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 21 judgments on Tuesday 17 October 2017 and 77 judgments and / or decisions on Thursday 19 October 2017.

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

Tuesday 17 October 2017

Braga v. the Republic of Moldova and Russia (application no. 76957/01)
Draci v. the Republic of Moldova and Russia (no. 5349/02)

Both cases concern allegations of unlawful arrests and inhuman conditions of detention in the self-proclaimed "Moldavian Republic of Transdniestria (the "MRT").

The applicant in the first case, Andrian Braga, is a Moldovan national who was born in 1971 and lives in Râbniţa (the "MRT"). He was arrested in the "MRT" on 28 July 1999 and charged with fraud and incitement to bribery. His detention was ordered on the basis of a decision by an "MRT" prosecutor and an "MRT" court subsequently convicted him as charged and sentenced him to five years' imprisonment. He was released on 22 January 2002 following an amnesty. He was detained for most of that time in "MRT" prisons, except for a period between 25 October and 21 November 2001 when he was transferred to a prison hospital in Moldova. During this period, Mr Braga's lawyer informed the Moldovan prosecuting authorities that Mr Braga was being held in the prison hospital and requested his immediate release, in view of his conviction by the unlawful courts of the "MRT". Mr Braga also saw his lawyer and signed an authority form to bring an application before the European Court of Human Rights (ECtHR). However, the lawyer had no further contact with Mr Braga once he was transferred back to an "MRT" prison on 21 November 2001, despite sending a request to the "MRT" Ministry of Justice.

The applicant in the second case, Alexandru Draci, is a Ukrainian national who was born in 1956 and lives in Toronto (Canada). The director of a company based in Ukraine, he was questioned in 1996 and 1997 by the Ukrainian authorities about his refusal to comply with a contract he had entered into with a collective farm in the "MRT" to send some diesel fuel. During his second interview, he was allegedly taken against his will to the "MRT" and accused by the authorities there of fraud. An "MRT" court subsequently convicted him in 1999 and sentenced him to ten years' imprisonment. He was released in 2002 following an amnesty. In the meantime, at the request of Mr Draci's lawyer the Moldovan authorities had initiated a criminal investigation into his alleged abduction by the "MRT" authorities, and cooperated with the Ukrainian authorities.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, both applicants complain about the inhuman conditions of their detention, alleging in particular that they were detained in cells which they had to share with other detainees who had tuberculosis and which were infested with parasitic insects. Mr Draci further alleges in particular that he had contracted a skin disease – streptodermia – for which he received no medical care and that, for the first two years of his detention, he had been held in solitary confinement in a concrete box with no windows, ventilation or toilet.

The applicants also complain that their detention could not be considered "lawful" under Article 5 § 1 (right to liberty and security) because it had been ordered by a prosecutor and court of the "MRT", an unrecognised state.

Lastly, Mr Braga alleges under Article 34 (right to individual petition) that, by transferring him back on 21 November 2001 to an "MRT" prison where all his correspondence was censored, the Moldovan authorities had been responsible for him being prevented from properly communicating with his lawyer about his application before the ECtHR.

Navalnyye v. Russia (no. 101/15)

The applicants, Aleksey Navalnyy and Oleg Navalnyy, are Russian nationals who were born in 1976 and 1983 respectively. Aleksey Navalnyy is an opposition leader and popular blogger. His brother Oleg Navalnyy, who is an entrepreneur, is currently serving a sentence in a correctional colony in the Oryol Region. The case concerns their complaint that their criminal conviction for money laundering and fraud was based on an unforeseeable application of criminal law and that the proceedings were arbitrary and unfair.

In 2008, two companies, the Russian subsidiary of the French company Yves Rocher (a limited liability company, Yves Rocher Vostok) and the limited liability company Multidisciplinary Processing ("MPK"), which had both been clients of the State enterprise Russian Post, entered into agreements with the company Chief Subscription Agency ("GPA"). GPA had been set up as a Russian limited liability company by another company, incorporated in Cyprus, which the applicants and their parents had acquired in 2007. Oleg Navalnyy, who was also working as a manager for Russian Post, played an active role in the functioning of GPA. Under the agreements, GPA undertook to provide freight forwarding services to Yves Rocher Vostok and logistical services, such as printing and distribution of telephone bills, to MPK. Subsequently GPA subcontracted the services to a number of other companies. GPA and its contractors provided these services to Yves Rocher Vostok until the end of 2012 and to MPK until March 2013.

