



Judgments and decisions of 5 October 2017

The European Court of Human Rights has today notified in writing 16 judgments¹ and 38 decisions²: five Chamber judgments are summarised below; separate press releases have been issued for three other Chamber judgments in the cases of *Ābele v. Latvia* (applications nos. 60429/12 and 72760/12), *Kalēja v. Latvia* (no. 22059/08), and *Becker v. Norway* (no. 21272/12); a separate press release has also been issued for one decision, in the case of *Zamoyski-Brisson and Others v. Poland* (nos. 19875/13, 19906/13, 19921/13, and 19935/13); eight Committee judgments, concerning issues which have already been submitted to the Court, and the 37 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 ().*

Kormev v. Bulgaria (application no. 39014/12)*

The applicant, Todor Kormev, is a Bulgarian national who was born in 1981. He is being held in Stara Zagora Prison (Bulgaria). The case concerned his detention conditions and his complaint concerning the fairness of the criminal proceedings that led to his conviction.

In February 2009 an investigation was opened by the Stara Zagora prosecutor's office into the theft of a large sum of money and jewellery from the coffers of a local company. On 26 February 2009 the police arrested three suspects, including Mr Kormev and Mr Stoykov. The events surrounding Mr Stoykov's arrest gave rise to a judgment by the Court, in which it found that the ill-treatment inflicted on Mr Stoykov during his arrest amounted to a violation of Article 3 of the Convention (*Stoykov v. Bulgaria*, no. 38152/11, 6 October 2011).

In August 2009 the three suspects were charged with aggravated theft and illegal possession of a firearm. In the meantime, the stolen money and jewellery were recovered on the basis of Mr Stoykov's instructions and were returned to the victims. The three defendants were found guilty by the regional court, which sentenced Mr Kormev to 18 years and six months' imprisonment. His conviction was upheld by the Plovdiv Court of Appeal in April 2011.

In November 2011 the Supreme Court of Cassation dismissed Mr Kormev's appeal on points of law, in which he formally challenged the admissibility of the evidence against him and the reasoning of his conviction, which was allegedly based only on the confession that had, in his view, been extorted from his co-defendant (Mr Stoykov). The Supreme Court considered that Mr Kormev's conviction had not been based solely on his accomplice's statement, but that it had been corroborated by other evidence.

Mr Kormev also complained about the conditions in which he had been detained, criticising, in particular, the size of the cells, the lack of hygiene (presence of cockroaches) and the absence of sanitary facilities (during the night he had been obliged to relieve himself in a bucket).

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.

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr Kormev alleged that his conditions of detention in the detention facility and in Stara Zagora Prison were inhuman and degrading.

Relying on Article 6 § 1 (right to a fair trial) of the European Convention, Mr Kormev alleged that his conviction had been based on a confession that had allegedly been extracted from one of his co-defendants (Mr Stoykov).

Violation of Article 3 (inhuman and degrading treatment) – concerning the period between February 2009 and February 2016

Violation of Article 6 § 1

Just satisfaction: The Court held that the finding of a violation of Article 6 constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Kormev on account of that violation. It further awarded him 10,000 euros (EUR) for the non-pecuniary damage sustained on account of the violation of Article 3 and EUR 477,54 for costs and expenses.

Varadinov v. Bulgaria (no. 15347/08)*

The applicant, Pavel Varadinov, is a Bulgarian national who was born in 1981 and lives in Brestovitsa (Bulgaria). The case concerned the fact that it had been impossible for him to challenge a penalty for a road-traffic offence and his complaint concerning the right of access to a court.

On 16 September 2007 Mr Varadinov was given a parking ticket by the road-traffic police for having committed an administrative offence, in that he had parked his car in an unauthorised area. On 21 September 2007 the regional police director imposed a fine of about 25 euros (EUR) – 50 Bulgarian leva (BGN) – and the loss of five points from his driving licence.

On 15 October 2007 Mr Varadinov lodged an appeal with the Plovdiv District Court, arguing that his car had not been parked and that he had not created a dangerous situation for others; however, the court ended the proceedings on the grounds that decisions imposing a fine of less than BGN 20 could not be submitted for judicial examination.

Relying in particular on Article 6 (right to a fair hearing and right to access to a court), Mr Varadinov alleged that he had been unable to have his case heard by an independent and impartial tribunal established by law.

Violation of Article 6 § 1

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Mr Varadinov. It further awarded him EUR 300 for costs and expenses.

Mazzeo v. Italy (no. 32269/09)*

The applicants, Saverio Cosimo Mazzeo, Cosimo Damiano Mazzeo and Elmerindo Mazzeo, are Italian nationals who were born in 1957, 1961 and 1961 respectively and live in Ceppaloni, Arpaia and Parma (Italy). The case concerned the non-execution of a judicial decision in their favour.

On 15 July 1981 the president of the Campania Region decided to close the nursery school in which the applicants' mother (Ms Scocca) taught and to have the staff on indefinite contracts re-employed by the municipality of Ceppaloni within 60 days starting from 30 July 1981. On expiry of that deadline, the individuals concerned would be remunerated on the basis of the national collective agreement on the service of local-government employees. On 27 June 1988, by decision no. 364, the municipality reemployed the staff members in question, including Ms Scocca, on the basis of

indefinite contracts starting on that date. Ms Scocca received a higher salary than she had been paid between 1981 and 1988.

