EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Forthcoming judgments and decisions

The European Court of Human Rights will be notifying in writing 15 judgments on Tuesday 10 January 2017 and 80 judgments and / or decisions on Thursday 12 January 2017.

*Press releases and texts of the judgments and decisions will be available at **10 a.m.** (local time) on the Court's Internet site (www.echr.coe.int)*

Tuesday 10 January 2017

Babiarz v. Poland (application no. 1955/10)

The applicant, Artur Babiarz, is a Polish national who was born in 1971 and lives in Dębowa Kłoda. The case concerns the Polish authorities' refusal to grant Mr Babiarz a divorce. He complains that this breached his right to marry his current partner, who is the mother of his child.

Mr Babiarz married R. in 1997. In autumn 2004, he met his current partner. In January 2005, he moved out of the flat he shared with R. and began living with his current partner, who gave birth to their daughter in October 2005. On 25 September 2006, Mr Babiarz filed a petition for a no-fault divorce. R. did not agree to the divorce, declared that she loved Mr Babiarz, and asked the court to dismiss the divorce petition. Mr Babiarz then requested a divorce on fault-based grounds.

Throughout the proceedings, R. maintained her refusal to divorce. A number of hearings were held during which 13 witnesses were heard, including family and colleagues. On 17 February 2009, the Lublin Regional Court refused to grant the divorce to Mr Babiarz. The court held that he was the only one responsible for the breakdown of the marriage, due to his infidelity. The court emphasised that, under Article 56 § 3 of the Family and Guardianship Code, a divorce cannot be granted if it has been requested by the party who was at fault for the marital breakdown and if the other spouse refuses to consent. It further noted that that there was no indication that R. was acting out of hatred or vengeance by withholding her consent to divorce as she had repeatedly expressed her desire to reconcile with him.

Mr Babiarz appealed against the judgment. He argued in particular that the court had erred in holding that a spouse's refusal to consent to divorce could be disregarded only when it was abusive or dictated by hostility towards the spouse seeking the divorce. Mr Babiarz contended that the court should have examined the negative consequences caused by continuing the formal existence of a failed marriage. On 16 June 2009, the Lublin Court of Appeal dismissed Mr Babiarz's appeal.

Relying on Article 8 (right to respect for private and family) and Article 12 (right to marry) of the European Convention on Human Rights, Mr Babiarz argues that by refusing to grant him a divorce, the courts had prevented him from marrying his partner.

Kacper Nowakowski v. Poland (no. 32407/13)

The case concerns the contact rights of a deaf and mute father with his son, who also has a hearing impairment. The applicant, Kacper Nowakowski, is a Polish national who was born in 1976 and lives in Białystok (Poland).

In August 2005 Mr Nowakowski, who is deaf and mute, married A.N., who also has a hearing impairment. The couple had a son in 2006. They divorced in 2007; the domestic courts ruled that their son, at the time 11 months old, was to reside with his mother and that Mr Nowakowski was

allowed to see his son for two hours every week. Mr Nowakowski did not object to these arrangements.

However, in August 2011, when his son had reached the age of almost five, Mr Nowakowski applied to the courts for an extension of his contact rights in order to strengthen their ties. He notably requested that the contact take place without the mother and away from her home, on account of her attempts to undermine him during visits and the generally unfriendly atmosphere.

The courts ultimately refused Mr Nowakowski's request in November 2012, finding that it would not be in his son's best interests. The courts took into account a number of factors, such as the child's disability and heavy dependence on his mother, and in particular the fact that she ensured security and stability for the child during the visits. Furthermore, the courts considered that it was necessary to involve the mother in the visits, as she was able to use sign language and communicate orally, whereas the father mostly used sign and the son only communicated orally. Moreover, the fact that the courts had taken into account this communication barrier in their decisions was not viewed as discriminatory; the courts considered the barrier to be a real obstacle to the forging of ties between father and son. Lastly, it was not considered necessary to impose an obligation on the parents to undergo family therapy, as recommended by experts in a number of reports drawn up during the proceedings, as the mother had already attended a parent support group and the father had declared that he could attend the same group. During those proceedings, Mr Nowakowski's request for a further expert report to be prepared by specialists in the needs of deaf people was rejected.

In a parallel set of proceedings, the courts decided to restrict Mr Nowakowski's parental authority over his son to issues concerning his education, again citing the best interests of the child.

Mr Nowakowski complains about the dismissal of his application for an extension of contact with his son, maintaining that the child's best interests demanded a broader perspective than the one adopted by the domestic courts. He also alleges that the dismissal of his request for increased contact had been solely on the ground of his disability and had been highly discriminatory. He relies on Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination) of the European Convention.

Korzeniak v. Poland (no. 56134/08)

The applicant, Stanisław Korzeniak, is a Polish national who was born in 1953 and lives in Krosno (Poland).

In the late 1990s, Mr Korzeniak carried out construction work for a Polish company in Germany. In July 1999, he lodged a civil claim against his former employer, claiming that he should have been paid a higher hourly rate for his work. For almost nine years, the proceedings passed between multiple levels of the Polish court system, until the final judgment was given by the Supreme Court on 14 May 2008. Mr Korzeniak was only partially successful in his claim.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Korzeniak complains that the proceedings lasted an excessive amount of time. He also complains that the Supreme Court that heard the final appeal was not impartial, on the grounds that one of the judges hearing the case had already passed judgment in the proceedings at an earlier stage, when he had been sitting in the Court of Appeal (prior to that judge's promotion to the Supreme Court).

