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 14 June 2016 and 31 judgments and / or decisions on Thursday 16 June 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 14 June 2016

Riahi v. Belgium (application no. 65400/10)

The applicant, Soufiane Riahi, is a Belgian national who was born in 1985 and lives in Brussels.

The case concerns the refusal of the national courts to call the prosecution witness whose statements constituted the decisive evidence on which Mr Riahi's conviction was based.

During the night of 13 to 14 August 2005 D. was attacked in Brussels by four people who robbed him of his mobile telephone and wallet. D. called the police, who arrived promptly at the scene and looked round the area with him in an attempt to find the attackers. D. recognised one of his alleged attackers amongst a group of people, and the police arrested three suspects, including Mr Riahi. The suspects were shown to D. behind a two-way mirror. D. identified the three people, including Mr Riahi, as his attackers, describing the role played by each one during the attack and recognising their physical appearance, dress and voice intonation.

Having been sentenced to 18 months' imprisonment on 13 March 2008 by the Brussels Criminal Court, Mr Riahi was put in prison on 2 February 2010. D., who had joined the proceedings as a civil party seeking damages, did not appear at the hearing. On 27 April 2010 the Brussels Court of Appeal upheld the conviction without hearing evidence from D, considering that Mr Riahi's guilt had been established by the detailed, specific and nuanced statement provided by D. to the police and the confirmation of his statements during a hearing before the investigating judge.

Mr Riahi appealed on points of law, arguing that he had been convicted on the basis of D.'s statement without having been able to examine him or have him examined. The Court of Cassation dismissed his appeal on 30 June 2010.

Relying on Article 6 §§ 1 and 3 (right to a fair trial) of the European Convention on Human Rights, Mr Riahi complains that he was unable to examine the only prosecution witness.

Philippou v. Cyprus (no. 71148/10)

The applicant, Tassos Philippou, is a Cypriot national who was born in 30 August 1949 and lives in Nicosia. The case concerns the automatic loss of his public service retirement benefits following disciplinary proceedings which resulted in his dismissal.

In January 2005 Mr Philippou, a civil servant in the Department of Lands and Surveys for over 30 years, after pleading guilty to a number of serious offences, including dishonesty, obtaining a substantial amount of money by false pretences, forging cheques and abuse of office, was given concurrent sentences ranging from two to five years' imprisonment. In passing sentence the Nicosia Assize Court took into account another eight similar criminal cases pending against Mr Philippou. A total of 223 criminal charges against him were involved.

In subsequent disciplinary proceedings, and following a hearing in June 2005 at which Mr Philippou was legally represented, the Public Service Commission ("the PSC") imposed on him the penalty of dismissal, which automatically entailed the forfeiture of his public service retirement benefits. In its decision the PSC, although taking into account certain mitigating factors such as Mr Philippou's personal situation, as well as the fact that he had undertaken to compensate the State for his criminal acts, imposed dismissal, the severest of the range of penalties available to it, on account of the gravity of the offences committed and the fact that Mr Philippou had been the mastermind behind a well-set-up fraud which had tarnished the image of the public service in general.

After that, Mr Philippou challenged the PSC's decision before the Supreme Court at two levels of jurisdiction, without success.

Following his dismissal, his wife has been receiving a widow's pension on the assumption that her husband had died rather than been dismissed. Mr Philippou has also been receiving a social security pension since August 2012.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Philipou complains about the forfeiture of his retirement benefits following his dismissal from the public service. He also relies on Article 1 of Protocol No. 12 (general prohibition of discrimination), and Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No. 1, alleging that the deprivation of his retirement benefits amounted to discrimination on the basis of his marital status, on the ground that his wife and dependents still benefited from a widow's pension.

Merabishvili v. Georgia (no. 72508/13)

The case concerns the pre-trial detention of a former Prime Minister of Georgia.

The applicant, Ivane Merabishvili, is a Georgian national who was born in 1968 and is currently detained in a prison in Tbilisi pending criminal proceedings against him for a number of offences including vote-buying and misappropriation of property.

Prior to the parliamentary elections of October 2012, which resulted in a change of power, Mr Merabishvili, one of the leaders of the then ruling party, the United National Movement (UNM), exercised, for several months in 2012, the function of Prime Minister of Georgia. After the political coalition Georgian Dream had won the parliamentary election of October 2012 and formed a new government, Mr Merabishvili was elected Secretary General of the UNM, which became the major opposition force in the country.

Mr Merabishvili was arrested on 21 May 2013 following the institution against him of three sets of criminal proceedings for using an allegedly fake passport, embezzlement and abuse of authority. On 22 May 2013 an initial court decision, based on Article 205 of the Code of Criminal Procedure, was taken remanding Mr Merabishvili in custody on the grounds that there was a risk that he might abscond or interfere with the investigation. This decision was confirmed on appeal on 25 May 2013. Subsequently, during a pre-trial session on 25 September 2013, he asked for his pre-trial detention to be replaced by a non-custodial measure of restraint. This request was examined and rejected on the same day, without explanation, in a brief statement given by the trial court judge.

Mr Merabishvili was convicted in February 2014 of the majority of the charges against him, including vote-buying, misappropriation of property and breach of the inviolability of another person's home and sentenced to five years' imprisonment. The charge of abuse of authority was dismissed. Mr Merabishvili's appeal on points of law is currently still pending before the Supreme Court. Four additional sets of criminal proceedings for various offences involving abuse of official authority when he was Minister of the Interior between 2005 and 2012, launched against him between May 2013 and July 2014, are also currently pending against him.

