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 20 judgments on Tuesday 13 December 2016 and 64 judgments and / or decisions on Thursday 15 December 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 13 December 2016

Jensen v. Denmark (application no. 8693/11)

The applicant, Henrik Mønsted Jensen, is a Danish national who was born in 1957 and lives in Skørping (Denmark). The case concerns proceedings against him for marketing counterfeit goods.

On 4 December 2009 Mr Jensen was convicted of two counts of violating intellectual property rights, particularly marketing counterfeit designer knives and lamps. He was given a six months' suspended sentence and 120 hours' community service. In addition, the proceeds from the counterfeit goods as well as copies of the designer goods were confiscated. Mr Jensen and his lawyer were present when the judgment was read out loud. He was informed during this hearing that he would have to pay legal costs, but was not told the specific amount.

Mr Jensen was subsequently informed in January 2010 that he was to pay 573,311 Danish Kroner (approximately 77,000 Euros) in legal costs for his two defence lawyers. He complained to the High Court in three letters of 17 and 26 January and 4 March 2010 about being made entirely liable for the legal costs, without any contribution from the Treasury. His appeal was, however, dismissed as lodged out of time. In particular the High Court, relying on the relevant legislation, reasoned that the time-limit for lodging an interlocutory appeal was 14 days, and, in Mr Jensen's case, this time-limit was to be calculated from 4 December 2009 when he had been informed during the reading out of the judgment that he was liable for legal costs, even though he had only been informed of the exact amount of those legal costs at a later date. As Mr Jensen had only lodged such an appeal on 17 January 2010, he had therefore missed the deadline.

Ultimately, leave to appeal to the Supreme Court was refused in June 2010.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, Mr Jensen complains that the system of imposing a duty to pay legal costs in a judgment without specifying the amount was unfair.

S.C. Fiercolect Impex S.R.L. v. Romania (no. 26429/07)

The applicant company, S.C. Fiercolect Impex S.R.L., was a Romanian limited liability company, based in Cluj Napoca (Romania), whose main activity involved collecting and recycling scrap iron. The case concerns the company's complaint that it was imposed with a fine and confiscated a large sum of money for operating without a valid permit.

By law the applicant company had to apply for an operating permit, accompanied by an environmental permit, to carry out its activity. In January 2005 it applied for an extension of its operating permit, which was due to expire on 7 March 2005. The new environmental permit was issued on 24 March 2005 and the new operating permit was issued on 14 April 2005.

In May 2005, following an inspection, the Cluj Financial Inspectorate fined the applicant company approximately 694 Euros (EUR) and ordered the confiscation of approximately EUR 21,347, representing the market value of the scrap iron collected for recycling between 8 March and 14 April 2005 (the period when the old operating permit had expired and the new one had not yet been issued).

The applicant company thus brought two sets of proceedings before the domestic courts, essentially complaining about the authorities' delay in issuing the relevant environmental and operating permits, which had resulted in them having to operate for a certain period without a permit. In the first set of proceedings, against the Financial Inspectorate, the applicant company's complaint was dismissed as unfounded in August 2005. In a second set of – administrative – proceedings the applicant company brought an action against the competent environment agency to recover damages incurred due to the delay in it issuing a permit. Ultimately, in these proceedings the applicant company's appeal on points of law was dismissed in February 2007. The administrative authorities found in particular that the company, which was considered by the relevant authorities to have a significant impact on the environment, should have suspended its activity until it had obtained the permits required by law and only then brought proceedings seeking to recover any damages.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention, the applicant company complains that the sum confiscated from it, in addition to the fine, was excessive, and that the authorities had been responsible for them having to operate without a permit as they had failed to issue the necessary permits in time.

Tiba v. Romania (no. 36188/09)

The applicant, Tiberiu Mircea Tiba, is a Romanian national who was born in 1974 and lives in Oradea (Romania). He has been a lawyer since 1997. The case essentially concerns his complaint that he was held against his will for nine hours by the police at a police station and then in a prosecutor's office where he had been taken for questioning on suspicion of traffic of influence.

On 11 December 2008 proceedings were initiated against Mr Tiba for having requested and received money from a client in exchange for persuading certain judges to adopt a favourable judgment in his client's case. On the same day, a warrant to appear was issued in Mr Tiba's name.

The following day, on 12 December 2008, at 8 a.m., a police officer went to Mr Tiba's office in Oradea to enforce the warrant to appear. He was escorted to the police station in the nearby town of Salonta. From there he was brought to the Timişoara office of the National Anticorruption Department (TNAD) and was handed over to the prosecutor at 11.40 a.m. According to Mr Tiba, he was questioned as a suspect by the prosecutor at the TNAD from 12 noon to 4.50 p.m., following which he was charged with traffic of influence. Mr Tiba was ordered to be placed in police custody for 24 hours commencing at 5.10 p.m.

On 13 December 2008 the Court of Appeal allowed the prosecutor's request to have Mr Tiba placed in pre-trial detention for a period of 30 days. Mr Tiba complained before the court that he had been unlawfully deprived of his liberty from 8 a.m. to 5.10 p.m. the previous day and requested that this period be detracted from his time in custody. The court concluded that it was not competent to rule on this complaint and Mr Tiba lodged an appeal on points of law against the judgment. On 17 December 2008, the High Court of Cassation and Justice rejected Mr Tiba's appeal as ill-founded, but did not address his complaint regarding the lawfulness of his detention on 12 December. Mr Tiba was found guilty of traffic of influence on 12 March 2010 and received a four-year suspended prison sentence.

Relying on Article 5 (right to liberty and security), Mr Tiba alleges that he was unlawfully deprived of his liberty from 8 a.m. to 5.10 p.m. on 12 December 2008, prior to being placed in police custody,

and that the domestic legislation did not provide for judicial review or any other remedy for his complaint concerning the alleged deprivation of his liberty.

