



Judgments and decisions of 8 October 2015

The European Court of Human Rights has today notified in writing ten judgments¹ and 84 decisions²: six Chamber judgments are summarised below; for three others, in the cases of *Gahramanli and Others v. Azerbaijan* (application no. 36503/11), *Sellal v. France* (no. 32432/13) and *Kharlamov v. Russia* (no. 27447/07), separate press releases have been issued;

for two decisions, in the cases of *Benmouna v. France* (no. 51097/13) and *Macalin Moxamed Sed Dahir v. Switzerland* (no. 12209/10), separate press releases have been issued;

one Committee judgment, which concerns issues which have already been submitted to the Court, and the 82 other decisions can be consulted on [Hudoc](#) and do not appear in this press release.

The judgments below are available only in English.

Vujica v. Croatia (application no. 56163/12)

The applicant, Klaudia Vujica, is an Austrian national who was born in 1974 and lives in Graz (Austria).

The case essentially concerned two parallel sets of proceedings in which the Croatian courts had refused to return Ms Vujica's three children to her in Austria and had awarded custody to the father.

Ms Vujica, married S.V. in Vienna (Austria) in 1997 and they had three children together, born in 1999, 2001 and 2006. They moved to Komletinci (Croatia) in 2006. The couple separated in 2009: S.V. remained in Croatia and Ms Vujica returned to Austria. At first the children stayed with their mother in Graz; however, in August 2010, after spending the summer holidays in Croatia with their father and paternal grandparents, the father refused to return them to their mother in Austria.

In September 2010 Ms Vujica therefore brought child return proceedings under the Hague Convention on the Civil Aspects of International Child Abduction via the Austrian Ministry of Justice. This request was forwarded to Vinkovic Municipal Court which dismissed Ms Vujica's request for the return of her children on 19 November 2010. The court based its decision on a report by the Vinkovci social services, including the opinion of a social worker and a psychologist that it was not in the best interests of the children who, settled in their living and school environment in Croatia, had stated that they did not wish to return to Austria. This decision, upheld by Vukovar County Court, became final in February 2011.

Meanwhile, in August 2010 civil proceedings for divorce and custody commenced before the Croatian courts. At a hearing held on the case on 19 November 2010 (that is, two hours after the hearing in the return proceedings) before Vinkovci Municipal Court the parents informed the court that they had agreed that the two older children would live with their father but that they could not reach an agreement on the custody of the youngest child. Ms Vujica's lawyer requested the court to obtain a joint expert opinion from a psychiatrist and a psychologist to establish what was in the best

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.

interests of the younger child who, only four and half years old at the time, was in particular need of her mother. The court, rejecting this proposal, granted the divorce, decided that it was not advisable to separate the three children and that they should live with their father. Ms Vujica was granted contact rights. This decision, upheld by Vukovar County Court, became final in February 2011.

The father also brought Hague Convention proceedings in April 2011 as Ms Vujica had retained her youngest daughter in Austria despite an agreement at the custody hearing of 19 November 2010 that Ms Vujica could take her daughter to Austria and return her at the beginning of January 2011. The Austrian courts dismissed the father's request in September 2011 on the basis of a psychological report which found that separating the young girl from her mother would have devastating consequences.

Ms Vujica's constitutional complaints as concerned both the return and custody proceedings were dismissed in January 2012.

Relying in particular on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Ms Vujica complained about the Croatian courts' decisions refusing to return her children to her and awarding custody of all three children to their father. She notably complained that the courts had not referred her and her former husband for mandatory mediation before the start of the divorce and custody proceedings and had failed to stay those proceedings pending the final outcome of the return proceedings.

Violation of Article 8

Just satisfaction: The Court held that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by Ms Vujica. It further awarded her 2,070 euros (EUR) in respect of costs and expenses.

Fartushin v. Russia (no. 38887/09)

The applicant, Sergey Fartushin, was a Russian national who was born in 1985 and who lived in Sarov (Russia). Mr Fartushin died in 2014.

The case principally concerned Mr Fartushin's allegations of his unrecorded detention and ill-treatment by the police.

