



## Forthcoming judgments of 30 August and 1 September 2016

The European Court of Human Rights will be notifying in writing 11 judgments on Tuesday 30 August 2016 and nine judgments and / or decisions on Thursday 1 September 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](http://www.echr.coe.int))*

### Tuesday 30 August 2016

#### [Mindek v. Croatia \(application no. 6169/13\)](#)

The applicant, Anton Mindek, is a Croatian national who was born in 1932 and lives in Domitrovec (Croatia). The case concerns his complaint about the forced sale of his house in order to pay a debt.

Between 2003 and 2007, Mr Mindek lost both criminal and civil proceedings brought against him for defamation of his neighbour following the publication of two articles in a daily newspaper in which he accused his neighbour of stealing his house and orchard. As a result, he was ordered to pay damages and costs to his neighbour, amounting in total to 58,415.75 Croatian kunas (approximately 7,924.87 euros).

Mr Mindek did not pay the sums on time. Accordingly, enforcement proceedings were instituted in 2007 and a domestic court ordered the seizure and sale of Mr Mindek's share of his house that he owned together with his wife. At an auction on 17 March 2011, the neighbour himself placed the only bid to buy Mr Mindek's share in the property, offering the minimum price allowed by law, namely one third of its market value. The court declared that the neighbour had satisfied the conditions to be awarded the share in the property, but specified that the decision properly awarding him that share would be delivered at a later date.

The court officially awarded the property to the neighbour on 18 November 2011. In the meantime, on 2 May 2011, Mr Mindek had settled the debt in full. Only the costs of the enforcement proceedings remained to be paid, but the court refused to specify those costs at that time. However, the fact that Mr Mindek had already paid the debt in full was considered solely in distributing the proceeds of the sale; his request to discontinue the enforcement procedure was rejected since he had only settled his debt after the sale on 17 March 2011. This decision was subsequently upheld on appeal and Mr Mindek's constitutional complaints were declared inadmissible.

Proceedings to partition the interest of the neighbour from that of Mr Mindek's wife by selling the house entirely and dividing the proceeds are currently still pending.

Relying in particular on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Mindek complains that the forced sale of his house was not justified and grossly unfair, emphasising that he had paid the relevant debt by the time the court awarded the house to his neighbour and that he and his wife would be left homeless if the partition for co-ownership proceedings went in the favour of their neighbour as they would not have enough money to buy out his share in the house.

### [Mihhailov v. Estonia \(no. 64418/10\)](#)

The applicant, Aleksandr Mihhailov, is a stateless person who was born in 1976 and lives in Narva (Estonia). The case concerns his complaint about police beatings during his arrest and detention, as well as a failure to carry out an effective investigation into those allegations.

On 29 April 2009, the police received an emergency call concerning two young men in Narva, Estonia. The caller reported that one of the men was carrying a knife and that the other was drunk. Accordingly, the police arrested the two men, one of whom was Mr Mihhailov. Mr Mihhailov alleges that, during his arrest, the police punched him, stepped on him, and otherwise physically abused him for no reason. He claims he was subjected to further severe and groundless beatings in detention. Mr Mihailov was taken to hospital the next day with concussion, but was released shortly afterwards.

Mr Mihhailov lodged a complaint of police ill-treatment with the authorities. After initial refusals, a criminal investigation was launched on 5 May 2009 and one month later statements were taken from the accused police officers. An assessment of Mr Mihhailov's medical records and certain other documents was also ordered in June 2009 and two months later a forensic medical expert gave his opinion in which he concluded that Mr Mihhailov's injuries must have been inflicted shortly before he had seen a doctor on 30 April 2009, but that their exact cause could not be established. Statements were also taken from other police officers, four children who had witnessed the arrest, other detainees and ambulance workers who had been called to the police station to treat Mr Mihhailov. The authorities repeatedly refused, however, Mr Mihailov's requests that he himself be examined by a medical expert, that statements be obtained by other relevant witnesses, that a face-to-face confrontation be held between himself and witnesses or the accused police officers and that recordings from the police station's security cameras be examined. Ultimately, on January 2010, the investigator decided to discontinue the investigation. He found that the use of force against Mr Mihhailov had been justified given his aggressive behaviour both during his arrest and ensuing police custody. Statements by Mr Mihhailov's fellow detainees in support of his version of events were found not to be credible. Appeals against this decision were refused.

In parallel proceedings, Mr Mihhailov was acquitted of misdemeanour charges due to lack of evidence.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention, Mr Mihhailov complains about his treatment by the police, alleging that the use of force was wholly uncalled for and that the investigations against the police were ineffective.

### [Hunguest Zrt v. Hungary \(no. 66209/10\)](#)

The applicant company, Hunguest Zrt, is a company based in Budapest. The case concerns the company's complaint about being ordered to pay more than one million euros as a security deposit pending the outcome of a property claim against it lasting almost ten years.