Relying on Article 5 §§ 1, 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily

by a court), Mr Merabishvili alleges that the decisions of 22 and 25 May 2013 ordering his pre-trial detention were based on unclear legal rules – notably in that they did not give a specific time-limit for his detention – and lacked reasonable grounds and that the courts failed to carry out a proper judicial review of his request for release in its decision of 25 September 2013.

Further relying on Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 § 1, he alleges that the initiation of criminal proceedings against him and his arrest were used by the authorities to exclude him from the political life of the country, resulting in the weakening of his party, UNM, and preventing him from standing as a candidate in the presidential election of October 2013. He further alleges that this persecution continued during his pre-trial detention when, on 14 December 2013, he was removed from his cell and taken for a late-night meeting with the Chief Public Prosecutor who threatened him in order to obtain information about the death of the former Prime Minister, Zurab Zhvania, and about secret offshore bank accounts of the former President of Georgia. He further claims that, despite informing the authorities of this incident at the first opportunity at a hearing on his case on 17 December 2013, calling upon them to examine video footage from the prison surveillance cameras, no objective or thorough criminal investigation was ever launched into his allegations. Lastly, he emphasises that the international community has expressed concerns over the initiation of criminal proceedings against the leaders of the opposition party, including himself.

Biržietis v. Lithuania (no. 49304/09)

The case concerns a prohibition on growing a beard in prison.

The applicant, Rimantas Biržietis, is a Lithuanian national who was born in 1953 and lives in the village of Patiltė (Utena Region, Lithuania).

Mr Biržietis served a prison sentence at the Marijampolė Correctional Facility from November 2006 to December 2009. During this time he was prohibited from growing a beard by the internal rules of the facility. Those rules – shown to and signed by Mr Biržietis on the first day of his sentence at the facility – placed an absolute prohibition on prisoners growing a beard, irrespective of its length, tidiness or any other considerations and did not allow for any exceptions.

During his detention, he made two requests to the prison authorities to allow him to grow a beard, submitting that he had undergone radiation treatment for tongue cancer and shaving therefore irritated his skin. Both his requests were, however, rejected after a medical examination did not identify any such health problems.

Mr Biržietis therefore brought judicial proceedings in December 2007 to complain about the prohibition. The courts found in his favour at first instance, but this judgment was subsequently overturned in March 2009 by the Supreme Administrative Court. That court notably found that Mr Biržietis had not proven any health-related, religious or other serious reasons that would prevent him from shaving regularly, and that the prohibition could be justified by the prison authorities' need to swiftly identify prisoners.

Relying on Article 8 (right to respect for private life), Mr Biržietis complains about the prohibition on his growing a beard in prison, alleging that this had caused him feelings of humiliation and distress.

Buczek v. Poland (no. 31667/12)

The applicant, Adam Tadeusz Buczek, is a Polish national who was born in 1988. At the relevant time he was an inmate of Wojkowice Prison. The case concerns the obligation imposed on him to pay procedural costs relating to the lodging of an application in civil proceedings for compensation.

In September 2011 Mr Buczek brought a claim against the State for compensation. He alleged an infringement of his personality rights and his dignity. He complained that a prison officer had failed to transmit to the appropriate court a letter in which he sought compensation from a prison

instructor. The instructor in question had allegedly inflicted ill-treatment on him, such as obliging him to "open a door with a key and badge", a task that was not among those assigned to him, "repeatedly kicking him in the ankles and hitting him on the back saying he was joking" or "eating his meals". Mr Buczek claimed 60,000 Polish zlotys (PLN) in compensation. He also sought an order from the court exempting him from procedural costs.

On 2 December 2011 the district court exempted him from payment of the costs exceeding PLN 500, the total amounting to PLN 3,000. Following an appeal, the district court amended its decision and exempted him from payment of the amount exceeding PLN 150 (approximately 35 euros).

On 6 February 2012 the court requested the applicant to pay within seven days the sum payable for lodging his application, failing which the application would be returned to him. Mr Buczek asked the court to either exempt him from the costs in question or allow him to pay them after the proceedings were concluded. On 21 February 2012 the court sent the application back on the grounds that the corresponding costs had not been paid.

Relying on Article 6 § 1 (right of access to a court), Mr Buczek complains of a violation of his right of access to a court, following the courts' refusal to exempt him from the costs payable on lodging his application in civil proceedings. Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), he complains of ill-treatment inflicted on him by the instructor about whom he had complained.

Koniuszewski v. Poland (no. 619/12)

The applicant, Krzysztof Koniuszewski, is a Polish national who was born in 1976 and lives in Warsaw. He is a journalist for a weekly motoring magazine, *The World of Cars*. The case concerns defamation proceedings brought against him for writing a series of articles about the widespread practice in Poland of the sale of adulterated motor fuel.

Following a report posted on the official website of the Competition and Consumer Rights Office summarising a countrywide survey concerning the quality of motor fuel sold by petrol stations, Mr Koniuszewski wrote a series of articles for his magazine in August 2006 presenting the most drastic cases of fraud and describing the impact of adulterated fuel on vehicles. One of the articles also included a table – entitled "Fuel crooks" – from the report indicating the petrol stations which sold counterfeit fuel.

