



## Judgments<sup>1</sup> concerning Hungary, Italy, Poland, Slovenia and Turkey

The European Court of Human Rights has today notified in writing the following 18 judgments.

Repetitive cases<sup>2</sup> and one length-of-proceedings case, with the Court's main finding indicated, can be found at the end of the press release. The judgments available only in French are indicated with an asterisk (\*).

### Metalco BT. v. Hungary (application no. 34976/05)

The applicant, Metalco BT., is a Hungarian limited partnership, presently under liquidation, which is based in Pécs (Hungary). Relying on Article 1 of Protocol No. 1 (protection of property) and Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention on Human Rights, the applicant company complained about the unfairness and excessive length of litigation with the Hungarian tax authorities concerning outstanding taxes. It further alleged that a share held in another company, used to secure its debt in the tax litigation, had ended up losing its value altogether.

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

#### **Violation of Article 6 § 1** (fairness)

**Just satisfaction:** 50,000 euros (EUR) (pecuniary and non-pecuniary damage)

### Potapenko v. Hungary (no. 32318/05)

The applicant, Alexandr Potapenko, is a Ukrainian national who was born in 1962 and lives in Békéscsaba (Hungary). Resident in Hungary since 1986, he complained about the excessive length of criminal proceedings brought against him in 1998 on charges of aggravated fraud. He was eventually acquitted in 2007. He relied on Article 6 § 1 (right to a fair hearing within a reasonable time) of the Convention. Further relying on Article 2 § 2 of Protocol No. 4 (freedom of movement), he also complained that his passport had been confiscated for seven and a half years of the proceedings against him.

#### **Violation of Article 6 § 1** (length)

#### **Violation of Article 2 § 2 of Protocol No. 4**

**Just satisfaction:** EUR 12,500 (non-pecuniary damage)

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

2 In which the Court has reached the same findings as in similar cases raising the same issues under the Convention.

## Choumakov v. Poland (No. 2) (no. 55777/08)

The applicant, Oleg Choumakov, is a Russian national who was born in 1971 and is currently serving a 25 year-prison sentence in Gdańsk Detention Centre (Poland) for the robbery and murder of a taxi driver. In a judgment of 29 July 2008 (**Choumakov v. Poland**, no. 33868/05) the European Court of Human Rights found a violation of Article 5 § 3 (right to liberty and security) on account of the excessive length of Mr Choumakov's pre-trial detention in connection with those proceedings against him. Despite that judgment, Mr Choumakov has remained in detention. This case concerned his further complaint about the excessive length of his pre-trial detention as well as of the criminal proceedings against him. He relied on Article 5 § 3 (right to liberty and security) and Article 6 § 1 (right to a fair trial within a reasonable time).

### **Violation of Article 5 § 3**

### **Violation of Article 6 § 1** (length)

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

## Knyter v. Poland (no. 31820/06)

## Lesiak v. Poland (no. 19218/07)

The applicants are two Polish nationals: Albert Knyter who was born in 1974 and lives in Gdańsk (Poland); and Zofia Lesiak who was born in 1964 and lives in Zabrze (Poland). Mr Knyter was arrested in June 2004 on homicide charges and convicted in January 2007 of false imprisonment, ill-treatment and unintentionally causing death. Arrested in April 2006 on suspicion of money-laundering, Ms Lesiak was released on bail in November 2007; the criminal proceedings are still pending against her. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 § 3 (right to liberty and security), both applicants complained about the conditions (overcrowding in the first case and inadequate medical care in the second case) and excessive length of their pre-trial detention. Lastly, they both also complained about restrictions on contact with their family/children during their detention, in breach of Article 8 (right to respect for private and family life for correspondence and the home). Ms Lesiak's case also raised a further issue under Article 8, that of the Polish authorities' monitoring of her correspondence with the European Court of Human Rights.

### **(1st case) Violation of Article 5 § 3**

### **(2nd case) No violation of Article 5 § 3**

### **(1st case) Violation of Article 8** (restrictions on family visits)

### **(2nd case) Violation of Article 8** (monitoring of correspondence)

**Just satisfaction:**

- non-pecuniary damage: to Mr Knyter, EUR 2,500 and to Ms Lesiak, EUR 800
- costs and expenses: to Ms Lesiak, EUR 500

## Sambor v. Poland (no. 15579/05)

The applicant, Dominik Sambor, is a Polish national who was born in 1974 and lives with his father and grandmother in Wrocław (Poland). He suffers from paranoid schizophrenia. In August 2003, following an argument with his father, Mr Sambor barricaded himself in his room and threatened his father with a knife and an axe. In possession of an airgun, he then opened fire on the police who had been called to the scene. Negotiations between Mr Sambor, the police, a psychologist and a doctor having failed, the police stormed his room and shot him once in the leg. As a result of the wound, his left leg had to be amputated. Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Sambor alleged that his life had been endangered during the police intervention and that the force used against him had been excessive and had amounted

to ill-treatment, especially as concerned the loss of his leg. He also complained that the ensuing investigation into the incident had been inadequate.