Dumikyan v. Russia (no. 2961/09)

The applicant, Mkptych Dumikyan, is an Armenian national who was born in 1970 in Armenia. He used to live in Kurgan, Russia and was apparently deported to Armenia in 2012. The case concerns the conditions of his detention in a Russian remand prison and the medical treatment he received there.

When still living in Russia, on 3 August 2008, Mr Dumikyan crashed a stolen car into a tree while under the influence of alcohol. He sustained multiple injuries, including a thighbone fracture, a dislocated hip and facial wounds.

On 6 August 2008, the police opened a criminal case against him into car theft. During the course of the investigation, it emerged that Mr Dumikyan was wanted by the authorities of the Republic of Belarus for a murder allegedly committed in Minsk in 2003. On 12 August 2008, the police arrested Mr Dumikyan who, bedridden in a skeletal traction frame, was still in hospital. They transported him to remand prison no. IZ-45/1 in Kurgan.

On 13 August 2008, the Kurgan Town Court ordered Mr Dumikyan's detention pending extradition. On 23 September 2008, the Kurgan Town Court changed the measure of restraint to detention pending investigation. Mr Dumikyan's detention was extended a number of times until 27 March 2009 when he was convicted of car theft and sentenced to four years' imprisonment in a correctional colony. On appeal, the Regional Court upheld the conviction and sentence, but ordered that he should instead serve his sentence at a settlement colony.

On admission to remand prison no. IZ-45/1 on 12 August 2008, Mr Dumikyan was examined by a medical assistant, who recorded visible bodily injuries. No medical tests were performed and no treatment or mobility aids were prescribed. Mr Dumikyan was seen by a prison doctor for the first time on 18 August 2008, after complaining of pain, nausea, and vertigo. The doctor ordered that he be transferred to the prison hospital for treatment. He underwent several medical tests and was seen by a surgeon and a neurologist, but no x-ray was carried out on his injured leg. The surgeon removed the metal pin in his leg and prescribed him a walking stick. Throughout the rest of his time in the remand prison, Mr Dumikyan was transferred between several cells, which he alleges were overcrowded with non-partitioned toilets, poorly ventilated and infested with bugs, mice and lice.

On 2 June 2009 Mr Dumikyan was transferred to a settlement colony where he served the remainder of his sentence until 22 September 2012.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Dumikyan complains that the conditions of detention in the remand prison were appalling, without access to adequate medical care. As a result, he alleges that his broken leg knitted in a wrong position and that he now walks with a limp. He further relies on Article 5 § 1 (right to liberty and security), alleging that he was subjected to a period of unlawful and arbitrary detention between 12 August and 23 September 2008 pending extradition proceedings.

Idalov v. Russia (no. 2) (no. 41858/08)

The applicant, Timur Idalov, is a Russian national who was born in 1967 and lives in Lakha-Varanda, the Chechen Republic (Russia). Mr Idalov makes a number of complaints about his detention, including ill-treatment in custody.

Mr Idalov was arrested on 16 July 2008 by the special police forces in the course of an operation against organised crime. The operation had specifically targeted Mr Idalov, who was suspected of racketeering. After the arrest, the specialised police unit charged and detained him on the grounds of an administrative offence, namely resisting arrest and failing to comply with the police's request

to present his identification documents. On 17 July 2008 criminal proceedings were brought against him on suspicion of illegal drug possession, the police having found heroin on him immediately after his arrest. On 18 July 2008 his pre-trial detention was authorised. He appealed against this detention order, noting in particular that it did not indicate a time-limit for his detention. The order was however upheld on appeal and repeatedly extended for the next year and a half due to the gravity of the charges against him and on the grounds that he might abscond and/or interfere with the examination of his case. He was convicted as charged on 17 December 2009 and sentenced to four years' imprisonment, later reduced to three years and two months' imprisonment. Mr Idalov was not present at the last trial hearing on the case which resulted in that judgment as he had been removed from the courtroom for repeated disruptive behaviour.

Mr Idalov claims that he was ill-treated on a number of occasions during his custody, namely: in May 2009 at the Odintsovo police station where he alleges that he was assaulted by three police officers; in September 2009 in a remand prison where he alleges that he was severely beaten by the prison director and prison guards on being placed in a disciplinary cell; in October 2010 when he alleges that he was beaten by prison guards in a remand prison in Moscow; and, in September and October 2012 in a correctional colony in Yekaterinburg where he alleges that he was beaten in his cell by a group of young men and by a man wearing the uniform of a major.

In all five incidents he sustained multiple injuries, which were recorded in subsequent medical reports or, on one occasion, when Mr Idalov took part in a hearing by means of a video link and showed the judges extensive bruising to his body. The authorities opened a formal inquiry in each case. In all but one of the incidents (of September 2009) the related investigations – ranging from four to seven years – are currently still pending. As regards the incident of September 2009, following interviews with Mr Idalov, the prison director, guards and medical professionals, the investigators concluded that Mr Idalov's injuries had resulted from the use of force against him which had been necessary to subdue him. As a result of that particular incident, Mr Idalov was found guilty in December 2010 of using force against an official and sentenced to six years' imprisonment, subsequently reduced to five and a half years' imprisonment.

Mr Idalov also complains about the conditions of his detention in a temporary detention centre in Odintsovo and remand prisons in Mozhaysk, Moscow and Yekaterinbourg, essentially on account of overcrowding and poor hygiene. He further alleges that the conditions of his transport to and from, and detention at, the court-house to attend hearings on his case, were inhuman and degrading, essentially because of overcrowding and lack of ventilation in vans, train compartments and court-house holding cells.