In December 2006 one of the garage owners cited in the table as selling gasoline of bad quality brought a private prosecution against Mr Koniuszewski for defamation, submitting that the articles had damaged his reputation and had had an impact on his business. In a judgment of November 2009 the District Court found Mr Koniuszewski guilty of defamation and ordered him to pay a fine of 2,000 Polish zlotys (PLN, approximately 500 euros (EUR)), to pay a charity PLN 500 (approx. EUR 125) and to reimburse the plaintiff's legal costs (approx. EUR 690). The first-instance court, although acknowledging that the problem of adulterated fuel was a serious one which had given rise to public discussion and measures taken by the State, considered that the fuel sold by the plaintiff had only breached the applicable standards minimally and that it had not been proven that it could have caused damage to car engines. The court therefore found it inappropriate that Mr Koniuszewski had included the name of the plaintiff's company in the table entitled "Fuel crooks", pointing out that more precise language should have been used. This judgment was essentially upheld in April 2011.

In the meantime, the civil courts had also found against Mr Koniuszewski and his magazine in a case for the protection of the garage owner's personality rights and ordered the defendants to pay PLN 10,000 (approx. EUR 2,500) in damages.

Relying on Article 10 (freedom of expression), Mr Koniuszewski complains of a breach of his freedom to warn people about problems with the quality of fuel, submitting that he had simply circulated information which was already in the public domain.

Pugžlys v. Poland (no. 446/10)

The applicant, Juozas Pugžlys, is a Lithuanian national who was born in 1966 and is serving a 12-year prison sentence in Suwałki Prison (Poland) for kidnapping and leading an organised criminal gang.

The case essentially concerns his complaint about the particularly stringent and humiliating measures to which he was subjected in the context of the criminal proceedings brought against him.

Mr Pugžlys was convicted in two sets of criminal proceedings in April 2005 and January 2010, respectively. In the first set of proceedings (for armed robbery), he was sentenced to four and a half years' imprisonment; and in the second set (for kidnapping for ransom and leading an organised criminal gang) he was sentenced to 12 years' imprisonment. Both judgments were upheld on appeal. Throughout his trial in the second set of proceedings Mr Pugžlys alleges that he repeatedly requested, without success, that the presiding judge order his release from the metal cage in the courtroom as well as the removal of his handcuffs.

Arrested in Amsterdam in April 2003 and subsequently extradited to Poland in the second set of criminal proceedings, Mr Pugžlys was classified as a dangerous detainee and placed under a high-security regime from October 2003 at the request of the remand centre where he was being held on the grounds that he had been charged with a number of violent offences and represented a security risk. From then on, the prison authorities reviewed and extended the application of the regime to him every three months, repeating the grounds in the initial decision. The measure was lifted in July 2012 when it was decided that he no longer posed a threat to security.

Relying on Article 3 (prohibition of torture and of inhuman or degrading treatment), Article 6 (right to a fair trial) and Article 13 (right to an effective remedy), he complains about the special high-security measures to which he was subjected during his classification as a dangerous detainee for nine years – namely his segregation from the prison community, his shackling whenever he was taken out of his cell and the routine daily strip searches – and the fact that he could not effectively appeal against the decisions extending those measures. Also relying on Article 3, he complains of further stringent and humiliating measures during hearings on his case when he was shackled and placed in a metal cage. Lastly, he makes a number of other complaints under Article 6 § 3(c) (right to defence through legal assistance) and Article 8 (right to respect for private and family life) about his court-appointed lawyer not speaking Lithuanian and restricted contact with his family.

Revision

Petroiu and Others v. Romania (no. 30105/05)

The applicants, Florica-Maria Petroiu, Constantin Petroiu, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea-Constantin Sterian, Maria-Alexandra Sterian, Doru Dănuţ Dumitru Popescu, Ena Rizescu (Georgescu), Mihaela-Iuliana Vintilescu, Ana Maria Apetrei and Paraschiva Vintilescu are 12 Romanian nationals who lodged an application with the Court on 9 October 2009. They complained that the sale of their property by the State and the lack of compensation had infringed their right protected by Article 1 of Protocol No. 1 (protection of property). In a judgment delivered on 24 November 2009, the Court declared the application admissible in respect of Florica-Maria Petroiu, Constantin Petroiu, Florin-Constantin Stăncescu, Maria Peicev, Lidia Peicev, Mircea Constantin Sterian, Maria-Alexandra Sterian and Doru Dănuţ Dumitru Popescu, held that there had been a violation of Article 1 of Protocol No. 1 to the Convention on account of lack of compensation for deprivation of property and reserved the question of just satisfaction. In a judgment of 3 June 2014 the Court decided to award the applicants 142,052 euros (EUR), jointly, for pecuniary damage, 1,500 EUR each for non-pecuniary damage and EUR 270, jointly, for costs and expenses.

On 11 November 2014 the Government sought revision of the two above-cited judgments under Rule 80 of the Rules of Court on grounds of discovery of a new fact which might have had a decisive

influence on the outcome of the case and which had been unknown to the Court when the judgment was delivered and could not reasonably have been known to the Government.

Stepanian v. Romania (no. 60103/11)

The applicants, Angela Stepanian and Dorel Stepanian, are Romanian nationals who were born in 1942 and 1990 respectively and live in Bucharest. They are the mother and son of S.N. The case concerns the ill-treatment suffered by S.N. while he was confined in a psychiatric hospital.

