



Judgments and decisions of 1 June 2017

The European Court of Human Rights has today notified in writing 15 judgments¹ and 13 decisions²: ten Chamber judgments are summarised below; separate press releases have been issued for two other Chamber judgments in the cases of *J.M. and Others v. Austria* (applications nos. 61503/14, 61673/14 and 64583/14) and *Giesbert and Others v. France* (nos. 68974/11, 2395/12 and 76324/13); separate press releases have also been issued for three decisions, in the cases of *Haupt v. Austria* (no. 55537/10), *Zschüschen v. Belgium* (no. 23572/07) and *Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (nos. 29382/16 and 489/17); three Committee judgments, which concern issues which have already been submitted to the Court, and the ten other decisions, can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments in French below are indicated with an asterisk ().*

Ayvazyan v. Armenia (application no. 56717/08)

The applicant, Silvar Ayvazyan, is a Russian national who was born in 1951 and lives in Rostov-on-Don (Russia). The case concerned the killing of her mentally-ill brother, Seyran Ayvazyan, born in 1961, by the police.

On 6 March 2006 Seyran Ayvazyan went to a local shop and stabbed a shop assistant and a customer. The police were called and went to Seyran Ayvazyan's home where he had, in the meantime, fled. One of four police officers who arrived at his home was also then stabbed. More police officers were called, as well as the local mayor, an ambulance and the fire brigade. The house being surrounded, the police tried to persuade him to surrender, without success. After about five hours, they decided to enter the house to apprehend him, but when he attacked another officer with a knife, they opened fire and shot him dead.

Criminal proceedings were immediately instituted after the shooting to investigate Seyran Ayvazyan's armed assaults. An inspection of the crime scene and an autopsy were conducted, and police officers involved in the incident were questioned. However, in October 2006 the prosecuting authorities decided to discontinue the criminal case given that Seyran Ayvazyan had died. At the same time the authorities refused to open criminal proceedings against the police officers involved in the incident, concluding that they had acted lawfully in the face of a life-threatening attack. One of Seyran Ayvazyan's sisters lodged a complaint about this decision, submitting in particular that no separate criminal proceedings had been brought into the killing. The complaint was dismissed at both first and second instance. Her appeal on points of law was also finally dismissed in May 2008 by the Court of Cassation because it had been lodged out of time. The Court of Cassation did nevertheless point out a number of shortcomings in the investigation into the killing, namely that not all the police officers present at the shooting had been questioned, that no measures had been

¹ Under Articles 43 and 44 of the Convention, Chamber judgments are not final. During the three-month period following a Chamber judgment's delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

² Inadmissibility and strike-out decisions are final.

taken to prevent collusion between those officers who had been questioned and that no reasonable explanation had been given for the fact that six of the ten bullets fired at Seyran Ayvazyan had hit him in the back.

Relying on Article 2 (right to life) of the European Convention on Human Rights, Silvar Ayvazyan alleged that the use of force against her brother had been unnecessary, the number of shots fired at him excluding the justification of self-defence, and that the police officers involved had been ill-prepared and ill-equipped for the situation. She further submitted under Article 2 that the authorities' investigation had been inadequate.

No violation of Article 2 – as regards the actions of the police officers

Violation of Article 2 – as regards the planning and control of the police operation

Violation of Article 2 (investigation)

Just satisfaction: 15,000 euros (EUR) (non-pecuniary damage)

Külekci v. Austria (no. 30441/09)

The applicant, Gokhan Külekci, is a Turkish national who was born in 1990 and lives in Turkey. He relied on Article 8 (right to respect for private and family life) of the European Convention to complain about his expulsion from Austria, and an exclusion order which prohibited him from being in the country. Mr Külekci was born in Austria to parents of Turkish origin. He left to live in Turkey in 1992, but returned to Austria in 1998. Mr Külekci had Turkish citizenship, and lived in Austria on a residence permit. In 2006 he was convicted of a series of violent crimes in Austria and served time in prison. As a result of his convictions, he was made the subject of an exclusion order, which was ultimately set for a period of five years. In February 2010 he was expelled to Turkey, aged 19.

