



Judgments and decisions of 2 March 2017

The European Court of Human Rights has today notified in writing nine judgments¹ and 32 decisions²: five Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *Talpis v. Italy* (application no. 41237/14);

a separate press release has also been issued for one decision, in the case of *Labaca Larrea and Others v. France* (nos. 56710/13, 56727/13 and 57412/13);

three Committee judgments, concerning excessive length of proceedings, and the 31 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 ().*

Debray v. France (application no. 52733/13)*

The applicant, Dominique Debray, is a French national who was born in 1954 and lives in Paris.

The case concerned the annulment of the entirety of a court summons for defamation and insult, on the ground that it had not met the requirements of section 53 of the Freedom of the Press Act.

In 2007, a patient being treated by Mr Debray, a doctor specialising in laser depilation, lodged a complaint against him with the medical association. She published the main lines of that complaint on an Internet site, describing Mr Debray and his associates as robbers and accusing him of dishonest commercial practices, misleading advertising and abuse of trust.

In June 2007 Mr Debray sued this person and the Internet site operator before the Paris Regional Court for insult and defamation. However, the pre-trial judge of the Paris Regional Court annulled the summons in its entirety on the grounds that it was too vague on the subject of the requirements of section 53 of the Freedom of the Press Act inasmuch as it classified certain facts as constituting both insult and defamation. That decision was upheld by the Paris Court of Appeal, but the Court of Cassation quashed the judgment delivered. The case was referred back to the Court of Appeal, which, on 15 February 2011, upheld its findings, and on 15 February 2013 the Full Court of Cassation dismissed Mr Debray's appeal on points of law on the grounds that a summons classifying the same fact as both insult and defamation was null and void.

Relying on Article 6 § 1 (right of access to a tribunal) and Article 13 (right to an effective remedy) of the European Convention on Human Rights, Mr Debray complained of the annulment of the court summons in its entirety and of a violation of his right to a court.

No violation of Article 6 § 1

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.

Paroutsas and Others v. Greece (no. 34639/09)*

The applicants, Athanasios Paroutsas, Aspasia Paroutsas, Efthymia Paroutsas, and Dimitra Paroutsas, are Greek nationals who were born in 1932, 1973, 1974, and 1981 respectively and live in Athens, apart from Ms Aspasia Paroutsas, who lives in Washington DC (USA).

The case concerned a problem with the service of two administrative decisions concerning the demolition of a building which had been deemed dangerous.

On 8 May 2002 the Urban Planning Department of Athens Municipality ordered the demolition of the first floor of a building belonging to the applicants, on the grounds that it was empty, rundown and unsuitable for habitation. The Urban Planning Department further requested the consolidation of the ground floor, notifying a 30-day deadline for commencing the works, under the supervision of an architect. According to the Government, the applicants initiated the works without calling on the services of an architect and with the intention of demolishing the whole building.

On 31 May 2002 a number of employees of the Urban Planning Department visited the site and drew up a progress report on the works, noting, firstly, that total demolition of the building was against the law because the structure was a listed “neoclassical” building and was under a conservation order, and secondly, that the works had begun. The Urban Planning Department ordered the owners to halt the demolition work and imposed a fine of 4,200 euros (EUR) on them. The report was served on the applicants by means of bills posted on the building under demolition on 21 June 2002, thus initiating the 30-day deadline in order to apply for reconsideration. The applicants submit that that decision was only brought to their attention one year later, on 19 June 2003, when Mr Athanasios Paroutsas was requested to pay the fine imposed.

On 4 September 2003 Mr Athanasios Paroutsas submitted an application for reconsideration to the Urban Planning Department’s Appeals Board, which declared it inadmissible as having been lodged out of time. He subsequently applied to the Athens Administrative Court to set the decision aside, submitting that on the date on which the report had been served the building had been almost completely demolished and that there had no longer been any walls standing on which to post the decision. That application was dismissed by the Administrative Court of Appeal by judgment of 28 December 2004, upheld by the Council of State on 31 December 2008.

Relying on Article 6 § 1 (right of access to a court and right to a fair trial within a reasonable time), the applicants complained of their lack of access to a court in order to assert their rights and of the length of proceedings.