Ioniță v. Romania (no. 81270/12)

The applicants, Dorina Ioniță and Viorel Ioniță, are Romanian nationals who were born in 1972 and 1976 respectively and live in Brăila (Romania). The case concerns the death of their son after an operation, and the alleged failure of the authorities to investigate the incident.

In November 2005, the applicants' four-year-old son underwent surgery for the removal of a polyps in the State-run Brăila Emergency Hospital. The surgery was carried out by Dr C.B., and the general

anaesthesia was performed by Dr P.A., who was assisted by a staff nurse, P.V.I. After surgery the child was immediately transferred to the intensive care unit, under the supervision of P.V.I. The child suffered a haemorrhage, causing blood to flood his lungs. Attempts to resuscitate him failed, and the boy was declared dead.

Conflicting accounts emerged of what had caused his death, according to an autopsy, statements by the medical professionals present at the time, and various forensic reports. The autopsy report, approved by the Iaşi Forensic Institute and the Mina Minovici Forensic Institute, concluded that there had been a link between the post-operative treatment and the child's death. Notably, the deflation of the balloon of the catheter, applied after the operation to prevent the transfer of blood into the lungs, was identified as a possible cause of the presence of blood in the child's airways. Conversely, a medical report submitted by Dr P.A. stated that the cause of death had not been the presence of blood in the lungs, but had instead been the post-operative reaction of the child, arising from his pre-existing medical conditions.

Disciplinary proceedings were instigated in relation to the incident. These were concluded in a decision by the superior disciplinary committee of the National College of Doctors made in June 2008. The committee found that the pre-surgical tests carried out by Dr C.B. and Dr P.A. had been insufficient, and fined them both 1,000 Romanian lei. The committee also found that the statements made by the medical professionals must have been inaccurate.

A criminal investigation was also opened, which the applicants joined as civil parties. The prosecutor's office of the Brăila District Court decided to institute criminal proceedings against Dr P.A. In order to resolve some of the inconsistencies in the medical reports, the investigating authorities made requests for a new forensic report, which would address the differing accounts and respond to observations from the parties. However, requests for a new report were rejected: in particular by the Mina Minovici National Forensic Institute, on the basis that the Forensic Institute had already given its opinion on the case.

In autumn 2008 the prosecuting authorities issued decisions to discontinue the proceedings against Dr P.A., on the grounds that there had been no evidence of criminal negligence in his conduct. Following a complaint lodged by the applicants, this decision was quashed by the Brăila District Court in February 2009. The court then conducted its own examination of the evidence in several hearings: in October 2010 it acquitted Dr P.A. and dismissed the applicants' civil claim. However, this decision was eventually overturned by the Galaţi Court of Appeal, which sent the file back to the first instance court. Nevertheless, in December 2011 the District Court once again acquitted Dr P.A. and dismissed the civil claim. The court held that it could not establish beyond reasonable doubt that Dr P.A. had been negligent in ensuring the tightness of the catheter's balloon after surgery. Moreover, it found that no causal link existed between the death of the child and the alleged omission of the medical authorities to obtain the applicants' informed consent for the operation. The court also dismissed the applicants' request to extend the criminal investigation to the nurse, P.V.I. The judgment was upheld by the Galaţi Court of Appeal on 22 May 2012.

The applicants had also lodged a separate set of civil proceedings in relation to the incident. These had been stayed between 2009 and 2013 pending a final decision in the criminal proceedings. However, after the stay was lifted the applicants gave up the claim.

Relying in substance on Article 2 (right to life), the applicants complain that the criminal investigation into the death of their son was ineffective and had exceeded a reasonable time. In particular, they complain that the authorities failed to investigate Dr C.B. or nurse P.V.I.; whilst their investigation of Dr P.A. had been insufficient, as it had failed to properly take into account the reports which had criticised his conduct.

Mečiar and Others v. Slovakia (no. 62864/09)
Riedel and Others v. Slovakia (nos. 44218/07, 54831/07, 33176/08, and 47150/08)

Both cases concern the rent-control system in Slovakia.

The applicants in both cases are: 31 Slovak nationals, who live/d in Bratislava, Bánovce, Bebravou, Brezová, Košice and Trenčín (all in Slovakia); two limited liability companies, based in Bratislava; and one religious association, also based in Bratislava. Three of the applicants are now deceased and have been replaced in the proceedings before the Court by their heirs.

The applicants are/were all owners or co-owners of flats that were or still are subject to rent control. On obtaining ownership of the flats, under the relevant legislation, they had to accept that they had to let their flats to tenants while charging no more than the maximum amount of rent fixed by the State; and that they could not terminate the leases, or sell the flats other than to the tenants.

It is in dispute what amount of rent the applicants would be able to receive by letting their flats under free-market conditions and, by extension, what proportion of the market rent the regulated rent represents. In particular, the Government submitted an expert opinion, according to which the regulated rent of the flats possessed by the applicants corresponded to some 14-26% of the market rent in 2010. The applicants, relying on different sources of information – expert opinions, data from the National Association of Real Estate Agencies and information on average rental prices in the press – argued that the regulated rent was disproportionately low compared with similar flats to which the rent-control did not apply. In one application (no. 54831/07), for example, the data suggested that the regulated rent represented some 5-13% of the market rent for comparable flats in the area.