On 31 May 2000 a property claim was brought against the applicant company requesting it to pay 275 million Hungarian forints (HUF) (approximately 1,057,000 euros (EUR) at the time). From March 2011 the company was obliged to deposit this amount on the bailiff's trust account as security until the end of the proceedings. During the proceedings, the company requested to have the deposit released, arguing that its financial situation was satisfactory and that there was therefore no need for such a deposit, and offering other securities in exchange; these requests were all turned down. In a final decision of April 2010 the domestic courts found partly in favour of the plaintiff and ordered the company to pay HUF 137,280,00 (EUR 514,000 at the actual rate) plus interest accrued. The interest accrued amounted to approximately HUF 189,500,000 (EUR 700,000 at the actual rate), which exceeded the principal sum awarded. Ultimately, the company had to surrender the whole deposit and to pay about another HUF 90 million (EUR 330,000).

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) of the Convention, the applicant company complains about the excessive length – nine years and 11 months – of the property claim proceedings. Further relying on Article 1 of Protocol No. 1 (protection of property), it also complains that, due to the serious delay in handling the case, a very high amount of default interest became due, while the significant amount it had been ordered to deposit as security had not yielded any interest.

#### [Apap Bologna v. Malta \(no. 46931/12\)](#)

#### [Montanaro Gauci and Others v. Malta \(no. 31454/12\)](#)

Both cases concern the requisitioning of property by the State.

The applicant in the first case, Louis Apap Bologna, is a Maltese national who lives in Sliema (Malta). Mr Apap Bologna owns a two-storey house in Gzira (Malta) which he inherited from his uncle when he died in 1975. The house was requisitioned in 1976. Throughout the years while the requisition order has been in force, Mr Apap Bologna has received annual rent of approximately 93 euros (EUR) from the Housing Authority. This amount was increased to approximately EUR 185 in 2010.

In October 2009 Mr Apap Bologna brought constitutional redress proceedings against the Housing Authority and the Attorney General, requesting that the requisition order be annulled, that the property be released in his favour and that he be awarded compensation. Ultimately, in February 2012, the Constitutional Court found in his favour and awarded him EUR 16,000 in compensation. However, it refused to annul the requisition order, finding that it would not be appropriate to release the property and evict the tenant, who was disabled and lived on social benefits. It also considered that it did not have the power to impose a higher rent for the future, when such rent was not provided for by the law.

The applicants in the second case are six members of the same family who are Maltese nationals and live in Sliema, St. Julian's and Gozo (Malta). They inherited a house in Rabat (Malta) from their late father in 1997 which had been requisitioned in 1987. The rent fixed by the authorities amounted to approximately EUR 35 annually. This amount was increased to approximately EUR 185 in 2010.

In September 2008 the applicants also brought constitutional redress proceedings, requesting that the courts: award them compensation for losses incurred as a result of inadequate rent and their inability to develop their property; annul the requisition order; release the property; and establish fair conditions in respect of their property, including a fair rent. Ultimately, in November 2011 the Constitutional Court awarded the applicants EUR 14,000, but found that the requisition had been lawful and in the public interest, thus it was not required to annul the requisition order.

Relying in particular on Article 1 of Protocol No. 1 (protection of property), all the applicants complain about the requisitioning of their property. They notably allege that the compensation awarded to them was ridiculously low and did not provide sufficient redress and that, in any case, their property continued to be requisitioned for a rent much lower than its market value. Mr Apap Bologna also relies on Article 13 (right to an effective remedy) of the Convention.

#### [Pascari v. the Republic of Moldova \(no. 25555/10\)](#)

The applicant, Igor Pascari, is a Moldovan national who was born in 1983 and lives in Chisinau. The case concerns his complaint about the unfairness of proceedings in which he was found guilty of causing a road traffic accident.

In August 2009 Mr Pascari, who is a bus driver, was involved in an accident with a car. According to the police, the driver of the car had changed lanes without paying attention to Mr Pascari's bus, which had been overtaking it in another lane. A decision was thus issued by the traffic police finding the driver of the car responsible for the accident. The driver of the car contested that decision before the courts, but the decision was subsequently upheld at first-instance. However, on appeal,

in November 2009, Mr Pascari was found responsible for causing the accident as he had not kept a safe distance between his bus and the vehicle in front of him. Mr Pascari was not involved in either set of proceedings and, under domestic law, was not allowed to challenge the Court of Appeal's decision. As a result of the judgment of November 2009, the traffic police issued a new decision finding Mr Pascari responsible for the accident in August 2009.

Relying on Article 6 § 1 (right to a fair trial) of the Convention and Article 1 of Protocol No. 1 (protection of property), Mr Pascari complains that the criminal charges against him were determined in court proceedings in which he had not been involved.