In 1994 S.N., who was born in 1968, was diagnosed with paranoid schizophrenia. He was following a course of treatment and was regularly admitted to Gura Ocniței Psychiatric Hospital. On 14 February 2010, in the evening, S.N. refused the prescribed treatment. The hospital director decided that the treatment had to be adminstered to him. According to the applicants, three hospital employees pinned him against a handrail and punched him in the head numerous times. A medical assistant injected him with the treatment and then had him locked up in isolation for 12 hours with no supervision. On 17 February 2010 S.N. was transferred urgently, on grounds of his very serious state of health, to Târgovişte Hospital. On 19 February 2010 his lungs were surgically drained and he underwent a pleurotomy of the left lung during which 2,500 millilitres of coagulated blood were removed. On 15 March 2010 a forensic doctor examined S.N. at the police's request. It was recorded that on 14 February 2010 he had sustained life-threatening injuries. An administrative inquiry was opened at the hospital following the incident of 14 February 2010 and a criminal investigation opened by the Gura Ocniței police of their own motion against the hospital employees.

On 1 April 2010 Ms Stepanian lodged a criminal complaint against the three hospital employees involved in the incident, for attempted manslaughter and improper conduct. On 5 July 2010 the public prosecutor's office gave a decision discontinuing the proceedings. Basing its decision on the statements gathered and the conclusions of the forensic medical report, the public prosecutor's office considered that the use of force had been necessary to immobilise S.N. and administer the prescribed medical treatment and had not been intended to kill him. Ms Stepanian challenged that decision. The public prosecutor's office dismissed her complaint, finding that the blows had not been inflicted to the vital organs and had not been dealt with the intention of killing. The decision discontinuing the proceedings was upheld by a final judgment.

S.N. was admitted to hospital suffering from pneumonia on 11 March 2011 and died there of a heart attack two days later.

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicants allege that S.N. suffered treatment tantamount to torture at the hands of State employees during his confinement in the psychiatric hospital. They also consider that the investigation carried out by the authorities was ineffective.

Birulev and Shishkin v. Russia (nos. 35919/05 and 3346/06)

The applicants, Aleksey Birulev and Mikhail Shishkin, are Russian nationals who were born in 1978 and 1976 respectively and live in Yelizovo in the Kamchatka Region and Vladimir (both in Russia). The case essentially concerns their allegations of unrecorded detention at police stations and of their subsequent placement in detention as suspects.

Both men were convicted in criminal proceedings brought against them: Mr Birulev was convicted of car theft in May 2006 and sentenced to ten years' imprisonment and Mr Shishkin was found guilty of rape in December 2005 and given a custodial sentence. Both men submit that they had been detained as suspects in those proceedings long before their arrests were officially formalised. Mr Birulev submits that he had been arrested as a suspect by the traffic police on 20 June 2005 at approximately 3.30 a.m. and taken to the local police station but that a record of his arrest was only drawn up at 6 p.m.. Mr Shishkin alleges that he had been taken to the police station against his will at around 12 noon on 11 April 2005 on suspicion of the rape charges without an arrest record being

drawn up until 11.35 p.m.. Both men were then remanded in custody two days later (on 22 June 2005 and 13 April 2005, respectively), the national courts taking into account that they were suspected of committing serious crimes, were unemployed and had criminal records. It was noted in particular as concerned Mr Birulev that he had been apprehended while driving a stolen car only three days after his release on parole following a conviction for a similar offence. As concerned Mr Shishkin, the court paid particular attention to the fact that he had been picked out by the victim in an identification parade. Mr Shishkin subsequently appealed against the detention order of 13 April 2005, complaining that he had not been brought before a judge within the statutory time-limit, namely 48 hours after his arrest. Nearly a month later, on 16 May 2005, the detention order of 13 April 2005 was however upheld as having been based on sufficient grounds.

Relying on Article 5 § 1 (right to liberty and security), both applicants complain about their arrests and subsequent placement in detention as suspects in the absence of "exceptional circumstances" referred to in Article 100 of the Russian Code of Criminal Procedure. Mr Shishkin also alleges in particular that the court order authorising his ensuing detention had only been issued on the evening of 13 April 2005 – beyond the time-limit set out in national law. Further relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), Mr Shishkin also makes two further complaints about the conditions of his detention between April 2005 and March 2006 on account of overcrowding and poor hygiene and about the excessive length of the judicial review of his detention order of 13 April 2005.

Urazov v. Russia (no. 42147/05)

The case concerns a number of complaints brought by a former police officer about the humiliating and degrading conditions of his pre-trial detention and trial on fraud charges.

The applicant, Sergey Urazov, is a Russian national who was born in 1969 and lives in Astrakhan (Russia).

Mr Urazov was arrested in June 2004 on suspicion of attempted fraud and placed in detention pending investigation on the grounds of the seriousness of the charges brought against him as well as the fact that, as an acting police officer, he could obstruct the investigation by putting pressure on witnesses. His detention was extended for essentially the same reasons until June 2006, when he was convicted of attempted large-scale fraud in abuse of office and sentenced to six and a half years' imprisonment and a fine. This judgment was upheld on appeal in January 2007. He obtained conditional early release in January 2009.

During his detention he had numerous health problems, including acute toothache, hypertension and chronic gastritis, and complained to various authorities, notably the head of the remand prison, the prosecuting authorities, the Ombudsman and a judge of a district court, about the inadequate medical care he was receiving, without success.

Mr Urazov makes a number of allegations under Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), notably about: poor conditions of detention in the remand prison on account of overcrowding and lack of hygiene; appalling conditions of transport between the remand prison and the courthouse for the hearings on his case; inadequate medical care during his detention on remand (Mr Urazov complains in particular about the Government's refusal to disclose a copy of his remand prison medical file); and his confinement in a metal cage before the trial court, also alleging that this breached his right under Article 6 §§ 1, 2, and 3 (c) (right to a fair trial / presumption of innocence / right to legal assistance of own choosing) to have confidential communication with his lawyer during the trial. He further complains under Article 5 §§ 1, 3 and 4 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court) that his

detention was unlawful and unjustified and that the courts failed to examine his appeals against decisions of April 2005 and April 2006 rejecting his requests for release.