The applicants complain that the rent-control scheme breached their property rights and, in three of the applications (nos. 62864/09, 44218/07 and 33176/08), that it was discriminatory. They argue in particular that the regulated rent for their flats was substantially lower than free-market prices for similar flats in the same areas and that they had thus been forced to satisfy the housing needs of other people at their own expense. Moreover, they contend that legislation which had allowed for increases in regulated rent by 20% each year since 2011 was not sufficient to close the gap between the regulated and the market rent and, in any case, did not address the breach of their rights before its enactment. They rely on Article 1 of Protocol No. 1 (protection of property) and Article 14 (prohibition of discrimination).

There are currently 14 similar applications involving some 200 applicants pending before the Court.

Aparicio Navarro Reverter and García San Miguel y Orueta v. Spain (no. 39433/11)

The applicants, Alberto Aparicio Navarro-Reverter and Ana María García San Miguel y Orueta, are Spanish nationals who were born in 1937 and 1942 respectively and live in Madrid.

The case concerns the failure to notify the owners of an apartment of administrative proceedings concerning the lawfulness of a building permit.

In September 2001 Mr Aparicio Navarro Reverter and Ms García San Miguel y Orueta purchased an apartment in Sanxenxo (Galicia). In July 2002 one of the neighbours applied to the administrative courts challenging the lawfulness of the construction work on the apartment block and requesting that it be suspended. The municipal authorities informed only the site developer, who was the sole holder of the building permit, about the proceedings; the applicants were not notified.

In January 2004 the Pontevedra administrative judge no. 3 partly allowed the neighbour's claims and annulled the building permit, without however ordering that the apartments be demolished. The buyers were not notified of that judgment. On appeal, the Galicia High Court of Justice ordered the demolition of several apartments. At the neighbour's request the necessary measures were taken to enforce the judgment. The municipal authorities and the site developer appealed against those

measures, without success, and the final judgment was served on the applicants in February 2009 by the municipal authorities, who informed them that the building permit granted to the developer had been annulled and that an order had been made for the demolition of several apartments, including theirs.

In March 2009 Mr Aparicio Navarro Reverter and Ms García San Miguel y Orueta applied unsuccessfully to the Galicia High Court of Justice to have the proceedings declared null and void. They also lodged an *amparo* appeal with the Constitutional Court, arguing that no steps had been taken to inform them of the proceedings. The Constitutional Court declared their appeal inadmissible. The demolition work is currently suspended and proceedings are in progress for regularisation of the original building permit.

Relying on Article 6 § 1 (right to a fair hearing), the applicants complain that they were not informed, as interested parties, of the proceedings before the Pontevedra administrative judge no. 3. They also allege that the authorities acted in breach of Articles 8 (right to respect for private and family life) and 13 (right to an effective remedy), and of Article 1 of Protocol No. 1 to the Convention (protection of property).

Osmanoglu and Kocabas v. Switzerland (no. 29086/12)

The applicants, Aziz Osmanoğlu and Sehabat Kocabaş, are two Swiss nationals who also have Turkish nationality. They were born in 1976 and 1978 respectively and live in Basle (Switzerland).

The case concerns the refusal of Muslim parents to send their daughters, who had not yet reached puberty, to compulsory mixed swimming lessons as part of their schooling.

Mr Osmanoğlu and Ms Kocabaş refused to send their daughters, born in 1999 and 2001, to compulsory swimming lessons as part of their schooling, on the ground that their beliefs prohibited them from allowing their children to take part in mixed swimming lessons. They were advised by the Public Education Department of the Canton of Basle Urban that they risked a maximum fine of 1,000 Swiss francs (CHF) each if their daughters did not attend the compulsory lessons, as the girls had not yet reached the age of puberty and as such could not claim exemption under the legislation.

Despite attempts at mediation by the school, the applicants' daughters continued not to attend the swimming lessons. As a result, in July 2010 the education authorities ordered Mr Osmanoğlu and Ms Kocabaş to pay a fine of CHF 350 per parent per child (a total of approximately 1,292 euros (EUR)) for acting in breach of their parental duty. The applicants appealed to the Court of Appeal of the Canton of Basle Urban, which dismissed their claims in May 2011. They lodged a further appeal with the Federal Court which was dismissed in March 2012 on the grounds that there had been no breach of the applicants' right to freedom of conscience and belief.

Relying on Article 9 (right to freedom of thought, conscience and religion), Mr Osmanoğlu and Ms Kocabaş allege that the requirement to send their daughters to mixed swimming lessons is contrary to their religious convictions.

Salija v. Switzerland (no. 55470/10)

The applicant, Bljerim Salija, is a Macedonian national, who was born in 1980 in the municipality of Tetovo ("the former Yugoslav Republic of Macedonia"). The case concerns the revocation of his permanent residence permit in Switzerland and his expulsion.

Mr Salija arrived in Switzerland in 1989 aged nine to be reunited with his family and was granted a permanent residence permit. In 1999 he married a Macedonian national who also held a permanent residence permit in Switzerland. The couple have two children together.

Following two criminal convictions for embezzlement (in 2003) and for homicide (in 2004), Mr Salija had expulsion proceedings brought against him, the migration authorities revoking his permanent

residence permit and ordering his removal. The expulsion order was served in July 2009, shortly before Mr Salija's release on parole after having served a third of his five-year-and-three-month prison sentence for homicide.