#### [Turturica and Casian v. the Republic of Moldova and Russia \(nos. 28648/06 and 18832/07\)](#)

The case concerns new rules adopted by the authorities of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT") with regard to car registration plates. Notably, from November 2004 any car with non-MRT registration plates could only enter the territory of the MRT after paying custom duties.

The applicants, Iurie Turturica and Petru Casian, are two Moldovan nationals who were born in 1962 and 1951, respectively, and live in Lunga and Corjova, in the Transdniestrian region of Moldova.

Like many other inhabitants of the MRT, both applicants refused to use registration plates issued by the MRT authorities because they are not recognised by any other country. Thus, in 2005 and 2007 Mr Turturica and Mr Casian had their cars confiscated by custom officers and fines imposed on them for failing to observe the new customs rules. In particular, Mr Turturica had two cars seized and fines imposed which were equal to 20 percent of the value of the first car and 50 percent of the value of the second car. He has never recovered his cars, despite challenging one of the decisions to fine him before the MRT courts and despite criminal proceedings having been brought by the Moldovan authorities for the unlawful seizure of the first car confiscated. Following the seizure of his car, Mr Casian paid a 30 euro fine and recovered his car. He complained to the Moldovan authorities who asked the Joint Control Commission (set up to monitor the implementation of an agreement signed in 1992 by the Presidents of the Russian Federation and the Republic of Moldova to put an end to the military conflict in the Transdniestrian region of Moldova) and foreign ambassadors to examine the matter. The OSCE was also informed. Ultimately, however, the Moldovan authorities informed Mr Casian that they did not have the means necessary to solve the problem of the seizure of his car.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicants complain about the seizure of their cars and the imposition of fines on them. Mr Turturica further complains under Article 6 § 1 (right to a fair trial) of the Convention that the proceedings he had brought before the MRT courts were not fair because those courts were not "tribunals established by law".

#### [Medipress-Sociedade Jornalística, Lda v. Portugal \(no. 55442/12\)](#)

The applicant, Medipress-Sociedade Jornalística, LDA, is a Portuguese company based in Paço de Arcos (Portugal).

The case concerns a civil judgment against Medipress-Sociedade Jornalística, LDA, for the publication of an article alleging that the then Portuguese Prime Minister had taken drugs.

On 7 October 2004 the magazine *Visão*, which the applicant company took over in 2008, published an article entitled "Wake-up call for the President?", alleging that the then Prime Minister (P.S.L.) had taken hard drugs. In September 2007, P.S.L., claiming that the article had damaged his reputation, sued the article's author and the company Edimpresa-Editora, the magazine's former proprietor, in the Oeiras District Court.

In a judgment of 22 September 2010 the Oeiras District Court partly granted the claim of P.S.L., finding that he had sustained damage to his reputation, and ordered the company Medipress-

Sociedade Jornalística, LDA, jointly with the author of the article, to pay 30,000 euros (EUR) for the non-pecuniary damage caused. The judgment was upheld on 21 June 2011 by the Court of Appeal, which found in particular that the allegation that the former Prime Minister had taken hard drugs did not fall within the exercise of the right to impart information and was unlawful. The Supreme Court of Justice upheld that judgment on 14 February 2012.

The company Medipress-Sociedade Jornalística, LDA, paid to P.S.L. the total sum of EUR 30,000.

Relying on Article 10 (freedom of expression) of the Convention, the company Medipress-Sociedade Jornalística, LDA, alleges that the award of damages for impugning the honour and reputation of the former Prime Minister breached its right to freedom of expression.

### [Aydoğdu v. Turkey \(no. 40448/06\)](#)

The applicants, Songül Aydoğdu and Ercan Aydoğdu, are Turkish nationals whose daughter was born prematurely and died two days after her birth at the hospital to which she had been transferred for emergency treatment.

The case concerns the allegation of Mr and Mrs Aydoğdu that their daughter's death was caused by professional negligence on the part of the staff of the hospital where she was treated.

On 6 March 2005 Ms Aydoğdu gave birth prematurely to a baby girl in Atatürk Hospital. The doctor diagnosed respiratory distress syndrome due to hyaline membrane disease, requiring emergency treatment and specific technical facilities which the hospital did not have. The baby was taken immediately to Behçet Uz Hospital. As there was no available space in the intensive care unit, which had incubators and mechanical ventilation equipment, the baby was admitted to the neonatal department. On his arrival, Mr Aydoğdu was informed by three doctors that that neonatal department was not able to provide the necessary care and that he would have to find another hospital with the requisite facilities to which the baby could be transferred. The doctors jointly signed a report, of which they gave a copy to the parents, indicating that the new-born had been transferred to their hospital despite their warning that they had neither an incubator nor a mechanical ventilator; they also noted that the baby's life was in danger. On 7 March 2006, while the family were looking for an appropriate hospital, the girl's condition worsened. The next day she was transferred to intensive care, where she was placed under mechanical ventilation, but she died on 8 March 2005.

