



## Judgments of 4 September 2018

The European Court of Human Rights has today notified in writing 14 judgments<sup>1</sup>:

four Chamber judgments are summarised below; a separate press release has been issued for one other Chamber judgment in the case of *Fatih Taş v. Turkey* (no. 5) (no. 6810/09);

nine Committee judgments, concerning issues which have already been submitted to the Court, can be consulted on [Hudoc](#) and do not appear in this press release.

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

### Tiramavia S.R.L. and Others v. the Republic of Moldova (applications nos. 54115/09, 55707/09, and 55770/09)

The applicant companies, Tiramavia S.R.L., Valan International Cargo Charter S.R.L., and Grixona S.R.L., are three air transport companies incorporated in Moldova.

The case concerned the withdrawal of their air operating certificates in 2007.

In June 2007 the local regulator, the Civil Aviation State Authority (CASA), asked the applicant companies to address irregularities found by an EU safety report. However, on 21 June the CASA proceeded to withdraw all three companies' operating certificates.

It found that some European airports had expressed worries about Tiramavia's aircraft and that the other applicant companies flew to various risky destinations, in spite of a ban imposed on those destinations. It had previously banned Moldovan carriers from flying to Iraq and Afghanistan, although that order was not due to come into effect until July 2007. The courts upheld the CASA's decisions.

The applicant companies complained in particular about the withdrawal of their operating certificates under Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.

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

**Just satisfaction:** 3,000 euros (EUR) for non-pecuniary damage and EUR 2,500 for costs and expenses to each of the applicant companies.

### Cristian Cătălin Ungureanu v. Romania (no. 6221/14)

The applicant, Cristian Cătălin Ungureanu, is a Romanian national who was born in 1972 and lives in Ploiești (Romania).

The case concerned the domestic courts' refusal to decide on rights for the applicant to visit his son during divorce proceedings.

<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)

In September 2012 Mr Ungureanu's wife filed for divorce and custody of their son, born in 2006. She and the child moved out a month later. In November 2012 Mr Ungureanu sought an interim court order for either custody or to determine his rights to visit his son during the divorce proceedings.

The courts refused him custody and stated that the law did not allow for access rights to be decided during divorce proceedings. The final decision came in May 2013.

The divorce proceedings ended in November 2016, leading to an order that the child should live with his mother and giving Mr Ungureanu a schedule of visiting rights. The child moved back in with the applicant in February 2018 after the mother decided to move town.

Relying in particular on Article 8 (right to respect for private and family life) of the European Convention, Mr Ungureanu complained in particular about not being able to obtain a decision on visiting rights during the divorce proceedings.

#### Violation of Article 8

**Just satisfaction:** EUR 8,000 (non-pecuniary damage) and EUR 2,380 (costs and expenses)

### Ömer Güner v. Turkey (no. 28338/07)

The applicant, Ömer Güner, is a Turkish national who was born in 1969 and lives in Aydın (Turkey).

The case concerned Mr Güner's conviction for aiding and abetting a terrorist organisation after he had been denied legal assistance, and on the basis of testimony made without a lawyer being present.

Mr Güner, the manager of a hotel at the time, was arrested in July 2002 by counter-terrorism police officers as part of an operation against an illegal organisation, the *Bolşevik Parti–Kuzey Kürdistan/Türkiye* (Bolshevik Party–North Kurdistan/Turkey).

Various left-wing materials were found in his room and he later told police, without a lawyer being present, that he had let two men linked to the Bolshevik Party stay at the hotel and use his car. One of the men, Mehmet Desde, was the applicant in [Desde v. Turkey](#).

Mr Güner was charged in September 2002 with aiding and abetting an illegal organisation. He denied the charges. After various sets of proceedings, he was convicted in March 2006 and sentenced to 10 months' imprisonment and a fine. The court found that the Bolshevik Party could be classed as a terrorist organisation and that he had aided and abetted it. His appeals were dismissed.

Relying in substance on Article 6 §§ 1 and 3 (c) (right to a fair trial and right to legal assistance of own choosing), Mr Güner alleged in particular that he had been denied legal assistance in the preliminary investigation stage, that his statements had been made under duress and that he had been convicted on the basis of testimony made in the absence of a lawyer.

#### Violation of Article 6 §§ 1 and 3 (c)

**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 Güner. It further awarded Mr Güner EUR 31 for costs and expenses.

### Yirdem and Others v. Turkey (no. 72781/12)\*

The applicants, Münüre Yirdem, Derya Şahin Yirdem, and Gülay İlter Yirdem, are three Turkish nationals who were born in 1958, 1973, and 1979 respectively and live in Istanbul. The case concerned proceedings relating to the circumstances of the death in hospital of the applicants' relative, Nayim Yirdem. The applicants are the deceased's widow and his two daughters.

In August 2003, three days after being admitted to hospital, Nayim Yirdem died of a cardiac arrest despite doctors' efforts to resuscitate him. An autopsy showed that his death had been caused by a heart attack and stroke resulting from corrosive poisoning with heptane and toluene, two components of organic solvents. According to a report written in August 2005 by the Forensic Medical Institute, these substances had not been present in the hospital.

In April 2006 the public prosecutor charged the medical staff of the hospital's neurology department with negligence in the performance of their duties. In May 2010 the defendants were acquitted by the Criminal Court, which based its decision on the findings of an expert report by the National Health Council, according to which the defendants were not guilty of any professional misconduct and the substance in question had most likely been injected before the patient was admitted to hospital. That judgment was upheld by the Court of Cassation in March 2012.

Relying in particular on Article 2 (right to life), the applicants complained of the death of Naim Yirdem, alleging, among other things, that the domestic authorities had failed to establish the origin of the two hydrocarbons found in the deceased's body.

**No violation of Article 2** (right to life)

**Violation of Article 2** (investigation)

**Just satisfaction:** EUR 10,000 for non-pecuniary damage and EUR 1,000 for costs and expenses to the applicants jointly.

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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.