



## Judgments and decisions of 3 December 2015

The European Court of Human Rights has today notified in writing seven judgments<sup>1</sup> and eight decisions<sup>2</sup>:

five Chamber judgments are summarised below; for two others, in the cases of *Prompt v. France* (application no. 30936/12) and *Mytilinaios and Kostakis v. Greece* (no. 29389/11), separate press releases have been issued;

eight decisions can be consulted on [Hudoc](#) and do not appear in this press release.

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

### Bici v. Albania (application no. 5250/07)

The applicant, Xhaferr Bici, is an Albanian national who was born in 1926 and lives in Durrës (Albania). The case concerned his complaint that his property rights to a plot of land had been breached.

In September 1996 a district court acknowledged that Mr Bici had inherited property rights to a plot of agricultural land measuring 72,000 sq. m which had been owned by his father and had been expropriated under the communist regime. Mr Bici subsequently lodged an application with the Durrës Property Restitution and Compensation Commission seeking the recognition, restitution and/or compensation of the property. In July 2008 the Commission returned the application to Mr Bici, stating that no decision could be taken on the strength of the 1996 district court decision and that the relevant legal provisions, which provided for the recognition of property rights in a case such as Mr Bici's had been repealed.

Relying in particular on Article 6 § 1 (right to a fair hearing within a reasonable time) of the European Convention on Human Rights, Mr Bici complained that the length of the proceedings before the Commission had been unreasonable.

#### **Violation of Article 6 § 1** (length of proceedings)

**Just satisfaction:** 7,000 euros (EUR) (non-pecuniary damage) and EUR 850 (costs and expenses)

### Amirkhanyan v. Armenia (no. 22343/08)

The applicant, Kondranov Amirkhanyan, is an Armenian national who was born in 1941 and lives in Yerevan. The case concerned his complaint that the quashing of a final judgment in his favour had been unfair and had breached his property rights.

In 1998 Mr Amirkhanyan had bought a plot of land measuring 285 sq. m from another person. He subsequently also used an adjacent strip of land of 38.75 sq. m which the seller had been using but to which he had not held any ownership rights. In 2004 the owner of the adjacent strip of land, G.,

<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> Inadmissibility and strike-out decisions are final.

brought proceedings against Mr Amirkhanyan, claiming her ownership rights. In December 2006 a district court granted her claim and ordered Mr Amirkhanyan to release the strip of land to her. On 9 March 2007 the appeal court granted Mr Amirkhanyan's appeal, finding that G. had relinquished her ownership rights of the strip of land in favour of the person who had sold the land to Mr Amirkhanyan. An appeal on points of law lodged by G. was declared inadmissible by the Court of Cassation on 12 April 2007. However, the Court of Cassation subsequently examined a second appeal on points of law lodged by G. and remitted the case for a fresh examination to the district court, which granted G.'s claim and recognised her ownership rights in respect of the strip of land. Mr Amirkhanyan's appeal against that decision was dismissed in July 2008.

Mr Amirkhanyan complained that the decision to quash the final judgment in his favour had been in breach of Article 6 § 1 (right to a fair trial) and of Article 1 of Protocol No. 1 (protection of property).

**Violation of Article 6 § 1**

**Violation of Article 1 of Protocol No. 1**

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

**Kantarelis v. Greece (no. 6314/12)\***

The applicant, Theodoros Kantarelis, a retired gendarme, is a Greek national who was born in 1926 and lives in Athens.

The case concerned the refusal by the State General Accounting Department (SGAD) to comply with the judgment of the Audit Court and readjust Mr Kantarelis's retirement pension.

