



Judgments of 2 October 2018

The European Court of Human Rights has today notified in writing nine judgments¹:

seven Chamber judgments are summarised below;

separate press releases have been issued for two other Chamber judgments in the cases of *Bivolaru v. Romania (no. 2)* (no. 66580/12) and *Mutu and Pechstein v. Switzerland* (nos. 40575/10 and 67474/10).

The judgments below are available only in English.

Kožemiakina v. Lithuania (application no. 231/15)

The applicant, Irina Kožemiakina, is a Lithuanian national who was born in 1969 and lives in Klaipėda (Lithuania).

The case concerned a civil compensation award that was awarded against her and her son, a minor, after the son was involved in an assault on a man.

The applicant's son, A.K., argued that he had acted in self-defence in the assault, which took place in February 2012. The first-instance court in November 2012 ultimately found a friend of A.K.'s guilty of attacking the man, stating that the applicant's son had participated in the attack. As a minor below the age of sixteen, the son could not be prosecuted and no finding of guilt was made against him. The man who had been assaulted made a civil compensation claim against the applicant and her son in May 2013, which led to an award against them. They argued that the criminal court's judgment on the assault had never assessed her son's guilt and thus the courts in civil proceedings could not rely on the criminal courts' findings, but their arguments and appeals against the compensation claim were dismissed in 2014.

Relying on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights, the applicant complained that the damages proceedings had been unfair because they had relied on criminal proceedings in which her son had only had the status of a witness and she had not had any procedural status.

Violation of Article 6 § 1

Just satisfaction: 3,000 euros (EUR) (non-pecuniary damage) and EUR 876 (costs and expenses)

A.B.V. v. Russia (no. 56987/15)

The applicant, Mr A.B.V., is a Russian national who was born in 1977 and lives in Balashikha (Moscow Region, Russia).

The case concerned the applicant's legal efforts to enforce a court order allowing him contact with his daughter.

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

A woman with whom the applicant had been living gave birth to a daughter in July 2010. The applicant had regular contact with the child until January 2011, when the mother began to avoid communication with him and prevented him from visiting the child.

Between June 2011 and July 2014 the applicant was involved in legal proceedings which ultimately led to the courts establishing his paternity of the child and issuing a contact order.

However, even with the involvement of the bailiff's service, the applicant was unable to enforce the court decision for several years as the mother refused to comply. The applicant met his child for the first time since 2011 in February 2017. The mother prevented a further two meetings from taking place while at the third the child stated that she did not want to communicate with him.

Relying on Article 8 (right to respect for private and family life) of the European Convention, the applicant complained about his continuing lack of access to his daughter and of the failure of the authorities to offer him effective assistance to enforce his access rights.

Violation of Article 8

Just satisfaction: EUR 12,500 (non-pecuniary damage) and EUR 2,600 (costs and expenses)

Fedchenko v. Russia (no. 3) (no. 7972/09)

Fedchenko v. Russia (no. 4) (no. 17221/13)

Fedchenko v. Russia (no. 5) (no. 17229/13)

The applicant in all three cases is Oleg Fedchenko, a Russian national who was born in 1968 and who lives in Suponevo (Bryansk Region, Russia).

Mr Fedchenko is the editor of a weekly newspaper which he founded himself called *Bryanskiye Budni* (Брянские будни).

All three cases concerned court findings of defamation against Mr Fedchenko.

In Fedchenko v. Russia (no. 3) the domestic court found that the applicant had defamed a member of the Bryansk Region Duma in an article published in February 2008, which referred, among other things, to the politician allegedly using his official car for private purposes. The court in November 2008, upheld on appeal in December of the same year, awarded 40,000 Russian roubles to the claimant and ordered Mr Fedchenko to publish a retraction within 10 days of the judgment coming into force.

Fedchenko v. Russia (no. 4) concerned a November 2012 damages award of 5,000 roubles against the applicant after he had published an article which referred to a deputy governor of the Bryansk region in connection with land fraud.

Fedchenko v. Russia (no. 5) concerned an award of 5,000 roubles made against the applicant in September 2012 after he was found to have defamed another regional governor in an article about alleged favouritism by the authorities to the owner of a local shopping centre which had been found to be in breach of fire safety rules. He was also ordered to publish retractions in both cases.

Mr Fedchenko relied on Article 10 (freedom of expression) in all three cases to complain about the court awards against him.