Violation of Article 6 § 1 (access to court) – in respect of Mr Paroutsas

Violation of Article 6 § 1 (length of proceedings) – in respect of Mr Paroutsas

Application declared **inadmissible** in so far as it concerns Aspasia, Efthymia and Dimitra Paroutsas

Just satisfaction: 4,200 euros (EUR) (non-pecuniary damage) and EUR 1,274 (costs and expenses) to Mr Paroutsas

Moroz v. Ukraine (no. 5187/07)

The applicant, Oleg Moroz, is a Ukrainian national who was born in 1967 and is currently serving his prison sentence. The case concerned his prosecution for murder, in addition to the conditions and treatment he had been subjected to whilst in pre-trial detention.

On the morning of 1 June 2005 O., the president of the Ukrainian Dental Association, was shot in his office. Mr Moroz had been present at the time, and called an ambulance. When the police arrived, Mr Moroz explained that it had been an accident: that he and O. had both been interested in hunting; that he had brought the gun as a present for O.; and that the gun had accidentally gone off when O. had tried to pull it to himself.

Mr Moroz was arrested by police, and questioned later that night in the presence of his lawyer. The lawyer indicated to the police that Mr Moroz had to be provided with the opportunity to talk with him in private before the questioning. However, the investigator rejected the request. Mr Moroz was later charged with murder, and then also with the illegal production, possession and storage of firearms. Starting in July 2005, he was detained at Kyiv pre-trial detention centre no.13 ("the SIZO").

In May 2006 the Kyiv City Court of Appeal found Mr Moroz guilty as charged and sentenced him to 15 years' imprisonment. The Court held that Mr Moroz had deliberately shot O. twice in the head, as revenge for O.'s role in preventing him from becoming the acting executive director of the Ukrainian Dental Association. The court's conclusion was based on witness testimony (including that of three people who had entered the room after the incident, and found Mr Moroz smiling), as well as a forensic examination (which included a ballistic examination that contradicted Mr Moroz's version of events). Mr Moroz appealed, but the Supreme Court upheld the decision in November 2006.

On 1 July 2007 Mr Moroz was transferred to prison no.72 to serve his sentence.

Relying in particular on Article 6 (right to a fair trial), Mr Moroz complained that the proceedings against him had been unfair. In particular, he complained that he had not been allowed to have a private discussion with his lawyer in the police station before his police interview there; and that he had also been denied a lawyer when first questioned about the shooting at the scene. Relying on Article 8 (right to family life and the correspondence), Mr Moroz complained that whilst in pre-trial detention, he had not been allowed to see his family or send correspondence to them. He also relied on Article 9 (freedom of religion) to complain that during his pre-trial detention he had not been allowed to meet with a priest or visit the SIZO chapel, and that his religious literature and other religious items had been seized by SIZO staff.

No violation of Article 6 §§ 1 and 3 (c)

Violation of Article 8

Violation of Article 9

Just satisfaction: EUR 4,000 (non-pecuniary damage)

Palchik v. Ukraine (no. 16980/06)

The applicant, Aleksandr Palchik, is a Ukrainian national who was born in 1954 and lives in Kostyantynivka. The case concerned his allegation that criminal proceedings brought against him for smuggling and related offences had been unfair.

In 2002 criminal proceedings were instituted against Mr Palchik, the managing director of a private company, on suspicion of having concluded fictitious contracts for ferromanganese with four Ukrainian private companies in order to obtain export value added tax refunds. Mr Palchik denied the allegations, stating that he had legally bought ferromanganese from the four companies, exported it to Russia and then received tax refunds. During the pre-trial investigation managers of the four companies admitted that the contracts had either been forged or fictitious and that no actual shipments of the goods had taken place; some of the managers also repeated these statements during confrontations with Mr Palchik.

The police tried on at least five occasions between 2003 and 2004 to bring these and other witnesses to court hearings on the case, without success. The pre-trial statements of these witnesses were therefore read out at a court hearing on the case in August 2004.

In December 2004 Mr Palchik was found guilty of exporting ferromanganese based on forged documents, receipt of tax refunds on the basis of fictitious and forged documents, abuse of office and forgery of documents. His final sentence was seven years and six months' imprisonment with a ban on holding managerial positions for two years. In convicting Mr Palchik, the first-instance court relied in particular on the statements of a number of witnesses given during the pre-trial

investigation as well as inconsistencies between the official records of Mr Palchik's company and the shadow accounting discovered by the authorities. These findings and the sentence were upheld on appeal in March 2005. Mr Palchik's and his lawyer's appeals on points of law were dismissed by the Supreme Court in September 2005, on the ground that the lower courts' findings had been based on a substantial amount of evidence, in particular the statements made by the managers of companies at the investigation stage.

