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 66 judgments and decisions on Tuesday 12 July 2016.

*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 12 July 2016

Marinova and Others v. Bulgaria (applications nos. 33502/07, 30599/10, 8241/11 and 61863/11)
Zdravko Stanev v. Bulgaria (no. 2) (no. 18312/08)

Both cases concern convictions for defamation following complaints against public officials.

The applicants in the first case are five Bulgarian nationals: Rositsa Marinova, Ventsislav Zlatanov, Petar Findulov, Ivan Dinchev and Margarita Dincheva. They live in Tervel, Sofia, Burgas and Lovech (all in Bulgaria). The applicant in the second case, Zdravko Kostov Stanev, is a Bulgarian national who was born in 1951 and lives in Sofia.

In each case, the applicants made complaints about the conduct of a public official or public officials to the authorities.

In particular, Ms Marinova complained to the Child Protection Agency that the school teacher of her son had ill-treated and humiliated him. She later also complained to the school's headmaster and the police that the teacher had taken her son's mobile telephone and had refused to give it back. Mr Zlatanov's and Mr Findulov's complaints concerned the conduct of road traffic police officers, who had allegedly smelled of alcohol, staggered and behaved aggressively (in Mr Zlatanov's case) and requested a bribe (in Mr Findulov's case). Mr Dinchev and Ms Dincheva complained to the district police directorate that when they had called the police on account of a conflict with their neighbours, the two police officers who had come to their house had failed to protect them. Mr Stanev accused the presiding judge in a criminal case against him – for forgery and false accusations – of bias because of their mutual personal history (the judge was Mr Stanev's former pupil).

In the first case, after the relevant authority in charge had found that each respective complaint was unsubstantiated, the public officials concerned each brought a private criminal prosecution against the applicants. The courts – in final judgments delivered between 2007 and 2011 – found the applicants guilty of defaming a public official and ordered them to pay a fine and damages in the amount of between 200 and 1,500 euros (EUR) to the officials concerned.

In the second case, in June 2007, the judge in Mr Stanev's criminal case also brought private criminal proceedings against him submitting that his statements had been untrue and defamatory. In a final judgment of March 2008 Mr Stanev was convicted of defaming a public official as concerned one of his statements and ordered to pay a fine of EUR 1,278.

All the applicants complain that their conviction and their being ordered to pay fines and damages in relation to the complaints they had made against public officials violated their rights, in particular, under Article 10 (freedom of expression) of the European Convention on Human Rights. Some of the

applicants in the first case make further complaints in relation to the proceedings against them, relying in particular on Article 6 (right to a fair trial) of the Convention.

Vrzić v. Croatia (no. 43777/13)

The applicants, Nikola Vrzić and Mila Vrzić, are Croatian nationals who were both born in 1955 and live in Poreč (Croatia). The case concerns the enforcement of a debt through the sale of their house.

In February 2009 the applicants and their company, M.N., entered into a loan agreement with another person, M.G., and his company. The agreement affirmed that the applicants owed a debt to M.G. and that their company owed a debt to his company. According to the agreement the creditors would be entitled to institute enforcement proceedings for the sale of the applicants' house upon failure of repayment. In October 2009, the creditors initiated such proceedings. An official external evaluation of the value of the property was subsequently conducted, placing the value of the house at the equivalent of approximately 323,000 euros (EUR).

After an unsuccessful public auction in January 2011, a second one was held in March 2012 in which the house was sold to M.G. for the equivalent of approximately EUR 109,000. The applicants unsuccessfully appealed, contending that the property had been undervalued and that the courts had failed to respect their dignity and to make the enforcement process as humane as possible. Ownership of the property was formally transferred by the court in June 2013. In September 2013 the competent court ordered the eviction of the applicants, which was then invoked by M.G. in March and April 2014. To date the applicants have not been evicted.

Relying on Article 8 (right to respect for private and family life and the home) and Article 1 of Protocol No. 1 (protection of property), the applicants complain about the order for their eviction, maintaining that their house should have been exempted from enforcement proceedings since it satisfied their basic housing needs.

A.B. and Others v. France (no. 11593/12)

The applicants, Mr A.B. and Ms A.A.B. and their son A.B., are Armenian nationals who were born in 1978, 1980 and 2007 respectively. They arrived in France on 4 October 2009, having fled Armenia in fear of persecution as a result of Mr A.B.'s journalistic activity and political involvement. The case primarily concerns the fact of their underage child being placed in administrative detention in the context of a deportation procedure.

On 4 October 2009, on the day of their arrival in France they lodged applications for asylum, which were refused by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) and subsequently by the National Asylum Tribunal (CNDA). Their requests for reconsideration were also rejected. The prefect of the Loiret *département* rejected their applications for residence permits, ordering them to leave the country. The administrative court, in response to a request by the applicants, refused to set aside these deportation orders.

Having been arrested by the police after committing a theft, Mr A.B. was immediately placed in police detention. His wife and son were taken into custody on the following day, 17 February 2012, in the Chaigny Reception Centre for Asylum Seekers (CADA), where the family were living. On the same date, the applicants were taken to the Toulouse-Cornebarrieu administrative detention centre (CRA). Mr A.B. and Ms A.A.B. challenged the orders placing them in administrative detention, and, in parallel, they filed an urgent application. They argued that they had a fixed place of residence in a CADA and that, in any event, the placement was incompatible with the best interests of their child. They pointed out that, since he was too young to be left alone, he was obliged to accompany them in their administrative dealings, and to be in close proximity to armed and uniformed police officers.

On 21 February 2012 the president of the Toulouse Administrative Court rejected the urgent application, without a hearing. On the same date the Toulouse Administrative Court rejected the application to have the administrative detention order set aside.