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), Mr Idalov complains about ill-treatment in custody, the lack of effective investigations in response to his complaints about ill-treatment and the inadequate conditions of his detention and transport. Further relying on Article 5 § 1 (b) and (c) (right to liberty and security), he complains about the unlawfulness of his pre-trial detention, notably as regards his administrative arrest on 16 July 2008, subsequent detention until 17 July 2008 and remand in custody from 18 July 2008 without a time-limit. He also complains under Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial) about the length of his pre-trial detention without sufficient grounds. Lastly, he complains under Article 6 (right to a fair trial) about his exclusion from the trial, submitting that this had resulted in certain evidence being examined in his absence.

Kasparov and Others v. Russia (no. 2) (no. 51988/07)

The applicants are Garri Kasparov, the former World Chess Champion and political activist, as well as six other activists, Aleksandr Averin, Yuriy Orel, Lev Ponomarev, Aleksandr Stelmakh, Aleksey Tarasov, and Andrey Toropov. They are all Russian nationals who were born in 1963, 1981, 1968,

1941, 1978, 1968, and 1973, respectively, and live in Moscow or the Moscow region. The case concerns their arrest at a demonstration and ensuing detention.

On 24 November 2007 a series of protest rallies were organised by opposition politicians in several Russian cities, including Moscow. The applicants, having attended a gathering on Academician Sakharov Prospekt in Moscow, were on their way to another authorised gathering on Chistoprudnyy Boulevard when they were stopped by the riot police and arrested.

Mr Kasparov and Mr Averin were then escorted to the Basmannyy district police station on suspicion of an administrative offence, namely marching without authorisation and refusing to disperse. Once at the station their administrative detention was ordered. Mr Kasparov was released at 6.20 p.m. the same day and Mr Averin at some point on 26 November 2007.

In the ensuing administrative proceedings both men contested that their procession had caused a disturbance and denied that they had had an opportunity to disperse before being arrested. The Justice of the Peace found them guilty of the two administrative charges against them and sentenced them to five days' administrative detention. In both sets of proceedings, the Justice of the Peace based her findings on police officers' witness statements and written police reports according to which the applicants had participated in an unauthorised march, chanting "Down with Putin!". The applicants requested to have other witnesses called and to admit additional evidence such as video recordings, but their requests were refused.

The other five applicants were arrested in similar circumstances and also convicted of administrative offences.

Relying on Article 5 § 1 (right to liberty and security), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), the applicants complain about their arrest during the demonstration and ensuing convictions of administrative offences. Further relying on Article 6 § 1 (right to a fair trial), they also allege that the administrative proceedings brought against them were not fair, in particular because the court had given undue weight to the police's version of events. Lastly, they allege under Article 18 (limitation on use of restrictions on rights) that their arrest and detention had undermined their right to freedom of assembly and freedom of expression, and had been intended as political revenge.

Kolomenskiy v. Russia (no. 27297/07)

The applicant, Denis Borisovich Kolomenskiy, was born in 1973 and lives in Kirov (Russia). The case concerns the placement in pre-trial detention and the conditions of detention of a lawyer who had been appointed as the administrator of a company in judicial reorganisation proceedings.

Mr Kolomenskiy, who was suspected of embezzlement in the context of proceedings for the judicial reorganisation of a company, was placed under judicial investigation. Having also been implicated in "arbitrary unlawful acts", he was placed in pre-trial detention on 1 June 2006. He appealed against that decision, alleging, among other points, that the purpose of a telephone call to a witness had been to obtain information about the ongoing investigation rather than to exert pressure. He also stated that he had not attended a meeting with the investigator as he had received the latter's summons too late and had requested that another date be found. The Kirov Regional Court dismissed his appeal, then subsequently confirmed the district court's decision to extent his pre-trial detention. In the meantime, on 23 October 2006 that court convicted Mr Kolomenskiy of money laundering the sum of 247,000 roubles (about 6,200 euros). The regional court, ruling on appeal, upheld the judgment. In 2007, sitting as a supervisory review instance, the presidium of the regional court quashed those judgments on the ground that Mr Kolomenskiy had not been assisted by his own choice of lawyer and had expressed reservations about the lawyer chosen by the investigator. At the same time, the supervisory-review instance ordered that he be kept in pre-trial detention, without giving reasons for its decision or indicating a deadline. The district court rejected his application for release. On 3 July 2007 the district court, to which the case had been remitted for

examination, convicted Mr Kolomenskiy of embezzlement and sentenced him to one year and six months' imprisonment. The regional court upheld that decision on appeal.

Relying on Article 3 (prohibition of inhuman or degrading treatment), taken alone and in conjunction with Article 13 (right to an effective remedy), Mr Kolomenskiy alleges that he was held in poor conditions in the Kirov Prison and, in particular, that he was unable to access dental care. Relying on Articles 5 § 1 (right to liberty and security), 5 § 3 (right to liberty and security) and 5 § 4 (right to speedy review of the lawfulness of detention), he complains that his detention was not lawful, that the length of the detention was unreasonable, that his appeals against the decisions authorising extensions of his detention were not examined speedily and, lastly, that they were examined in his absence. Under Article 6 § 2 (presumption of innocence), he alleges that the principle of the presumption of innocence was infringed by the Russian Supreme Court and by the regional court.

Kunitsyna v. Russia (no. 9406/05)

The applicant, Zinaida Kunitsyna, is a Russian national who was born in 1950 and lives in Tomsk (Russia). The case concerns defamation proceedings brought against her following the publication of an article she had written about a care home for the elderly where the mother of a well-known politician had been resident.