Mr Külekci complained that his exclusion and expulsion from Austria had violated his right to private and family life. In particular, he argued that his entire family had lived in Austria, and that it had been disproportionate to expel him to what he considered to be a foreign country, as a result of juvenile delinquency that was common for children from broken families.

No violation of Article 8

Malik Babayev v. Azerbaijan (no. 30500/11)

The application of Malik Seyfal oglu Babayev concerned the death of his son during his compulsory military training. Whilst serving as a sniper in the Gadabay region in military unit no.171, Mr Babayev's son died from a gunshot wound. The authorities found that he had committed suicide. Relying in substance on Article 2 (right to life), Mr Babayev complained that his son had been driven to suicide as a result of being ill-treated during his military service, and that the State had failed to protect him whilst he was in its total control. Furthermore, Mr Babayev contended that the Government had failed to carry out an effective investigation into the death. The investigation was repeatedly closed and reopened. It was eventually closed permanently, with the finding that the ill-treatment was not established and that Mr Babayev's son had probably committed suicide because he had been depressed. Mr Babayev claimed that the proceedings had been discontinued in order to avoid harm to the reputation of the Ministry of Defence.

Mr Babayev is an Azerbaijani national who was born in 1966 and lives in Khachmaz (Azerbaijan).

No violation of Article 2 (right to life)

Violation of Article 2 (investigation)

Just satisfaction: EUR 15,000 (non-pecuniary damage)

Krasteva and Others v. Bulgaria (no. 5334/11)

The four applicants relied on Article 1 of Protocol No. 1 (protection of property) to complain that they had been deprived of their property without compensation. In 1968, the second applicant and the antecedents of the other three applicants purchased a plot of land on the outskirts of Sofia. The land in question had originally been collectivised in the years after 1945. In 2002, a group of persons claiming to be the heirs of the original pre-collectivisation owners brought a claim against the applicants for ownership of the land, arguing that they had a right to repossess it. The claimants were ultimately awarded ownership by the courts and the applicants had to surrender possession. The applicants complained that they had been unfairly deprived of land that had been purchased in good faith, and that they had not been awarded any compensation.

The applicants are Donka Krasteva, Maria Piskova, Angelina Piskova-Indzhova, and Iskra Piskova. They are Bulgarian nationals who were born in 1932, 1929, 1965, and 1956 respectively and live in Sofia.

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 82,000 for pecuniary damage, to be distributed among the applicants according to the size of their respective shares in the property lost; EUR 1,000 to each of the four applicants for non-pecuniary damage; and EUR 2,979 jointly to Ms Krasteva, Ms Piskova and Ms Piskova-Indzhova for costs and expenses (to be distributed among them as follows: one half for Ms Krasteva and one fourth each for Ms Piskova and Ms Piskova-Indzhova)

Mindadze and Nemsitsveridze v. Georgia (no. 21571/05)

The two applicants made a number of complaints arising from the criminal proceedings against them, including claims of police ill-treatment, unlawful deprivation of liberty and an unfair trial.

The applicants, David Mindadze and Valerian Nemsitsveridze, are Georgian nationals who were born in 1977 and 1979 respectively and live in Tbilisi and Tskaltubo (Georgia). In 2004 they were arrested and charged in connection with an attack on a member of the Georgian Parliament. The Tbilisi Regional Court found both men guilty of attempted murder with aggravating circumstances (as well as various other charges), finding that Mr Nemsitsveridze had ordered the murder of the parliamentarian, and that Mr Mindadze had attempted to carry it out with the use of a firearm (the victim was wounded but not killed).