Aldeguer Tomás v. Spain (no. 35214/09)

The applicant, Antonio Aldeguer Tomás, is a Spanish national who was born in 1955 and lives in Pozuelo de Alarcón (Madrid), Spain. The case concerns his complaint of having been discriminated against on the ground of his sexual orientation in that he was denied a survivor's pension following the death of his partner, with whom he had lived in a *de facto* marital relationship.

Mr Aldeguer Tomás' partner, with whom he had lived together in a homosexual relationship since 1990, died in 2002. In 2003 Mr Aldeguer Tomás claimed social security allowances as a surviving spouse. The National Institute of Social Security ("INSS") refused to grant him a survivor's pension on the grounds that he had not been married to the deceased person. Following the entry into force of the law legalising same-sex marriage in Spain in July 2005, Mr Aldeguer Tomás filed an administrative complaint against the INSS' 2003 decision. The INSS dismissed his complaint, noting that under the legislation in force he could not gain the status of a widower. Mr Aldeguer Tomás challenged that decision before the courts, and in November 2005 the Social Tribunal found for him, holding that the facts of the case had to be assessed in the light of the new law on same-sex marriage. On appeal by the INSS and the Treasury General of Social Security, the Madrid High Court of Justice reversed the first-instance judgment in September 2006, finding that the law on same-sex marriage had not been intended by the legislature to cover same-sex partnerships which had been ended by the death of one partner before the law entered into force; the law therefore had no retroactive effect in the circumstances of Mr Aldeguer Tomás' case. Both his appeal on points of law and his *amparo* appeal were declared inadmissible, by the Supreme Court and the Constitutional Court respectively, the final decision being taken in February 2009.

Relying on Article 14 (prohibition of discrimination) read in conjunction with Article 8 (right to respect for private and family life) and, in substance, in conjunction with Article 1 of Protocol No. 1 (protection of property), Mr Aldeguer Tomás complains that he was discriminated against on the ground of his sexual orientation in that he was denied a survivor's pension following the death of his partner.

Jiménez Losantos v. Spain (no. 53421/10)

The applicant, Federico Jorge Jiménez Losantos, is a Spanish national who was born in 1951 and lives in Madrid.

The case concerns the criminal conviction of Mr Jiménez Losantos, a journalist, for making comments about the mayor of Madrid which were considered to be insulting.

On 27 June 2006 the R.G., the mayor of Madrid at the time, lodged a complaint against Mr Jiménez Losantos, considering that he had insulted him during the radio programme *La mañana*, run by Mr Jiménez Losantos, by making a number of criticisms of statements made by the mayor about the Madrid terrorist attacks of 11 March 2004 ("11-M"). Subsequently the mayor extended his complaint to other comments made by Mr Jiménez Losantos.

On 11 June 2008 Mr Jiménez Losantos was convicted by Madrid judge no. 6, who found that the journalist's comments had clearly exceeded the limits on freedom of expression and amounted to the offence of proffering and broadcasting serious insults. The judge observed that the truth of Mr Jiménez Losantos's allegations had not been proved; that the latter had attributed to the mayor things that he had not said; that the comments made were clearly insulting or hurtful, and had been intended to tarnish the mayor's image and dignity gratuitously and purposelessly with a view to publicly discrediting him. Mr Jiménez Losantos was ordered to pay a fine of 100 euros (EUR) per day for 12 months, and given a default custodial sentence (the terms of which were the following: non-payment of the fine for two days, namely EUR 200 EUR, resulted in deprivation of liberty for one

day). The judgment was upheld by the Madrid *Audencia provincial* on 14 May 2009, and the Constitutional Court declared an appeal by Mr Jiménez Losantos inadmissible on 29 March 2010.

Relying on Article 10 (freedom of expression), Mr Jiménez Losantos complains that he was convicted on account of his comments and alleges that the domestic courts' interpretation of the facts was biased.

Güvener v. Turkey (no. 61808/08)

The applicants, Behçet Güvener, Bayram Güvener, Orhan Güvener, Mehmet Güri Güvener and Sevda Güvener, are Turkish nationals who were born in 1969, 1974, 1976, 1936 and 1947 respectively and live in Mersin (Turkey).

The case concerns the suicide of a serviceman, Cevdet Güvener, while carrying out his compulsory military service. He was the brother or son of the applicants.

On 23 February 2007, while on sentry duty between 9 a.m. and 1 p.m., Cevdet Güvener and his two fellow servicemen fell asleep. They were woken by the battalion commander who was carrying out an inspection. The commander noted down the three men's names and asked them to call their unit commander to the premises before leaving their sentry post. According to the witness evidence and documents filed in the case, Cevdet Güvener called his unit commander by radio transmission, then left a message saying "farewell comrades" before shooting himself in the head with his gun. He died of his injuries the same day.

An investigation was opened and statements taken from witnesses. The military prosecutor discontinued the proceedings, concluding that Cevdet Güvener had committed suicide and that no one bore criminal responsibility. On 17 September 2007 the Güvener family appealed against that decision on the grounds that the investigation had not addressed their allegations of homicide and that the witness statements had not been convincing. On 23 July 2008 the military court dismissed their appeal and, on 15 September 2008, the Mehmetçik Foundation, a public solidarity foundation set up to support the families of soldiers who die or are wounded in service, paid Cevdet Güvener's parents a sum amounting to approximately 11,650 euros (EUR) at the time. During his military service Cevdet Güvener had asked to be examined by a psychiatrist; he had been found to be experiencing "problems adjusting".