On 17 February 2006 Mr Kantarelis unsuccessfully challenged the decision rejecting his request for a readjustment of his retirement pension. The SGAD pointed out that Laws nos. 2838/200 and 3016/2002 relied on by Mr Kantarelis concerned promotions of active servicemen and did not apply to servicemen who had already retired before those Laws came into force. On 4 October 2006 Mr Kantarelis applied to the Audit Court, which found in his favour. In its judgment of 5 March 2010 it observed that Law no. 2838/2000 should also apply to servicemen who had left the armed forces before the Law came into force. On 2 July 2010 Mr Kantarelis applied to the three-member panel of the Audit Court responsible for monitoring the execution of judgments, seeking an order compelling the SGAD to comply with the Audit Court's judgment. The SGAD indicated that it only had to comply with judgments that were no longer amenable to appeal. The panel considered that this refusal was unjustified and requested the SGAD to execute the judgment. On 15 October 2011 Mr Kantarelis applied to the Audit Court again, complaining about the SGAD's continuing refusal to comply with the judgment of 5 March 2010. However, the Audit Court declared his request inadmissible on the grounds that it had not been submitted in the proper form.

Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property), Mr Kantarelis complained of the SGAD's refusal to comply with the Audit Court's judgment of 5 March 2010 and of his consequent inability to receive the difference in amount of his retirement pension that would result from a readjustment of the pension according to that judgment.

**Violation of Article 6 § 1**

**Violation of Article 1 of Protocol No. 1**

**Just satisfaction:** EUR 1,300 (non-pecuniary damage)

## Kushch v. Ukraine (no. 53865/11)

The applicant, Sergey Kushch, is a Ukrainian national who was born in 1969 and lives in Kyiv. The case concerned his pre-trial detention, and in particular his complaint about the allegedly inadequate medical care available to him in detention and his handcuffing in hospital.

Mr Kushch was arrested and subsequently placed in pre-trial detention on charges of embezzlement in July 2010. His detention was subsequently extended on several occasions and his appeals against the detention orders were rejected. During the following months two further criminal cases on suspicion of embezzlement were opened against him. He was eventually released in March 2012, subject to an undertaking not to abscond.

Suffering from a number of illnesses, including hypertension and a heart condition, Mr Kushch maintains that, due to the inadequate treatment he received, his health drastically deteriorated while in detention. In particular, the pre-trial detention centre in Kyiv, where he was kept from August 2010, did not have the specialists or facilities he required. There were long delays until he was – on several occasions during his detention – examined and treated in civilian hospitals after the need for such examination had been acknowledged by the prison authorities themselves. On one occasion, the European Court of Human Rights, at Mr Kushch's request, applied an interim measure under Rule 39 of its Rules of Court and indicated to the Ukrainian Government that his medical examinations which had been found to be necessary should be carried out and their conclusions should be acted upon without delay.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Kushch complained, in particular, of the authorities' failure to provide him with prompt and adequate medical care in detention and of the fact that, while in hospital, he had allegedly been handcuffed to his bed at all times. Relying further on Article 5 §§ 1 (c), 3, 4, and 5 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to have lawfulness of detention decided speedily by a court / right to compensation), he complained: that several periods of his pre-trial detention had been unlawful; that its overall duration, of more than one year and seven months, had been unreasonable; that there had been no adequate review of his detention; and that he had not had an enforceable right to compensation in respect of the alleged violations of his rights under Article 5.

**Violation of Article 3** (inhuman and degrading treatment) – in respect of the medical care available to Mr Kushch in detention

**Violation of Article 3** (inhuman and degrading treatment) – on account of handcuffing in hospital

**No violation of Article 5 § 1** – in respect of Mr Kushch's detention from 21 to 23 July 2010

**Violation of Article 5 § 1** – in respect of Mr Kushch's detention from 23 to 29 July 2010, from 21 to 23 March 2011, and from 24 March 2011 to 6 March 2012

**Violation of Article 5 § 3**

**Violation of Article 5 § 4**

**Violation of Article 5 § 5**

**Just satisfaction:** EUR 12,000 (non-pecuniary damage) and EUR 3,000 (costs and expenses)

## Yaroshovets and Others v. Ukraine (nos. 74820/10, 71/11, 76/11, 83/11, and 332/11)

The applicants, Danylo Yaroshovets, Vyacheslav Vorona, Oleg Baltyan, Viktor Pylypchuk, and Andriy Romanchuk, Ukrainian nationals, were born between 1978 and 1982. They all live in Kyiv, with the exception of Mr Vorona, who died in 2014. His mother has pursued his application after his death. The case mainly concerned the applicants' detention and the criminal proceedings against them.