On 25 June 1990 the municipality made Ms Scocca redundant; she brought proceedings before the Naples Administrative Tribunal (TAR) in order to have her redundancy set aside. She also claimed the payment of sums in back pay, corresponding to the difference between the remuneration paid between 1981 and 1988 and the salary paid from the date of her re-employment (27 June 1988). The TAR dismissed her appeal and Ms Scocca lodged an appeal on points of law, but she died while it was pending. The three applicants pursued the proceedings before the *Consiglio di Stato* as her heirs.

On 27 June 2006 the *Consiglio di Stato* allowed Ms Scocca's appeal, ordering the municipality to pay her a difference in salary amounting to 222,931.69 euros (EUR). However, it dismissed Ms Scocca's appeal in so far as it concerned the legitimacy of her dismissal.

On 30 January 2008, as the municipality had not complied with the order, the applicants brought enforcement proceedings before the *Consiglio di Stato*. On 20 November 2008, during the employment proceedings, the municipality set aside, of its own motion, its decision no. 364, replacing it by decision no. 284, which indicated that Ms Scocca ought to have been reemployed on a temporary rather than an indefinite contract. On the following day it requested that the applicants' application for enforcement be set aside. The *Consiglio di Stato* granted the municipality's request and dismissed the application for enforcement on the grounds that the legal basis for the claim had been automatically quashed. On 22 January 2009 the applicants unsuccessfully applied to have decision no. 284 set aside. Their appeal before the *Consiglio di Stato* is currently pending.

Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 1 of Protocol No. 1 to the Convention (protection of property), the applicants complained of a violation of the principle of legal certainty and of the right of access to a court, and about the failure to execute the *Consiglio di Stato*'s judgment of 27 June 2006.

Violation of Article 6 § 1

Violation of Article 1 of Protocol No. 1

Just satisfaction: EUR 245,000 for pecuniary and non-pecuniary damage and EUR 2,500 for costs and expenses

Ostroveņecs v. Latvia (no. 36043/13)

The applicant, Nikita Ostroveņecs, is a Latvian national who was born in 1993 and is detained in Jēkabpils (Latvia). The case concerned his complaint of having been ill-treated by detainee escort officers.

A minor at the time of the criminal trial against him, Mr Ostroveņecs, was charged, together with three co-accused, with aggravated murder and the intentional destruction of property. After several hearings in May 2010, having pleaded "partially guilty", he was convicted as charged on 29 May 2010 and sentenced to ten years' imprisonment. The Supreme Court upheld the conviction on appeal but reduced the sentence to nine and a half years' imprisonment in December 2013.

Mr Ostroveņecs submits that on the trial days he was insulted and physically assaulted in the holding area in the basement of the Riga Regional Court by detainee escort officers to make him confess to the crimes. In particular, he was made to perform exercises such as walking slowly in a squatted position; he was beaten on his back and other body parts, including with a rubber truncheon; the officers belittled him and threatened to kill or mutilate him if he did not plead guilty. During a hearing on 25 May 2010, without having consulted his lawyer, he eventually admitted his guilt and refused to testify. At a later hearing, on 28 May 2010, after consultation with his lawyer, and after

his mother and his lawyer had lodged complaints with the prosecution service about his ill-treatment, he maintained his earlier plea of “partially guilty”, stating that he had admitted to being guilty only as a result of having been assaulted.

In June 2010 the Internal Security Office opened an internal inquiry into the complaints of ill-treatment. Having obtained both Mr Ostrovenec’s medical records from the prison where he was held and as well as explanations from 16 officers, the Office refused to open criminal proceedings in August 2010, finding that there was no information indicating that a disciplinary offence had been committed. After that decision and further refusals by the Office to open proceedings had been quashed by the prosecution service, a criminal investigation was eventually opened in February 2012. It was terminated in July 2012, on the grounds that there were no elements of an offence. Subsequent appeals by Mr Ostrovenec’s mother and himself against that decision were dismissed by the prosecutors.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), Mr Ostrovenec complained that he had been ill-treated by the detainee escort officers and that there had been no effective investigation into his allegations.

Violation of Article 3 (investigation)

Violation of Article 3 (inhuman and degrading treatment)

Just satisfaction: EUR 8,000 (non-pecuniary damage) and EUR 1,210 (costs and expenses)

Aviakompaniya A.T.I., ZAT v. Ukraine (no. 1006/07)

The case concerned a dispute between a commercial air carrier business and the aviation authorities.

The applicant, Aviakompaniya A.T.I., ZAT, was a Ukrainian company based in Kyiv which operated a commercial air carrier business. It was liquidated in 2015. In March 2003 the applicant company brought a claim for damages against the State Aviation Safety Department, complaining about loss of profit which had been caused by the latter’s delay in issuing it with a safety certificate ordered by a court judgment of 2001. The first-instance commercial court allowed the claim in part, but this judgment was then quashed on appeal and the applicant company’s claim was rejected. However, the Higher Commercial Court (“the HCC”) subsequently reversed the appellate court’s ruling, finding in the applicant company’s favour. Ultimately, in June 2006, the Supreme Court quashed the ruling of the HCC, holding that the applicant company had failed to prove that it had realised a profit prior to 2001.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicant company alleged in particular that the Supreme Court had overstepped the limits of its jurisdiction in their case. In particular, under the domestic legislation in force at the time, the Supreme Court was not allowed to quash the higher court’s decision and directly uphold the appellate court’s decision; rather it had to quash this decision and then remit the case for fresh consideration by a lower court.

Violation of Article 6 § 1 – concerning the scope of the powers of the Supreme Court in the applicant company’s case

Just satisfaction: EUR 1,500 (non-pecuniary damage) and EUR 1,200 (costs and expenses) to East/West Alliance Limited.

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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.