Mr Palchik was released from detention following a presidential pardon in May 2009.

Relying on Article 6 §§ 1 and 3 (d) (right to a fair hearing/right to obtain attendance and examination of witnesses), Mr Palchik made a number of complaints about the fairness of the proceedings against him. In particular, he complained that the Supreme Court had failed to summon him and his lawyer to the hearing on his appeal on points of law, and thus had only heard the case in the presence of the prosecutor, in breach of the principle of equality of arms. Furthermore, he complained that the witnesses whose statements had been used to convict him had not been examined at trial and that five other witnesses had not been called at all. Lastly, he also complained that he had not been able to obtain a copy of the appeal court's decision of March 2005 for a considerable amount of time during the proceedings, in breach of Article 34 (right of individual petition).

Violation of Article 6 § 1 (equality of arms)

No violation of Article 6 §§ 1 and 3 (d) – on account of the admission of the statements of two of the witnesses (S. and K.) as evidence

Violation of Article 6 §§ 1 and 3 (d) – on account of the admission of the untested statement of one of the witnesses (R.) as evidence

No violation of Article 34

Just satisfaction: EUR 1,000 (non-pecuniary damage) and EUR 600 (costs and expenses)

Ahmed v. the United Kingdom (no. 59727/13)

The applicant, Liban Mohamud Ahmed, is a Somali national who was born in 1977 and lives in London. The case concerned his detention after the Secretary of State decided to make a deportation order against him.

In 1999 the applicant made a claim for asylum in the UK. This was unsuccessful, but he was granted exceptional leave to remain in the UK until 2004.

Following ten criminal convictions between November 2001 and August 2005, Mr Ahmed was convicted again in December 2007, of a public order offence and of failing to surrender, and was sentenced to four and a half months' imprisonment. In January 2008 Mr Ahmed was served with a notice that the Secretary State intended to make a deportation order against him. His appeal against that decision was dismissed.

On 8 February 2008 Mr Ahmed was detained pending his deportation. Removal directions were cancelled on 16 June 2009, after Mr Ahmed made an application to the European Court of Human Rights, which granted an interim measure under Rule 39.

His detention was reviewed monthly with reasons for maintaining his detention being recorded in the review forms. Some of the review forms issued after the grant of the interim measure under Rule 39 noted, in what the domestic courts described to be passages which were "not very happily expressed" [§22], that his continuing detention was a direct result of his appeals, that Rule 39 "is a barrier to removal" and that he could reduce the length of his detention by withdrawing voluntarily.

The courts repeatedly refused to grant Mr Ahmed bail and his further representations against his removal were also refused by the Secretary of State.

On 13 July 2011, two weeks after the Court ruled on the issue of removals to Somalia in the case of *Sufi and Elmi v. the United Kingdom*³, Mr Ahmed was released on bail.

In November 2011 the Administrative Court dismissed Mr Ahmed's judicial review claim, finding that his detention had not been unlawful. In particular, the Court noted that Mr Ahmed had plainly presented a substantial absconsion risk. The Court of Appeal dismissed his appeal in October 2012. The Supreme Court refused leave to appeal on 26 March 2013.

Relying on Article 5 § 1 (f) (right to liberty and security), Mr Ahmed complained that the domestic law governing administrative detention of immigrants prior to expulsion had not been sufficiently precise, accessible and foreseeable for it to meet the standard of lawfulness under the Convention. He also argued that his detention between 8 February 2008 and 13 July 2011 had not been for the purpose of deportation and had been in violation of his right to liberty. Furthermore, Mr Ahmed relied on Article 34 (right of individual petition) to complain that the authorities had hindered his right to apply to the Court, by justifying the decision to keep him detained with the fact that he had obtained a measure under Rule 39 (interim measures) of the Rules of Court from the Court, and by making repeated offers to him to join a "Facilitated Returns Scheme" which would voluntarily return him to Somalia.

No violation of Article 5 § 1 f)

No violation of Article 34

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHR_Press](https://twitter.com/ECHR_Press).

Press contacts

echrpess@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

George Stafford (tel: + 33 3 90 21 41 71)

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.

³ Applications nos. 8319/07 and 11449/07, judgment 28 June 2011.