On 24 February 2012 the applicants submitted to the Court, under Rule 39 of the Rules of Court, a request for the suspension of the order for placement in the administrative detention centre. The Court declined to indicate an interim measure in response to that request.

On 5 March 2012 the applicants were released after having indicated their wish to return to Armenia and having requested, for that purpose, assistance with a view to voluntary return. They did not leave France, however, on account of their son's health. By two judgments of 15 November 2012, the Bordeaux Administrative Court of Appeal set aside the judgments of 17 February 2012 ordering their placement in administrative detention.

The applicants alleged that the placement in administrative detention of their son, then aged four, in the Toulouse-Cornebarrieu administrative detention centre amounted to treatment contrary to the provisions of Article 3 (prohibition of torture and of inhuman or degrading treatment). They submitted that the placement of their child in detention had been ordered in breach of Article 5 § 1 (right to liberty and security) and § 4 (right to speedy review of the lawfulness of detention) and that it had infringed their right to respect for family life, a right protected by Article 8 (right to respect for private and family life).

A.M. v. France (no. 56324/13)

The applicant, A.M., is a Tunisian national who was born in 1976 and lives in Kairouan. The case concerns the issue of effective access to a court for review of the lawfulness of detention.

A.M. left his country at the time of the "Tunisian revolution" and entered France unlawfully in February 2011. He was stopped by the French police on 4 March 2011 and two orders were issued against him, one for his removal – naming Tunisia as the country of destination – and the other for his placement in administrative detention. The Pau Administrative Court confirmed the lawfulness of those decisions. The removal measure was never executed and A.M. was released.

A.M. was again stopped on 7 October 2011 and taken into administrative custody pending execution of the removal order of 5 March 2011. On 9 October 2011 he challenged the lawfulness of the order placing him in administrative detention, and a hearing was scheduled for 11 October at 1 p.m. At 4 a.m. on the morning of 11 October, A.M. was returned to Tunisia and could not attend the hearing. On an application by A.M.'s lawyer, the Bordeaux Administrative Court of Appeal set aside the order of 7 October 2011 in so far as it provided that judicial review of the decision to place the applicant in administrative detention did not suspend the execution of the expulsion measure. On 4 March 2013 the *Conseil d'Etat* quashed the administrative court of appeal's judgment and, ruling on the merits of the case, dismissed A.M.'s appeal.

Relying on Article 5 § 4 (right to speedy review of the lawfulness of detention), A.M. considers that he was deprived of any effective access to a judge for the purpose of reviewing the lawfulness of his detention. He pointed out that he was returned to Tunisia before an application was made to the judge with responsibility for civil liberties and detention matters and before the administrative court had ruled on the lawfulness of the measure placing him in administrative detention. He emphasises the limited nature of the review carried out by the administrative judge, who had no power to assess the conditions in which he had been placed in custody.

A.M. and Others v. France (no. 24587/12)

The applicants, Ms A.M. and her two daughters, are three Russian nationals who were born in 1974, 2009 and 2011 respectively and live in Strasbourg. The case concerns the fact of placing underage children in administrative detention in the context of a deportation procedure.

Ms A.M. is an ethnic Chechen. After the disappearance of her husband, a member of an armed resistance group, she received threats. Fearing for her own life and that of her first daughter, she left Russia for Poland, where she applied for asylum. Having been informed that two men, one speaking Russian, the other Chechen, were looking for her, she decided in October 2011 to take refuge in France, without waiting for the outcome of the asylum procedure in Poland. She lodged an application for asylum with the Bas-Rhin prefecture; she received a temporary residence permit and was offered emergency housing in a Strasbourg hotel. On 8 December 2011 she gave birth to her second daughter. On 19 January 2012, noting that Ms A.M. had applied for asylum in Poland, the prefect of the Bas-Rhin *département* issued an order for readmission to that country, in application of the Dublin II Regulation. Ms A.M. challenged that order before the Strasbourg Administrative Court, and simultaneously lodged an urgent application for a stay of execution of the order. Her request was refused.

Arrested at her hotel with her daughters on 18 April 2012, Ms A.M. was placed in the Metz-Queleu administrative detention centre (CRA) in execution of an order issued by the prefect of the Bas-Rhin *département* on the same date. On 19 April 2012 she refused to board a flight to Poland. She was against placed, with her daughters, in the Metz-Queleu CRA, with a view to a further attempt at readmission to Poland. Ruling on an appeal by the applicant, the Nancy Administrative Court refused to set aside the order placing her in administrative detention. On 21 April 2012 the judge of the Metz *Tribunal de grande instance* with responsibility for civil liberties and detention matters authorised a 20-day extension of the administrative detention of the applicant and her daughters. That decision was upheld by the first president of the Metz Court of Appeal. Ms A.M. lodged an urgent application for an interim measure under Rule 39 of the Rules of Court. The acting President granted the application. In execution of the interim measure, on 25 April 2012 the prefect of the Moselle *département* ordered Ms A.M. to reside in the Moselle *département*. Ms A.M. and her children were not released from the administrative detention centre until the following day. As she did not know anyone in Moselle, Ms A.M. returned immediately to Strasbourg, where she was stopped by the police. The public prosecutor decided to bring charges against her for unlawful residence and failure to comply with the order to reside in a particular locality. Following a request by Ms A.M.'s representative, the order to reside in Moselle was repealed and the prefect of the Bas-Rhin *département* issued a new order, instructing that she remain in compulsory residence in that *département*. On 12 September 2012 Ms A.M. was convicted by the Strasbourg Criminal Court of the offences with which she had been charged, and given a suspended one-month prison sentence.