Cevdet Güvener's family allege that he was killed by one of his immediate superiors after being caught sleeping while on sentry duty.

Relying on Article 2 (right to life) and 13 (right to an effective remedy), Cevdet Güvener's family allege that the investigation carried out into their relative's death was ineffective. Under Article 6 (fair hearing), they also complain that the public prosecutor and the court examining the case were neither independent nor impartial.

Revision

Kavaklıoğlu and Others v. Turkey (no. 15397/02)

The applicants are 63 Turkish nationals. The case concerned the operation launched on 26 September 1999 to quell an uprising in Ulucanlar Central Prison in Ankara. The applicants are nine relatives of eight inmates who died and the 65 inmates who were injured during the operation.

In a judgment of 6 October 2015 the Court held that on account of the circumstances surrounding the operation in question there had been both a substantive and a procedural violation of Article 2 of the Convention regarding, among others, the late Mr Abuzer Çat and Mr Behsat Örs. The Court also decided to award 50,000 euros (EUR), jointly, to the applicants Mr Hüseyin Çat and Mr Hasan Çat – relatives of Mr Abuzer Çat – and EUR 5 000 to Mr Behsat Örs for non-pecuniary damage.

On 5 January 2016 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention.

For his part, on 8 January 2016, the applicants' lawyer in the case informed the Registry that Mr Behsat Örs had died on 27 January 2014, leaving his wife and a daughter. He requested revision of the judgment under Rule 80 of the Rules of Court and an amendment of the operative provisions in order to name the two heirs of the deceased applicant as beneficiaries of the sum awarded in just satisfaction. The Court examined the parties' requests and decided to allow the Government three weeks in which to submit any observations regarding Mr Bayraktar's request. It allowed Mr Bayraktar the same time regarding the Government's request, considering that, in respect of the above-mentioned part and notwithstanding the reference made to Article 43 of the Convention, it should be reclassified as a request for revision, without it being necessary to seek a ruling from the Grand Chamber.

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.

Haraszthy and Others v. Hungary (no. 71256/11)
Wasiak v. Poland (no. 7258/12)
Barbu v. Romania (no. 1159/08)
Dragomir v. Romania (no. 43045/08)
Kuzmin and Others v. Russia (nos. 12100/05, 5744/07, and 28425/07)

Thursday 16 June 2016

R.D. v. France (no. 34648/14)

The applicant, Ms R.D., is a Guinean national who was born in 1993 and lives in Neuilly-sur-Seine. The case concerns the procedure for her deportation to Guinea. She is married to a Christian and has endured all sorts of violent reprisals on the part of her Muslim father and brothers.

Ms R.D., who is from Conakry (Guinea), states that her family are Muslim and her father an imam. In 2010 she met X, who is a Christian, and they kept their relationship secret. In March 2012 X asked for her hand in marriage. R.D.'s father categorically refused to allow his daughter to marry a non-Muslim. R.D.'s father and brothers threatened to kill her if she continued the relationship. Ms R.D. ran away from home and took refuge at X's house. They married in November 2012, when she was three months' pregnant. In December 2012 her father, brothers and half-brothers burst into the house she shared with her husband, X. They beat her up and brought her back to her father's house by force. The police, who had been alerted by the neighbours, went to the house and found her tied to a tree. She was released and taken to hospital where she learnt that she had lost her child. She was kept in hospital for two months. She then took refuge with an uncle in a town 800 km from Conakry. Meanwhile, her father, an influential imam, had her husband arrested. Her in-laws' house was wrecked. When threatened with being discovered at her uncle's house, Ms R.D. fled. She left Guinea for France.

After arriving in France in February 2014 she sought help from associations in Reims in obtaining an address for administrative purposes so that she could lodge an asylum application. After being alerted by compatriots and fearing that her father would find her in France, she attempted to escape and was arrested at the gare du Nord in Paris. On 28 April 2014 the authorities served her with an order for her immediate removal to Guinea and an administrative detention order. She unsuccessfully sought judicial review in the Paris Administrative Court. On 30 April 2014 she lodged

an asylum application which was processed under the fast-track procedure and rejected. An appeal by Ms R.D. is still pending. On 13 May 2014 the Court decided to indicate to the Government, under Rule 39 of the Rules of Court (interim measures), not to deport R.D. to Guinea for the duration of the proceedings before it.

Ms R.D. alleges that enforcement of her deportation to Guinea would expose her to a risk of treatment contrary to Article 3 (prohibition of torture and inhuman or degrading treatment). Relying on Article 13 (right to an effective remedy) taken in conjunction with Article 3, she complains that, owing to the examination of her asylum application under the fast-track procedure, she did not have an effective remedy under French law by which to assert her complaint under Article 3.

Versini-Campinchi and Crasnianski v. France (no. 49176/11)

The applicants, Jean-Pierre Versini-Campinchi and Tania Crasnianski, are French nationals who were born in 1939 and 1971 respectively and live in Paris (France). The case concerns the interception, transcription and use in disciplinary proceedings against the applicants, who are lawyers, of transcripts of conversations they had had with one of their clients.