- case of **Fedchenko v. Russia (no. 3):**

Violation of Article 10

Just satisfaction: EUR 1,000 (pecuniary damage), EUR 7,500 (non-pecuniary damage) and EUR 1,830 (costs and expenses)

- case of *Fedchenko v. Russia (no. 4)*:

Violation of Article 10

Just satisfaction: EUR 130 (pecuniary damage), EUR 7,500 (non-pecuniary damage) and EUR 1,680 (costs and expenses)

- case of *Fedchenko v. Russia (no. 5)*:

Violation of Article 10

Just satisfaction: EUR 7,500 (non-pecuniary damage) and EUR 1,700 (costs and expenses)

Tsakoyevy v. Russia (no. 16397/07)

The applicants, Dzhamal Tsakoyev and Zukhra Tsakoyeva, are Russian nationals who were born in 1940 and 1950 respectively. They live in the North Caucasus (Russia).

The case concerned the alleged abduction of their son, Rasul Tsakoyev, on 27 September 2004 during a police special operation. He was found two days later next to a local petrol station. He had been severely beaten and died soon after in hospital from his injuries.

The applicant couple complained to the authorities while their son was still alive and an investigator went to the hospital to question him. He explained that he had been forced into a car and taken to police premises which he recognised from previous times he had been questioned about his involvement in an illegal armed group. He alleged that he had then been beaten with rubber truncheons, burnt with cigarettes and tortured with electric shocks and needles under his nails for the next three days.

The prosecuting authorities opened a criminal case on 7 October 2004. Rasul Tsakoyev's family and colleagues were questioned and confirmed his allegations, while the police officers gave statements either saying that they could not recall the incident or that they had been asked by family and friends to search the police station for Mr Tsakoyev but had not found him.

The investigation has since been repeatedly suspended and resumed, the supervising prosecutors and domestic courts pointing out shortcomings in the investigation. The criminal proceedings are, however, still pending.

Relying on Article 2 (right to life), Article 3 (prohibition of torture and of inhuman or degrading treatment), Article 5 (right to liberty and security) and Article 13 (right to an effective remedy), the applicant couple alleged that the police had abducted and tortured their son, as a result of which he had died, and that the authorities had failed to effectively investigate the matter.

Violation of Article 2 (right to life) in respect of Mr Rasul Tsakoyev

Violation of Article 2 (investigation)

Violation of Article 3 (torture) in respect of Mr Rasul Tsakoyev

Violation of Article 5 in respect of Mr Rasul Tsakoyev

Violation of Article 13 in conjunction with Articles 2 and 3

Just satisfaction: EUR 5,000 each to Dzhamal Tsakoyev and Zukhra Tsakoyeva for pecuniary damage, EUR 60,000 to the applicants jointly for non-pecuniary damage, and EUR 4,500 jointly (costs and expenses)

Krivolapov v. Ukraine (no. 5406/07)

The applicant, Igor Krivolapov, is a Ukrainian national who was born in 1961 and lives in Kramatorsk (Ukraine).

The case concerned Mr Krivolapov's detention and trial during criminal proceedings against him.

In January 2004 the authorities began criminal proceedings against Mr Krivolapov, alleging that as deputy head of the police in Kramatorsk he had falsified the case against a man accused of murdering a local journalist in 2001 in order to avoid responsibility for his failure to solve the crime.

Mr Krivolapov was remanded in custody in February 2004, with his period in detention being extended several times. He was finally released in February 2009 after a court acquitted him of some of the charges and found him guilty of others, but held that he had already served his sentence while in detention. He was ordered back into pre-trial detention in January 2012 on different charges but was released by a court in January 2013 after the remaining charges became time-barred.

Mr Krivolapov complained in particular under Article 5 § 1 (right to liberty and security / lawful arrest on reasonable suspicion) that his detention from 10 August 2005 to 19 February 2009 had been unlawful and arbitrary. Relying on Article 5 §§ 1 and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial) he complained that his detention from 25 January 2012 until 24 January 2013 had been excessively long and had not been based on relevant and sufficient reasons. He relied on Article 5 § 5 (right to compensation) to complain that he had had no enforceable right to compensation for such violations of his rights.

Relying on Article 6 § 1 (right to a fair trial within a reasonable time) and Article 6 § 2 (presumption of innocence), he complained about the length of the proceedings against him and the fact that public officials had been involved in the media campaign surrounding his case, asserting his guilt prior to his conviction.

Violation of Article 5 § 1 - on account of the detention from 10 August 2005 to 19 February 2009;

Violation of Article 5 §§ 1 and 3 - on account of the detention from 12 December 2012 to 24 January 2013;

Violation of Article 5 § 5

Violation of Article 6 § 1 (length of the criminal proceedings)

Violation of Article 6 § 2 (presumption of innocence)

Just satisfaction: EUR 20,000 (non-pecuniary damage) and EUR 300 (costs and expenses)

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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.