On 5 May 2008 Mr Fartushin was contacted by the police and requested to go to the police station for questioning regarding the theft of a vehicle. At 2 p.m. that day Mr Fartushin went to the station as requested, leaving friends waiting for him outside. His arrival was registered in the police records. According to Mr Fartushin, once inside the police station officers demanded that he confess to the thefts. When he refused, he was shackled, beaten and threatened. On 6 May 2008 a lawyer appointed by Mr Fartushin's family made enquiries but was unable to locate him at the police station. Further police records report that Mr Fartushin had been arrested as a suspect on 6 May 2008 at 8.20 p.m. An ambulance was called at 9.15 p.m.

On 7 May 2008, Mr Fartushin lodged a complaint alleging that he had been unlawfully deprived of his liberty and ill-treated in police custody. His complaints were dismissed on the basis of the officers' statements denying the allegations that Mr Fartushin had been ill-treated or brought to the police station before 8.20 p.m. on 6 May 2008. The investigator ordered that no criminal proceedings should be instituted. Further decisions were given applying the same reasoning. Mr Fartushin appealed to the courts who ultimately ruled that the investigator's decision was lawful and well-grounded.

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 (right to liberty and security), Mr Fartushin complained that he had been unlawfully detained and ill-treated in police custody.

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 3 (investigation)

Violation of Article 5 – on account of the applicant's unrecorded detention at the police station

Just satisfaction: EUR 30,000 (non-pecuniary damage) and EUR 4,600 (costs and expenses) to Ms Irina Fartushina and Ms Ksenia Fartushina, the applicant's heirs

Sergey Denisov v. Russia (no. 21566/13)

Tselovalnik v. Russia (no. 28333/13)

Both cases principally concerned allegations of inadequate medical care in detention.

The applicants are Sergey Pavlovich Denisov and Sergey Tselovalnik, Russian nationals who were born in 1971 and 1977, respectively. They are both currently serving prison sentences following drug trafficking offences. Mr Denisov is currently serving his sentence in Krasnoyarsk (Russia) and Mr Tselovalnik in Kemerovo (Russia).

The applicant in the first case, Mr Denisov, was arrested on 13 August 2012 on suspicion of having attempted to sell a large quantity of heroin. He was held in pre-trial detention until 7 August 2013 when he was released against an undertaking not to leave town. Mr Denisov's pre-trial detention was authorised and regularly reviewed by the court which held that his pre-trial detention was necessary as it was likely that he would abscond, reoffend or pervert the course of justice if released. On 24 March 2014, Mr Denisov was convicted of four counts of drug trafficking. The applicant in the second case, Mr Tselovalnik, was convicted of several counts of attempted drug trafficking on 19 November 2008 and sentenced to ten and half years' imprisonment.

Both men suffered from various illnesses during their detention.

Mr Denisov, suffering from HIV, cancer and chronic hepatitis C, was regularly monitored during his detention, given treatment for his HIV and referred to a cancer specialist. A biopsy was recommended but refused by Mr Denisov.

Mr Tselovalnik started experiencing severe knee pain during his detention in December 2009, and, following numerous complaints, he was seen in June 2010 by a doctor who suspected that he might be suffering from rheumatoid polyarthritis. At the end of October 2012, in response to Mr Tselovalnik's continuous complaints of ongoing pain, he started to receive some limited treatment and, in December 2012, was seen by various medical professionals but not by the appropriate specialist. Complaints made by Mr Tselovalnik regarding pain in other joints went unexamined. He was diagnosed with acute prostatitis in February 2013 but rather than seeing a specialist, as recommended, he was found fit for transfer.

Mr Denisov complained about his treatment to the authorities in November 2012 and requested a forensic medical expert examination. He received two letters of response in December 2012 informing him that the court had already examined his arguments regarding the state of his health and determining the issue of his pre-trial detention. Mr Tselovalnik complained on numerous occasions and to various authorities about the lack of proper medical assistance. He requested a forensic medical examination or an admission to a prison hospital for examination and treatment. In November 2013, he complained to the court regarding the lack of medical care, claiming that his health complaints had been systematically ignored. His claim was dismissed in January 2014 and his subsequent appeal dismissed in July 2014.