A freelance journalist, she wrote an article in December 1999 for the newspaper Tomskaya Nedelya, which is published and distributed in the Tomsk Region. The article described the everyday life of residents in a care home for the elderly, including the mother of a former deputy of the national parliament (the State Duma). The deputy was identified by his full name in the headline and text of the article. The article exposed the difficulties of the care home staff in taking care of the residents without adequate equipment and mentioned that quite a few of the residents had been abandoned by their relatives. The article stated in particular that "quite a few respectable people brought their ill relatives to the care home in an attempt to escape unnecessary trouble". It also quoted the chief medical officer referring to the "lack of mercy" of the relatives who brought their next of kin to reside in the home.

The deputy's family subsequently sued Ms Kunitsyna for disclosing information about their private life and tarnishing their reputation. After a first final and binding court decision in Ms Kunitsyna's favour, which was quashed in supervisory review proceedings, she was ultimately held civilly liable in October 2003 for writing the article and having it published in the regional newspaper. The domestic courts notably concluded that the extract describing the placement of the claimants' relative as "an attempt to escape unnecessary trouble" because of "lack of mercy" was untrue and damaging to their honour and dignity. She was ordered to pay 10,000 Russian roubles (RUB) – approximately 285 euros (EUR) – to each of the three claimants in compensation, subsequently reduced to RUB 4,000 (approximately EUR 110).

Relying on Article 10 (freedom of expression), Ms Kunitsyna complains that the domestic courts had, without justification, limited her freedom to express an opinion on an important social and public issue, namely the lack of specialist care facilities in the Tomsk region.

Snyatovskiy v. Russia (no. 10341/07)

The applicant, Anton Snyatovskiy, is a Russian national who was born in 1951 and until his arrest lived in Vladivostok, Primorskiy Region (Russia). The case concerns criminal proceedings brought against him for the management of a company allegedly involved in embezzlement and his related detention.

In January 2004 the police charged Mr Snyatovskiy, at the time in charge of the Central Office of the Alfa Bank's branches in the Russian Far East, based in Vladivostok, with abuse of his position. In September 2005 another criminal case was opened against him on charges of multiple counts of

aggravated embezzlement and money laundering. The European Court has received no further information about the outcome of these criminal proceedings.

In the context of the criminal proceedings against him, Mr Snyatovskiy initially signed a written undertaking not to leave Vladivostok. This undertaking was however revoked on 23 January 2006 and he was remanded in custody on account of the seriousness of the charges against him and the risks of his absconding or hampering the investigation. His detention was then repeatedly extended on similar grounds until 28 May 2008 when he was released, the courts deciding that detention was no longer justified as the investigating authorities had completed their investigation. He appealed against the detention orders on a number of occasions in March, June, September and December 2007, citing in particular ill health. These appeals were examined and rejected between 17 and 63 days after being lodged.

Prior to his detention, Mr Snyatovskiy had a history of heart disease. His condition worsened in June 2006 and he was admitted to the prison hospital where he spent the major part of his detention under close medical supervision, which included his having important medical tests and drug therapy.

Relying on Article 5 §§ 3 and 4 (right to liberty and security), Mr Snyatovskiy complains about his pre-trial detention, alleging in particular that it was excessively long as well as unjustified and that the judicial review of his detention orders was protracted. Also relying on Article 6 § 1 (right to a fair trial within a reasonable time), he complains about the excessive length of the criminal proceedings against him. Lastly, relying on Article 3 (prohibition of inhuman or degrading treatment), he alleges that he was not given adequate medical care in detention.

Yunzel v. Russia (no. 60627/09)

The applicant, Nikolay Yuryevich Yunzel, is a national of Russia born in 1967. Mr Yunzel has lived in Menzelinsk, the Tatarstan Republic, until his arrest. The case concerns, in particular, his allegation of inadequate dental treatment in a remand prison.

In 1999 Mr Yunzel was convicted and sent to serve his sentence in a correctional colony. A new set of charges having been brought against him, he was transferred to a remand prison in the Taatarstan Republic between April 2008 and October 2009 in order to ensure his participation in the investigation. He alleges that his conditions of detention in that period were inhuman and degrading, being held for most of the time alone in a dirty, poorly-lit cell with no access to fresh air and limited access to outside information. He was on occasions also transported to a temporary detention unit at the Naberezhnyye Chelny police station, which was allegedly overcrowded with no access to outdoor exercise.

While being held in the remand prison in January 2009, he complained of severe toothache to the prison authorities. He was examined by a civilian dentist in May and December 2009 and March and June 2010. This treatment was however interrupted on several occasions because the authorities failed to arrange for his transfer. Mr Yunzel, in severe pain and no longer able to chew food, submitted a number of requests for his dental treatment to be completed. His dental restoration treatment was eventually completed in August 2010.

In the meantime, in June 2009, Mr Yunzel had filed a civil claim against the prison authorities seeking dental treatment and compensation, but it was dismissed by the Naberezhnyye Chelny Town Court in August 2009. The Supreme Court of Tatarstan Republic upheld the decision on appeal.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Yunzel complains about the conditions of his pre-trial detention during which the prison authorities failed to provide him with timely and adequate dental treatment.

Eylem Kaya v. Turkey (no. 26623/07)

The applicant, Eylem Kaya, was born in 1975. She was being held in a prison in Çankırı when the application was lodged. The case concerns the place taken by the State prosecutor in the courtroom during the trial of a civil servant and the prison authorities' supervision of her correspondence with her lawyer.