All of his appeals before the domestic courts, ultimately to the Federal Supreme Court in July 2010, were dismissed. The courts notably took into account the gravity of his offences, that he was not well integrated in Switzerland, that he spoke Albanian and that he was familiar with the culture in "the former Yugoslav Republic of Macedonia" where he had spent parts of his childhood and which he had visited since. Moreover, his wife, who was also a national of "the former Yugoslav Republic of Macedonia" and knew Albanian as well the country's culture, and his children, who were of an adaptable age, could reasonably be expected to relocate.

In October 2010 Mr Salija left Switzerland for "the former Yugoslav Republic of Macedonia" in order to comply with the expulsion order. His family joined him there in December 2010. The family has since returned to Switzerland (in 2015) and live in Zurich.

Relying on Article 8 (right to respect for private and family life), Mr Salija complains about the revocation of his residence permit and his expulsion, arguing that he had no close ties with "the former Yugoslav Republic of Macedonia" whereas he had arrived in Switzerland as a child, had lived there for more than 20 years, marrying and raising two children.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Laveykin v. Russia (no. 10727/07)
Novoselov v. Russia (no. 44882/07)
Rodkin v. Russia (no. 63038/10)
Trufanov and Others v. Russia (no. 18130/04)
Usmanov v. Russia (no. 48917/15)
Mives DOO v. Serbia (no. 48966/09)

Thursday 12 January 2017

Sarbyanova and Pashaliyska v. Bulgaria (no. 3524/14)

The applicants, Niya Ivanova Sarbyanova-Pashaliyska and Maria Ivanova Pashaliyska, are Bulgarian nationals who were born in 1960 and 1999 respectively and live in Sofia. The case concerns their complaint about the excessive length of the investigation into the murder of Ivan Mirchev Pashaliysky, their husband and father, respectively.

On 2 June 2000 Mr Pashaliysky was killed in an office in a hotel in Sofia. The authorities arrested a suspect the same night and opened criminal proceedings against him the following day. The suspect was indicted a few days later. The investigation was brought to court three years later, higher prosecutors having returned the case to the investigators during that time in order for a number of shortcomings to be redressed. The accused ended up being convicted at first instance in 2007.

However, in July 2008 the case was sent back to the investigation stage by the appeal court due to a procedural defect, namely the indictment had not contained a description of how the accused had killed the victim. This defect was remedied and in August 2008 the suspect was indicted again and fresh proceedings were opened against him. 16 hearings subsequently took place, at which the applicants made numerous requests for evidence to be gathered and witnesses to be heard. Changes in the composition of the bench meant that the trial had to be restarted again. Those

proceedings eventually led to the accused's conviction in December 2013 and his being sentenced to 12 years' imprisonment. The guilty verdict and sentence were ultimately upheld in a final judgment by the Supreme Court of Cassation in November 2015.

Both applicants were named as private prosecutors throughout those proceedings. The second applicant, who had also been recognised as a civil party seeking damages during the proceedings, was ultimately awarded 8,000 euros in damages.

Relying on Article 2 (right to life) and Article 13 (right to an effective remedy), the applicants complain about the excessive length of the investigation into their relative's murder, both at the pre-trial and trial stages.

Bátěk and Others v. the Czech Republic (no. 54146/09)

The applicants, Roman Bátěk, Radek Blažej and Karel Elsner, are Czech nationals who were born in 1969, 1968 and 1972 respectively and live in Lanžhot (Mr Bátěk and Mr Elsner) and Břeclav (Mr Blažej). The applicants, customs officers, were convicted of abuse of authority and accepting bribes. The case concerns the admission of evidence at their trial from absent and anonymous witnesses.

The applicants were employed as customs officers by the Lanžhot Customs Office on the border between the Czech and Slovak Republic from September 2003 to January 2004. Their team of customs officers was infiltrated by an undercover police agent in December 2003. As a result of her observations, the undercover agent suspected the applicants of soliciting and accepting bribes from truck drivers in exchange for trouble-free customs clearance.

The authorities took action by obtaining the testimonies of 20 truck drivers. The truck drivers were interviewed in the presence of a judge by means of an urgent measure procedure as they were all foreign nationals. The drivers confirmed a general practice of customs officials' accepting bribes. They were, however, unable to describe specific individuals. Subsequently the applicants, along with 15 other customs officers, were charged with abuse of the authority of public official and accepting bribes, and were officially indicted in February 2005.

During the hearing at the Břeclav District Court the undercover police agent gave her testimony outside the courtroom via an audio streaming device, as an anonymous witness. The agent's potential future operations were cited as the reason for not revealing her identity. Only the third applicant attended the hearing and was able to question her. The truck drivers were not summoned to testify because they were foreign nationals. Therefore the transcript of their testimonies collected during the pre-trial stage was read out at the trial.

The applicants and other defendants were found guilty as charged by the district court in May 2006. They were sentenced to one year's imprisonment suspended for two years' probation and were fined. The court primarily based its decision on the written report by the undercover agent, corroborated by various customs documents and the truck drivers' papers confirming times and places of customs clearance.