Relying on Article 3 (prohibition of torture and ill-treatment), Mr Mindadze complained in particular that police officers had subjected him to electrical shocks and severe beatings in order to extract a confession from him, and that the violence had never been properly investigated. Also relying on Article 3, both applicants claimed that they had been subjected to ill-treatment as a result of the poor conditions of their pre-trial detention. Relying on various provisions under Article 5 (right to liberty and security), they claimed that parts of their pre-trial detention had been unlawful. They submitted that, when the domestic court had ordered an extension of their pre-trial detention, it had not provided any valid reasons for this; that they had not been provided with the prosecutor's application to extend their detention on remand in advance of the judicial examination of it; and that almost six months of their pre-trial detention had not been covered by any valid court decision. Finally, the applicants relied on Article 6 § 1 (right to a fair trial) to complain that the criminal proceedings against them had been unfair, on account of the extraction of a confession and related statements from Mr Mindadze by torture as well as the applicants' inability to benefit from the assistance of lawyers of their own choice at the early stages of the proceedings.

Violation of Article 3 (torture) – in respect of Mr Mindadze, on account of the ill-treatment by the police on 13 May 2004

Violation of Article 3 (investigation) – in respect of Mr Mindadze, concerning the ill-treatment by the police on 13 May 2004

Violation of Article 5 § 1 - on account of the unlawfulness of the applicants' pre-trial detention between 13 January 2005 and 7 June 2005

Violation of Article 5 § 3 - on account of the absence of sufficient reasons in the detention orders of 10 November 2004 and 7 June 2005

Violation of Article 6 § 1

Just satisfaction: EUR 28,000 to Mr Mindadze and EUR 16,000 to Mr Nemsitsveridze for non-pecuniary damage and EUR 4,800 to the applicants jointly for costs and expenses

Stefanetti and Others v. Italy (nos. 21838/10, 21849/10, 21852/10, 21855/10, 21860/10, 21863/10, 21869/10 and 21870/10)*

The eight applicants are Italian nationals who were born between 1933 and 1944. They live in Sondrio Province in Lombardy (Italy). The case concerned the calculation of their retirement pensions.

Relying on Article 6 § 1 (right to a fair trial), the applicants submitted that the action of the legislature in enacting Law No. 296/2006 while their actions were still pending before the Italian courts had amounted to a violation of their right to a fair trial. Under Article 1 of Protocol No. 1 (protection of property) they also complained that according to their calculations they had lost 67 % of the total pensions to which they had been entitled.

In its 15 April 2014 judgment on the merits, the Court ruled that the impugned legislative action involving the enactment of Law No. 296 of 2006 (also known as the "Finance Law for 2007" or "law of authoritative interpretation"), section 1 (777) of which finally, and retroactively, settled the substance of the dispute between the applicants and the State before the domestic courts, had not been justified by any compelling reasons of public interest and that there had therefore been a violation of Article 6 § 1 of the Convention. The Court had also ruled that the infringement of the applicants' property rights had been disproportionate and created an imbalance between the requirements of the public interest and the protection of individuals' fundamental rights, and had therefore amounted to a violation of Article 1 of Protocol No. 1.

Under Article 41 (just satisfaction), the Court had awarded each of the applicants a sum of 12,000 euros (EUR) in respect of non-pecuniary damage.

Today's judgment concerned the question of compensation for pecuniary damage.

Just satisfaction: EUR 146,508 to Mr Stefanetti, EUR 100,517 to Mr Rodelli, EUR 159,922 to Mr Negri, EUR 167,601 to Mr Della Nave, EUR 166,158 to Mr Del Maffeo, EUR 72,088 to Mr Cotta, EUR 47,382 to Mr Curti and EUR 14,786 to Mr Andreola for pecuniary damage, and EUR 5,000 jointly to the eight applicants for costs and expenses

Dejnek v. Poland (no. 9635/13)

The applicant, Artur Dejnek, complained of strip searches and personal checks that he had been subjected to whilst serving a prison sentence in Lublin Remand Centre. Mr Dejnek maintained that prison guards repeatedly conducted extremely intimate searches of him and his cell. In particular, he claimed that he had been ordered to strip naked despite severe pain in his back and subjected to a search which included an inspection of his penis and anus. Mr Dejnek complained that the searches were humiliating and debasing, in violation of his rights under Article 3 (prohibition of inhuman or degrading treatment). The Court also chose to examine the claims under Article 8 (right to respect for private and family life, the home, and the correspondence).