### **No violation of Article 3**

#### **Açış v. Turkey (no. 7050/05)\***

The applicants, Saniye Açış, Hanifi Açış, Barış Açış, Veli Açış and Menice Açış, are Turkish nationals who were born in 1969, 1988, 1989, 1990 and 1955 respectively and live in Batman (Turkey). They are the wife, children and mother of İzzettin Açış, who was performing his compulsory military service in south-eastern Turkey at the material time. In June 1992 members of the PKK (Workers' Party of Kurdistan, an illegal organisation) attacked the gendarmerie station in the village and during the ensuing clashes injured İzzettin Açış and took him hostage. A military operation was launched aimed at finding the young man and an investigation was subsequently opened by the authorities. In 2002 the applicants, having had no news of their relative, sought a declaration that he was to be presumed dead. Their request was refused, in particular because of a letter from the commanding officer of the territorial army stating that İzzettin Açış had joined the PKK. Relying on Article 2 (right to life), the applicants complained that the authorities failed to protect their relative's life while he was in military service and that the investigation into his disappearance had not been effective. Under Article 3 (prohibition of inhuman or degrading treatment), they alleged that the information provided by the authorities had been contradictory and defamatory. In addition, they maintained that the discontinuation of the proceedings in their case because they had been unable to pay the court fees had been in breach of Article 6 (right of access to a court) and Article 14 (prohibition of discrimination). They alleged that they had not had an effective remedy by which to assert their complaints, relying on Article 13 (right to an effective remedy) in that regard.

**(Concerning the applicants) Violation of Article 3** (prohibition of inhuman or degrading treatment)

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

**No violation of Article 14**

**Just satisfaction:** jointly, EUR 23,400 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

#### **Desde v. Turkey (no. 23909/03)**

The applicant, Mehmet Desde, is a German national who was born in 1959 and lives in Berlin. Travelling in Izmir in July 2002, Mr Desde alleged that he had been arrested and tortured during his ensuing police custody on suspicion of being a member of the illegal organisation *Bolşevik Parti-Kuzey Kürdistan/Türkiye (Bolshevik Party-North Kurdistan/Turkey)*. He complained in particular that, blindfolded and stripped naked, he had been beaten and sexually abused and that the authorities had not effectively investigated those allegations. He relied on Articles 3 (prohibition of inhuman or degrading treatment) and 13 (right to an effective remedy). He also alleged that the criminal proceedings against him, in which he had been convicted as charged and sentenced to two years and six months' imprisonment, had been unfair, in breach of Article 6 §§ 1 and 3 (c). Notably he claimed that his confession during police custody, made under duress and in the absence of a lawyer, had been used in evidence against him at trial.

**No violation of Article 3** (prohibition of inhuman or degrading treatment)

**Violation of Article 3** (lack of effective investigation)

**Violation of Article 6 §§ 1 and 3 (c)** (fairness)

**Just satisfaction:** EUR 19,000 (non-pecuniary damage) and EUR 2,000 (costs and expenses)

### Faruk Temel v. Turkey (no. 16853/05)\*

The applicant, Faruk Temel, is a Turkish national who was born in 1982 and lives in Hakkari (Turkey). While he was president of the provincial youth section of HADEP (People's Democracy Party, a legal political party) he read out a press statement at a party conference in 2003 in which he allegedly protested against the United States intervention in Iraq and Abdullah Öcalan's solitary confinement. Relying on Article 10 (freedom of expression), he complained of his conviction on account of that statement. Under Article 6 §§ 1 and 3 (c) (right to a fair trial), he alleged in particular that in the proceedings against him he had been denied the assistance of a lawyer during the investigation stage.

#### **Violation of Article 10**

#### **Violation of Article 6 §§ 1 and 3 (c) (fairness)**

**Just satisfaction:** EUR 16,000 (non-pecuniary damage)

### Gereksar and Others v. Turkey (nos. 34764/05, 34786/05, 34800/05 and 34811/05)\*

The applicants are 12 Turkish nationals who owned farmland in Bingöl (Turkey) on which they grew vegetables or, in the case of one of them, a plantation of trees. In 1996 the Bingöl provincial council began building an airstrip on land adjoining the applicants' land. Relying on Article 1 of Protocol No. 1 (protection of property), they complained that the channels they used to irrigate their land had been taken out of operation while the work had been in progress. They also relied on Article 6 § 1 (right to a fair hearing) with regard to the proceedings following their appeals against that measure.