During the same period, Aleksey Navalnyy ran an increasingly public anti-corruption campaign targeting high-ranking public officials, and he organised a number of political rallies, including one at Bolotnaya Square in Moscow in May 2012. The aim of that rally was to protest against "abuses and falsifications" in the presidential elections held earlier in 2012. He also investigated the off-duty activities of the chief of the Investigative Committee of the Russian Federation. In April 2012 the Investigative Committee opened criminal proceedings against Aleksey Navalnyy in another embezzlement case (the "Kirovles case" which was subject of the case *Navalnyy and Ofitserov v. Russia* (46632/13 and 28671/14) before the European Court of Human Rights).

In December 2012 the Investigative Committee opened a criminal file on the basis of material severed from the Kirovles case, on the suspicion that Aleksey and Oleg Navalnyy had committed fraud against Yves Rocher Vostok and had laundered the proceeds of illegal transactions. They were subsequently charged with fraud and money laundering. The investigator rejected a request by Oleg Navalnyy, in February 2013, that five employees of Yves Rocher Vostok be questioned as witnesses in a face-to-face confrontation. During the proceedings, the financial director of Yves Rocher Vostok submitted an internal audit report to the investigator stating that the company had not sustained any damage or loss of profits due to its agreement with GPA.

In February 2014 the trial court ordered that Aleksey Navalnyy be placed under house arrest as a preventive measure, which was maintained until 5 January 2015. On 30 December 2014 the applicants were convicted of money laundering and defrauding MPK and Yves Rocher Vostok. Aleksey Navalnyy was given a suspended sentence of three and a half years and Oleg Navalnyy a prison sentence of three and a half years, to be served in a correctional colony.

The trial court found in particular that the applicants had set up a "fake company", GPA, with the intention to use it as an intermediary to offer services to two clients of Russian Post, MPK and Yves

Rocher Vostok. It held that Oleg Navalnyy had taken advantage of insider information that Russian Post had ceased to provide the companies with certain services and had convinced those clients to use GPA as a substitute; that he had misled the clients about GPA's pricing policy and its relationship with Russian Post, thus depriving them of the freedom of choice of service providers; that he had promoted his company's services while knowing that it would have to subcontract the work to other companies; and that GPA had retained the difference in price between what MPK and Yves Rocher Vostok paid for its services and what GPA paid to its subcontractors.

The applicants' appeals against the judgment were rejected.

Relying on Article 7 (no punishment without law), the applicants complain that they were convicted of acts that were lawful at the time and that the authorities extended the interpretation of the criminal law in their case in such broad and ambiguous terms that it did not satisfy the requirements of foreseeability. Relying on Article 6 §§ 1, 2, and 3 (d) (right to a fair trial / presumption of innocence / right to obtain attendance and examination of witnesses), they maintain that the criminal proceedings against them were arbitrary and unfair. They also rely on Article 18 (limitation on use of restrictions on rights).

Revision

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

This request for revision concerns a judgment by the European Court of Human Rights following an application lodged by 74 Turkish nationals, including the late İsmet Kavaklıoğlu, to complain about an anti-riot operation conducted on 26 September 1999 in Ulucanlar Central Prison in Ankara.

Relying, in particular, on Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment), some of the applicants submitted that their relatives had been killed by the security forces in breach of their right to life, while others complained of the ill-treatment which they had suffered during and after the operation. The applicants also complained that the investigations conducted had been inadequate and ineffective.

In a judgment of 6 October 2015 the Court found that, in the light of the circumstances of the anti-riot operation on 26 September 1999, there had been a substantive and procedural violation of Article 2 of the Convention in respect of the late İsmet Kavaklıoğlu, among others. It awarded Şaban Kavaklıoğlu (the deceased's father) the sum of 50,000 euros in respect of non-pecuniary damage.