Ms Kaya, a civil servant in the customs department, was arrested as part of an investigation into corruption. The next day she was questioned then placed in pre-trial detention. The State prosecutor brought criminal proceedings against her on charges of corruption and membership of a criminal organisation. The assize court convicted Ms Kaya of the charges against her and sentenced her to six years and 15 days' imprisonment. The Court of Cassation upheld the judgment. In 2007, Ms Kaya gave the prison authorities a letter, intended for her lawyer, which concerned the power of attorney that was to be sent to the Court in the context of the present application. The applicant submitted a copy of that letter, which had been stamped with the word "seen" by the prison authorities' committee responsible for reading the prisoners' correspondence.

Relying on Article 8 (right to respect for private and family life), Ms Kaya alleges that her correspondence with her lawyer concerning her application to the Court was checked by the prison authorities and that this practice infringed her right to respect for her correspondence.

Under Article 6 § 1 (right to a fair trial), she submits that there was a breach of the principle of equality of arms on the ground that, at her trial, the prosecutor stood on a raised platform, while she and her lawyer were placed, as was the rule, at a lower level in the courtroom.

Kutlu and Others v. Turkey (no. 51861/11)

The applicants, Hadice Kutlu, Ayşe Canbeg, Fatma Karaoğlu, Mehmet Kutlu and Türkan Unurlu, are five Turkish nationals who were born in 1925, 1950, 1965, 1957 and 1971 respectively and live in Şanlıurfa (Turkey). They are the owners of three plots of land near which a hydraulic dam was built. The case concerns the authorities' refusal to expropriate their plots of land, significant restrictions having been imposed on the use of that land on account of the dam's proximity, and also the reduction, without reasons being provided, in the amount of compensation paid to them.

Two protection zones were established around the dam. The first two plots of land were located in the maximum protection zone, within which any building work or agricultural activity was prohibited, while the third plot of land was in the inner protection zone, where building work was prohibited and agricultural work was restricted.

In 2006 these owners applied to the district court for an expropriation allowance. The district court refused to order expropriation, but held that the practical restrictions (difficult access, destruction of telephone and electricity wires) and legal restrictions (prohibition on building work and limitations on agricultural activities) made the applicants' cultivation of pistachio crops more difficult, resulted in a depreciation in the value of their land and amounted to damage that ought to be compensated. However, the Court of Cassation set aside that judgment. After referral, the court consulted a group of experts, who fixed the total value of the properties at 1,272,380 Turkish liras (TRY). They assessed the depreciation at 40%. By a judgment of 9 July 2009, the court again decided to compensate the owners. However, taking into account their surface area, their location in relation to the dam and how they were used, the court assessed the depreciation in the value of the land at 15% for the plot of land in the inner protection zone and 25% for each of the other two plots of land. The court merely laid down these criteria, without indicating other grounds. Lastly, it awarded only TRY 1,000 for each of the plots of land on the ground that the applicants had limited their claims to that amount and that they had reserved their claims with regard to the remaining amounts. The owners subsequently requested the remainder of the amount to which they were entitled. The district court granted their claims and they obtained TRY 89,954 and 85,857 for the two plots of land situated in

the maximum protection zone and TRY 77,584 for the plot of land in the inner protection zone. Those judgments were upheld by the Court of Cassation.

Relying on Article 1 of Protocol No. 1 (protection of property), the owners of the plots of land allege that the authorities' refusal to expropriate their land, in spite of the restrictions imposed on its use, was in breach of their right to peaceful enjoyment of their possessions.

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.

Iurii v. the Republic of Moldova (no. 24446/09)
Rusu Lintax SRL v. the Republic of Moldova (no. 17992/09)
Marques de Almeida et Gomes Abrunhosa Marques de Almeida v. Portugal (nos. 63595/13 and 34996/14)
Boychuk v. Russia (no. 11214/07)
Pashkevich v. Russia (no. 8741/15)
Savatin v. Romania (no. 49588/13)
Nazarov v. Russia (no. 17614/08)
Shagabutdinov v. Russia (no. 51389/07)

Thursday 15 December 2016

Colloredo Mannsfeld v. the Czech Republic (nos. 15275/11 and 76058/12)

The applicant, Jerome Colloredo Mannsfeld, is a Czech national who was born in 1949 and lives in Zbiroh (the Czech Republic). The case concerns restitution proceedings for movable property located in Opočno Castle. The property was confiscated from the applicant's predecessor during the German occupation of Czechoslovakia in 1942, and once again in 1945 after the Second World War had ended.

National legislation adopted in 1991 provides for the restitution of properties that had been transferred to the State between 25 February 1948 and 1 January 1990. In 1992 the applicant's father thus brought an action for the restitution of property in Opočno Castle. The applicant entered the proceedings as heir and legal successor to his father, when he died in 1998. Owing to the large number of items concerned, the action was decided in three sets of successive proceedings from 1999 to 2012. The first set of proceedings – in which a collection of paintings was returned to the applicant – is not part of the present application before the European Court.

In 2006, in the course of the second proceedings, the Pardubice District Court, finding the applicant's claim well-founded, ordered the State to return a large set of items to him. However, this judgment was subsequently overturned by the Regional Court. Referring in particular to a decision of 1947 by the Ministry of Agriculture in which the Opočno Castle State was declared cultural property, the Regional Court considered that the property in question had been taken away from the applicant's predecessor before 25 February 1948 and that therefore the legislation on restitution did not apply. The supreme jurisdictions, also explicitly referring to the 1947 decision as evidence, all went on to uphold the Regional Court's judgment.

In the third set of proceedings, the District Court followed the conclusion of the Regional Court and dismissed the applicant's claim. This decision was upheld by all levels of courts, including the Constitutional Court in April 2012.

Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), the applicant complains about the courts' rejection of his claim for restitution of property located in Opočno Castle. He alleges in particular that the restitution proceedings were unfair as the Regional Court had based its decision in the second set of proceedings on a document – the 1947 decision – which was not shown to the parties or discussed by them and which had also affected the outcome of the third set of proceedings.