In March and April 2005 Mr and Ms Aydoğdu each filed a complaint for homicide against the doctors and administrators of the two hospitals, holding them responsible for the death of their daughter on grounds of professional negligence. Two reports issued by the forensic medical institutes of Izmir and Istanbul concluded that the child had died from respiratory distress syndrome due to prematurity and hyaline membrane disease, without there being any certainty that treatment in an incubator could have saved her life. In January 2006 a chief inspector was appointed by the Ministry of Health to carry out an administrative and, if appropriate, disciplinary investigation. In February 2006 the inspector concluded that the medical staff had provided appropriate treatment and that no fault or negligence could be imputed to them. He took the view, however, that the three doctors of Behçet Uz Hospital should be reprimanded for giving Mr and Ms Aydoğdu a copy of the report about the issues arising in the two hospitals. The inspector also noted that it was necessary to undertake structural reforms to address the shortcomings noted in his report. Further to the inspector's findings, the deputy governor refused to bring criminal proceedings against the doctors. An appeal by Mr and Ms Aydoğdu against that decision was dismissed, as the Administrative Court found that there was not enough evidence for a charge of professional negligence to be made out.

Without relying on any specific Article of the Convention, Mr and Ms Aydoğdu allege that the errors committed by the medical staff and the shortcomings in the organisation of the hospital services led to the death of their new-born baby. They also complain that the criminal proceedings were unfair.

### [Nasrettin Aslan and Zeki Aslan v. Turkey \(no. 17850/11\)](#)

The applicants, Mr Nasrettin Aslan and Mr Zeki Aslan, two brothers, are Turkish nationals who were born in 1973 and 1987 respectively and live in Hakkâri (Turkey).

The case concerns their allegations of ill-treatment at the time of their arrest and transfer to the police station.

On 4 June 2010 a pro-Kurdish party (Barış ve Demokrasi Partisi – BDP) organised a demonstration in Hakkâri during which incidents took place, especially in a neighbourhood near police quarters. A number of individuals, including children, threw stones at the police and attacked a police vehicle before taking refuge in the surrounding buildings. According to the brothers, on the day of the incident Nasrettin Aslan was visiting the home of his nephew, located near the police quarters, to take the latter to hospital. On his arrival he was allegedly manhandled by police officers who asked him to keep an eye on his children, and Nasrettin Aslan replied that the children in question were not his own. His brother Zeki Aslan then intervened to separate them. According to the authorities, the brothers physically assaulted the police officers, who used force, in a sufficient and proportionate manner, in order to immobilise them. On the same day the brothers were taken into police custody and questioned by the police, without legal assistance; they alleged that they were struck by the police during their transfer. A medical examination, carried out before the police interview, revealed a number of bruises.

On 5 June 2010 the brothers filed a criminal complaint with the office of the public prosecutor, who gave a discontinuance decision on 11 June 2010, upheld by the Van Assize Court on 8 July 2010. In the meantime the public prosecutor of Hakkâri brought criminal proceedings against the Aslan brothers for assaulting civil servants in the course of their duties and causing damage to public property. In June 2013 they were convicted by the Hakkâri Criminal Court on the assault charge; the proceedings concerning the other charge are still pending.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the Aslan brothers complain that they were subjected to police violence during their arrest and transfer to the police station. Under Articles 3, 5 (right to liberty and security), 6 (right to a fair hearing), 13 (right to an effective remedy) and 14 (prohibition of discrimination), they also complain about the inadequacy of the investigation.

### [Toptaniş v. Turkey \(no. 61170/09\)](#)

The applicant, Abbas Toptaniş, is a Turkish national who was born in 1974 and lives in İzmir (Turkey). The case concerns his complaint about a failure to conduct a full investigation after he was accidentally shot near a military compound.

On 14 October 2008, between 8 p.m. and 9 p.m., Mr Toptaniş collapsed suddenly when on his way to meet friends from the construction site where he worked near Foça, İzmir. A bullet was found between his ribs, and his injury was life-threatening. For medical reasons, the bullet was provisionally left in his body.

A prompt investigation into the incident found that no gunshots had been heard by witnesses at the site, that the lack of gunshot residue on Mr Toptaniş's jacket indicated a shot from long-distance, and that a firing practice had been underway that night at the nearby shooting ranges of the 7th Gendarmerie Commando Regiment. The police concluded that Mr Toptaniş must have been hit by a stray bullet that had ricocheted during the military firing practice.