On 5 May 2017 the applicants' lawyer, Kazım Bayraktar, informed the Registry of Şaban Kavaklıoğlu's death on 17 September 2014. Consequently, he requested the revision of the judgment pursuant to Rule 80 of the Rules of Court and the designation of the late Şaban Kavaklıoğlu's five heirs as beneficiaries of the award made in respect of just satisfaction. The Court will rule on the request for revision in its judgment of 17 October 2017.

Özgür Keskin v. Turkey (no. 12305/09)

The applicant, Ozgur Keskin, is a Turkish national who was born in 1974 and lives in Izmir. The case concerns his complaint of having been deprived of an opportunity to participate in appeal proceedings regarding a labour dispute.

Mr Keskin worked for a company owned by Izmir City Council. On 19 March 2007 he resigned from his job to perform military service. He received a severance pay and signed a release, discharging the City Council from all liability. Shortly after being enlisted he was discharged from military service on health grounds and requested reinstatement into his previous job. When his requests were rejected by the Council he initiated proceedings before the Izmir Labour Court. He relied upon a clause of the collective bargaining agreement in force at the company which provided for the reinstatement of employees who had quit their jobs to perform their military service, provided they applied within three months from their discharge from the military.

In 2007, the Izmir Labour Court found in favour of Mr Keskin, in an oral hearing in the presence of both parties. The Council subsequently appealed this judgment. Mr Keskin was not notified of the appeal. Without holding a hearing, the Court of Cassation quashed the first-instance court's decision and found in favour of the Council. No further appeal was possible against this decision.

Relying on Article 6 § 1 (right to a fair hearing), Mr Keskin complains that he was deprived of the opportunity to participate in the proceedings owing to the fact that he had not been notified of the appeal lodged by the City Council.

Öğrü v. Turkey (no. 19631/12)

The applicant, Adnan Öğrü, is a Turkish national who was born in 1954 and lives in Adana. The case concerns the administrative fine imposed on him for taking part in a demonstration organised at a prohibited location, in breach of an order issued by the Governor.

On 13 October 2010 Mr Öğrü made a public statement to the press outside the Adana courthouse, calling, together with other members of his trade union, for the setting-up of crèches in the public institutions in which they worked.

The police were called and noted that the demonstrators had been acting in breach of a 2009 order by the Governor prohibiting the staging of demonstrations within 30 metres of the courthouse. Mr Öğrü was ordered to pay a fine of 143 Turkish liras (TRY) (approximately 70 euros). He contested the fine before the Police Court, which rejected his application.

Relying on Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), Mr Öğrü alleges that the fine he was ordered to pay breached his rights to freedom of expression and peaceful assembly.

Tel v. Turkey (no. 36785/03)

The applicant, Ahmet Zafer Tel, is a Turkish national who was born in 1969 and lives in Kütahya. The case concerns the refusal of his application for rectification of a judgment that contained a manifest error of assessment.

In October 1993 Mr Tel passed the competitive examination for recruitment to Kütahya Dumlupınar University and was appointed as a researcher and lecturer in the Botany Department of the Faculty of Biology. His contract was renewed without reservations until the Vice-Chancellor's Office decided to dismiss him on the basis of an opinion contradicting the recommendations of his immediate supervisor ("N+1") that he be kept on in the post.

Mr Tel brought two sets of administrative proceedings to have his dismissal set aside. During the first set of proceedings the Vice-Chancellor's Office furnished a report by Mr Tel's "N+2" stating that the applicant's performance had been unsatisfactory. The Administrative Court approved his dismissal on the basis of that report. Mr Tel then brought a second set of proceedings to have the report set aside. On 20 March 2002 the Administrative Court delivered a judgment setting aside the report with retroactive effect, on the grounds that, according to the rules in force, any disagreement between the "N+1" and "N+2" should have been referred to the "N+3" for a decision.

Mr Tel then lodged an application with the Supreme Administrative Court for rectification of a judgment, with a view to having his dismissal set aside on the grounds that it was based on a document that had been found to be unlawful and hence null and void. His application was dismissed.

Collective criminal proceedings were also instituted against the "N+2", who was accused by several members of the academic staff of abuse of office, defamation, and forgery and using forged documents. In March 2007 he was found guilty of abuse of office, committed with the aim of terminating the contracts of several members of the academic staff.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time), Mr Tel alleges that the proceedings he brought to contest his dismissal – which he considers to be unlawful – were unfair. He complains of the fact that the administrative courts dismissed his case on the sole basis of a report that had been set aside by the courts.