The applicants allege that their placement in administrative detention from 18 to 26 April 2012, having regard to its duration and the physical conditions in which it took place, as well as the age of the children (two and a half years, and four months) was in breach of Article 3 (prohibition of torture and of inhuman or degrading treatment). They allege that their placement in administrative detention took place in circumstances that were contrary to Article 5 § 1 (right to liberty and security) and that the appeal to challenge it was ineffective under Article 5 § 4 (right to speedy review of the lawfulness of detention). Lastly, relying on Article 8, they complain that their placement in administrative detention infringed their right to respect for family life.

R.C. and V.C. v. France (no. 76491/14)

The applicants, Ms R.C. and her child V.C., are Romanian nationals who were born in 1980 and 2012 respectively and live in Toulouse. The case concerns the fact of placing an underage child in administrative detention in the context of a deportation procedure.

Ms R.C. arrived in France in 2012. In October 2012 she was arrested and placed in pre-trial detention in Toulouse-Seysses Prison in connection with the offences of directly provoking a minor to commit crimes or offences, involvement in a criminal conspiracy to prepare a crime, and handling, in an organised group, goods obtained through an offence. On 19 November 2014 the Nîmes Criminal Court sentenced her to 3 years' imprisonment, 6 months of which were suspended, and a 10-year

exclusion from French territory. On 2 December 2014, by an order issued against her the same day, the prefect instructed that she was to be placed in administrative detention in the Toulouse-Cornebarrieu administrative detention centre, where she and her child were immediately placed. Ms R.C. challenged that decision before the Toulouse Administrative Court, which dismissed her request. The judge of the Toulouse *Tribunal de grande instance* with responsibility for civil liberties and detention matters ordered that the detention be extended, and this was upheld by the first president of the Toulouse Court of Appeal. On 10 December 2014 Ms R.C. asked the Court to indicate interim measures under Rule 39 of the Rules of Court. The President of the Section of the Court decided to indicate to the Government, under Rule 39, "to take the necessary measures to ensure that the detention of the applicant and her child, should it continue, [was] compatible with the criteria laid down in the Popov v. France judgment". In execution of that measure, the prefect of the Haute-Garonne *département* ended the applicant's administrative detention and ordered her to remain in compulsory residence in a hotel for a maximum period of 45 days. Then, on 20 December 2014, Ms R.C. and her child were removed to Romania.

Ms R.C. alleges that the placement of her child, then aged two, in administrative detention in the Toulouse-Cornebarrieu centre amounted to treatment contrary to the provisions of Article 3 (prohibition of torture and of inhuman or degrading treatment). She submits that this placement in administrative detention took place in circumstances that were contrary to Article 5 § 1 (right to liberty and security) and that the appeal available for challenging it was ineffective under Article 5 § 4 (right to speedy review of the lawfulness of detention). She complains that her placement in administrative detention with her son amounted to a disproportionate interference in their right to respect for family life, protected under Article 8, given the child's very young age.

R.K. and Others v. France (no. 68264/14)

The applicants are two Russian nationals, of Chechen ethnic origin, and their child, who were born in 1984, 1989 and 2013 respectively. The case concerns the fact of placing an underage child in administrative detention in the context of a deportation procedure.

Mr R.K. stated that, having been accused of collaborating with the Chechen rebellion, he was afraid of being persecuted by either the authorities or by the Chechen rebels, and decided to flee the Russian Federation with his family. Having arrived in France in October 2010, Mr R.K. and his family lodged an application for asylum in June 2011. As they had already made a similar application in Poland, they were placed in administrative detention and a procedure for readmission to Poland was begun. On 30 November 2011 the French Office for the Protection of Refugees and Stateless Persons (OFPRA) dismissed their asylum application, criticising, in particular, Mr R.K. for his very brief, impersonal and stereotyped account. The National Asylum Tribunal (CNDA) upheld the OFPRA's decision. On 5 November 2012 two orders were issued in respect of Mr R.K. and his family, refusing to grant them residence and requiring them to leave French territory. The Montpellier Administrative Court dismissed their application to have those orders set aside. On 12 May 2014 Mr R.K. and his family were notified of an order excluding them from French territory and another instructing them to remain in a particular locality. The measure imposing a residence obligation was extended on two occasions. Arrested at their home on 15 October 2014, they were driven to the airport but refused to board the plane. The prefect, considering their refusal to board as deliberate intent to evade enforcement of the removal order, repealed the order imposing house arrest and ordered that they be placed in administrative detention. Mr R.K. and his family were therefore placed on 15 October 2014 in the Toulouse-Cornebarrieu administrative detention centre. The Toulouse Administrative Court dismissed their appeal to have the placement lifted. On 17 October 2014, Mr R.K. and his family requested the Court to indicate interim measures under Rule 39. The acting President decided to indicate to the Government that it would be desirable not to return them to the Russian Federation for the duration of the proceedings before the Court. On 20 October 2014, the judge with responsibility for civil liberties and detention matters imposed a 20-day

extension of the administrative detention, a decision that was upheld on the following day by the first president of the Toulouse Court of Appeal. On 24 October 2014 the prefect repealed the administrative detention order and ordered Mr R.K. and his family to reside in a hotel for six months.

The applicants consider that enforcement of the order for their return to the Russian Federation would expose them to the risk of treatment contrary to Article 3 (prohibition of torture and of inhuman or degrading treatment), and allege that the placement of their child, then aged 15 months, in the Toulouse-Cornebarrieu administrative detention centre for nine days amounted to treatment contrary to the same article. They submit that this placement was in breach of Article 5 § 1 (right to liberty and security) and 5 § 4 (right to speedy review of the lawfulness of detention). Relying on Article 8 (right to respect for private and family life), they complain that their detention in the administrative detention centre was a disproportionate interference in their right to respect for family life, given the very young age of their child.