In the meantime, at 3 p.m. on 15 October 2008, gendarme officers interviewed Mr Toptaniş although he was still in a critical condition. He waived his right to a lawyer and stated that he did not wish to press criminal charges. He repeated this in November before the public prosecutor after being released from hospital. Because there was therefore no official complaint as required under domestic law for the prosecution of a crime of negligence, the authorities decided not to prosecute

and the investigation was concluded. No further steps were taken even when the bullet in Mr Toptaniş body was later extracted and delivered to the prosecutor.

In March 2009, Mr Toptaniş brought a claim for compensation against the Ministry of the Interior. However, the İzmir Administrative Court found that there was no tangible evidence connecting the bullet to the regiment's firing practice, and that Mr Toptaniş had hindered the collection of evidence by deciding not to press charges.

Relying in particular on Articles 2 (right to life) of the Convention, Mr Toptaniş alleges that the investigation into his shooting had been obviously ineffective, since the investigation had been closed without the bullet extracted from his body being subjected to a ballistic examination or a perpetrator being identified.

Thursday 1 September 2016

#### [X and Y v. France \(no. 48158/11\)](#)

The applicants, Mr X and Mr Y, are French nationals who live in Courbevoie (France).

The case concerns two complaints made by Mr X and Mr Y, stock market professionals, following the disciplinary sanctions imposed on them by the Enforcement Committee of the AMF (French financial markets regulator) on account of their failure to comply with the rules and time-limit for the short selling of shares in connection with a rights issue by the company Euro Disney.

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, Mr X and Mr Y allege that their case was not examined impartially by the AMF Enforcement Committee. They also complain about a violation of the principle of intelligibility of the law. Under Article 7 (no punishment without law), they complain that the offence and sanction in question were not provided for by law.

#### [Marc Brauer v. Germany \(no. 24062/13\)](#)

The applicant, Marc Brauer, is a German national who was born in 1978 and lives in Rheine (Germany). The case concerns the rejection of his appeal against an order confining him to a psychiatric hospital for failure to meet the one-week time-limit prescribed by law.

In June 2012, Mr Brauer was arrested for damaging parked vehicles with a hammer and resisting a court's clerk. As a preliminary measure, Mr Brauer, who had already been under psychiatric treatment in the past, was confined to a psychiatric hospital and given a court-appointed lawyer. On 18 December 2012, the Münster Regional Court, finding that he could not be held criminally responsible and was mentally ill, upheld his confinement to the hospital. Immediately after the hearing, he announced his wish to appeal against the court's decision and mandate a new defence lawyer. He was given express instructions by the judge on how and where to lodge an appeal.

Nevertheless, Mr Brauer, after receiving written instructions by his court-appointed lawyer, subsequently typed and signed an appeal letter to the Rheine District Court. It was rejected as belated, the Regional Court reiterating the express judicial instruction of 18 December 2012 to Mr Brauer that an appeal could be lodged in writing to the Münster Regional Court and the Münster District Court but at the Rheine District Court it could only be orally recorded by the registry. In January 2013 the court-appointed lawyer, who had resumed Mr Brauer's defence, requested a reinstatement of the proceedings and lodged an appeal on points of law, alleging that his client had misunderstood instructions on how to lodge an appeal. Ultimately, in April 2013 the Federal Court of Justice refused to examine Mr Brauer's appeal on the merits as he had failed to lodge it within the one-week time-limit and rejected his request for reinstatement of the proceedings. This court placed decisive weight on the express judicial instructions given on 18 December 2012. Any misunderstandings were considered to be Mr Brauer's own responsibility, there being no evidence to show that he had not understood instructions due to his mental health.

Mr Brauer filed a constitutional complaint, which was declined in June 2013 with no reasons given.

Relying on Article 6 § 1 (access to court) of the Convention, Mr Brauer complains about the refusal to examine his appeal on points of law on the merits and the rejection of his request for reinstatement of the proceedings concerning his confinement to a psychiatric hospital, claiming in particular that he had not understood the judge's instructions with regard to lodging an appeal due to his mental state and misunderstood counsel's instructions as they had been unclear.

#### [Wenner v. Germany \(no. 62303/13\)](#)

The applicant, Wolfgang Adam Wenner, is a German national who was born in 1955. He is a long-term heroin addict. The case concerns his complaint of having been denied drug substitution therapy in prison.

Having been addicted to heroin since 1973, Mr Wenner has unsuccessfully tried to overcome his addiction with various types of treatment. From 1991 to 2008 his addiction was treated with medically prescribed and supervised drug substitution therapy.