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.

Kahriman v. Bosnia and Herzegovina (no. 4867/16)
Á.R. v. Hungary (no. 20440/15)
Somogyi v. Hungary (no. 43411/12)
Stemplys and Debesys v. Lithuania (nos. 71024/13 and 71974/13)
Orăştie Romanian Greek Catholic Archpriesthood United to Rome and Oraştie Romanian Greek Catholic Parish United to Rome v. Romania (no. 32729/12)
Amirov v. Russia (no. 56220/15)
Gachma v. Russia (no. 9589/06)
Khuseynov v. Russia (no. 1647/16)
Krivolutskaya v. Russia (no. 28008/14)
Titov v. Russia (no. 35254/04)
Batić and Others v. Serbia (nos. 2866/16, 6789/16 and 13143/16)
Bilić v. Serbia (no. 24923/15)
Maksović v. Serbia (no. 54770/15)
Stokić v. Serbia (no. 26308/15)

Thursday 19 October 2017

Lebois v. Bulgaria (no. 67482/14)

The applicant, Vincent Lebois, is a French national who was born in 1986 and lives in Sofia (Bulgaria). He spent three months in detention in Bulgaria in 2014 following his arrest for breaking into cars. The case concerns his complaint of the poor conditions in detention during that time, including inadequate medical care. He also complains about the restrictions on communication with family and friends during his detention.

Mr Lebois was arrested in Sofia on 24 January 2014 and placed under police detention. He spent the first day of his detention in a police station before being transferred to a pre-trial detention facility in Sofia. He was subsequently brought before the Sofia District Court, which decided he should remain in custody pending trial. On 17 April 2014, Mr Lebois pleaded guilty, upon agreement, and accepted to serve a sentence of three months' imprisonment. He was released on 24 April 2014, having spent six days in Sofia Prison, as the time he had already spent in detention was deducted from the sentence.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Lebois makes a number of complaints about his detention conditions during his initial detention in the police station, pre-trial detention and imprisonment. As concerned his detention in the police station, he alleges that he was handcuffed to a bench in the police station corridor rather than put into a cell; that he was given no food or drink; and that he was not allowed to go to the toilet or to use a telephone. As concerned his pre-trial detention and imprisonment in Sofia Prison, he alleges overcrowding, poor hygiene and lack of outdoor exercise. He claims that, as a result of those conditions, he developed a

staphylococcus infection, for which he did not receive proper medical treatment; and lost 23 kilograms.

Further relying on Article 8 (right to respect for private and family life and the correspondence), he makes a number of allegations about restrictions on access to a telephone and on visits from family or friends. In particular, he complains that for 12 days after his arrest he had been unable to contact his family or anyone else to inform them of his detention as he had no money on him to purchase a phone card. Around two weeks later with the help of a co-detainee who spoke some English, he managed to borrow one minute of call-time which he used to contact the French consulate, which then informed his family and friends of his whereabouts and made arrangements for legal representation, money, food and clothing. He also alleges that the detention facility staff had often not complied with the internal regulations governing detainees' rights to receive visitors or to purchase/recharge phonecards. As a result, he had been unable to speak to his mother in France over the telephone for a period of three weeks in March/April 2014; and, on two separate occasions, his Bulgarian girlfriend and another friend were told that he had been moved to a different wing and were turned away without seeing him.

Vanchev v. Bulgaria (no. 60873/09)

The applicant, Georgi Petrov Vanchev, is a Bulgarian national who was born in 1952 and lives in Sofia. The case concerns his complaint of having been detained for a period in excess of the set term of his sentence and of having been ordered to pay excessive court fees in tort proceedings he had brought against the prosecution authorities.

Mr Vanchev is a former police officer. Criminal proceedings were brought against him in 1996, and he was placed under house arrest from 6 March 1996 until 3 April 1996, when he was remanded in custody. He was once again placed under house arrest on 1 July 1996 until 30 September 1997. He was thus deprived of his liberty for more than one year and six months. In its final judgment in January 1998 the Sofia Military Court convicted him of failing to perform his duties and gave him a one-year suspended prison sentence. In separate proceedings the Supreme Court of Cassation, on 26 March 2003, convicted him of fraud and sentenced him to one year of imprisonment. He was again placed in detention on 1 July 2003 to serve a combined sentence of one year in prison, but was released on 18 September 2003 by a decision of the competent prosecutor who noted that the period of pre-trial detention should have been deducted from Mr Vanchev's sentence.

