



## Judgments and decisions of 26 January 2017

The European Court of Human Rights has today notified in writing nine judgments<sup>1</sup> and 15 decisions<sup>2</sup>: five Chamber judgments are summarised below; separate press releases have been issued for three other Chamber judgments in the cases of *Lena Atanasova v. Bulgaria* (application no. 52009/07), *Ivanova and Ivashova v. Russia* (nos. 797/14 and 67755/14), and *X v. Switzerland* (no. 16744/14); one separate press release has also been issued for a decision in the case of *Bodet v. Belgium* (no. 78480/13); one Committee judgment, concerning issues which have already been submitted to the Court, and the 14 other decisions can be consulted on [Hudoc](#) and do not appear in this press release.

*The judgments below are available only in English.*

### Faig Mammadov v. Azerbaijan (application no. 60802/09)

The applicant, Faig Mammadov, is an Azerbaijani national who was born in 1962 and is detained in Baku. The case concerned his absence from a hearing before the Supreme Court.

In June 2008 the Assize Court convicted Mr Mammadov and his wife of fraud. Mr Mammadov was sentenced to nine years' imprisonment and confiscation of property, and his wife was sentenced to seven years imprisonment suspended for five years on probation. The Baku Court of Appeal overturned the judgment in January 2009, reducing Mr Mammadov's term of imprisonment to seven years and lifting the confiscation of property sanction. Mr Mammadov then lodged a cassation appeal to the Supreme Court, and the prosecutor lodged a cassation protest.

The Supreme Court adjourned the hearing of the appeal on two occasions. This was upon the request of Mr Mammadov's lawyer, who referred to health problems, and pleaded that he had not had enough time to familiarise himself with the case file and collect further evidence.

The next hearing took place on 1 July 2009. Though the prosecutor was present, neither Mr Mammadov nor his lawyer attended. The Supreme Court dismissed Mr Mammadov's appeal and accepted the prosecutor's application for a supervisory review in part. The court then upheld Mr Mammadov's conviction but quashed his wife's conviction, remitting that part of the case to the Court of Appeal for fresh examination. The Supreme Court's decision stated that the examination of the case in the absence of Mr Mammadov and his lawyer was possible, on the grounds that the lawyer had failed to appear despite being duly notified, and the incarcerated Mr Mammadov had made no request to attend.

Relying in particular on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Mammadov complained that the Supreme Court had failed to take measures to ensure his or his lawyer's attendance at the hearing examining his cassation appeal.

<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.

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

### Dzirnis v. Latvia (no. 25082/05)

The applicant, Janis Dzirnis, is a Latvian national who was born in 1968 and lives in Riga. The case concerned the ownership of a property which was purchased by Mr Dzirnis but then transferred to the State, without any compensation being paid.

In 1991 legislation came into force in Latvia relating to property that had been nationalised in the Communist era. This allowed former owners or their heirs to reclaim property that had been seized. One such property, located in Jurmala, became the subject of several decisions and rulings from the Latvian authorities. The heir of the property's former owner, V.P.E., instituted proceedings to reclaim it. However, she did not pursue her claim to court. In July 2000 the Cabinet of Ministers issued an order by which it was meant to transfer ownership of a part the property ("the contested property") to the Ministry of Finance. Following this, V.P.E. re-instituted her claim. In February 2001 the Jurmala City Court ruled in her favour, and she was registered as the owner of the full property. She then sold the contested property to the applicant, Mr Dzirnis, for 39,000 Latvian lati.

The following month, the Prosecutor General submitted an appeal to the Senate of the Supreme Court, claiming that the judgment awarding ownership of the property to V.P.E. had been unlawful. The court quashed the judgment and ordered a new adjudication of the case. The Ministry of Finance then brought a claim against both V.P.E. and Mr Dzirnis, requesting that the purchase of the contested property by the latter be declared null and void, and for the Ministry's rights over it to be recognised. The proceedings were joined with V.P.E.'s original claim over the property.