In 2008 Mr Wenner was arrested on suspicion of drug trafficking and placed in detention on remand, where his drug substitution treatment was interrupted against his will. In June 2009 he was convicted of drug trafficking and – taking into account a previous conviction – sentenced to a total of six years' imprisonment. The trial court also ordered his placement in a drug detoxification facility, to be executed after a period of six months' detention. In accordance with that order, in December 2009, he was transferred to a drug rehabilitation centre, where he underwent abstinence-based treatment for his addiction, without additional substitution treatment. In April 2010 he was transferred back to prison, as ordered by the competent court. Mr Wenner's appeal against that decision was dismissed by the Munich Court of Appeal, finding that it was not to be expected with sufficient probability that he could be cured from his drug addiction or could be prevented for a considerable time from relapsing into drug abuse.

In June 2011 Mr Wenner made a request to the prison authorities for treatment with a heroin substitute for his addiction. Alternatively, he requested that the question of whether such substitution treatment was necessary be examined by a drug addiction specialist. Mr Wenner claimed that his serious chronic neurological pain could be considerably alleviated by drug substitution treatment. The prison authorities dismissed his request, arguing that substitution treatment was neither necessary from a medical point of view nor a suitable measure for his rehabilitation. Mr Wenner's appeal was dismissed by the Augsburg Regional Court in March 2012. The Munich Court of Appeal upheld that decision and, on 10 April 2013, the Federal Constitutional Court declined to consider his constitutional complaint without giving reasons.

Following his release from prison in December 2014, Mr Wenner was examined by a doctor, who prescribed him drug substitution treatment.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, Mr Wenner complains that the refusal to grant him drug substitution therapy in prison – which made him suffer considerable pain and caused damage to his health – and the prison authorities' refusal to have the necessity of drug substitution therapy examined by an external medical expert amounted to inhuman treatment.

#### [Huzuneanu v. Italy \(no. 36043/08\)](#)

The applicant, Luciano Valentin Huzuneanu, is a Romanian national who was born in 1973 and lives in Romania.

The case concerns Mr Huzuneanu's inability to obtain the reopening of criminal proceedings against him, which had led to his conviction *in absentia*.

Following his prosecution on a charge of murder, Mr Huzuneanu was sentenced by the Rome Assize Court to 28 years' imprisonment on 15 March 2004. The authorities, taking the view that he had absconded from justice, assigned him a lawyer, who took part in the proceedings. The lawyer appealed against the first-instance judgment before the Rome Assize Court of Appeal, which dismissed the appeal on 17 January 2005. He also lodged an appeal on points of law but it was declared inadmissible. An international arrest warrant was issued against Mr Huzuneanu on 19 December 2005 and he was arrested in Romania in 2006, then extradited to Italy at an unknown date.

Mr Huzuneanu, relying on Article 175 of the Code of Criminal Procedure, submitted that his appeal against his conviction should not be time-barred. He argued that he had not absconded from justice and had not waived his right to appear, stating that because he had not been notified of the procedural developments at his place of residence in Romania, he had not been duly informed of the criminal proceedings against him. In a decision of 12 April 2007, the Rome Assize Court of Appeal took the view that Mr Huzuneanu was entitled to be exempted from the time-bar but to appeal only against the second-instance judgment. Mr Huzuneanu appealed on points of law, alleging that he should have a fresh trial on the merits, not only a decision on points of law. That claim was dismissed by the Court of Cassation on 13 January 2008, on the ground that a person convicted *in absentia* forfeited his right to the re-opening of the period for appeal if the assigned counsel had, independently and without the client's knowledge, appealed against the decision in question and if the court of competent jurisdiction had then ruled on that appeal.

In another set of proceedings concerning a different person convicted *in absentia*, the Constitutional Court declared Article 175 § 2 to be in breach of the Constitution, on the ground that the provision did not allow a defendant not having effective knowledge of the proceedings to reopen the period for an appeal against a decision given *in absentia* where the same appeal had previously been lodged by counsel. In December 2009, based on that decision, Mr Huzuneanu lodged a request for a new time-limit for appeal, but without success.

Relying on Article 6 (right to a fair hearing) of the Convention, Mr Huzuneanu complains of his inability to reopen criminal proceedings and thus to present his defence before the Italian courts.

Just satisfaction

#### Valle Pierimpiè Società Agricola S.P.A. v. Italy (no. 46154/11)

The applicant, Valle Pierimpiè società Agricola S.p.a., is an Italian limited company.

The case concerns a declaration to the effect that a part of the Venice lagoon known as Valle Pierimpiè, which the applicant company had purchased and had been using for fish farming, belonged to the public maritime domain.

Relying on Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant company complained of having been deprived without compensation of the fishing valley it had been using, and of being held liable to pay a potentially very large sum to the State in compensation for unlawful occupancy of the property.

In its judgment on the merits of 23 September 2014, the Court found a violation of Article 1 of Protocol No. 1 and held that Italy was to pay the applicant company 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 25,000 in respect of costs and expenses.