In 2004 Mr Vanchev brought a tort action against the prosecution authorities, claiming compensation for his detention having exceeded the set term of imprisonment. In a judgment of 2006, Sofia City Court allowed his claim in part. The court also ordered him to pay court fees amounting to 1,040 euros (EUR). He was eventually awarded approximately EUR 1,530 damages in a final judgment of the Supreme Court of Cassation in 2009.

Relying on Article 5 § 1 (right to liberty and security), Mr Vanchev alleges that his detention was in excess of the set term of imprisonment. Further relying on Article 6 § 1 (right to a fair hearing), he complains that the court fees he had to pay reduced significantly the compensation he had been awarded.

Fuchsmann v. Germany (no. 71233/13)

The applicant, Boris Fuchsmann, is a German national who was born in 1947 and lives in Düsseldorf (Germany). He is an internationally active entrepreneur in the media sector and runs the company Innova Film. The case concerns the German courts' rejection of his request for an injunction against certain statements about him in an article published in the *New York Times*.

The article was published on 12 June 2001 in the print edition of the *New York Times* and, slightly modified, in its online edition, where it remains accessible. It reported on a criminal investigation in the United States against a company owned by former New York City mayoral candidate R.L. over

allegations that the company had paid bribes to officials in Ukraine for a television license. In that context, the article stated that Mr Fuchsmann, who was one of the owners of a broadcasting company in Kiev, had ties to Russian organised crime, according to the FBI and European law enforcement agencies. The article further reported: that a FBI report had described Mr Fuchsmann as an embezzler, whose company in Germany was part of an international organised crime network; that he was barred from entering the United States; and that his company Innova was part of a Russian organised crime network, according to U.S. and German law enforcement agencies.

In July 2002 Mr Fuchsmann brought proceedings before the German courts seeking injunctions against those statements about him. Initially, in January 2008, the Düsseldorf Regional Court declared the action inadmissible, finding that the German courts had no jurisdiction, since the *New York Times* print edition was not distributed in Germany and its online edition was not aimed at readers in Germany. That decision was confirmed by the Court of Appeal, but quashed by the Federal Court of Justice, in 2010, as far as the claim for an injunction against the statements in the online edition was concerned. The Federal Court of Justice affirmed the German courts' jurisdiction in that respect, given that the online edition was accessible in Germany.

In June 2011 the Court of Appeal, to which the case had been referred back, granted the injunction regarding the statement that Mr Fuchsmann had been banned from entering the United States, but it dismissed the remainder of his claim. While accepting that the statements in question interfered with his personality rights, the court considered that it was necessary to balance those rights against the freedom of the press. In particular, there was a public interest in being informed about the fact that Mr Fuchsmann, a German businessman who was internationally active in the media sector, was suspected of being involved in organised crime. Furthermore, the author of the article had notified Mr Fuchsmann that the article would be published. Nevertheless the latter had waited for more than one year after publication before applying for an injunction. He therefore could not have perceived the interference with his personality rights as intolerable. In October 2012 the Federal Court of Justice rejected Mr Fuchsmann's complaint against the Court of Appeal's decision and, in April 2013, the Federal Constitutional Court declined to consider his constitutional complaint.

Relying on Article 8 (right to respect for private and family life), Mr Fuchsmann complains that the German courts failed to protect his reputation and right to respect for his private life.

Verlagsgruppe Droemer Knaur GmbH & Co. KG v. Germany (no. 35030/13)

The applicant company, Verlagsgruppe Droemer Knaur GmbH & Co. KG, is a prominent German book-publishing house based in Munich. The case concerns proceedings in which it was ordered to pay damages to a person who was presented in a book the company had published as a member of the mafia.

The book, entitled "Mafia" and written by the well-known author Petra Reski, was published in September 2008. It was reprinted in several editions and also published in Italy. Its subject were the Mafia's ties to Germany and its inner structures. On two pages, the book referred to an Italian national residing in Germany (S.P.) by his full name. It stated, in particular, that S.P. was a presumed member of the 'Ndrangheta and that he had allegedly been involved in a murder.