The case was heard at first instance by the Riga Regional Court, and was then appealed to the Supreme Court. It was then repeatedly passed between the Supreme Court and the Senate of the Supreme Court, both of which ruled on the matter on three occasions. The final judgment was given in March 2005. The end result was that the Ministry of Finance obtained ownership of the contested property, with no compensation being awarded to Mr Dzirnis.

Relying on Article 1 of Protocol No. 1 (protection of property), Mr Dzirnis complained that, though he had purchased the contested property in good faith, the domestic courts had deprived him of title to it without compensating him for the loss that he had sustained.

### Violation of Article 1 of Protocol No. 1

**Just satisfaction:** 88,283.50 euros (EUR) (pecuniary damage), and EUR 5,000 (non-pecuniary damage)

### Khamidkariyev v. Russia (no. 42332/14)

The applicant, Mr Mirsobir Mirsobitovich Khamidkariyev, is an Uzbek national who was born in 1978. He is currently serving a prison sentence in Uzbekistan.

Mr Khamidkariyev fled Uzbekistan in December 2010 and moved to Russia. He lived in Moscow with his partner, Ms I., and their child.

In 2011, the Uzbek authorities charged Mr Khamidkariyev *in absentia* with crimes related to religious extremism for his alleged involvement in establishing a jihadist organisation in 2009. He was arrested in July 2013 in Moscow on the basis of an Uzbek arrest warrant and detained pending extradition. However, he was released in August following an intervention by the Golovinskiy inter-district prosecutor's office of Moscow. The prosecutor's office noted that the Uzbek authorities had not lodged a formal extradition request; that the crimes he had been charged with did not constitute criminal offences under Russian law; and that Mr Khamidkariyev could not have established the

jihadist organisation in 2009, as it had been banned by the Supreme Court of Russia since 2003. After his release, Mr Khamidkariyev continued to live in Moscow.

On the evening of 9 June 2014, Mr Khamidkariyev was abducted while waiting in a taxi for Ms I. and their child outside a pharmacy in central Moscow. According to Mr Khamidkariyev, his abductors placed a sack over his head, which they did not remove until they had taken him to an unidentified house, where he recognised them as two FSB officers whom he had met in November 2011. The two officers are then alleged to have beaten Mr Khamidkariyev and kept him in the house until the following day. He was then allegedly handed over to Uzbek officials near the steps of a Tashkent-bound airplane. Once in Uzbekistan, Mr Khamidkariyev was arrested on suspicion of crimes related to religious extremism and detained for two months ahead of his criminal trial at the Tashkent City Court. Mr Khamidkariyev claims that during his detention, he was subjected to torture and other ill-treatment by Uzbek officials.

On 18 November 2014, the Tashkent City Court found Mr Khamidkariyev guilty and sentenced him to eight years' imprisonment. His court-appointed lawyer refused to lodge an appeal. Mr Vasilyev lodged an appeal with the Appeal Chamber of the Tashkent City Court on Mr Khamidkariyev's behalf. It appears, however, that Mr Khamidkariyev subsequently withdrew his statement of appeal. He remains in prison in Uzbekistan.

Relying in particular on Article 3 (prohibition of torture and of inhuman or degrading treatment), Mr Khamidkariyev complained that his secret transfer to Uzbekistan could only have been carried out with the active or passive involvement of the Russian authorities, and that the Russian authorities had failed to conduct an effective investigation into the abduction.

**Violation of Article 38** (obligation to furnish necessary facilities for the examination of the case)

**Violation of Article 3** (treatment)

**Violation of Article 3** (investigation)

**No violation of Article 34** (right of individual petition)

**Interim measure** (Rule 39 of the Rules of Court) – not to extradite, expel or otherwise involuntarily remove Mr Khamidkariyev from Russia to Uzbekistan or any other country – lifted.