Following the death of a number of people suspected of having been contaminated after eating meat from cattle infected with bovine spongiform encephalopathy, a judicial investigation was opened in December 2000. The company Districoupe – a branch of the Buffalo Grill chain of restaurants supplying the meat – was suspected of breaching the embargo on the importation of beef meat from the United Kingdom, a county affected by a major outbreak of the disease. Mr Versini-Campinchi, a lawyer, was instructed to defend the interests of Mr Picart, managing director of Districoupe and chairman of Buffalo Grill's supervisory board. Ms Crasnianski, also a lawyer, assisted him on the case.

On instructions issued by the investigating judge on 2 December 2002, Mr Picart's telephone line was tapped. Telephone conversations between Mr Picart and the applicants were intercepted and transcribed, including a conversation with Ms Crasnianski on 17 December 2002 and one with Mr Versini-Campinchi on 14 January 2003. Mr Picart was placed in police custody on 17 December 2002, and charged on 18 December 2002 along with three other people.

Mr Picart applied to the European Court of Human Rights on 31 March 2004 in the context of the criminal proceedings subsequently brought against him. His application was declared inadmissible by a decision of 18 March 2008.

On 12 May 2003, having been requested to rule on the lawfulness of the phone-tapping records in question, the investigation chamber of the Paris Court of Appeal excluded the transcript of a conversation of 24 January 2003 between Mr Picart and Mr Versini-Campinchi on the grounds that it concerned the exercise of the rights of the defendant and was not capable of supporting a presumption that the lawyer had participated in an offence. It refused to exclude the other transcripts, however, considering that the contents were capable of disclosing a breach of professional confidence and contempt of court by Mr Versini-Campinchi and Ms Crasnianski. In a judgment of 1 October 2003 the Court of Cassation dismissed an appeal on points of law lodged by Mr Picart.

Meanwhile, on 27 February 2003, the public prosecutor at the Paris Court of Appeal had sent a letter to the Chairman of the Paris Bar asking him to initiate disciplinary proceedings against the applicants. On 21 March 2003 the Chairman had instituted disciplinary proceedings against Ms Crasnianski for breach of professional confidentiality. However he had discontinued the proceedings against Mr Versini-Campinchi regarding the contents of the conversation of 14 January 2003. Before the Bar Council the applicants sought to have the transcript of the phone-tapping record of 17 December 2002 removed from the evidence in the case on the grounds that it was illegal. On 16 December 2003 the Bar Council, sitting as a disciplinary board, rejected their request. On the merits, the Bar Council found that Ms Crasnianski's comments recorded on 17 December 2002 infringed

Article 63-4 of the Code of Criminal Procedure and breached the obligation of professional confidentiality incumbent on her as a lawyer. Observing that she had acted on the instructions of Mr Versini-Campinchi, the Council found that they had acted jointly. The Bar Council imposed an order on Mr Versini-Campinchi temporarily banning him from exercising the profession of lawyer for two years, suspended for 21 months, and banned Ms Crasnianski from exercising the profession for one year, suspended. On 12 May 2004 the Paris Court of Appeal dismissed an appeal by the applicants against the decision of 16 December 2003. On 10 October 2008 the Court of Cassation quashed and set aside the judgment of the Paris Court of Appeal of 12 May 2004 and remitted the case to the Court of Appeal, which dismissed the applicants' appeal in a judgment of 24 September 2009. An appeal by the applicants to the Court of Cassation was declared inadmissible.

Relying on Article 8 (right to respect for private and family life), Mr Versini-Campinchi and Ms Crasnianski complain of the interception and transcription of their conversations with their client and the use of the corresponding phone-tapping records in the disciplinary proceedings brought against them.

Sihler-Jauch and Jauch v. Germany (nos. 68273/10 and 34194/11)

The applicants, Dorothea Sihler-Jauch and Günther Jauch, are German nationals who were born in 1958 and 1956 respectively and live in Potsdam (Germany). The case concerns the publication of an article in the German weekly magazine *Bunte* about their wedding and their unsuccessful attempts before the German courts to obtain damages.

Mr Jauch is a well-known journalist, producer and TV presenter. In July 2006, the applicants married. The ceremony and reception took place in a church and an ancient palace in Potsdam, both of them well-known tourist attractions. The wedding was attended by 180 guests, including the mayor of Berlin. Although the applicants' lawyer had informed the press beforehand that the couple did not wish for any reports about details of the wedding to be published, *Bunte* published an article after the wedding which was illustrated by several photographs, including one photograph of the bride taken shortly before the ceremony, and gave details such as the nature of the catering and quotes from the speeches.

Ms Sihler-Jauch obtained an injunction, issued by the Berlin Regional Court in August 2006, against any further publication of the photograph of her on the wedding day. She also brought proceedings against the magazine, claiming, in particular, 250,000 euros (EUR) as a notional licence fee for the report and EUR 75,000 in damages. In January 2008 the Hamburg Regional Court awarded her EUR 25,000 in damages, finding that the article had violated her personality rights, but rejected the claim for the licence fee. In October 2008 the Hamburg Court of Appeal set the judgment aside and dismissed the action, holding in particular that, owing to the influence of Mr Jauch and his role as a presenter in TV shows on political issues, the public had a legitimate interest in the wedding which could not be outweighed by the applicants' wish for privacy. In May 2010 the Federal Constitutional Court declined to admit Ms Sihler-Jauch's constitutional complaint.

In parallel proceedings, Mr Jauch also made a claim for damages, which was rejected by the courts.

Relying on Article 8 (right to respect for private and family life), the applicants complain that their privacy was insufficiently protected by the domestic courts. They further rely on Article 1 of Protocol No. 1 (protection of property), complaining that they were not paid a notional licence fee for the report of their wedding.