Following the publication of the book, S.P. brought court proceedings seeking an injunction against the dissemination of those passages. In November 2008, the Munich Regional Court issued the injunction. It held in particular that, while there was a public interest in reporting about organised crime, the author had acted in breach of her journalistic duties. She had relied on internal reports of the Federal Office of Criminal Investigation, as regards S.P.'s presumed membership of the 'Ndrangheta, which constituted an insufficient source for her allegations, since the reports were not intended for publication and she had exaggerated the degree of suspicion described in these reports. The investigating authorities themselves had not come to the conclusion that there was

sufficient evidence of an offence having been committed by S.P. The company's appeal was dismissed in April 2009.

In the main proceedings, the Court of Appeal eventually ordered the company to pay damages in the amount of 10,000 euros. It reasoned that the injunction was not sufficient redress for S.P., as it was not an adequate means of reaching the readers of a book that had already been published. A further appeal by the company was dismissed and, in November 2013, the Federal Constitutional Court refused to admit its constitutional complaint.

The company complains that the judgment ordering it to pay damages was in breach of its rights under Article 10 (freedom of expression).

Tsalkitzis v. Greece (no. 2) (no. 72624/10)

The applicant, Vassilis Tsalkitzis, is a Greek national who was born in 1945 and lives in Afidnes Attikis (Greece). The case concerns his conviction for making false accusations, perjury and slander against an MP, whereas complaints he had made against the same MP were never heard owing to the latter's immunity.

In 2001 Mr Tsalkitzis launched a criminal complaint against the MP for breach of duty and extortion when he had been mayor of Kifissia Municipality. The MP was never prosecuted following this criminal complaint because Parliament refused to lift his immunity. In a judgment of 2006 the European Court of Human Rights found that this refusal to lift the MP's immunity for acts which had been committed prior to his election had violated Mr Tsalkitzis' right of access to a court under Article 6 § 1 of the European Convention. To date, the Committee of Ministers of the Council of Europe has not yet concluded the supervision of the execution of this judgment (Article 46 § 2 of the Convention).

In the meantime, in 2004, the MP lodged a criminal complaint against Mr Tsalkitzis for false accusation, perjury and slander and criminal proceedings were initiated. He was convicted *in absentia* by the Athens Court of First Instance and sentenced to 20 months' imprisonment and deprivation of his political rights. Mr Tsalkitzis appealed this judgment before the Athens Court of Appeal, submitting that his trial for slander should have been suspended until the end of the criminal proceedings he had initiated against the MP. However, at a hearing in 2009 the Court of Appeal dismissed this appeal finding that no criminal prosecution had actually ever been initiated against the MP and therefore there were no pending criminal proceedings which could justify suspending the proceedings against Mr Tsalkitzis. The Court of Appeal went on to examine a number of witnesses (five for the prosecution and one for the defence; Mr Tsalkitzis himself did not testify) and upheld the verdict at first instance. Mr Tsalkitzis' appeal on points of law was also dismissed in May 2010. He spent eight days in prison before his sentence was commuted to community service and was released; he eventually paid a fine in lieu of serving his sentence.

Relying on Article 6 § 1 (right to a fair trial), Mr Tsalkitzis complains that the criminal proceedings brought against him for making false accusations, perjury and slander were unfair. In particular, he alleges that the refusal by the domestic courts to suspend or adjourn the criminal proceedings brought against him until the end of the proceedings he had initiated against the MP was excessively formalistic, especially in view of the European Court's judgment of 2006.

Nawrot v. Poland (no. 77850/12)

The applicant, Krzysztof Nawrot, is a Polish national who was born in 1981 and is currently serving a 10-year sentence of imprisonment in Nysa Prison (Poland) following his conviction in 2001 for robbery. His prison sentence was interrupted between 2008 and 2014 when he was placed in a psychiatric hospital in a second set of criminal proceedings brought against him for murder. The case concerns his complaint about his detention in the psychiatric hospital.