R.M. and Others v. France (no. 33201/11)

The applicants are Russian nationals, ethnic Chechens, who were born in 1981, 1989 and 2010 respectively. The case concerns the fact of placing an underage child in administrative detention in the context of a deportation procedure.

The applicants decided to leave the Russian Federation, alleging that they were being followed by servicemen who took them for Chechen fighters. Having arrived in France in June 2008, they filed applications for asylum; these were dismissed by the OFPRA, which considered their accounts unreliable. The applicants appealed against those decisions. The National Asylum Tribunal (CNDA) dismissed their appeals. On 18 February 2011 two orders were issued by the prefect in respect of the applicants, refusing to grant them a residence permit and excluding them from French territory. They filed a request for re-examination of their asylum request, and this was refused by the OFPRA. Arrested on 23 May 2011, they were placed in the “family” area of the Toulouse-Cornebarrieu administrative detention centre, along with their seven-month-old child. On 27 May the judge with responsibility for civil liberties and detention matters ordered that their administrative detention be extended for a further 15 days. Having received a request for an interim measure under Rule 39 of its Rules, the Court decided to indicate to the French Government that it would be desirable not to return the applicants to the Russian Federation for the duration of the proceedings before the Court. The applicants’ administrative detention lasted at least seven days. On 16 March 2015 the applicants submitted a new request for re-examination of their application for asylum. The OFPRA refused the request and the CNDA upheld that decision.

The applicants consider that enforcement of the order for their return to the Russian Federation would expose them to the risk of treatment contrary to Article 3 (prohibition of torture and of inhuman or degrading treatment), or even to certain death, in violation of Article 2 (right to life). When communicating the case, the Court decided, of its own motion, to ask the Government two questions concerning compliance with Article 5 § 1 (right to liberty and security) and 5 § 4 (right to speedy review of the lawfulness of detention). Relying on Article 8 (right to respect for private and family life), they complain that their detention in the administrative detention centre was a disproportionate interference in their right to respect for family life, given their child’s very young age.

Reichman v. France (no. 50147/11)

The applicant, Claude Reichman, is a French national who was born in 1937 and lives in Paris.

The case concerns an allegation of a disproportionate interference with the right of access to the Court of Cassation and with freedom of expression.

At the relevant time Mr Reichman was responsible for a programme broadcast on Radio Courtoisie. On 14 November 2006 he made a presentation about the radio station’s situation since the death of

its founder, Jean Ferré. He first described a meeting held at the radio station a short time previously, in the course of which L., the new vice-chairman of the board of directors of the association responsible for managing the radio station had, with the help of bodyguards, ensured that the attendees could not express themselves. He then criticised L.'s decision to assume control of the radio station's editorial line and stated, in particular: "… the radio's financial situation has given rise to certain... I was going to say acrobatic feats... let's just say, to certain potentially unorthodox conduct, and this is all a source of great concern to me…"

On 9 February 2007 L. lodged a complaint, together with an application to join the proceedings as a civil party. On 3 May 2007, an injunction appointed a judicial administrator, who was charged with convening a general assembly to elect a new board of directors and with ensuring the day-to-day running of the radio station's management association. The urgent-applications judge noted that there had been a succession crisis at Radio Courtoisie since the death of its founder in October 2006. By an order of 8 February 2008, the investigating judge committed Mr Reichman for trial before the criminal court on a charge of public defamation. On 17 February 2009 the Paris Criminal Court found the applicant guilty of public defamation of a private person, on the ground that he had imputed to the civil party actions which could be classified as criminal in nature or, at the least, could entail his liability. The court held that Mr Reichman's plea of good faith could not be accepted in the absence of serious evidence to substantiate his accusation. He was ordered to pay a suspended fine of 1,000 euros (EUR), and to pay L. the sums of EUR 1,500 in damages and EUR 2,000 for irrecoverable costs. The appeal court upheld the applicant's conviction. The Court of Cassation declared Mr Reichman's appeal on points of law inadmissible, on the ground that he had given his lawyer special authorisation to bring proceedings before the Court of Cassation dated 25 May, although the appeal court's verdict had been delivered on 27 May 2010.

Relying on Article 6 § 1 (right of access to a court), Mr Reichman complains that there has been a disproportionate interference with his right of access to the Court of Cassation. He also alleges a violation of his right to freedom of expression, protected by Article 10 of the Convention.

SIA AKKA/LAA v. Latvia (no. 562/05)

The case concerns a complaint about the restriction on the copyright of authors' musical work.

The applicant organisation, SIA AKKA/LAA (SIA "Autortiesību un komunicēšanās konsultāciju aģentūra/Latvijas Autoru apvienība" –Copyright and Communication Consulting Agency ltd./Latvian Authors Association) is a non-profit organisation founded in Riga by the Latvian Authors Association, whose members are various Latvian artists.

In the late 1990s SIA AKKA/LAA, an organisation responsible for managing the copyright of the musical works of a large number of Latvian and international authors, failed to conclude new license agreements with several broadcasting companies in Latvia. Despite this, some of the broadcasters continued to use the protected musical works.

In 2002, the applicant organisation thus issued civil proceedings against several of the broadcasting parties. In particular, the organisation lodged a claim against a private radio station for copyright infringement. The radio station in turn lodged a counterclaim arguing that the applicant organisation had abused its dominant position, fixing an unreasonably high royalty rate. In January 2003, the radio station was held to have infringed the author's rights and the applicant organisation ordered to conclude a licence agreement for the next three-year period with a royalty rate set at 2% of the radio station's monthly net turnover. The appellate court upheld this judgment in October 2003, noting that it was partly due to the applicant organisation's inconsistent negotiating that a licence agreement could not be concluded. An appeal on points of law was subsequently dismissed.