Žirovnický v. the Czech Republic (no. 60439/12 and no. 73999/12)

The applicant, Albert Žirovnický, is a Czech national who was born in 1968. He is currently being held in the prison of Mírov (Czech Republic). These applications concern the conditions in which he was held in a number of short-term prisons; he alleges that those conditions constituted inhuman treatment, particularly on account of passive smoking (application no. 60439/12) and prison overcrowding (no. 73999/12).

Serving a sentence since 2001 for murder, Mr Žirovnický has been held in a number of prisons in the Czech Republic.

Mr Žirovnický, who is a non-smoker, alleges that he suffered from passive smoking in the short-term prison of Prague-Pankrác and in Plzeň-Bory prison, when he was in the common room and in the offices of the prison staff. The situation had worsened when he was transferred to Valdice prison, where he was placed in cells for non-smokers but where his cell-mates, according to him, smoked. He was also allegedly exposed to smoke infiltrations in his cell and the authorities refused to do anything about it. The Government challenges his version. In 2006 Mr Žirovnický lodged an application for the protection of his "personality rights", relying on the right to respect for his dignity and health. In a judgment of 2016, the Municipal Court upheld his claim and awarded him CZK 200,000 (about EUR 7,400) for the damage to his health. It took the view that Mr Žirovnický had indeed been exposed to passive smoking. The prison service expressed its intention of lodging an appeal. In parallel, on the basis of Law no. 82/1998, Mr Žirovnický brought proceedings for the excessive length of proceedings for the protection of his personality rights. The courts dismissed his case at first instance and on appeal. An appeal on points of law is still pending before the Supreme Court.

As regards the overcrowding in Czech prisons, Mr Žirovnický claims that none of those in which he was held complied with minimum standards or the European Prison Rules. The Government challenge the prisoner's allegations and argue that Mr Žirovnický would never have referred to the public prosecutor any complaint concerning the conditions of his detention in the prisons. In 2010 Mr Žirovnický sued for damages again in respect of the alleged ill-treatment under Law no. 82/1998. The court dismissed his claim in full. In those proceedings, the applicant's appeal is also pending. Lastly, Mr Žirovnický sued for compensation on account of the duration of the proceedings in which he claimed damages for ill-treatment (no. 23 C 83/2013). Those proceedings are still pending.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Article 13 (right to an effective remedy) and Article 6 § 1 (right to a fair trial within a reasonable time), separately or in combination, Mr Žirovnický complains about the conditions of his detention and the ineffectiveness of the compensatory remedies provided for by Czech law in order to resolve both the problems of prison overcrowding and passive smoking and the length of the proceedings.

M.P. v. Finland (no. 36487/12)

The applicant, Ms M.P., is a Finnish national who lives in Helsinki. The case concerns Ms M.P.'s conviction for defamation for having expressed concerns that her daughter might have been sexually abused by her (the child's) father.

Ms M.P. and her ex-partner began living together in 2003. Their daughter was born in November 2004. In May 2006, Ms M.P. and her daughter left the child's father, as Ms M.P. had begun to fear for her own and the child's safety, as the father was, in her view, violent.

In July 2006, the child's father initiated custody and contact rights proceedings. Following interim decisions in August 2006 and June 2007, the Kouvola District Court held an oral hearing and on 4 September 2007 awarded both parents joint custody of the child. She was to live with her mother and visit her father every other weekend from Friday to Sunday and during the holidays, unsupervised.

In the meantime, following the child's third unsupervised visit with her father in August 2007, Ms M.P. contacted a child psychiatrist with concerns that her daughter's behaviour had changed; that she was using vulgar language and was restless and anxious. On 16 August 2007, Ms M.P. contacted the child welfare authorities in Helsinki and reported her suspicions that her daughter was being sexually abused by her (the child's) father. The authorities reported the matter to the police and recommended that the meetings between the child and her father be suspended until the end of the investigation. The police requested that a forensic-psychological interview be conducted with the child, but were told by the Forensic Child and Adolescent Psychiatry Centre that she was too young for such an interview. The pre-trial investigation was concluded on 15 October 2007, after a physiological examination carried out on the child revealed no external signs of any abuse.

On 19 October 2007, Ms M.P. had a telephone conversation with a social worker and insisted that another investigation be carried out, as she believed her daughter remained at risk during the unsupervised visits with her father. The social worker explained that the court order on custody rights remained in force, so Ms M.P. would have to appeal against this in court, rather than complaining to the child welfare authorities. Ms M.P. nevertheless submitted a second report to the child welfare authorities in January 2008, insisting on another investigation and maintaining her claim that her daughter was being abused. Later the same month Ms M.P. twice took her daughter to an emergency clinic for examination, as she had trouble sleeping and, was in her view, behaving oddly. No somatic signs or symptoms of sexual abuse were discovered. The Kouvola Police Department's pre-trial investigation into the matter was concluded on 4 May 2008, as there was no appearance of any crime.

On an unspecified date, the father of the child asked the police to investigate whether Ms M.P. had defamed him by giving what he claims was false information about him to the social worker on 19 October 2007. The Public Prosecutor subsequently charged Ms M.P. with defamation for having insisted on 19 October 2007 that her daughter was at risk of sexual abuse by her father, after the police had already investigated the matter and found no appearance of any crime. The Helsinki District Court convicted Ms M.P. of defamation on 11 September 2009, concluding that she had not had a sufficient factual basis for the allegations against her child's father. She was given a fine and ordered to pay 1,000 euros compensation to the child's father. This judgment was upheld on appeal on essentially the same grounds, the Court of Appeal also pointing out that it was irrelevant that her allegations had been made to a public official who was bound by confidentiality.