Mr Dejneke is a Polish national who was born in 1976 and is detained in Lublin (Poland).

No violation of Article 3 – concerning the strip searches of 5 June 2012 and 25 August 2012

Violation of Article 8 – concerning the strip searches of 5 June 2012 and 25 August 2012

Just satisfaction: EUR 3,000 (non-pecuniary damage)

Kość v. Poland (no. 34598/12)

The applicant, Jarosław Kosc, is a Polish national who was born in 1942 and lives in Tomaszów Mazowiecki (Poland). The case concerned his complaint about proceedings brought against him by a former local mayor, Z.M., for sending a petition to the district mayor in the run-up to the local elections of 2010, requesting clarifications about Z.M.'s management of village funds. Both Mr Kosc and Z.M. were candidates in those local elections. In May 2011 the domestic courts found that Mr Kosc had infringed Z.M.'s personal rights by failing to prove his accusations. This decision was upheld on appeal in November 2011, the Court of Appeal also concluding that Mr Kosc's petition had not been in the public interest, but had been motivated by his desire to win the elections. Relying on Article 10 (freedom of expression), Mr Kosc submitted that the courts' findings had been disproportionate, stressing that the petition should have been regarded as private correspondence with local government officials concerning the proper use of public funds.

Violation of Article 10

Just satisfaction: EUR 3,000 (non-pecuniary damage) and EUR 1,500 (costs and expenses)

Shabelnik v. Ukraine (no. 2) (no. 15685/11)

The case concerned the applicant's claim that the criminal proceedings against him had been unfair.

The applicant, Dmitriy Shabelnik, is a Ukrainian national who was born in 1979 and is currently in detention in Zhytomyr (Ukraine). In July 2002, he was convicted of murder. However, Mr Shabelnik made a successful complaint about the trial to the European Court of Human Rights, which found that the proceedings had been unfair and in violation of Article 6 (right to a fair trial). As a result of this finding, in 2010 the proceedings came before the Supreme Court for a fresh examination. The court excluded some of the evidence from consideration, but found that the rest of the evidence had been sufficient to support the trial court's finding that Mr Shabelnik had committed the murder.

Relying on various provisions under Article 6, Mr Shabelnik complained that the 2010 proceedings before the Supreme Court had also been unfair. In particular, he complained that he had not been permitted to attend the hearing; that the court had implicitly relied on information which it had ostensibly struck from the admissible body of evidence and had unfairly relied on psychiatric evidence not relied upon during the first trial; and that the Court had – contrary to domestic law and without warning – conducted a fresh re-examination of the entire factual circumstances of the case, rather than simply rule on the validity of the trial court's findings.

Violation of Article 6 § 1

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 6,000 (costs and expenses)

Tonyuk v. Ukraine (no. 6948/07)

The applicant, Yustyna Tonyuk, is a Ukrainian national who was born in 1941 and lives in the Ivano-Frankivsk Region of Ukraine. She complained about the existence and use of a cemetery, which had been created ten metres from her home. Ms Tonyuk obtained two judgments from national courts, which banned the use of the cemetery for future burials, on the grounds that its proximity to Ms Tonyuk's home was in breach of the applicable sanitary standards.

Relying in particular on Article 6 § 1 (right to a fair hearing), Ms Tonyuk complained that burials in the cemetery continued despite of the judgments in her favour, claiming that the court orders had never been properly enforced.

Violation of Article 6 § 1 – on account of the non-enforcement of the judgments of 16 January 2003 and 18 March 2004 in Ms Tonyuk's favour

Just satisfaction: EUR 6,000 (non-pecuniary damage)

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