Fourkiotis v. Greece (no. 74758/11)

The applicant, Sotiris Fourkiotis, is a Greek national who was born in 1970 and lives in Piraeus.

The case concerns the difficulty, followed by the impossibility, for a father of two children, who was judicially separated from the mother, to have contact with his children despite a court decision granting him access rights.

In July 2001 Mr Fourkiotis married Ms I.P. They had twins who were born in December 2006. However, their relationship deteriorated. Mr Fourkiotis alleges that this was because of his wife's membership of a religious sect and the close relationship she had developed with one of the leaders of the sect.

On 25 January 2010 I.P. applied to the courts, among other things, for custody of the children, an order that Mr Fourkiotis leave the marital home and maintenance payments. In a decision of 9 June 2010 the court ordered Mr Fourkiotis to leave the marital home and to pay I.P. and the children maintenance. It also determined a schedule of access rights in respect of the children. On 11 October 2010 I.P. applied to the courts for an order prohibiting contact between Mr Fourkiotis and his children. Mr Fourkiotis applied to the same court seeking custody of the children and citing, among other things, I.P.s conduct regarding his access rights. In a decision of 14 February 2011 the court made an interim ruling awarding custody of the children to I.P. and access to Mr Fourkiotis. The court found that Mr Fourkiotis's allegations that I.P. had a disturbed personality were unfounded. Mr Fourkiotis pointed out that I.P. never complied with the court's decision.

In March 2011 Mr Fourkiotis contacted the Athens prosecutor responsible for cases involving minors asking him to take all necessary measures to protect the children's interests and his relationship with them. The prosecutor ordered a social inquiry. On 7 September 2011 Mr Fourkiotis sent a letter to the public prosecutor at the Court of Cassation complaining of lack of action on the part of the prosecutor. He alleges that the prosecutor took no action on his letter and states that he has not seen his children again since 30 June 2011. He accuses their mother of turning them against him.

Relying on Article 8 (right to respect for private and family life), 6 § 1 (right to a fair hearing) and Article 8 taken in conjunction with Article 13 (right to an effective remedy), Mr Fourkiotis complains of the State's failure to ensure the effective exercise of his access rights, of his inability to have the decision of the court of first instance scheduling access rights enforced and of the lack of an effective remedy to complain of the insufficient protection of his right.

Igor Tarasov v. Ukraine (no. 44396/05)

The applicant, Igor Andreyevich Tarasov, is a Ukrainian national who was born in 1957 and lives in Sevastopol (Ukraine). The case concerns administrative and criminal proceedings brought against him following an altercation in a bar.

In the early hours of the morning on 26 January 200 Mr Tarasov was involved in a fight in a local bar. Bar staff were injured and damage was caused to property in the bar. The police arrived and arrested Mr Tarasov who was found guilty two days later in administrative proceedings of minor disorderly acts (namely, using obscene language, grabbing and swinging a wooden chair leg and threatening physical violence) and sentenced to five days' administrative detention. Shortly afterwards, criminal proceedings were also brought against him for causing injuries to the bar staff and damage to property. He was convicted in October 2003 of two offences, namely intentional infliction of medium-severity bodily injuries and disorderly acts with aggravating circumstances, and sentenced to three years' imprisonment. The first-instance court dismissed Mr Tarasov's argument that he had already been convicted of an administrative offence for the same incident on the ground that the first case dealt with a different type of legal responsibility. His conviction was subsequently upheld on appeal and his appeal on points of law was dismissed by the Supreme Court in January 2005.

Relying in particular on Article 4 of Protocol No. 7 (right not to be tried or punished twice), he complains about being tried and punished twice for the same offence.

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.

Ahad Mammadli v. Azerbaijan (nos. 69456/11 and 48271/13)
Gaya Aliyev and Others v. Azerbaijan (nos. 29781/11, 29808/11, 30372/11, 30473/11, 30478/11 and 30487/11)
Soltanov and Others v. Azerbaijan (nos. 30362/11, 30581/11, 30728/11, 30799/11 and 66684/12)
M.R. and Others v. Finland (no. 13630/16)
A.I. v. France (no. 45063/15)
Lasos v. Germany (no. 10885/15)
Marek v. Germany (no. 64337/12)
Halmai and Varadi v. Hungary (no. 71483/11)
Laszlo v. Hungary (no. 69924/12)
Vidakovic v. Montenegro (no. 27524/06)
M.M.R. v. the Netherlands (no. 64047/10)
Smolik v. Poland (no. 24144/14)
Association 'ACCEPT' and Others v. Romania (no. 48301/08)
Mucea v. Romania (no. 24591/07)
SC Red Credit SRL v. Romania (no. 45879/09)
Stătescu and Others v. Romania (nos. 56574/10, 6889/14, 30880/14, 56284/14 and 12696/15)
A.T. v. Russia (no. 25790/15)
Chiyanova v. Russia (no. 25085/05)
Manyutina and Others v. Russia (no. 26410/13)
Prigarin v. Russia (no. 29998/04)
M.L.R. v. Spain (no. 22353/14)
Kocevski v. "The former Yugoslav Republic of Macedonia" (no. 36309/10)
Kaya v. Turkey (no. 67385/09)
Yildirim v. Turkey (no. 17184/03)
Yilmaz v. Turkey (no. 7755/10)
Kuzmina v. Ukraine (no. 11984/06)

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)
Inci Ertekin (tel: + 33 3 90 21 55 30)