A similar claim was lodged in 2003 against a state-owned radio company. The radio company also lodged a counter-claim contending that the parties had in fact established a *de facto* contractual relationship. In April 2003 the applicant organisation's claim was dismissed, the counter-claim

upheld and a general obligation to conclude a licence agreement imposed. This first-instance decision was later partly upheld by the Senate.

Relying on Article 1 of Protocol No. 1 (protection of property) and Article 6 § 1 (right to a fair hearing), the applicant organisation complains that the decisions of the national courts had restricted their authors' exclusive rights to freely conclude licence agreements for the use of their musical works.

Gedrimas v. Lithuania (no. 21048/12)

The applicant, Aleksandras Gedrimas, is a Lithuanian national who was born in 1950 and lives in Jonava (Lithuania). The case concerns his complaint of having been ill-treated by the police.

Mr Gedrimas, who worked as a guard in a garage complex, was on duty during the early morning hours of 23 April 2008, when several police officers arrived at the complex. The officers had been tipped off about a break-in and robbery of a jewellery store nearby and had followed traces from the store to the complex with the help of a police dog.

According to Mr Gedrimas, he had explained to the officers that the garage complex was his workplace and that he had not left it that night. However, the officers had accused him of drunk driving, handcuffed him, pushed him to the floor, and, holding him down, twisted his arms and kicked him in the stomach repeatedly. According to the officers, Mr Gedrimas had refused to comply with their orders to introduce himself, shouted at them and jostled them, obliging them to handcuff him and take him to the police station, where he was identified as the guard of the complex. Mr Gedrimas was released from detention on the same morning.

On the day of Mr Gedrimas' arrest, the prosecutor opened a pre-trial investigation into his allegations of ill-treatment. Following a number of investigative steps, the prosecutor discontinued the investigation in November 2008, holding that Mr Gedrimas had obstructed the police officers in the performance of their duties, had resisted them and had attempted to punch one of them. On Mr Gedrimas' appeal, a senior prosecutor reopened the investigation in March 2009. The investigation was subsequently closed and reopened on several occasions. It was discontinued by a court's decision upheld by a higher court in September 2011.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Gedrimas complains that he was subjected to inhuman treatment by the police and that the authorities failed to carry out an effective and objective investigation.

Žekonienė v. Lithuania (no. 19536/14)

The applicant, Janina Žekonienė, is a Lithuanian national who was born in 1940 and lives in Gelgaudiškis, Šakiai Region (Lithuania). The case concerns her complaint of having been unlawfully arrested and detained in degrading conditions.

On 3 March 2010 Ms Žekonienė, who was 69 years old at the time, went to the local police station, where her son was detained on suspicion of unlawful possession of narcotic substances, to bring him food and clothes. In the afternoon of the same day she was informed by an investigator that she was under provisional arrest on suspicion of also being involved in drug-related crimes. On the following day she was questioned as a suspect and denied having committed any crime. Later during the day, she started feeling weak and had a pain in her chest, and an ambulance was called to the police station to give her first aid. In the afternoon she was released. In September 2010 the prosecutor discontinued the investigation against her.

In 2013 Ms Žekonienė lodged a civil claim for damages against the State, arguing that her provisional arrest had been unfounded and unnecessary. Her claim was dismissed by a decision eventually upheld in December 2013.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Ms Žekonienė complains that she was detained in degrading conditions. She also complains that her provisional arrest was unlawful and arbitrary, in violation of Article 5 § 1 (c) (right to liberty and security).

Bobîrnac v. Romania (no. 61715/11)

The applicant, Bogdan Ştefan Bobîrnac, is a Romanian national who was born in 1997 and lives in Craiova (Romania).

The case concerns the domestic courts' refusal to award compensation for the non-pecuniary damage allegedly sustained by Mr Bobîrnac, who suffers from a serious disability, on account of the unjustified refusal by a public body to reimburse him the interest payments on a bank loan, to which he was entitled.

In March 2009 the county committee for child protection issued a certificate to Mr Bobîrnac stating that he suffered from a serious first-degree disability. In application of a law on the protection of disabled persons, Mr Bobîrnac's mother took steps to obtain reimbursement of a bank loan, with a view to adapting their home to Mr Bobîrnac's medical needs. In May 2009 the National Authority for Disabled Persons (ANPH) granted Mr Bobîrnac's request for reimbursement and confirmed that it had received the documents required by law. In December 2009 Mr Bobîrnac signed a loan agreement with a bank, and applied for reimbursement of the interest payments from the County Social Welfare Department (DGASPC), to which the ANPH's powers had been transferred in the meantime. However, the DGASPC refused to sign the reimbursement contract, finding that the proposed construction work was unlawful and that Mr Bobîrnac had failed to include several documents with his application.

Mr Bobîrnac appealed to the Dolj county court, claiming, in particular, 9,000 euros for the non-pecuniary damage sustained. The court ordered the DGASPC to sign the contract for reimbursement of interest, but dismissed the claim for compensation for non-pecuniary damage. Mr Bobîrnac lodged an appeal against that decision, but it was dismissed by the Craiova Court of Appeal on 4 May 2011.

Relying on Article 6 § 1 (right to a fair hearing), Mr Bobîrnac complains about the domestic courts' refusal to award him compensation for the non-pecuniary damage allegedly sustained by him on account of the national authorities' wrongful conduct.