The applicants appealed the decision, contesting the non-disclosure of the police agent's identity and the fact that they did not have the opportunity to cross-examine the truck drivers. Their appeal was dismissed by the Brno Regional Court in March 2007 as unsubstantiated. The subsequent constitutional appeal of the applicants was dismissed in April 2009.

Relying on Article 6 § 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), the applicants complain in particular that their convictions were not fair because they had been based on the admission of evidence from absent and anonymous witnesses, whose testimonies they had not been able to effectively challenge.

Štulíř v. the Czech Republic (no. 36705/12)

The applicant, Emil Štulíř, is a Czech national who was born in 1967 and lives in Prague. The case concerns his defence rights in criminal proceedings against him for coercion.

In April 2007 Mr Štulíř was charged, among other things, with unlawful restraint and coercion of his former partner (C.). She had submitted a complaint at a police station in Surrey (the United Kingdom) in June 2006 about receiving threatening telephone calls and emails from Mr Štulíř after she had decided to end their relationship. C. had also been interviewed by the Czech police in August 2006 in Prague in the presence of a judge by means of an urgent measure. The police had requested this measure to the prosecuting authorities, explaining that C. had been forcibly coerced by Mr Štulíř in both the UK and the Czech Republic, where she had temporarily returned for the interview but where she did not feel safe. In her statement, C. described in detail acts of intimidation by Mr Štulíř in the form of phone calls, SMS messages, letters and verbal threats while residing in the Czech Republic as well as the UK.

The investigation was completed in May 2008 and Mr Štulíř was indicted for coercion. His trial started in October 2008 at the District Court of Prague and was conducted without hearing his former partner as a witness. Although she was summoned to testify, C. claimed that she had settled in the United Kingdom and was working there and that it would be too stressful for her to be in the presence of the accused. Hence, her statement given to the Czech police in August 2006 was read out and admitted as evidence by the court. During the proceedings, Mr Štulíř claimed that C.'s residence abroad had not been a sufficient reason for carrying out her interview as an urgent measure and that her statement should not have been read out at the trial.

In December 2009 the court found Mr Štulíř guilty of coercion and sentenced him to a two and a half years' suspended prison sentence subject to a probationary period of two years. The court based its finding on the testimony of C. read out at trial, corroborated by other evidence such as a testimony by C.'s mother, the content of a letter from one of her female friends and a witness statement by C.'s psychologist.

Mr Štulíř appealed the decision claiming that his conviction had been based on the uncorroborated statement of C. He demanded her psychiatric evaluation and reassessment of all other evidence. His request was overthrown by the Prague Municipal Court, which, after having examined at length C.'s credibility, ruled out the possibility that she had orchestrated the whole story against her former partner. Mr Štulíř's appeal on points of law was rejected as unsubstantiated by the Supreme Court in November 2010. His constitutional appeal was also dismissed in December 2011.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair trial and right to obtain attendance and examination of witnesses), Mr Štulíř complains that the criminal proceedings against him were not fair as neither he nor his lawyer had been granted an opportunity to challenge the testimony of the key witness C., on which his conviction had essentially been based.

Saumier v. France (no. 74734/14)

The applicant, Laure Saumier, is a French national who was born in 1967 and lives in Le Plessis Trevise (France). The case concerns an individual who became ill as a result of her employer's negligence and who was unable to obtain full compensation for the damage she suffered.

On 3 May 2007 the Créteil Social Security Tribunal recognised Ms Saumier as having a work-related illness. In July 2008 the Health Insurance Office assessed her degree of permanent disability at 70% and awarded her an annual disability pension of 11,377.22 euros (EUR). On 15 October 2010 the Créteil Social Security Tribunal found that the applicant's employer had been negligent and increased the amount of the pension to the maximum of EUR 12,749.64 per annum. It ordered an expert assessment of the non-pecuniary damage sustained. On the basis of the expert report Ms Saumier claimed compensation in respect of all the damage suffered, in an amount of

EUR 1,211, 664.90. The Health Insurance Office refused to pay in advance the amount of compensation claimed by the applicant to cover all heads of damage.

In a judgment of 21 September 2011 the Créteil Social Security Tribunal awarded Ms Saumier the sum of EUR 745,042.81, but dismissed her claims relating to "loss of current and future earnings and permanent functional impairment". The Health Insurance Office appealed to the Paris Court of Appeal, which overturned the judgment in so far as it had awarded compensation in respect of the impact on the applicant's occupation, her permanent functional impairment, the need for permanent assistance by a third person and the non-pecuniary damage arising from a progressive illness, and dismissed Ms Saumier's claims concerning those aspects.

Ms Saumier lodged an unsuccessful appeal on points of law with the Court of Cassation.

Relying on Article 14 (prohibition of discrimination), taken together with Article 1 of Protocol No. 1 (protection of property), Ms Saumier complains of the fact that, unlike victims of negligence under the ordinary law, victims of work-related accidents or illnesses caused by their employer's negligence are not eligible for compensation in respect of all the damage sustained.

UBS AG v. France (no. 29778/15)

The applicant, the bank UBS AG, is a Swiss company with its registered offices in Basle and Zürich (Switzerland).

The case concerns a sum of 1.1 billion euros required by way of security in the context of judicial supervision of a bank that was placed under formal investigation for illegal direct selling of banking products and aggravated laundering of the proceeds of tax fraud.