Relying on Article 10 of the Convention (freedom of expression), Ms M.P. alleges that her freedom of expression was violated by the defamation proceedings, as she made her complaints in good faith and was merely doing what she saw as her duty to protect her daughter.

Vaščenkovs v. Latvia (no. 30795/12)

The applicant, Maksims Vaščenkovs, now deceased, is a national of Latvia who was born in 1986. The case, continued by his grandmother, concerns the justification for his pre-trial detention.

In August 2011 Mr Vaščenkovs was arrested by the Latvian police and placed in pre-trial detention initially on suspicion of robbery and later on suspicion of theft. His subsequent appeal against the decision was dismissed by the Latgale Regional Court.

Although detained on suspicion of theft, in September 2011 the public prosecutor decided to charge Mr Vaščenkovs with robbery and theft and transferred the case to the Ludza District Court for adjudication. His detention was then extended on three occasions by the investigative judge, in October and December 2011 and in April 2012. This continued detention was justified by reference also to suspected robbery which allowed the permissible time-limit for his detention to be increased from 12 to 24 months. The judge thus decided to further extend Mr Vaščenkovs' detention in August and November 2012 and in January 2013, justifying his protracted detention by referring also to the robbery charge. These decisions were not subject to appeal.

Mr Vaščenkovs complained on several occasions to the Ludza District Court claiming that it had failed to provide reasons for his detention on suspicion of robbery, without success.

Relying on Article 5 § 3 (right to liberty and security/reasonableness of pre-trial detention), Mr Vaščenkovs complains that the domestic courts failed to provide sufficient reasons for the suspicion that he had committed robbery.

Abdullah Kaplan v. Turkey (no. 4159/16)
Adem Tunc v. Turkey (no. 4552/16)
Ahmet and Zeynep Tunc v. Turkey (no. 4133/16)
Ahmet Tunc v. Turkey (no. 39419/16)
Alpaydinci and Others v. Turkey (no. 10088/16)
Altun v. Turkey (no. 4353/16)
Balcal and Others v. Turkey (no. 8699/16)
Bedri and Halime Duzgun v. Turkey (no. 901/16)
Caglak v. Turkey (no. 2200/16)
Cengiz Abis and Others v. Turkey (no. 10079/16)
Dagli and Others v. Turkey (no. 6990/16)
Dolan v. Turkey (no. 9414/16)
Erkaplan v. Turkey (no. 10085/16)
Eroglu v. Turkey (no. 478/16)
Gecim v. Turkey (no. 5332/16)
Gorgoz v. Turkey (no. 480/16)
Inan v. Turkey (no. 2105/16)
Irmak v. Turkey (no. 5628/16)
Karaduman and Cicek v. Turkey (no. 6758/16)
Karaman v. Turkey (no. 5237/16)
Kaya v. Turkey (no. 9712/16)
Koc and Others v. Turkey (no. 8536/16)

Omer Elci v. Turkey (no. 63129/15)
Oncu v. Turkey (no. 4817/16)
Oran v. Turkey (no. 1905/16)
Paksoy v. Turkey (no. 3758/16)
Sariyildiz v. Turkey (no. 4684/16)
Seniha Surer and Others v. Turkey (no. 10073/16)
Seviktek v. Turkey (no. 2005/16)
Sultan and Suleyman Duzgun v. Turkey (no. 891/16)
Tunc and Yerbasan v. Turkey (no. 31542/16)
Uysal v. Turkey (no. 63133/15)
Vesek v. Turkey (no. 63138/15)
Yavuzel and Others v. Turkey (no. 5317/16)

These 34 applications concern the curfew measures taken in Turkey since August 2015.

The European Court of Human Rights started receiving these applications in December 2015, including more than 40 requests for interim measures from (or on behalf of) over 160 persons in the context of the curfews imposed by local governors in certain towns and villages of south-eastern Turkey (see also the press releases of 13 January 2016 and 5 February 2016). Most of the requests concern incidents that took place in the towns of Cizre and Sur.

Notably, five of those requests for interim measures were subsequently accepted and the ECtHR indicated to the Turkish Government to take all measures within their powers to protect the lives and physical integrities of five injured applicants who were waiting to be taken to hospitals. Following the deaths of four of the applicants, allegedly because of the Government's failure to comply with an interim measure to take them to hospital, and the taking into hospital of the fifth applicant, the ECtHR lifted the interim measures.

A further 43 persons in six of the applications, claiming to have been injured and trapped in the basements of three buildings in Cizre at the time of the introduction of their applications, lost their lives shortly afterwards, allegedly when the buildings in which they had taken refuge were bombed by members of the security forces. Relatives of some of those deceased persons expressed their wish to pursue the applications.

The applicants allege, among other things, unlawful killings and failure to take steps to protect the right to life, ill-treatment and unlawful deprivation of liberty on account of some of the applicants' confinement to their homes for extended periods. They rely on Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (right to liberty and security) of the European Convention. Some of the applicants also complain about the arrest and detention in prison of their legal representative and the Government's alleged failure to comply with a number of interim measures under Rule 39 of the Rules of Court, in breach of Article 34 (right to individual application).

Bıdık v. Turkey (no. 45222/15)

The applicant, Dilek Bıdık, is a Turkish national who was born in 1969 and lives in Manisa (Turkey). The case concerns the termination of Ms Bıdık's employment as a head teacher following the entry into force of a law.

In 2004 Ms Bıdık was appointed to the position of head teacher of a public secondary school. She was employed in that capacity in various secondary schools until 12 September 2014, when she was dismissed automatically on the ground that the entry into force of Law no. 6528 had terminated the employment, at the end of the 2013–2014 school year, of all head teachers and deputy head teachers in schools in Turkey who had held such posts for four years.