In the second set of criminal proceedings, in August 2005, he was notably charged with murdering an Italian citizen by repeatedly hitting him on the head. A psychological assessment, ordered to determine his criminal responsibility, found in July 2006 that he was suffering from a chronic psychotic disorder of a delusional type, related to lesions in his central nervous system, and a personality disorder. The report found that he would not have been aware of his actions in relation to the offence or be able to control them. The court discontinued the proceedings against him on grounds of insanity and recommended that he be placed in a psychiatric hospital, where he was sent in May 2008.

Reviews of his condition confirmed that he should remain in a psychiatric institution on the ground that he was a danger to society. However, a report drawn up in June 2012 by a different team of psychiatrists in connection with a third set of criminal proceedings, also related to events in 2005, found that he did not have any lesions in his central nervous system and was not suffering from a mental illness at the time of those offences. They diagnosed him with a dissocial personality disorder and stated that he had had full mental capacity at the time.

Starting from July 2012, Mr Nawrot challenged his confinement in psychiatric hospitals and applied to be released. He attempted to commit suicide twice in 2013 and in May of that year he told the court that he had been simulating mental illness. The courts examined his submissions and divergences in opinions from two sets of experts, but held that his detention was justified by his condition.

Amid differing expert opinions on his mental state, he continued to be held in psychiatric hospitals until May 2014, when the security measure was lifted and he was transferred to a prison to serve the remainder of the sentence imposed in 2001. In July 2015 in the third set of criminal proceedings Mr Nawrot was found guilty of several counts of robbery committed in 2005 and given a three-year prison sentence, suspended for seven years. The court found he had had full mental capacity at the time of the events. In those same proceedings another person was charged and convicted of murdering the Italian citizen.

Relying on Article 5 (right to liberty and security), Mr Nawrot complains that his detention in a psychiatric hospital was unlawful and that he was not able to effectively challenge the lawfulness of his continued detention.

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Panahli v. Azerbaijan (no. 48255/11)
Steyaert v. Belgium (no. 67963/12)
Zlatev v. Bulgaria (no. 19077/10)
Knežević v. Croatia (no. 55133/13)
Spalldi d.o.o. v. Croatia (no. 39070/11)
Skupa v. the Czech Republic (no. 30700/13)
Šlechta v. the Czech Republic (no. 29056/13)
Ouafi v. France (no. 42571/14)
Celal v. Greece (no. 30943/14)
Dule and Ansar v. Greece (no. 38466/16)
Karavaris and Others v. Greece (no. 11984/15)
Michalopoulou v. Greece (no. 1208/17)
Saridze v. Greece (no. 60069/16)
Sarry v. Greece (no. 12229/12)

Tamiolakis and Solidakis v. Greece (no. 30353/13)
Trakkas v. Greece (nos. 61068/16 and 61071/16)
Yfantis and Others v. Greece (nos. 42462/13, 30949/14, 46576/14, and 78102/14)
Zhekov and Botev v. Greece (no. 74842/13)
Bodó and Horgos v. Hungary (no. 29180/16)
H.J. v. Hungary (no. 70984/16)
M.S. v. Hungary (no. 64194/16)
'Alpe Società Agricola Cooperativa Con Produzione e Lavorazione Propria' and Others v. Italy (no. 8726/09 and 38 other applications)
'Associazione Produttori Agricoli Sant'Orsola S.C.A.' and Others v. Italy (no. 4087/08)
Bosco v. Italy (no. 18132/10)
Fabrizi and Nazzicone v. Italy (nos. 6534/11 and 67687/12)
Fornataro v. Italy (no. 37978/13)
Mazzarella v. Italy (no. 24059/13)
Mikalauskas v. Lithuania (no. 52927/13)
Pocius v. Lithuania (no. 5394/12)
Ismail v. the Netherlands (no. 67295/10)
Chrzanowska v. Poland (no. 4881/11)
Cybulski v. Poland (no. 10223/16)
Rządziński v. Poland (no. 32418/11)
Costa v. Portugal (no. 3230/14)
Marinică and Others v. Romania (no. 8209/04)
Aliyev v. Russia (no. 53846/10)
Anurova v. Russia (no. 8385/07)
Balabanov and Others v. Russia (nos. 31390/08 and 63805/09)
Baranov v. Russia (no. 61558/15)
Botyanovskaya v. Russia (no. 73025/13)
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