UBS France, a subsidiary of the applicant company, was initially placed under investigation for supplying the means of committing the offence of illegal direct selling of banking products, carried out in France between 2004 and 2011. Subsequently, on 6 June 2013, UBS AG was placed under investigation for the illegal direct selling of banking or financial products to French residents. It was placed under judicial supervision and ordered to pay a security of 2,875,000 euros (EUR) in accordance with Article 706-45 of the Code of Criminal Procedure.

On 23 July 2014 the bank UBS AG was placed under investigation for aggravated laundering of the proceeds of tax fraud. On the same day the investigating judges made an order rectifying the terms of the judicial supervision and finding that a security of EUR 1,100,000,000 appeared compatible with the bank's resources.

In a judgment of 22 September 2014 the Investigation Division of the Paris Court of Appeal upheld the order, noting the existence of harm to the French State in so far as the concealed assets had been subject to wealth tax and that their concealment had necessarily resulted in substantial financial losses. It also reviewed the proportionality of the security, examining in particular the methods used to calculate it.

On 17 December 2014 the Court of Cassation dismissed an appeal on points of law, on the grounds that the Court of Appeal had given sufficient reasons for finding that the security had been proportionate to the sums involved in the alleged offences and to the applicant's assets and liabilities and that the full amounts laid down in Article 142 of the Code of Criminal Procedure were therefore payable.

Relying in particular on Article 6 § 2 (right to be presumed innocent) and Article 1 of Protocol No. 1 (protection of property), the bank UBS AG complains of the amount of the security it was required to pay in the context of the judicial supervision to which it was made subject.

Kirins v. Latvia (no. 34140/07)

The applicant, Andrejs Kirins, is a Latvian national who was born in 1971 and lives in Daugavpils (Latvia). The case concerns Mr Kirins' complaint about receiving inadequate compensation when he went blind as a result of excessive use of force by a police officer.

In January 1995 Mr Kirins, who had a serious form of myopia, was arrested by an inspector of the Daugavpils City Police. The inspector beat and kicked him, notably hitting him in the head, near to his eyes.

Criminal proceedings were immediately brought against the inspector for excessive use of force. Mr Kirins was a civil party to those proceedings. During the proceedings, a number of medical reports were ordered to assess the seriousness of Mr Kirins' injuries and to establish whether there was a link between his injuries and his loss of sight. Six hearings were held in total. The first hearing on the case in November 1995 was postponed as the inspector had failed to appear. A warrant for his arrest was issued. The police finally informed the trial court in August 1999 that the inspector had left Latvia. From June 2000 to February 2003 five hearings were postponed due to non-attendance of various medical experts or because requests had been made by Mr Kirins to summon further medical experts. In February 2003 the inspector was ultimately found guilty *in absentia* of wilful ill-treatment and sentenced to three years' imprisonment. The court decided that the question of compensation to Mr Kirins had to be dealt with in civil proceedings.

Relying on that judgment finding the inspector guilty and on various tort liability provisions of Civil Law, Mr Kirins initiated civil proceedings against the State for compensation. He was partly successful in the civil proceedings in as far as his claim for pecuniary damages was concerned, and recovered his medical expenses. However, his claim for non-pecuniary damages was dismissed on appeal, the Supreme Court finding that the loss of his sight was not directly linked to the injuries he had sustained in January 1995. Mr Kirins' further appeal on points of law was dismissed by the Senate of the Supreme Court in February 2007.

Mr Kirins alleges that the criminal and civil proceedings in which his claim for damages had been adjudicated, lasting 11 years, were excessively long and unfair. He also alleges that the compensation he had been awarded for his ill-treatment by a police officer was inappropriate. He relies on Article 6 § 1 (right to a fair hearing within a reasonable time), Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy).

Abuhmaid v. Ukraine (no. 31183/13)

The applicant, Hesham Ahmad Saddidin Abuhmaid, was born in 1970 in Rafah, Gaza. He holds a passport issued by the Palestinian Authority and currently lives in Kyiv.

In 1993 Mr Abuhmaid moved to Ukraine in order to study. Until November 2009, Mr Abuhmaid stayed in the country on the basis of temporary residence permits, which had been regularly extended by the Ukrainian police. However, Mr Abuhmaid then encountered repeated problems with the Ukrainian authorities in relation to his right to reside in the country. An expulsion decision was taken by the police in March 2010, leading to legal proceedings about his forced expulsion. These ended in October 2014, when the application for forcible expulsion was refused by the Desnyanskyy District Court. Mr Abuhmaid also engaged in proceedings relating to his repeated claims for asylum, and a re-examination of his case is still pending. Finally, Mr Abuhmaid also applied for leave to immigrate to Ukraine (principally relying on the fact that he is married to a Ukrainian citizen). However, this application was refused.

According to the Government, Mr Abuhmaid has a lawful right to stay in the country, while his asylum application is being reconsidered.

Relying on Article 8 (right to respect for private and family), Mr Abuhmaid complains that his possible future removal from Ukraine would involve unjustified interference with his personal and

family life. The applicant also complains that he cannot legalise his residence in Ukraine and that he remains in a precarious situation regarding his life prospects. Relying on Article 13 (right to an effective remedy), he complains that the authorities did not carry out an independent and rigorous scrutiny of his claims under Article 8. He also complains that the decision ordering his expulsion had been contrary to Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens) to the Convention, and that domestic law did not provide for the procedural standards required by that provision.