All five applicants were co-defendants in criminal proceedings brought against them in October 2005 on charges of several counts of ill-treatment, theft, extortion and abuse of power, allegedly committed while working as police officers. They were placed in pre-trial detention and the detention orders were subsequently repeatedly extended by the courts, in particular on the grounds that the case was complex, the applicants were accused of serious offences and there was a risk that they might obstruct the investigation. In October 2008 they were convicted as charged and sentenced to five years' imprisonment with a ban on holding any office of law-enforcement for three years. On appeal, they were given longer sentences, but the appeal court judgment was quashed by the Supreme Court. The case was subsequently repeatedly reconsidered by the courts at three levels of jurisdiction. Eventually, in June 2015 the proceedings ended with the Higher Specialised Court for Civil and Criminal Matters delivering a final judgment on the case.

The applicants remained in detention until their release on an undertaking not to abscond in May 2012. Four of the applicants maintain that during the period of their detention pending trial they were transported to and from court hearings, on more than 200 occasions, in very poor conditions. In particular, they were kept in overcrowded prison vans for several hours, with insufficient access to fresh air and high temperatures in summer and freezing temperatures in winter. On court days, they were also placed in special transit boxes measuring 3.75 square metres with no ventilation for durations ranging from 30 minutes to several hours.

One applicant, Mr Yaroshovets, submits that after his arrest in October 2005 he was beaten up and threatened with physical violence by a police officer for refusing to answer questions related to the offences of which he was suspected. Furthermore, Mr Pylypchuk, who was diagnosed with chronic prostatitis during his detention, maintains that he was not provided with adequate medical assistance for his condition. In particular, the authorities refused his request to be examined at a specialised clinic.

The applicants alleged violations of Article 3 (prohibition of inhuman or degrading treatment) on account of, in particular: Mr Yaroshovets' alleged ill-treatment by the police; the alleged lack of adequate medical assistance provided in detention to four of the applicants; and the poor transport conditions of four of the applicants. Furthermore, the applicants relied on Article 5 §§ 1, 3 and 5 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial / right to compensation), complaining in particular of the unlawfulness and the long duration of their detention pending the criminal proceedings against them, and – as regards four of the applicants – of the fact that they had not had an enforceable right to compensation for the violation of their rights under Article 5. Finally, the applicants complained that the length of the proceedings against them had been unreasonable, in violation of Article 6 § 1 (right to a fair trial within a reasonable time).

**Violation of Article 3** (inhuman and degrading treatment) – in respect of Mr Yaroshovets

**Violation of Article 3** (investigation) – in respect of Mr Yaroshovets

**No violation of Article 3** – in respect of Mr Pylypchuk, concerning his complaint of inadequate medical assistance in detention

**Violation of Article 3** – in respect of Mr Yaroshovets, Mr Balyan, Mr Pylypchuk and Mr Romanchuk, on account of the conditions in which they were transported to and from court hearings during their detention

**Violation of Article 5 §§ 1 and 3** - in respect of Mr Yaroshovets, Mr Balyan, Mr Pylypchuk and Mr Romanchuk, on account of the unlawfulness and length their detention between 14 October 2005 and 28 October 2008

**Violation of Article 5 §§ 1 and 3** - on account of the unlawfulness and length of the applicants' detention between 24 December 2009 and 13 August 2010

**Violation of Article 5 § 1** - in respect of Mr Yaroshovets, Mr Balyan, Mr Pylypchuk and Mr Romanchuk, on account of their detention between 14 October 2010 and 20 September 2011

**No violation of Article 5 § 1** - in respect of Mr Yaroshovets, Mr Balyan, Mr Pylypchuk and Mr Romanchuk, on account of their detention between 20 September 2011 and 8 May 2012

**Violation of Article 5 § 5** - in respect of Mr Yaroshovets, Mr Balyan, Mr Pylypchuk and Mr Romanchuk

**Violation of Article 6 § 1** (length of proceedings)

**Just satisfaction:** EUR 20,000 to Mr Yaroshovets, EUR 10,000 to the estate of Vyacheslav Vorona, and EUR 15,000 each to Mr Balyan, Mr Pylypchuk, and Mr Romanchuk, in respect of non-pecuniary damage

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