service, where she was examined by a psychiatrist, who diagnosed her, in particular, with acute psychotic disorder, and prescribed hospitalisation. She was immediately, and against her will, admitted to a psychiatric clinic, where she was tied to a bed in an isolation room for one night. After a county court judge had authorised her involuntary retention, which was subsequently extended by the court, M.S. remained in the clinic – her appeal against that decision being dismissed – until being discharged on 29 November 2012.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Ms M.S. complained that she had been ill-treated during her confinement in the psychiatric hospital, and that there had been no effective investigation in that respect. Further relying, in substance, on Article 5 § 1 (e) (right to liberty and security), she complained of having been unlawfully and unjustifiably detained in the hospital, and that the relevant court decision had not been accompanied by adequate procedural safeguards.

Violation of Article 3 (investigation)

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 5 § 1 (e)

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

Mileusnić and Mileusnić-Espenheim v. Croatia (no. 66953/09)

The applicants in this case, Petar Mileusnić and his son Goran Mileusnić Espenheim, Croatian nationals of Serbian ethnic origin, were born in 1936 and 1967 respectively. Until his death in March

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. 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 Inadmissibility and strike-out decisions are final.

2013 Petar Mileusnić lived in Novska (Croatia). Goran Mileusnić Espenheim, who lives in Dieskau (Germany), has subsequently pursued the application on his behalf.

The case concerned the applicants' complaint that there had been no adequate response by the national authorities to the killing of V.M., the applicants' wife and mother, respectively, and G.M., their daughter and sister, respectively. Both women died after being shot in their home by armed men in uniforms of the Croatian army in December 1991 during the armed conflict in Croatia. In a first set of criminal proceedings following the incident, the charges against two suspects were dropped and the proceedings against three other suspects were terminated in 1992. In a second set of criminal proceedings, following a complaint by the applicants in 2008, four suspects were charged with war crimes against the civilian population. Eventually, the charges against two of the suspects were dropped, and the remaining two men were convicted as charged and sentenced to ten and nine years' imprisonment in a judgment upheld by the Supreme Court in March 2013.

In separate civil proceedings brought by the applicants, their claims for compensation for the deaths of their relatives were dismissed, but, following a friendly settlement between Mr Mileusnić Espenheim and the Military of Defence he was awarded and paid compensation for the killing of his relatives in 2014.

Relying in particular on Article 2 (right to life) and Article 14 (prohibition of discrimination), the applicants complained that the authorities had not taken appropriate steps to investigate the death of their close family members and to bring the perpetrators to justice, and they alleged that their relatives had been killed because of their Serbian ethnic origin. They further relied on Article 1 of Protocol No. 1 (protection of property) to the Convention, complaining that the national courts had dismissed their claim for damages.

No violation of Articles 2 and 14 (investigation)

Complaint under Article 1 of Protocol No. 1 struck out – the Court found that the matter giving rise to the complaint in question had been resolved

Dzhabbarov v. Russia (no. 29926/08)

The applicant, Ramazan Gardashkhan-Ogly Dzhabbarov, is a Russian national who was born in 1963 and lives in Tomsk. The case concerned his complaint of having been ill-treated in State custody.

Mr Dzhabbarov was asked to appear at a regional office of the security service (FSB) in May 2006, where, according to his submissions, he was ill-treated by FSB officers in order to make him confess to a murder. In particular, he alleges that he was beaten for several hours and had a bag put over his head. He was subsequently placed in remand custody. Following Mr Dzhabbarov's complaint of being in pain and his allegations of having been beaten up in FSB custody, the governor of the remand prison informed the prosecutor's office. In July 2006, the military investigator decided not to open criminal proceedings into his complaint of ill-treatment, the decision being upheld on appeal. Following a new complaint by Mr Dzhabbarov, the investigator again refused to open criminal proceedings, but the decision was quashed and a new inquiry was ordered. Eventually, a decision not to open proceedings was confirmed by the supervising prosecutor in February 2009.

In the meantime, Mr Dzhabbarov was convicted of manslaughter in July 2007. The conviction was quashed on appeal. In June 2009 he was found guilty of battery and sentenced to 140 hours of compulsory labour, and released from detention.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Dzhabbarov complained that he had been ill-treated in State custody and that the ensuing investigation had not been effective.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 3 (investigation)

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

Zhyzitskyy c. Ukraine (n° 57980/11)

The applicant, Valentyn Zhyzitskyy, is a Ukrainian national who was born in 1971. He is currently serving a prison sentence.

The case concerned Mr Zhyzitskyy's complaint of having been ill-treated by the police after being arrested on 1 May 2007, in order to make him confess to the murder of his wife from whom he was separated. He alleges in particular that he had a cap pulled over his head, was tied to a chair, and that electric shocks were administered to him, including to his genitals. Mr Zhyzitskyy confessed to the murder, but retracted the confession a few days later when represented by a lawyer whom he trusted. Following his complaint of ill-treatment, the prosecution authorities refused on several occasions to open criminal proceedings against the police officers involved in the alleged ill-treatment. Mr Zhyzitskyy was convicted of murder and sentenced to 13 years' imprisonment in February 2008. The judgment was subsequently quashed, but his conviction was eventually upheld in March 2011.

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Zhyzitskyy complained that he had been ill-treated by the police and that there had been no effective domestic investigation into the matter. He also complained, under Article 6 § 1 (right to a fair trial), that he had not had a fair trial on account of his self-incrimination under duress.

Violation of Article 3 (torture)

Violation of Article 3 (investigation)

Violation of Article 6 § 1

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 480 (costs and expenses)

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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.