It reserved the question of the application of Article 41 (just satisfaction) of the Convention with regard to pecuniary damage. The Court will rule on this question in its judgment of 1 September 2016.

### [Upīte v. Latvia \(no. 7636/08\)](#)

The applicant, Ženija Upīte, is a Latvian national who was born in 1945 and lives in Riga. The case concerns her objection to a judge reviewing a civil case she had brought because he was under inquiry in a scandal involving the judiciary.

In the summer of 2007 there was a telephone tapping scandal in Latvia concerning allegedly unlawful and unethical behaviour in the judiciary. In particular, a book was published containing transcripts between lawyers from a well-known Latvian law firm and judges working in various courts. An inquiry was thus carried out by a working group set up by the Supreme Court.

In the meantime, in 2004 Ms Upīte had brought civil proceedings against a third party. In 2007, when the scandal broke out, her appeal on points of law in these proceedings was pending before the Senate of the Supreme Court, acting as a court of cassation. At the cassation hearing on 29 August 2007 her lawyer raised objections as to one of the three judges sitting on the panel as he was one of those being assessed at the time in the inquiry into allegedly unethical behaviour in the judiciary. On the same day these doubts were dismissed by the other two judges on the panel as they found that they were only based on an assumption and the dismissal of Ms Upīte's civil claim was upheld.

In November 2007 two of the 15 judges assessed during the inquiry were identified in a report as having violated the Code of Ethics of Judges: the judge reviewing Ms Upīte's case was not one of those identified.

Relying on Article 6 § 1 (right to a fair hearing) of the Convention, Ms Upīte alleges that one of the judges reviewing her case was not impartial because he was under inquiry for unethical behaviour at the time.

### [Mikhno v. Ukraine \(no. 32514/12\)](#)

[Svitlana Atamanyuk and Others v. Ukraine \(nos. 36314/06, 36285/06, 36290/06 and 36311/06\)](#)

Both cases concern a military aircraft crash during an aerobatics display at an air show on 27 July 2002 at the Sknyliv aerodrome in Lviv. The cases were brought by relatives of persons killed when the aircraft crashed into spectators at the show and exploded (referred to as the "Sknyliv accident"). As a result of the crash, 77 people died and over 290 sustained injuries.

The applicants in the first case are two Ukrainian nationals, Nina and Anastasiya Mikhno, a grandmother and her granddaughter. They were born in 1940 and 1997 respectively and live in Lviv (Ukraine). Tetiana and Sergiy Mikhno, Anastasiya's mother and father, were in the epicentre of the accident and died at the scene. Anastasiya, who was five at the time, witnessed her parents being crushed by the aircraft.

The applicants in the second case are four Ukrainian nationals: two sisters, Svitlana and Lyudmila Atamanyuk, their mother, Ganna Atamanyuk (now deceased) and Svitlana Atamanyuk's niece, Anna Loskutova. They were born in 1953, 1946, 1920 and 1984 respectively. The Atamanyuk sisters and Anna Loskutova live in Lviv (Ukraine). Svitlana Atamanyuk's daughter, son-in-law and two grandchildren, who attended the air show, all died on the spot. Her niece, Anna Loskutova, who had gone with them to the air show, survived.

Following the accident, several concurrent investigations were opened, notably by a special commission set up by the Government, by the Ministry of Defence, by a commission set up by the Lviv local authorities and by a non-governmental organisation founded by survivors of the accident and those who had lost relatives at the air show. The Special Commission issued its report within several months of the accident and the others between September 2002 and October 2003. Those investigations all reached similar conclusions concerning the major factual circumstances surrounding the air show accident. Notably, the primary cause of the accident had been a technical

mistake by one of the two military pilots flying the plane which crashed. The pilot had executed an aerobatics manoeuvre not featured in his mission order and not practiced by him before the air show, and his co-pilot and the ground crew had failed to intervene in time and guide the plane back to the aerobatics zone it had exited from during the faulty manoeuvre. Furthermore, the investigations also unanimously found that the organisation of the air show had generally had significant safety-related shortcomings. In particular, the relevant general regulatory framework was insufficiently detailed and the military and civilian authorities alike had failed to make full use of the existing framework for implementing all reasonable measures to minimize the risks to spectators' lives. These factors cumulatively resulted in an inadequate preparation of both the airfield for safe accommodation of spectators as well as of the crew for their performance.

The domestic criminal investigation, launched on the same day of the accident, resulted in the conviction of five military officers, including the two pilots who had successfully ejected from the aircraft before the crash, the air show flights director, the aerobatic performance director and the chief safety officer. Relying extensively on the findings of the Government's special commission and an aviation experts' assessment, the national courts convicted and sentenced them in a final decision of March 2006 to prison terms varying between four and 14 years' imprisonment. They notably found that the first pilot had been guilty of breaching his mission order, that three of the other officers – including the second pilot – had been responsible for failing to intervene in his misconduct and that the chief safety officer had failed to put in place a meaningful emergency prevention plan.