Aliyev and Gadzhiyeva v. Russia (no. 11059/12)

The applicants, Nizamudin Aliyev and Madina Gadzhiyeva, are Russian nationals who were born in 1960 and 1987 respectively and live in Makhachkala, Dagestan (Russia).

The case concerns their complaint that Mr Aliyev's son, Sirazhudin Aliyev, and Ms Gadzhiyeva's husband, Gazimagomed Abdullayev, – both of them young men, born in 1988 – disappeared after being unlawfully detained by State officials in 2012.

The two young men were driving by car in the centre of Makhachkala in the afternoon of 21 January 2012, when they were stopped by a group of several armed men in uniforms of the State Traffic Police who then forced the two young men out of their car, handcuffed them and placed them separately into two other vehicles and drove away. The abduction took place in the presence of numerous witnesses. According to the applicants, they later learned from sources whose identity they did not disclose that their relatives had first been detained on the premises of the Dagestan Centre for Terrorism Counteraction (CTC) and had then been taken to the CTC's headquarters in the Stavropol region. The Russian Government do not dispute the circumstances of the abduction as presented by the applicants, but deny any involvement of State officials in the incident.

On the day of the abduction, the applicants complained about it to a number of local law-enforcement authorities. The investigators subsequently questioned a number of people, including

family members of the disappeared, and on 31 January 2012 a criminal investigation into the abduction was initiated. It was subsequently suspended and resumed on numerous occasions, but remains pending without having led to any concrete results.

Relying on Article 2 (right to life), the applicants complain that their relatives were abducted and subsequently killed by State officials, that the authorities failed to take effective measures to protect their lives and that the investigation into the abduction was ineffective. They further rely on Article 5 (right to liberty and security) and Article 13 (right to an effective remedy), complaining about the unlawfulness of their relatives' detention.

Kotelnikov v. Russia (no. 45104/05)

The applicant, Mikhail Kotelnikov, is a Russian national who was born in 1981 and lives in Veshenskaya, a village in the Rostov Region (Russia). The case concerns his complaint that there was no effective investigation into a car accident in which he suffered severe injuries.

In the evening of 9 July 2002 Mr Kotelnikov, who was on the pavement of the street, was hit by a car driven by P., a police officer and his former schoolmate. According to Mr Kotelnikov, P. had threatened him about two weeks earlier in a dispute over P.'s behaviour, and the incident was the result of a deliberate attempt to kill or injure him in revenge.

As a result of the accident, Mr Kotelnikov suffered severe head and spinal injuries. He had to undergo surgery several times, but he never completely recovered. He lost his ability to work, started to suffer from repeated epileptic fits and was registered as category 2 (medium) disabled.

Several days after the accident, the district prosecutor opened a criminal investigation. According to Mr Kotelnikov, the investigator in charge was a friend of P.'s. In February 2003 P. was charged with causing serious bodily harm by negligently breaching traffic regulations. Mr Kotelnikov's request for P. to be charged instead with the offence of intent to cause serious bodily harm was dismissed by the trial court. In September 2004 P. was found guilty as charged. He was sentenced to 18 months' imprisonment but was not required to serve his sentence owing to the expiry of the statutory limitation period for crimes of that category.

At the same time – following a civil claim lodged by Mr Kotelnikov in the context of the criminal proceedings – the trial court awarded him compensation for non-pecuniary damage. The judgment was subsequently quashed and the case was remitted, but the trial court confirmed its initial findings in April 2005. Eventually, in May 2005, the appeal court confirmed the findings as to the facts but decided that P. could not be held guilty owing to the statutory limitation period; the first-instance judgment was quashed and the proceedings were discontinued.

In separate civil proceedings Mr Kotelnikov was eventually awarded the equivalent of approximately 5,800 euros in damages in 2006.

Relying in particular on Article 2 (right to life), Mr Kotelnikov complains that the authorities failed to conduct an effective investigation into the car accident and maintains that the compensation he was awarded was insufficient.

Krapivin v. Russia (no. 45142/14)

The applicant, Andrey Krapivin, is a Russian national who was born in 1964 and lives in Perm (Russia). The case concerns contact rights with his son, born in 2005.

In 2009 Mr Krapivin stabbed his wife to death. Their son, three years old at time, witnessed the murder. In 2010 the national courts found that Mr Krapivin had murdered his wife owing to a temporary psychotic disorder in the form of an acute reaction to stress and, exempting him from criminal responsibility, ordered his compulsory psychiatric treatment. He was released from

psychiatric hospital in February 2011. His son, in the meantime, was placed in the care of his maternal grandmother, V.

In March 2011 Mr Krapivin applied to the childcare authorities to have his son returned to him. His application was rejected. Proceedings ensued before the courts and, in August 2012, they dismissed: the childcare authority's and V.'s application to deprive Mr Krapivin of his parental responsibility; and, Mr Krapivin's counterclaim to end V.'s guardianship and to have his son returned to him. The district court notably concluded that, in view of the child's young age and his attachment to his grandmother, a change of his place of residence could be traumatic. Mr Krapivin could, however, continue to have contact with his son.

Further proceedings then ensued concerning contact rights, Mr Krapivin submitting that the grandmother was preventing him from seeing his son. The national courts concluded in May 2013 that it was not in the child's best interests for him to resume contact with his father. The courts justified this decision by the fact that: Mr Krapivin had not provided evidence showing that his mental health had improved and that he presented no danger to the child; the tragic murder had taken place in the child's presence, causing him profound psychological distress; the child had been brought up and cared for by his grandmother from the age of three and had not seen his father for a long time; and Mr Krapivin often left on long business trips, meaning his absence from town every two months out of four. This decision was upheld on appeal in September 2013.