Relying on Article 6 (right of access to a court) and Article 13 (right to an effective remedy), Ms Bıdık complains that she was denied access to a tribunal to defend her rights in relation to the termination of her employment as head teacher, indicating that she was dismissed in direct application of a law providing that no other official decision was necessary. Thus, she alleges that she was deprived of any possibility of requesting that the termination of her employment be reviewed by a court, including the Constitutional Court.

Relying in particular on Article 14 (prohibition of discrimination), as well as on the Universal Declaration of Human Rights and the European Social Charter, Ms Bıdık alleges that the termination of her duties on account of the direct application of a law had adverse repercussions on her private life and her financial situation, and that it also amounted to discrimination on trade-union grounds.

Ignatov v. Ukraine (no. 40583/15)

The applicant, Oleksandr Ignatov, is a Ukrainian national who was born in 1989 and lives in Nyzhni Sirogozy (Ukraine). The case concerns Mr Ignatov's pre-trial detention, and whether Ukrainian legislation and practice adequately protects human rights in this area.

Mr Ignatov was arrested on 4 June 2013, as a suspect in criminal proceedings about a carjacking. The following day, the Solanyansky District Court placed him in pre-trial detention. The court held that he might abscond, on the grounds that he was suspected of a serious crime, was unemployed, had no money, did not live in the area and was not living at his official registered address. The case was transferred to the Krasnogvardiysk District Court.

Mr Ignatov's pre-trial detention was then extended by the District Court on at least 11 occasions, lasting until his trial in January 2015. He made a number of applications for release, but these were all rejected. Following his trial Mr Ignatov was convicted of robbery and carjacking. He was sentenced to five years' imprisonment, though the court reduced this by half under the Amnesty Act. Four months later, he was granted early release.

Relying on Article 5 § 3 (right to trial within a reasonable time or to release pending trial), Mr Ignatov complains that in their decisions ordering his continued detention, the domestic courts failed to give convincing reasons for holding him in custody, having merely referred to the seriousness of the charges against him. He also relies on Article 5 § 1(c) (right to liberty) to complain that Article 315 of the Code of Criminal Procedure did not require any reasons to be given by the domestic courts, when they made decisions in preliminary hearings about whether to subject a defendant to preventive measures. Furthermore, he complains that no such reasons were given in his case, when the District Court committed him to trial. Finally, Mr Ignatov relies on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court) to complain that on two occasions there had been too much delay before the courts examined his requests for release, it having taken the courts 25 and 19 days respectively to examine his applications.

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.

Rakuzovs v. Latvia (no. 47183/13)
Chernaya v. Ukraine (no. 1661/08)
Kryat v. Ukraine (no. 21533/07)
Georges v. Belgium (no. 28438/14)
Geuens v. Belgium (no. 20867/07)
Stoyanov and Others v. Bulgaria (no. 8949/11)
Ivaneza and Others v. Croatia (no. 73223/14)

Terlevic v. Croatia (no. 33320/15)
Repaczki v. Germany (no. 31357/12)
Basanovic v. Montenegro (no. 9781/10)
Gaj Rašović D.O.O. v. Montenegro (no. 45638/13)
Salaj and Others v. Montenegro (no. 62897/13)
Savicevic v. Montenegro (no. 33657/10)
Sukovic v. Montenegro (no. 60957/12)
Vitorovic v. Montenegro (no. 50782/08)
Vlahovic v. Montenegro (no. 62444/10)
Vratnica v. Montenegro (no. 45470/13)
T.S. v. the Netherlands (no. 11001/15)
Gajewski v. Poland (no. 8951/11)
Krysiak v. Poland (no. 9756/10)
Piotrowski v. Poland (no. 8923/12)
Wygoda v. Poland (no. 6738/12)
Brancoveanu v. Romania (no. 15000/09)
Gheorghiu and S.C. BG. Media SRL v. Romania (no. 46695/13)
Hijnii v. Romania (no. 63474/10)
Iacobescu v. Romania (no. 45605/13)
Nyerlucz v. Romania (no. 47170/10)
Toma v. Romania (no. 1343/14)
Aslikhanov v. Russia (no. 60002/09)
Chumachenko and Others v. Russia (nos. 6586/07, 32506/07, 59603/08, 48750/10, and 54468/10)
Melnikov and Others v. Russia (nos. 40869/06, 2669/07, 21121/07, 26215/07, 38500/07, 49785/07, 923/08, 23213/08, and 58357/08)
Podstrelov v. Russia (no. 77015/11)
Vavilin and Avoyan v. Russia (nos. 16346/08 and 57531/12)
Dimitrijevic v. Serbia (no. 6192/09)
Nikolic v. Serbia (no. 45900/12)
Toholj v. Serbia (no. 7584/13)
Akca v. Turkey (no. 17997/10)
Akçinar and Others v. Turkey (nos. 24849/07, 55588/08, 43665/11, 43697/11, 49957/11, 78502/11, 2429/12, 54152/12, 65466/12, 30581/13, 76909/12, 13250/13)
Bayram and Others v. Turkey (nos. 37221/05, 43222/09, 60112/10, and 17816/11)
Bozbağ and Yildirim v. Turkey (nos. 22110/07 and 47224/08)
Çağil and Others v. Turkey (nos. 45122/12, 76993/12, 78361/12, and 81781/12)
Galic and Atiniz v. Turkey (no. 29241/07)
Peker and Others v. Turkey (no. 75404/10)
Poyraz v. Turkey (no. 1796/10)
Turk and Others v. Turkey (no. 44188/04)
Uye v. Turkey (no. 45461/12)
Yildirim v. Turkey (no. 19452/07)

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.