#### **Violation of Article 6 § 1 (length)**

#### **Violation of Article 6 § 1 (fairness)**

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

**Just satisfaction:**

- non-pecuniary damage: to each of the applicants in the first and third cases EUR 7,800; to the applicants in each of the other two cases, EUR 7,800, jointly
- costs and expenses: jointly, EUR 400

### Hüseyin Habip Taşkın v. Turkey (no. 5289/06)

The applicant, Hüseyin Habip Taşkın, is a Turkish national who was born in 1960 and lives in Izmir (Turkey). He alleged that criminal proceedings brought against him for being a member of the illegal organisation, Bolşevik Parti-Kuzey Kürdistan/Türkiye (*Bolshevik Party-North Kurdistan/Turkey*), in which he was convicted as charged in October 2004 and sentenced to two years and six months' imprisonment, had been unfair, in breach of Article 6 §§ 1 and 3 (c) (right to a fair trial). Notably he claimed that his statement during police custody, although made in the absence of a lawyer, had been used to convict him.

#### **Violation of Article 6 § 3 (c) in conjunction with Article 6 § 1 (fairness)**

**Just satisfaction:** EUR 1,800 (non-pecuniary damage) and EUR 1,000, less EUR 850 granted by way of legal aid by the Council of Europe (costs and expenses)

### Kutlar and Ocaklı v. Turkey (nos. 41433/06, 47936/08)

The applicants, Taylan Kutlar, born in 1980, and Osman Nuri Ocaklı, born in 1966, are two Turkish nationals, who have been held since 2000 and 2003, respectively, in pre-trial detention on charges of membership of an illegal organisation, the *MLKP* (the "*Marxist Leninist Communist Party*"). Relying on Article 5 § 3 (right to liberty and security), they complained about the excessive length of their pre-trial detention.

Mr Osman Nuri Ocaklı also complained that he had not had the possibility to challenge his continued detention on remand.

**(Both applicants) Violation of Article 5 § 3**

**(2nd applicant) Violation of Article 5 § 4**

**Just satisfaction:**

- non-pecuniary damage: to Mr Kutlar EUR 10,800; to Mr Ockalı EUR 9,000
- costs and expenses: to Mr Kutlar EUR 1,000, to Mr Ockalı EUR 1,500

## Repetitive cases

The following cases raise issues which have already been submitted to the Court.

**Just satisfaction**

**Genovese and Others v. Italy** (no. 9119/03)\*

**Giacobbe and Others v. Italy** (no. 16041/02)\*

**Quattrone v. Italy** (no. 67785/01)\*

In judgments of 2 February 2006, 15 December 2005 and 11 January 2007 the Court held in these three cases that there had been a violation of Article 1 of Protocol No. 1 (protection of property) on account of the absence of formal expropriation and compensation following the occupation by the authorities of land belonging to the applicants, and that the question of the application of Article 41 (just satisfaction) was not ready for decision.

In the case of **Quattrone** the Court held, in the judgment of 11 January 2007, that there had also been a violation of Article 6 § 1 (right to a fair hearing within a reasonable time) on account of the excessive length of the proceedings (more than 16 years), and awarded the applicant 7,900 euros (EUR) for non-pecuniary damage and EUR 2,000 for costs and expenses.

In its judgments today, the Court awarded the applicants/heirs, jointly, in the case of: **Genovese and Others**, EUR 6,000 for non-pecuniary damage and EUR 10,000 for costs and expenses; **Giacobbe and Others**, EUR 217,500 for pecuniary damage and EUR 15,000 for non-pecuniary damage; and, **Quattrone**, EUR 1,366,000 for pecuniary damage, EUR 15,000 for non-pecuniary damage and EUR 15,000 for costs and expenses.

**Mehmet Yıldız and Others v. Turkey** (no. 14155/02)\*

In this case the applicants complained that the expropriation compensation awarded to them had lost its value because the statutory default interest rate was inadequate. They relied on Article 1 of Protocol No. 1 (protection of property).

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

## Length-of-proceedings case

In the following case, the applicant complained in particular under Article 6 § 1 (right to a fair trial within a reasonable time) about the excessive length of non-criminal proceedings.

**Maksimovič v. Slovenia (No.2)** (no. 31675/05)

**Violation of Article 6 § 1**

**Violation of Article 13**

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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.