New proceedings concerning Mr Krapivin's parental responsibility and contact rights were brought in December 2014. The courts reassessed the situation but, again taking into account the fact that the child had been living with his grandmother since the age of three, was attached to her and wanted to continue living with her, and that Mr Krapivin's work required long absences, found that the child remaining with his grandmother would be more favourable to his development. However, the courts considered that the child, by that time almost ten years old, had the right to communicate with his father. In particular, Mr Krapivin had in fact established and maintained regular contact with his son, at school, over the telephone and the Internet. Furthermore, he made regular child maintenance payments and there was no evidence that he had any harmful influence on his son, who moreover expressed the wish to have contact with his father.

Relying on Article 8 (right to respect for family life), Mr Krapivin alleges that the Russian courts denied him the right to have contact with his son. Further relying on Article 6 § 1 (right to a fair hearing), he also complains that he was not able to attend one of the hearings on his case – in May 2013 – because the courts had failed to notify him.

Cupara v. Serbia (no. 34683/08)

The applicant, Dragomir Cupara, is a Serbian national who was born in 1950 and lives in Sevojno (Serbia). The case concerns his complaint that his unemployment benefits were cut.

In May 2001, Mr Cupara was granted unemployment benefits by the Serbian Central Employment Office. In June 2001 a law was passed changing the terms for calculating benefits and his benefits were cut the following October. He brought a civil claim in 2007 against the Employment Office seeking payment for some of the difference between the benefits received and those granted in the original decision of May 2001. His claim was subsequently rejected on the ground that his benefits had been correctly calculated in accordance with the 2001 law.

Relying on Article 6 § 1 (right to a fair hearing), Mr Cupara alleges that the domestic case-law on the payment of unemployment benefits is inconsistent. In particular, he complains that his civil claim was rejected by the courts while at the same time identical claims filed by other plaintiffs were accepted.

Mučibabić v. Serbia (no. 34661/07)

The applicant, Mihailo Mučibabić, is a Serbian national who was born in 1926 and lives in Novi Sad (Serbia). The case concerns the investigation into the death of his 22-year-old son, Vojislav Mučibabić, who died in an accident caused by the covert production of rocket fuel.

On 23 June 1995 a powerful explosion occurred at the facilities of Grmeč, a company commissioned by the Serbian intelligence services to covertly produce rocket fuel. 11 workers present died, including Mr Mučibabić's son, and ten others were seriously injured.

The criminal police immediately inspected the scene and the next day set up a commission, consisting of officers of the Security Institute as well as the co-owners of one of the two companies involved, to examine the cause of the explosion. Their report was published eight months later and concluded that the explosion had been caused by heat generated during the production of the composite rocket fuel. After that, a formal preliminary judicial investigation against unknown persons from Grmeč was opened: two further expert reports were thus drawn up and the investigating judge heard evidence from a number of witnesses to the explosion, victims' families and suspects designated by Mr Mučibabić in November 1998 and State Intelligence executives in 1999-2000. However, the prosecutor decided in June 2000 not to further investigate or to prosecute, relying on secret evidence and information and the absence of any offences established.

Shortly after that decision, Mr Mučibabić requested, as a subsidiary prosecutor, that an investigation be opened into the possibility that breaches of safety regulations had caused the explosion. In March 2002 the investigating judge opened an investigation. However, having established that the rocket fuel had been produced at the request of the intelligence services and the then Serbian President, the investigating judge closed the investigation in April 2003.

Mr Mučibabić then filed an indictment against four senior executives of the two companies commissioned to produce the rocket fuel as well as against an executive of the intelligence services, for failing to take the necessary measures to avoid putting the life of his son, as well as others, at risk. Following periods of activity and 21 hearings being cancelled or adjourned for various procedural reasons, the defendants were acquitted at first-instance in 2013 due to lack of evidence. These criminal proceedings are currently still pending at second instance.

In the meantime, following a constitutional appeal lodged by Mr Mučibabić, in 2011 the Constitutional Court found that there had been delays and shortcomings in the investigation into the accident and held that Mr Mučibabić was entitled to damages. The proceedings to determine the amount of compensation are still pending.

Relying in particular on Article 2 (right to life), Mr Mučibabić alleges that the authorities failed to carry out a prompt and effective investigation into his son's death, in an attempt to conceal State involvement in a covert activity.

Kaçan v. Turkey (no. 58112/09)

The applicant, Cem Kaçan, is a Turkish national who was born in 1968. He is currently serving a prison sentence in Istanbul (Turkey).

The case concerns the unplanned tapping of Mr Kaçan's telephone conversations with individuals who were suspected of involvement in drug trafficking and whose telephones were being tapped.

On 30 March 2005 several individuals suspected of involvement in international drug trafficking had their telephones tapped following authorisation from the Istanbul Assize Court, which subsequently issued 14 other warrants for telephone tapping. Mr Kaçan was not one of the persons concerned, but he had several telephone conversations with some of the suspects, particularly with regard to a delivery of goods from Iran and sums of money that were to be paid to him.

On 15 August 2005 several suspects were arrested at the same time in Istanbul. The goods seized by the authorities included 153 kilograms of heroin and ancillary products for its manufacture. Mr Kaçan was arrested on 25 August 2005. Under questioning, he stated that he knew the suspects, but denied any involvement in the drug trafficking, indicating that he had gone to Iran for other reasons. He was released on the same day, but an arrest warrant was issued against him in September 2005 and he absconded.

He was arrested on 8 September 2007 and remanded in custody. His lawyer challenged the legal validity of the evidence formed by the telephone conversations, relying on the absence of a judicial warrant for tapping Mr Kaçan's telephone conversations. He also argued that his client's telephone conversations could be interpreted as referring to an ordinary commercial transaction, given that Mr Kaçan was a trader.