Kebe and Others v. Ukraine (no. 12552/12)

The applicants, Solomon Alemu Kebe and Efrem Tadese Girma, nationals of the State of Eritrea, and Tesfaye Welde Adane, a national of the Federal Democratic Republic of Ethiopia, were born in 1984, 1988 and 1987 respectively. Mr Kebe currently lives in Odesa. Mr Adane left Ukraine for Ethiopia on 23 November 2014. His current whereabouts are unknown. Mr Girma died on 6 March 2015. The case concerns their attempt to obtain asylum in Ukraine.

In or around the 2000s, all three of the applicants fled Ethiopia or Eritrea for Djibouti. According to the applicants, they lived in Djibouti illegally, and feared being returned to their home countries to face persecution. Therefore in January 2012, they stowed themselves away on a commercial vessel flying the Maltese flag. Their intention was to seek asylum in any country other than Djibouti or their countries of origin.

In February 2012, the vessel anchored in the port of Mykolayiv in Ukraine. Ukrainian border guards and a lawyer from a local NGO embarked the vessel to meet with the applicants. According to the applicants, they told the border guards that they wished to seek asylum in Ukraine, and started filling in asylum applications: but that the border guards stated that they could not accept the claims, as the vessel the applicants had arrived on was flying the flag of a foreign state. The border guards allegedly relied on the same reason to prevent the applicants from leaving the vessel, and the NGO lawyer was purportedly asked to disembark. According to the Government, the applicants did not submit any claims for asylum, and expressed no wish to do so.

The vessel was scheduled to depart for Saudi Arabia on 3 March 2012. One day before the departure, the NGO lawyer submitted an application to the European Court of Human Rights. She requested interim measures under Rule 39, by which the Court would indicate to the Government that the applicants should be allowed to leave the vessel, and be granted access to a lawyer and legal assistance. The lawyer argued that, if the applicants were made to return to Saudi Arabia, there was a real risk that the authorities would forcibly return them to their countries of origin, where they would be subjected to ill-treatment. The application was granted later that day, and on 3 March 2012 the applicants were permitted to leave the vessel and enter Ukraine.

The applicants lodged asylum claims at this time, but the parties have not informed the court what happened to these. It appears that the applicants submitted new asylum claims in 2014. However, all of these were rejected by the Odesa Regional Department of the Migration Service. Mr Adane did not appeal the decision relating to his case, and left for Ethiopia in November 2014. Mr Girma did appeal his decision, but the proceedings were discontinued after he died in March 2015. Mr Kebe also appealed, and the proceedings are still pending before the Odesa Administrative Court.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the applicants complain that they were exposed to a risk of ill-treatment in their countries of origin and in Saudi Arabia, on account of the initial refusal of the Ukrainian authorities to allow them to disembark in Ukraine, to accept and examine their asylum claims, and to prevent their possible removal. Relying on Article 13 (right to an effective remedy) taken in conjunction with Article 3, they complain that no effective remedies in respect of their grievances under Article 3 had been available in Ukraine.

Lykin v. Ukraine (no. 19382/08)

The applicant, Vladimir Lykin, is a Ukrainian national who was born in 1953 and lives in Molodetske, in the Donetsk Region (Ukraine). The case concerns a defamation claim made against him by a local politician.

On 28 January 2007 Mr Lykin, at the time a member of the Shakhtarsk District Council and president of the local branch of the Party of the Regions, read out a letter at a local meeting. In attendance were over 40 party members and inhabitants of the village of Zolotarevka. The letter criticised the appointment of the then Deputy President of the Shaktarsk District Executive Committee. It listed a number of purported failings of the local politician, and stated that he was "a grabber and a petty tyrant".

The local politician then instituted civil proceedings against Mr Lykin, claiming damages for the dissemination of defamatory information. In September 2007 the Shaktarsk Court upheld the complaint, awarding the claimant 200 Ukrainian hryvnias in damages. In particular, the court held that the letter should have been treated as an anonymous application by citizens within the meaning of section 5 of the Citizens' Applications Act, and that Mr Lykin had acted unlawfully by making it public without verifying its serious accusations. The Donetsk Regional Court of Appeal upheld the judgment on appeal, and in January 2008 the Supreme Court of Cassation rejected Mr Lykin's request for a cassation appeal.

Relying in particular on Article 10 (freedom of expression), Mr Lykin complains that by finding against him in the defamation proceedings, the domestic courts had unlawfully and unfairly curtailed his right to freedom of expression.

The Court will give its rulings in writing on the following cases, some of which concern issues which have already been submitted to the Court, including excessive length of proceedings.

These rulings can be consulted from the day of their delivery on the Court's online database HUDOC.

They will not appear in the press release issued on that day.