Further domestic decisions were taken not to prosecute a number of other military officers and to acquit in a final decision of October 2008 four high-ranking Air Force officials responsible for authorising the air show and military training. The courts concluded that those officers had not directly caused the accident, which had been the first pilot's fault, emphasising that holding the most senior officers accountable for not having supervised his training and performance any closer would constitute an overbroad interpretation of the military statutes and other relevant legal acts. Three of those acquitted officers were, however, dismissed and the fourth demoted following disciplinary proceedings brought against them. Disciplinary proceedings were also brought against a number of other officers, who had never been prosecuted in criminal proceedings, and they received reprimands.

In the meantime, Nina and Anastasiya Mikhno had brought proceedings – lodged within the framework of the criminal proceedings against the military officers – in December 2002 and February 2003, respectively, for compensation. They were subsequently each awarded 50,000 Ukrainian hryvnias (UAH), which was paid in full to Anastasiya Mikhno in December 2006 and her grandmother, Nina Mikhno, in December 2012. The applicants in the second case had lodged similar claims for damages in 2003 and obtained their awards in 2006. In another claim, Anastasiya Mikhno was also awarded an allowance to be paid by the Ministry of Defence until her 18<sup>th</sup> birthday. Lastly, like other victims of the accident, the applicants in both cases received lump-sums from State financial aid programmes.

Relying on Article 2 (right to life) of the Convention, all six applicants allege that the Ukrainian authorities were responsible for the airplane crash resulting in the deaths of their relatives, notably by failing to put in place the necessary legislative, administrative and practical safeguards to protect lives during the air show; and that they failed to carry out an effective and independent investigation into the crash. Further relying on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 13 (right to an effective remedy), all the applicants also allege in particular that the courts dealing with their claims for damages lacked independence and impartiality, that those proceedings had lasted too long and that they had no effective remedies to accelerate their claims. The applicants in the second case lastly complain under Article 3 (prohibition of inhuman or degrading treatment) about the authorities' organisation of the procedure to identify the crash victims' bodies

and the way in which their relatives' remains were handled, alleging that it had caused them emotional distress.

#### [V.M. v. the United Kingdom \(no. 49734/12\)](#)

The case concerns the complaint by a mentally-ill woman about her immigration detention pending deportation.

The applicant, Ms V.M., is a Nigerian national who was born in 1977 and lives in West Drayton (England, UK).

Ms V.M. entered the United Kingdom illegally on 18 November 2003 with her son. In November 2003 her son was admitted to hospital with serious injuries and then taken into care. Ms V.M. was later charged with child cruelty and convicted on 7 April 2008. Due to the seriousness of her offences, the Crown Court judge recommended deportation. Ms V.M. thus remained in detention when her criminal sentence ended on 8 August 2008.

In the following three years, until her release on bail in July 2011, Ms V.M. brought a number of proceedings challenging the decision to deport her. In December 2008, the immigration authorities dismissed her appeal against her deportation. In June 2009, she also requested the decision to deport be reversed or that her representations be treated as a fresh asylum claim, referring to her poor mental health (recurrent depression and a personality disorder) and the poor standard of treatment facilities in Nigeria if she were deported. Five months later the Secretary of State refused to treat those representations as a fresh claim for asylum. Permission to apply for judicial review was granted in May 2010 and a hearing took place in July 2010: both the Court of Appeal and the Administrative Court concluded that, in view of the serious risk of Ms V.M. absconding, reoffending or harming herself or others, she would have been detained lawfully during the period between August 2008 and April 2010 even if the policy to favour alternatives to immigration detention for the mentally ill had been considered. Ms V.M.'s bail applications were also rejected on similar grounds.

During her detention, Ms V.M. had ongoing medical assessments and, by March 2010, the assessments noted that her mental health had significantly deteriorated. However, the courts reviewed all of the medical evidence in their decisions on Ms V.M.'s case and concluded that the authorities' decision not to transfer her to hospital had been reasonable.

Relying in particular on Article 5 § 1 (right to liberty and security) of the Convention, Ms V.M. complains about the excessive length of her detention as well as the system of immigration detention in the UK, notably alleging that the time-limits on the maximum period of immigration detention were unclear and that there was no automatic judicial review. She also complains that her detention from August 2008 (when her criminal sentence ended) to July 2010 (when her first application for judicial review was heard) had not been lawful as it breached the policy on mentally-ill immigration detainees.

[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.

**Jørgensen and Others v. Denmark** (no. 30173/12)

**Strack v. Germany** (no. 28811/12) and **Richter v. Germany** (no. 50303/12)

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