On 26 May 2008 Mr Kaçan was sentenced to 16 years and three months' imprisonment for having taken part in drug trafficking. The assize court based its decision on expert analysis of the various objects seized during the searches, on the recordings of Mr Kaçan's telephone conversations with several co-defendants, and on the consistency between those recordings and the manner in which events had unfolded. That judgment was upheld by the Court of Cassation in May 2009.

Relying on Article 6 § 1 (right to a fair trial), Mr Kaçan complains that he was subjected to unlawful telephone tapping and about the use of his conversations as the only evidence in the criminal proceedings, although no judicial warrant had been issued for tapping of his telephone.

Ruban v. Ukraine (no. 8927/11)

The case concerns entitlement to a more favourable sentence due to a gap in legislation.

The applicant, Vladimir Ruban, is a Ukrainian national who was born in 1972 and is currently serving a life sentence for aggravated murder and banditry.

In July 2009 Mr Ruban was convicted at first-instance of aggravated murder and banditry. The offences had been committed in 1996 and, at that time, the 1960 Criminal Code provided for 15 years' imprisonment or the death penalty for an offence of aggravated murder. However, on 29 December 1999 the Constitutional Court had found the death penalty to be unconstitutional with immediate effect; and, three months later, on 29 March 2000, Parliament had amended the Criminal Code so as to replace the abolished death penalty with life imprisonment for the offence of aggravated murder. Mr Ruban was thus sentenced to life imprisonment.

In an appeal to the Supreme Court in July 2010, Mr Ruban claimed that he should have benefited from the more lenient sentence which had been applicable to an offence of aggravated murder during the three-month period between the ruling of the Constitutional Court and the amendment of the Criminal Code, namely 15 years' imprisonment. However, the Supreme Court upheld the judgment of July 2009, noting that Mr Ruban had been sentenced correctly.

Relying on Article 7 §§ 1 and 2 (no punishment without law), Mr Ruban alleges that, had he been sentenced during the three-month gap between the time when the death penalty had been abolished and life imprisonment had not yet been introduced, the courts would have had no choice but to sentence him to a maximum of 15 years' imprisonment, as no other alternative had been available in the Criminal Code.

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.

Kimeswenger v. Austria (no. 72905/13)

Todorov v. Bulgaria (no. 19552/05)
S.H. v. France (no. 19812/15)
Chatzovoulos v. Greece (nos. 56162/11, 58046/11, 59341/11 and 62709/11)
Giannaris and Others v. Greece (nos. 39938/11, 66703/11, 71386/11, 14993/12 and 69865/12)
Leka and Others v. Greece (no. 50363/15)
Lepetes and Others v. Greece (nos. 53332/14 and 55942/14)
Sotiropoulos v. Greece (no. 67689/10)
Zeliou and Others v. Greece (nos. 70181/14, 13306/15 and 16925/15)
Biro v. Hungary (no. 69865/11)
Csiha v. Hungary (no. 172/12)
Fabos v. Hungary (no. 46549/12)
Molnar v. Hungary (no. 54608/11)
Schneider v. Hungary (no. 5378/12)
Stuber v. Hungary (no. 40743/12)
Toth v. Hungary (no. 5379/12)
Z. L. B. v. Hungary (no. 56872/12)
De Nicola v. Italy (no. 19298/13)
Rainone v. Italy (no. 57968/13)
A.F. v. the Netherlands (no. 61060/11)
Natkanski v. Poland (no. 77695/12)
Wozniak v. Poland (no. 67636/12)
Bravo Belo v. Portugal (no. 57026/11)
Ibris v. Romania (no. 15193/12)
Manole v. Romania (no. 23358/13)
Țintaru and Others v. Romania (no. 43624/13 and 37 other applications)
Kolkutin v. Russia (no. 34942/05)
Korovina and Others v. Russia (nos. 36775/05, 35376/06, and 30165/08)
Kotova and Others v. Russia (nos. 3585/08, 17069/08, 17076/08, 20005/08, 21064/08, 24504/08, 31458/08, 32139/08, 35387/08, 38384/08, 42214/08, 42265/08, 42320/08, 45312/08, 46310/08, 56727/08 and 56792/08)
Kuznetsova and Others v. Russia (nos. 76993/13, 23064/14, 23290/14, 23831/14, 25372/14, 25647/14, 25781/14, 25986/14, 25991/14, 26484/14, 26896/14 and 27847/14)
Parchiyev and Others v. Russia (nos. 41337/04, 26332/05, 34812/05, 469/06 and 11092/07)
Rogushin v. Russia (no. 34706/04)
Shakhov and Others v. Russia (nos. 7302/06, 36226/09, 74253/12 and 69458/13)
Talalayev v. Russia (no. 45710/09)
G.J. v. Spain (no. 59172/12)
Asani v. "the former Yugoslav Republic of Macedonia" (nos. 18358/15, 36597/15, 25270/15, 23227/15, 24676/15, 24787/15, 24790/15, 29918/15, 33467/15, 33471/15, 33657/15, 33661/15, and 34963/15)
Paksut v. Turkey (no. 6250/10)
Yigit v. Turkey (no. 54619/11)
Babiy v. Ukraine (no. 7001/06)
Grushkovskyy v. Ukraine (no. 70744/10)
Ivashchenko v. Ukraine (no. 18453/09)
Logvynovskyy and Logvynovska v. Ukraine (no. 38149/11)
Petrychenko v. Ukraine (no. 2586/07)
Bhojwani v. the United Kingdom (no. 49964/11)
Wilson v. the United Kingdom (no. 65084/14)

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