Relying on Article 3 (prohibition of inhuman or degrading treatment), both men complained that the authorities had not taken steps to safeguard their health and well-being, having failed to provide them with adequate medical assistance. Mr Denisov argued in particular that his HIV treatment had been interrupted following his arrest and that his suffering from cancer and HIV infection had warranted his release. Mr Tselovalnik alleged in particular that the authorities had failed to take the

necessary measures to ensure an accurate diagnosis at an early stage of his disease. Also relying on Article 13 (right to an effective remedy), both men argued that they had not had an effective remedy to complain about the lack of medical assistance in detention. Finally Mr Denisov further complained under Article 5 (right to liberty and security) that his pre-trial detention had been unreasonably long and that the court orders for his detention had not been sufficiently reasoned.

- case of *Sergey Denisov*:

No violation of Article 3

No violation of Article 5 § 3

Violation of Article 13

Just satisfaction: EUR 2,500 (non-pecuniary damage)

- case of *Tselovalnik*:

Violation of Article 3 (inhuman and degrading treatment)

Violation of Article 13

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

Aždajić v. Slovenia (no. 71872/12)

The applicant, Zlatka Aždajić, is a Slovenian national who was born in 1949 and lives in Ruše (Slovenia).

The case concerned Ms Aždajić's complaint that a default judgment against her for repayment of a loan had been unfair as she had not even been aware that proceedings had been brought against her.

In December 2006 proceedings were brought against Ms Aždajić by an acquaintance for repayment of a loan of 14,000 euros. In September 2007 a default judgment was served on her ordering payment of the loan. She immediately lodged an appeal and an application to reinstate the proceedings. She explained that, having travelled to Namibia in January 2007 for three months, she had not received the delivery slips in her mailbox which would have led to her being informed of the claim against her and of the request for her observations. Her application to reinstate the proceedings was rejected in December 2007 as it had been lodged outside the three-month time-limit, the courts considering that she should have lodged such an application on finding the delivery slips when returning from Namibia in March 2007. Her appeals against that decision and the default judgment were subsequently also dismissed on the ground that she had been properly served with the claim, as proved by the notices of delivery indicating that the delivery slips had been duly left in her mailbox.

Relying on Article 6 § 1 (right to a fair trial), she complained that the proceedings against her had been unfair as she had not been properly served with the claim against her.

Violation of Article 6 § 1

Just satisfaction: EUR 2,000 (non-pecuniary damage) and EUR 3,869 (costs and expenses)

Korošec v. Slovenia (no. 77212/12)

The applicant, Tadej Korošec, is a Slovenian national who was born in 1980 and lives in Ljubljana.

Mr Korošec, who has progressive spinal muscular atrophy and needs 24-hour assistance, complained that the proceedings for an increase in his attendance allowance had been unfair.

In May 2009 Mr Korošec's general practitioner, considering that his patient's condition was worsening, applied for an increase in his assistance allowance to Slovenia's Pensions and Disability

Insurance Institute. The request was then dismissed by the Institute's disability commission – composed of the Institute's various medical specialists – at two instances, on the ground that Mr Korošec did not need permanent, professional medical care. In October 2009 Mr Korošec therefore brought proceedings against the Institute before the social courts, requesting that an independent expert examine his medical file. In September 2010 his claim was dismissed on the grounds that disability commissions had already made an adequate assessment of the documentation in his medical file. His appeal was subsequently dismissed by the appeal court as was his application for leave to appeal on points of law by the Supreme Court. His constitutional complaint was ultimately dismissed in June 2012.

Relying on Article 6 § 1 (right to a fair trial), Mr Korošec alleged that the proceedings concerning his allowance had not been fair. Notably, the courts had based their decisions on the opinions of the disability commissions, which had not been independent bodies but had been appointed by the opposing party, namely the Institute which had refused to increase his allowance in the first place.

Violation of Article 6 § 1

Just satisfaction: EUR 5,000 (non-pecuniary damage) and EUR 2,800 (costs and expenses)

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Press contacts

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

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

Nina Salomon (tel: + 33 3 90 21 49 79)

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

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.