**Just satisfaction:** EUR 19,500 (non-pecuniary damage)

## Terentyev v. Russia (no. 25147/09)

The applicant, Sergey Terentyev, is a Russian national who was born in 1954 and lives in Syktyvkar, in the Komi Republic (Russia). The case concerned his liability for defamation.

Mr Terentyev is a musician and jazz critic. In 2007 he published an article on his personal website about a local jazz festival, which was scathingly critical of the festival and its president. Mr Terentyev used various derivatives of the festival president's surname to mock his professional qualities and described his delivery as "crappy". The festival president sued Mr Terentyev for defamation. In August 2008 the Syktyvkar Town Court found against Mr Terentyev, ordering him to pay 5,000 roubles in damages and publish a retraction on his website. His appeal of the decision was dismissed by the Supreme Court of the Komi Republic two months later. The Supreme Court found that Mr Terentyev's right to freedom of expression had not been breached, because "the defendant published statements on the Internet which undermined the honour and dignity of the plaintiff as a person, pedagogue and musician and which contained negative information about him".

Relying on Article 10 (freedom of expression), Mr Terentyev complained that the defamation ruling had violated his right to freedom of expression.

**Violation of Article 10**

**Just satisfaction:** EUR 144 (pecuniary damage), and EUR 2,500 (non-pecuniary damage)

## Surikov v. Ukraine (no. 42788/06)

The applicant, Mr Mikhail Mikhaylovich Surikov, is a Ukrainian national who was born in 1962 and lives in Simferopol. The case concerned a refusal by Mr Surikov's employer (a State-owned company) to promote him on the basis that he had been declared unfit for military service in 1981, due to mental health-related issues.

Mr Surikov began working at the Tavrida State Publishing House in August 1990. Initially hired as a worker, in 1997 he asked the director of Tavrida to place him on a reserve list for promotion to an engineering position in line with his qualifications. Having received no reply, in 2000 Mr Surikov applied for a second time and was refused. Mr Surikov appealed to the Central District Court of Simferopol seeking to compel his employer to consider him for an engineering position.

During the proceedings, Tavrida submitted that the refusal was connected to the state of Mr Surikov's mental health, in particular the fact that he had been declared unfit for military service in 1981. In 1997, the human resources department of the company had obtained from the military enlistment office a certificate confirming this. The court rejected Mr Surikov's complaint, holding that the promotion of employees was within the employer's discretion. This was upheld on appeal by the Supreme Court of the Autonomous Republic of Crimea.

In 2002, following a referral by Tavrida, Mr Surikov underwent medical examinations and obtained a certificate signed by six medical specialists attesting to his fitness for employment as an engineer. In August 2003 he was appointed as a foreman and in April 2006 as an engineer-technologist.

Between 2000 and 2006, Mr Surikov was engaged in civil proceedings against Tavrida concerning the purportedly unlawful collection, use, and dissemination of his personal health data. He also submitted that the standardised grounds for his dismissal from military service in 1981 had not been specific enough to serve as a basis for the later refusal to promote him, and that in any case, the information was outdated. He complained that, if the company had had doubts about his health, it should have asked him for a current medical certificate. His claims were unsuccessful at every level.

In 2006, Mr Surikov instituted civil proceedings against the director of Tavrida, the human resources officer, and his supervisor, challenging the lawfulness of their actions regarding the processing of his health data. His claim was unsuccessful, as were subsequent appeals to the Court of Appeal and the Supreme Court. The final decision was made on 23 May 2007.

Relying on Article 8 (right to respect for private and family life), Mr Surikov complained that his employer had arbitrarily collected, retained, and used sensitive and obsolete data concerning his mental health when considering his application for promotion, and had unlawfully disclosed this data (to his colleagues and in court). Relying on Article 6 (right to a fair hearing), Mr Surikov further complained that the domestic courts had failed to address pertinent and important points raised in his case.

### Violation of Article 8

### Violation of Article 6

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

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