Kaiser v. Austria (no. 15706/08)
Brkic and Others v. Croatia (no. 53794/12)
Dvali v. Georgia (no. 64260/09)
Mikeladze v. Georgia (no. 25759/08)
Nikolashvili v. Georgia (no. 16716/10)
X. v. Georgia (no. 30030/07)
Andi Kodra v. Greece (no. 4717/15)
Andriopoulos and Others v. Greece (no. 79608/12)
Arvanitis and Others v. Greece (no. 73011/13)
Bekir-Ousta and Others v. Greece (no. 7050/14)
Bogri and Others v. Greece (nos. 29342/11, 35291/11, 55837/12, 59954/12, 69226/12, 75135/12, and 72915/14)
Charalambopoulos and Others v. Greece (nos. 20545/13, 20550/13, 47955/13, 53319/14, and 53908/14)
Kashif v. Greece (no. 53897/14)
Khelifi v. Greece (no. 45915/15)
Koutsoupia and Others v. Greece (nos. 18879/14, 27633/14, 65153/14, 66274/14, and 35539/15)
Liakou and Others v. Greece (nos. 58804/12, 60511/12, 30827/13, 57376/13, 75694/13, 18671/14, 24237/14, 26900/14, 35922/14, 53218/14, and 33390/16)
Maraggos v. Greece (no. 13977/16)
Shukvani v. Greece (no. 71192/13)
Tounta and Others v. Greece (no. 72037/12)

Tsakarelou and Others v. Greece (nos. 29569/12, 66791/14, and 69999/14)
Xiaoqin Lin v. Greece (no. 65312/14)
Kásáné Kis Kós and Others v. Hungary (nos. 32082/12, 29721/13, 31467/13, and 32263/13)
Kujbus v. Hungary (no. 6724/14)
Matrai v. Hungary (no. 26133/14)
Van Kuijk and Others v. Hungary (nos. 50270/12, 64609/12, 69918/12, 73335/12, and 73990/12)
Bolzoni and Others v. Italy (no. 20894/09 and 56 other applications)
Fini and Others v. Italy (nos. 3989/09, 10647/09, 15746/09, 15765/09, 17116/09, 17271/09, 17276/09, 19087/09, 20764/09, and 20897/09)
Leonardi and Others v. Italy (nos. 3294/09, 3359/09, 3363/09, 3370/09, 3415/09, 3423/09, 3434/09, 3435/09, 3437/09, and 3442/09)
S.N. and T.D. v. Latvia (no. 5794/13)
Svarpstons and Others v. Latvia (no. 14976/05)
Desira and Eltarhuni v. Malta (no. 30623/13)
El Allati v. the Netherlands (no. 45892/13)
Gambier v. the Netherlands (no. 27787/15)
Kolpaczewska v. Poland (no. 10872/11)
Kowalczyk v. Poland (no. 10337/13)
M.P. v. Poland (no. 20416/13)
Nawrocki v. Poland (no. 73362/10)
Rogala v. Poland (no. 49980/11)
Wielogorski v. Poland (no. 41244/14)
S.C. Eco Invest S.R.L. and Bolmadar v. Romania (no. 60727/10)
Suta v. Romania (no. 56122/14)
Tache v. Romania (no. 58925/12)
Vasilescu v. Romania (no. 8100/15)
Azbarov and Kantsev v. Russia (nos. 9765/06 and 59128/12)
Bolshakova v. Russia (no. 50952/11)
Chanov v. Russia (no. 26220/07)
Davydov v. Russia (no. 14613/13)
Karnaushko and Others v. Russia (no. 17500/10)
Konstantinov and Kuzmin v. Russia (nos. 22847/11 and 65537/12)
Tabolin v. Russia (no. 1168/11)
Zhibinov v. Russia (no. 15890/16)
Bugaric v. Serbia (no. 39694/10)
Medic v. Serbia (no. 24898/10)
Uzelac v. Serbia (no. 20904/13)
Lombar v. Slovenia (no. 47091/10)
Draupner Universal Ab and Jurik v. Sweden (no. 16753/11)
M.T. and Others v. Sweden (no. 47058/16)
S.B. and Others v. Sweden (no. 62222/15)
Lazareski v. 'the former Yugoslav Republic of Macedonia' (nos. 30762/15, 30804/15, and 2640/16)
Arkhipov and Others v. Ukraine (nos. 39029/05, 23100/06, 3968/07, 33593/07, 4019/08, 16317/08, 26293/10, 13018/12, 74393/12, and 36960/13)
Chechelnytskyy and Others v. Ukraine (nos. 16356/11, 57247/12, 27191/13, and 10667/15)
Dudyk and Others v. Ukraine (nos. 10288/07, 26126/08, 58461/08, and 65421/13)
Dyomina and Others v. Ukraine (nos. 56042/07, 753/08, 9851/08, 20369/08, 59448/08, 8649/09, 18435/09, 48227/10, 74637/10, and 63025/15)
Ivan and Others v. Ukraine (nos. 24500/07, 51276/07, 15998/08, 49123/08, 4393/10, 18598/10, 35062/10, 26352/11, 56854/11, 56272/12, 37013/13, 47193/13, 12066/15, and 60798/15)
Shafranovskiy v. Ukraine (no. 56191/07)

Shvets and Others v. Ukraine (nos. 40506/07, 12722/08, 42638/08, 24296/11, 53420/11, 35684/12, 65855/13, 22735/16, and 22736/16)
Sokolov and Others v. Ukraine (nos. 7192/04, 59887/08, 1203/09, 35037/09, 49032/09, 17989/10, 23264/11, 36887/11, and 7190/15)
Veligzhanin and Others v. Ukraine (no. 20653/13 and 75 other applications)
Veremchuk and Others v. Ukraine (nos. 10039/05, 17388/06, and 29165/06)
Yudina and Others v. Ukraine (nos. 8416/06, 53941/07, 33600/09, and 53724/09)
McNamara v. the United Kingdom (no. 22510/13)

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